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DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505-AC44

Department of the Treasury Regulations for the Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury is issuing 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).

DATES: Effective date for the Interim Final Rule: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the Interim Final Rule are due: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Treasury invites comments on the topics addressed in this Interim Final 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 1132; 1500 Pennsylvania Avenue, NW; Washington, DC 20220.

Email: Send to RESTORErule@treasury.gov.

In general, Treasury will post all comments to 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: Please send questions by email to RESTORErule@treasury.gov or contact Janet Vail, 202-622-6873.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 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. These funds will be invested and made available through five components of the Act described below.

The Direct Component sets aside 35 percent of the penalties paid into the trust fund for eligible activities proposed by the State of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. 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 independent Federal entity called the Gulf Coast Ecosystem Restoration Council (Council). The Council includes members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, the Secretary of Commerce, at this time serves as Chairperson of the Council. The Council will direct those 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, entities representing the Gulf Coast States can use an additional 30 percent of penalties in the trust fund for eligible activities pursuant to State Expenditure 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), an operating unit of the Department of Commerce, and the Centers of Excellence Research Grants Program.

Treasury has 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 Research Grants 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.

Treasury published a proposed rule on September 6, 2013, containing procedures regarding trust fund investments, as well as procedures to implement the five components of the Act. These procedures recognized that each component makes funds available through grants. Accordingly, the procedures contained not only requirements in the Act, but also administrative requirements common to Federal grant programs. The procedures also outlined a structure for compliance monitoring. The Federal and state entities that administer grants under the Act will be primarily responsible for overseeing compliance with the terms of their award agreements. In addition, Treasury will have an important and supplemental role in overseeing the states' compliance with requirements in the Comprehensive Plan Component and the Spill Impact Component.

II. Public Comments and Summary of Interim Final Rule

Treasury received over 1,200 comment letters on the proposed rule from individuals, public interest groups, state and local governments, and research institutions. The comments were generally positive. Most comments offered views or requested information regarding the activities eligible for funding, the process and timing for issuing grants, and other aspects of grant administration. Several comments also urged that Treasury provide additional opportunities for public comment.

Treasury is issuing its regulations as an Interim Final Rule, which will take effect 60 days after publication in the Federal Register. Treasury will accept comments on the Interim Final

Rule for 30 days after publication, and publish a Final Rule after considering any comments. Separately, Treasury has published a proposed rule that allocates shares to individual Louisiana parishes under the Direct Component. Treasury is accepting public comments on the proposed rule for 30 days after publication.

As noted in the preamble to the September 6, 2013, proposed rule, requirements for RESTORE Act grants are partly defined by the Act and Treasury's regulations, and partly by an extensive body of pre-existing requirements. Some of these pre-existing requirements are administrative requirements in circulars issued by the Office of Management and Budget (OMB). When Treasury published its proposed rule, OMB was completing a compilation and modification of uniform requirements for grants awarded by Federal agencies to states, local governments, Indian tribes, institutions of higher learning, and nonprofit organizations. OMB published an Advanced Notice of Proposed Guidance on February 12, 2012, (ANPG available at www.regulations.gov under docket number OMB-2012-0002), and a Notice of Proposed Guidance on February 1, 2013 (NPG available at www.regulations.gov under docket number OMB-2013-0001). After considering more than 300 public comments, OMB issued its final guidance on December 26, 2013. The final guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), will be published in the Code of Federal Regulations at 2 CFR Part 200, and is currently available at 78 FR 78590.

Because OMB's Uniform Guidance has already undergone an extensive public review, its requirements do not need additional public comment before they are applied to grants under the RESTORE Act. Readers seeking information about the requirements applying to audits, allowable costs, disbursements, payments, procurements, recordkeeping, and reporting, among

other topics, should consult OMB's Uniform Guidance. Requirements in areas covered by the guidance will be applied to individual grants through a grant agreement.

The Interim Final Rule continues to require compliance with applicable Federal laws and policies for grants, and does not refer specifically to OMB's Uniform Guidance. Treasury received many comments requesting that Treasury's regulation specifically identify the requirements that apply. Each individual grant agreement is the appropriate place to comprehensively identify these requirements. As stated in the Uniform Guidance, the Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriation provisions, and incorporate them either directly or by reference in the terms and conditions of the award. 2 CFR 200.300. The Uniform Guidance describes most administrative requirements, cost principles, and audit requirements applying to Federal awards under the Act. All federal agencies, however, are required to implement the policies and procedures in the Uniform Guidance by promulgating a regulation that will be effective by the end of the year. Because regulations to implement the Uniform Guidance must still be published, Treasury's RESTORE Act regulations generally refer to Federal laws and policies applying to grants.

Section-by-Section Analysis

Section 34.1 (Purpose)

This section describes the general scope of the Interim Final Rule. Editorial changes have been made for clarity.

Section 34.2 (Definitions)

This section defines terms used in the Interim Final Rule. The Interim Final Rule has several new definitions from the proposed rule. *Activity* has been defined to mean “activity, project, or program.” The Act uses the term *activity* broadly to encompass projects, programs, and other activities that may be funded under the Act. When the Interim Final Rule uses the term *activity*, it has the same broad meaning. In response to a comment, *infrastructure* has been defined as well, in order to assist the Council and the Gulf Coast States in applying the limits on infrastructure projects in the Spill Impact Component. The Interim Final Rule also includes a definition of *assignee*, a term used in the Comprehensive Plan Component of the Interim Final Rule. An assignee is a Federal agency or a Gulf Coast State that has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan.

The definitions of *administrative costs* and *administrative expenses* have been revised in response to comments on the proposed rule. Several comments asked Treasury to clarify the scope of these terms, and questioned why the terms were defined differently. Other comments suggested revisions. At least one comment suggested that *administrative costs* should not be defined at all.

The statute specifically authorizes and the rule defines administrative expenses and administrative costs. Funds are also available for other costs authorized by the five RESTORE Act components or programs. Treasury encourages grantees to minimize administrative expenses, administrative costs, and indirect costs within these components or programs to the extent possible.

The Act uses the term *administrative expenses* with reference to the Council and NOAA. The Act does not define the term, and it does not have a precise, commonly accepted meaning in

government accounting. The Act does cap administrative expenses at 3 percent of funds made available to the Council and NOAA. Because the cap effectively limits administrative activities, the term should be construed to avoid unintended limits on the restoration, protection, and scientific activities Congress requires the Council and NOAA to perform.

In light of public comments, the Interim Final Rule defines administrative expenses to mean expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative expenses do not include expenses that are identified specifically with, or readily assignable to, (a) facilities; (b) eligible projects, programs, or planning activities; (c) activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections; (d) the Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments; (e) the Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component; (f) preparation of reports required by the Act; (g) establishment and operation of advisory committees; or (h) collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem. The definition applies to administrative expenses for services provided by the Council and NOAA staff, as well as such services provided through an interagency agreement, or by contract. When an expense has a mixed purpose, the Council and NOAA will need to make reasonable judgments about the percentage attributable to administrative activities.

Treasury is also clarifying the definition of *administrative costs* in the Interim Final Rule. The term *administrative costs* is used with reference to the Gulf Coast States, Florida counties,

and Louisiana parishes, which receive their funds through grants. The revised definition is similar, but not identical, to the definition of administrative expenses. Under the Interim Final Rule, administrative costs are indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs may include costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, (a) facilities; (b) eligible projects, programs, or planning activities; or (c) activities relating to grant applications, awards, audit requirements, or post-award management, including payments and collections. When a cost can be attributed to more than one purpose, states and local governments will need to make reasonable judgments about the percentage that is administrative. OMB's Uniform Guidance provides an extensive discussion of allowable and allocable costs, which applies to administrative costs under the Act. See 2 CFR 200.402 – 200.414.

Treasury has added a new definition of *planning assistance*, an eligible activity listed in § 34.201. This definition is discussed later in the preamble.

In addition to these changes, the Interim Final Rule includes editorial changes to the definition of *Gulf Coast State entity*, a new definition of *Multiyear Implementation Plan* and *pass-through entity* for the reader's convenience, and a technical change to the definition of *recipient*. The technical change makes clear that a recipient also includes a pass-through entity that provides a subaward to a recipient to carry out part of the RESTORE Act program.

Treasury is not revising the definition of *best available science*. Like the proposed rule, the Interim Final Rule defines this term exactly as stated in the Act. The term 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.

Some comments proposed broader definitions of *best available science*, asserting that the statutory definition is inadequate. Other comments urged Treasury to require consideration of cultural and social knowledge and other factors, and proposed characteristics of best available science. Treasury does not have authority to change the definition Congress wrote into the Act. Treasury recognizes, however, that guidelines regarding interpretation and application of this term may be helpful. In consultation with Council members, Treasury is developing guidelines for use in evaluating the best available science criteria for grants under the Direct Component. Treasury will provide further information at a later time.

Treasury received other comments suggesting additional definitions and editorial changes. OMB's Uniform Guidance includes an extensive list of definitions pertaining to grants, audits, and cost principles. These definitions will apply to grants issued under the Act.

Section 34.100 (The Trust Fund)

This section describes the deposit of amounts into the trust fund, and when the trust fund terminates. Minor editorial changes were made to clarify when the trust fund terminates.

Section 34.101 (Investments)

This section describes how Treasury will invest amounts in the trust fund. There are no changes in this section from the proposed rule.

Section 34.102 (Interest earned)

This section describes the availability of interest earned on amounts in the trust fund. There are no changes in this section from the proposed rule.

Section 34.103 (Allocation of funds)

This section describes the general allocation of trust fund amounts. In response to comments, editorial changes have been made for consistency with the Act.

Section 34.104 (Expenditures)

The Interim Final Rule states that trust fund amounts are available for expenditure solely for direct and indirect expenses of eligible activities without fiscal year limitation. Treasury has deleted a reference in the proposed rule to administrative costs and administrative expenses, because these costs and expenses are included among other allowable costs. The proposed rule also stated that grantees must minimize the time between the receipt of funds and the disbursement of funds. Treasury received several comments seeking clarification on this statement and more generally on requirements pertaining to payments and program income.

OMB's Uniform Guidance has an extensive discussion of the requirements applying to payments at 2 CFR 200.305. To ensure consistency between the Interim Final Rule and OMB's Uniform Guidance, Treasury is deleting the sentence from § 34.104 in the proposed rule regarding the timing of disbursements. The Uniform Guidance also has a discussion about program income at 2 CFR 200.307. Please refer to the Uniform Guidance for detailed information about general requirements that apply to payments and program income.

Section 34.105 (Waiver)

This section describes the circumstances when Treasury may waive or modify in a single case or class of cases a requirement in the regulations. Several comments asked Treasury to clarify when this section will be used, and to seek public comment before applying it. Treasury expects to use its waiver authority sparingly, and never in a manner that is inconsistent with applicable law. Treasury included this section because it is difficult to foresee, at an early stage

in implementing the Act, how the regulations will apply to all circumstances. Treasury will provide public notice whenever a waiver or modification under this section would materially change a regulatory requirement.

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

Components

Gulf RESTORE Program – Eligibility Criteria

Treasury received numerous comments proposing uniform requirements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Gulf RESTORE Program. Several comments urged uniform eligibility criteria. Other comments suggested criteria that would give priority to certain project proposals, based on whether they provide an overall net benefit, benefit a variety of resources, are cost effective, or other factors. Additional comments proposed changes that would allow individuals to submit project proposals, and other changes that would require uniform requirements for public engagement.

The Act does not mandate uniform requirements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component. For each component, there are different eligibility criteria, different processes for selecting activities, and different entities responsible for making those selections. Accordingly, the Interim Final Rule has different requirements for each component. The Interim Final Rule and the Council's own procedures provide opportunities for the public to offer views on project selection and design. Members of the public who have views in these areas should present them to the entities that will propose activities for funding.

Section 34.200 (General)

This section generally describes the policies and procedures for eligible activities under the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Treasury has revised this section in the Interim Final Rule.

In the proposed rule, § 34.200(a) (1) stated that costs incurred, whether charged on a direct or indirect basis, must conform with the applicable OMB circulars and guidance. Treasury received several comments seeking clarification of the rules applying to costs. OMB's Uniform Guidance includes an extensive discussion of administrative requirements, including information about allowable costs. At this time, the Uniform Guidance applies to grants issued under the Act. Within the year, all Federal agencies are required to incorporate the Uniform Guidance into their own regulations. Because the governing rule in the future will likely be an agency regulation, rather than the Uniform Guidance, the Interim Final Rule refers to "applicable Federal law and policies on grants."

Section 34.200(a)(3) in the proposed rule stated that environmental review and compliance procedures must be complied with for each program, project, or activity, as applicable. Treasury has deleted this sentence because it is unnecessary, given broader and more descriptive requirements in OMB's Uniform Guidance. The Uniform Guidance states, that the Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award. 2 CFR

200.300(a).

Section 34.200(a)(3) in the proposed rule also mentioned pre-award costs. The proposed rule stated that grant agreements may provide for pre-award costs of environmental review and compliance in the manner prescribed by applicable OMB circulars and guidance. Treasury received a number of requests, particularly from Florida counties, to make a more definite statement in the Interim Final Rule about the availability of pre-award costs.

OMB's Uniform Guidance states that pre-award costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. 2 CFR 200.458. Treasury cannot, in the context of a rulemaking, determine whether any particular pre-award cost is eligible for reimbursement under future grants. In addition, Treasury is not the Federal awarding agency for three of the five components in the Act. To avoid inconsistency with the Uniform Guidance, the sentence about pre-award costs has been deleted from the Interim Final Rule. Entities should contact the appropriate Federal awarding agency for guidance about reimbursement of particular pre-award costs.

Finally, § 34.200(b) of the proposed rule stated that a Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of a project or program that is an eligible activity and authorized by Federal law. Treasury received several comments about this provision. One comment suggested that Treasury prohibit other Federal agencies from reducing their funding to states by the amount of RESTORE Act funds used for cost sharing or matching. Another comment suggested that this provision be extended to the Centers of Excellence

Research Grants Program. Other comments asked for clarification about the scope of the provision.

Treasury has not substantively changed the text of § 34.200(b) in the Interim Final Rule, which closely follows the statutory language at section 311(t)(1)(N) and (t)(3)(F) of the Federal Water Pollution Control Act. Under OMB's Uniform Guidance, a non-Federal entity cannot use amounts paid by the Federal government under a Federal award to satisfy the entity's cost sharing or matching responsibilities under another Federal award, unless certain criteria are met. One criterion is when a Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs. 2 CFR 200.306(b)(5). The Act allows funds made available under the Direct Component and Spill Impact Component to satisfy the cost-sharing requirements of other Federal programs, but not funds made available under other parts of the Act.

Minor editorial changes have been made to other parts of § 34.200 for clarity.

Section 34.201 (Eligible activities for the Direct Component)

This section describes the activities that are eligible for funding under the Direct Component. Treasury received many comments about this section. Several comments urged Treasury to defer to the states' judgment on selection and design. As stated in the preamble to the proposed rule, Treasury will review applications to determine that they document, with some specificity, compliance with eligibility and other requirements in the RESTORE Act and these regulations. On matters requiring special expertise, such as the application of best available science, Treasury will apply a "reasonable person" standard of review that recognizes the substantive expertise of the states, Florida counties, and Louisiana parishes, while still requiring the submittal of supporting documentation. Treasury is using a similar standard when evaluating

an activity's geographic scope, as discussed below. This approach acknowledges the expertise and important role that states, Florida counties, and Louisiana parishes have in selecting projects for the Direct Component, while going beyond mere "check the box" review.

Several comments also addressed the geographic scope of eligible activities. The proposed rule stated that certain activities are eligible for funding to the extent they are carried out in the Gulf Coast region. Several comments urged Treasury to interpret this language broadly, in order to allow activities benefitting that geographic area regardless of where the work is done. Treasury agrees that a broad interpretation is most consistent with the statute and Congressional intent. Repeatedly, the Act refers to the Gulf Coast region as the place where results occur, not necessarily where work is done. An interpretation that focused solely on the geographic location of the project site – rather than project benefits – would unnecessarily exclude activities contemplated by the Act, and be difficult to apply when work is done in multiple locations.

In response to these comments, the Interim Final Rule explains when a Direct Component activity is "carried out" in the Gulf Coast region. The rule states that activities are carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant.

Treasury intends this new language to achieve several goals. The language recognizes the expertise of the entity applying for a grant, as well as Treasury's limited role in grant review and the applicant's knowledge and understanding of Gulf Coast restoration. Potential applicants for funds will be Gulf Coast States, counties, and parishes, each of which has significant local

and technical expertise. The language focuses on “each severable part” of an activity, to discourage grant applicants from seeking approval of ineligible projects by grouping them with eligible ones. The language also requires that each severable part be “primarily designed” to restore or protect the Gulf Coast region. Treasury anticipates that some activities which are designed to benefit the Gulf Coast region may also provide secondary benefits to other areas. An upstream water quality project that is designed to reduce nutrient loading at the coast may also improve water quality within the watershed. By focusing on what an activity is primarily designed to accomplish, Treasury seeks to avoid arguments that secondary benefits to other geographic areas are enough to disqualify otherwise eligible activities.

Additional comments urged Treasury to add eligibility requirements, or to declare that particular kinds of activities are eligible for funding, such as long-term stewardship activities. Treasury is not adding new eligibility criteria for activities under the Act, or singling out particular activities that are not mentioned in the Act. The Act sets broad criteria for selecting activities, and leaves to the Gulf Coast States, Florida counties, and Louisiana parishes whether to apply additional criteria to achieve economic or environmental goals. Members of the public should direct their suggestions for additional eligibility factors to the entities that will propose activities for funding.

Treasury also received several comments regarding planning assistance. Some comments asked Treasury to add public engagement as a type of planning activity. Florida counties urged that planning costs should include costs for the Gulf Consortium, which is an entity formed under Florida law and made up of 23 Florida counties. Several comments also asserted that funds should be available to pay for Multiyear Implementation Plans. Other comments asserted that planning activities should not be defined at all.

The Interim Final Rule has been revised to address the comments on planning. The Interim Final Rule now uses the term *planning assistance*, to be consistent with the Act, and defines that term in § 34.2. Planning assistance means tasks required to prepare plans for eligible activities, as well as one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, and monitor grants after award, and audit compliance with respect to activities in a Multiyear Implementation Plan or State Expenditure Plan. This change addresses comments, particularly from Florida counties, that noted the expense of starting up an operation to manage grants. Effective grants management may require one-time investments to track payments, develop policies and internal controls, and make other preparations necessary to comply with the Act and Treasury regulations. Eligible entities may seek grants to fund preparations of this kind with respect to activities in a Multiyear Implementation Plan or State Expenditure Plan. Planning assistance is not intended to cover ongoing activities or operations and maintenance, although costs for activities, operations, and maintenance may be allocable to grants for other eligible activities.

The revised language is broad enough to include public engagement activities that are part of data gathering, studies, analysis, or the preparation of plans for eligible activities. For example, obtaining public comment on Multiyear Implementation Plans and State Expenditure Plans is an eligible planning activity, because it is a necessary part of preparing the plans.

Additional language, new in the Interim Final Rule, requires that all Direct Component activities be included in and conform to the Multiyear Implementation Plan required by § 34.303. As stated in the rule, states must seek public review and comment on their Multiyear Implementation Plans before submitting them to Treasury. This step allows the public to offer views on particular projects, the order in which they will be funded, and the overall strategy for

using funds under the Act. The new language added to § 34.201 will help ensure that activities submitted in a grant application have been presented to the public and incorporated into the Multiyear Implementation Plan.

Section 34.202 (Eligible activities for the Comprehensive Plan Component)

The section identifies the activities eligible for funding under the Comprehensive Plan Component. The list includes not only projects and programs, but also activities that the Act specifically requires or allows the Council to perform. Many comments addressed project selection under the Comprehensive Plan Component. In response to these comments and for clarity, Treasury has revised the proposed rule to provide that the Council may expend funds to carry out activities in the Gulf Coast region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2).

Among other things, the statute prescribes priorities that the Council must follow when selecting projects and programs for the Initial Comprehensive Plan that will be carried out in the first three years, subject to available funds. Except for certain projects and programs that were authorized prior to July 6, 2012, the Council's three-year list must give highest priority to projects meeting one or more of the following criteria:

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

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

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

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

See 33 U.S.C. 1321(t)(2)(D)(iii). The Council is responsible for making selections within statutory parameters. The Council's selection process, described in the Initial Comprehensive Plan, will provide many opportunities for the public to comment on the activities the Council should fund.

The proposed rule allowed the Council to use funds from the Comprehensive Plan Component to fund its activities under the Spill Impact Component. Some comments questioned this use. The Act requires the Council to undertake several functions with regard to the Spill Impact Component. The Council must issue regulations allocating funds between the five Gulf Coast States, review State Expenditure Plans, and disburse amounts for eligible projects and programs, among other things. Because all of the Council's funding to operate comes through the Comprehensive Plan Component, the Council must use funds from that component to perform its statutory obligations. For this reason, the Council included its responsibilities under the Spill Impact Component in the Initial Comprehensive Plan.

In response to comments, Treasury has added new language to § 34.202 to clarify when a project or program selected by the Council is carried out in the Gulf Coast region, as required by 33 U.S.C. 1321(t)(2)(E)(IV). That occurs when, in the reasonable judgment of the Council, each severable part of the project or program is primarily designed to restore or protect that

geographic area. The Interim Final Rule requires the Council to document the basis for its judgment when it selects the project or program. Similar language also appears in the Direct Component and the Spill Impact Component of Treasury's regulation. In each case, the language gives deference to the reasonable judgment of the entity that selects an activity to restore or protect the Gulf Coast region.

One activity that is not specifically mentioned in the Comprehensive Plan Component is public engagement. Public engagement can be an eligible activity. It is a necessary part of selecting projects and programs, conducting assessments under the National Environmental Policy Act, as well as performing other programmatic and administrative activities. To the extent public engagement costs can be identified specifically with, or readily assignable to the programmatic activities excluded from the definition of *administrative expenses*, they will not be subject to a three percent cap.

Section 34.203 (Eligible activities for the Spill Impact Component)

This section describes the activities that are eligible for funding under the Spill Impact Component. Several comments suggested additional or different eligibility criteria, such as the criteria applying to activities under the Comprehensive Plan Component. Other comments proposed that Treasury give the states guidance on how they demonstrate ecological, fisheries restoration, and economic recovery in their State Expenditure Plans. Several comments offered views about how particular states should spend their funds. Comments also requested that funds be available for the preparation of State Expenditure Plans.

The Act gives the Council responsibility for administering the Spill Impact Component. Among other things, the Council determines each state's share, based on criteria in the Act, and disburses funds for eligible activities. The Council chair also must approve State Expenditure

Plans. Given these important roles, the Council is an appropriate body to determine whether and how to elaborate on the statutory eligibility criteria. Accordingly, the Interim Final Rule preserves the Council's discretion to issue guidance or regulations on this subject that are consistent with the Act.

Treasury made other changes, however, in response to comments. Treasury added a provision describing when an activity in a State Expenditure Plan is carried out in the Gulf Coast region. Treasury also clarified that funding is available for developing State Expenditure Plans. The Interim Final Rule also states that eligible activities must be included in, and conform to, the State Expenditure Plan. This clarification helps ensure that all funded activities have gone through the public comment process required of State Expenditure Plans.

Proposed rule § 34.204 (Limitations on activities)

This section described statutory limitations on activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component. Treasury received several comments suggesting that Treasury remove limitations here and clarify how grant recipients demonstrate the criteria in § 34.204(b).

Treasury has deleted this section and moved its provisions to § 34.803 of the Interim Final Rule, so that they apply to all five components of the Act. This change, along with minor wording changes, makes the regulation consistent with section 1607 of the Act. The limitations cannot be removed entirely from the Interim Final Rule because they are statutorily required. There is not a bright-line test for documenting that an acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands. However, the documentation required may well be useful for

other purposes, such as demonstrating that an activity is being carried out in the Gulf Coast region. Treasury will consider issuing further guidance if needed.

Interim Final Rule § 34.204 (Limitations on administrative costs and administrative expenses)

This section implements the three percent cap on administrative costs and administrative expenses. The proposed rule used different methods for calculating the cap on administrative costs and expenses, because the Gulf Coast States, coastal political subdivisions, and coastal zone parishes receive their funds episodically through grants. Measuring costs on an individual grant basis is easier to monitor. The Council, however, receives its funds through an annual apportionment from OMB. Treasury received several comments seeking an explanation of this section.

The Interim Final Rule contains the same method for calculating the Council's and NOAA's administrative expenses. This method gives the Council and NOAA some flexibility to incur administrative expenses above three percent during a start-up period, so long as the total does not exceed three percent of amounts received by the end of the fourth, or most recent, fiscal year, whichever is later. For the sake of consistency, Treasury has amended the language applying to NOAA in § 34.604 of the Interim Final Rule to be consistent with language applying to the Council.

Some comments questioned why the cap applies to administrative expenses and costs attributable to staff, when the statute is silent on this point. Treasury has clarified the rule by removing the reference to staff. The regulation defines "administrative expenses" and "administrative costs." To the extent that staff costs are captured by these definitions, they are subject to the three percent cap.

Other comments questioned why the three percent cap applies to funds received under the Spill Impact Component. The Act states that the three percent cap applies to amounts received by a Gulf Coast State under section 311(t) of the Federal Water Pollution Control Act, which includes the Direct Component, Comprehensive Plan Component, and Spill Impact Component. See 33 U.S.C. 1321(t)(1)(B)(iii).

Several comments asked whether the three percent cap applies to subawards that state and local governments make under the Direct Component, Comprehensive Plan Component, or Spill Impact Component. Treasury interprets the Act to impose a cap based on amounts that Gulf Coast States, coastal political subdivisions, and coastal zone parishes receive directly from Treasury, the Council, or a Federal agency designated by the Council to issue grants. The cap does not apply to the administrative costs of subrecipients. These costs will be governed by general requirements in OMB's Uniform Guidance.

Some comments asked how the cap on administrative costs affects a state's negotiated indirect cost rate. The cap may reduce an award for the indirect costs of a state, county, or parish, depending on the circumstances. The amount of the cap must be calculated for each grant, and will equal three percent of all funds a state, county, or parish receives in that grant. If the amount of the cap is greater than the indirect costs of a state, county, or parish, no reduction is needed. If indirect costs exceed the administrative cost cap, there are two options. The state, county, or parish can reduce its claim for indirect costs to an amount at or below the cap. Alternatively, the state, county, or parish can demonstrate that its administrative costs -- a subset of all indirect costs -- do not exceed the cap. Treasury will issue guidance, as necessary, to resolve indirect cost questions.

The Interim Final Rule applies the three percent cap on administrative costs to amounts received under an award. Treasury has amended § 34.204(a) to clarify that the three percent limit will be applied to the total amount received under each award, not to amounts received in individual fiscal years. Administrative and other costs may be monitored throughout the award period, however, by the Federal awarding agency.

The Interim Final Rule does not include a cap on administrative costs for the Centers of Excellence Research Grants Program, because the Act does not include one. In the absence of a statutory cap, the general rule is that all costs charged to a Federal award must be “necessary and reasonable for performance of the Federal award and be allocable thereto” under the principles in OMB’s Uniform Guidance. 2 CFR 200.403(a). The Uniform Guidance lists other factors as well. Whether a state’s administrative costs are allowable under the Centers of Excellence Research Grants Program will be measured against the standards in the Uniform Guidance.

Treasury has moved a provision regarding the Alabama Gulf Coast Recovery Council to § 34.302(a) of the Interim Final Rule, and clarified its meaning. The Act states that “Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.” 33 U.S.C. 1321(t)(1)(F). Treasury interprets this requirement to govern who performs duties for the Alabama council, not just to limit how the Alabama council spends RESTORE Act funds.

Interim Final Rule § 34.205 (Council’s audited financial statements and audits)

This section describes an auditing requirement for the Council. The provision regarding audits by the Treasury Inspector General has been clarified to be consistent with the Act.

Subpart D – Gulf RESTORE Program – Direct Component

Section 34.300 (General)

This section introduces a subpart on the Direct Component, and states that funds provided to the Gulf Coast States, Florida counties, and Louisiana parishes will be in the form of grants.

Section 34.301 (Responsibility for administration)

This section states that Treasury will be the Federal awarding agency for Direct Component grants. Editorial changes have been made for clarity.

Section 34.302 (Allocation of funds)

This section describes how funds will be allocated between Alabama, Florida counties, Louisiana state government and parishes, Mississippi, and Texas. Treasury received comments relating to the shares allocated to the Florida counties and the Louisiana parishes.

The Act allocates funds to 15 nondisproportionately impacted counties in Florida according to a weighted formula, and a share to 8 disproportionately affected counties. The Act did not state each county's specific share. Treasury's proposed rule stated that Treasury would divide funds among the eight disproportionately affected counties according to the formula mutually agreed upon by the counties and included in the Multiyear Implementation Plan submitted by each county. The proposed rule did not further specify the share allocated to each nondisproportionately impacted county.

Treasury received several comments from the Florida counties regarding their shares. The 23 counties have formed a consortium under Florida law, called the Gulf Consortium. According to a comment submitted by the Gulf Consortium, the consortium is a public entity that adheres to Florida's public records and public meeting requirements, and provides reports to the Florida Auditor General and Florida's Chief Financial Officer. The Gulf Consortium states that the eight disproportionately affected counties have agreed upon a formula, which distributes 20 percent among the counties equally, and 80 percent based on oiled shoreline, per capita sales tax

collections, population and distance from the Deepwater Horizon oil rig. Treasury accepts the counties' allocation formula; however, the proposed calculation only distributes 99.997 percent of the counties' share. In order to distribute the full amount, Treasury added a proportionate amount of the difference between 99.997 percent and 100 percent to each county's share, and rounded the result to nine decimal places.

The Gulf Consortium also proposed a specific allocation for the 15 nondisproportionately impacted counties. This allocation uses the 2010 population census, the per capita sales tax collections for 2012, and data from NOAA for the distance to the Deepwater Horizon oil rig. Treasury agrees that these data sources are appropriate, and that the methodology used is reasonable. However, the proposed allocation adds up to 100.16 percent of the nondisproportionately impacted counties' share. In order to distribute the correct amount, Treasury subtracted a proportionate amount of the difference between 100.16 percent and 100 percent from each county's share, and rounded the result to three decimal places. The resulting shares are stated in the Interim Final Rule.

The proposed rule requested comments on the best methodology for determining the allocation for the Louisiana parishes. The Act says that the parish allocation should be determined according to a weighted formula of three elements: (a) 40 percent based on the weighted average of miles of parish shoreline oiled, (b) 40 percent based on the weighted average of the population of the parish, and (c) 20 percent based on the weighted average of the land mass of the parish. The State of Louisiana and one parish proposed that Treasury include additional factors, in order to account for the degree of oiling, measures of re-oiling, the type of shoreline that experienced oiling, and several other factors. They suggested that an approach which takes these factors into account would provide a more comprehensive assessment of injury

and fairer allocation of funds. Louisiana did not describe how these factors should be weighed, identify an authoritative source for the data, or provide a statutory basis for applying these new criteria.

Treasury has published a separate Notice of Proposed Rulemaking addressing these comments. In that notice, Treasury proposes an allocation for each of the eligible Louisiana parishes, to be incorporated into § 34.302(e). Treasury will consider any public comments on the allocation to Louisiana parishes before issuing a final rule.

Section 34.303 (Application procedure)

This section describes how to apply for grants under the Direct Component. Treasury requires that applicants submit a Multiyear Implementation Plan describing the activities they intend to fund, and a grant application for each activity. Applicants must publish the Multiyear Implementation Plan for public review and comment before submitting it to Treasury. The Multiyear Implementation Plan and grant application serve related but different purposes. Requirements for the Multiyear Implementation Plan are designed to help applicants plan strategically, and to involve the public in the process of selecting activities. Treasury will use the grant application to determine whether proposed activities comply with requirements in the Act and these regulations, and to prepare an enforceable grant agreement that meets requirements in OMB's Uniform Guidance.

Treasury received many comments about the grant application process. Several comments stated that the rule should allow applicants to develop Multiyear Implementation Plans incrementally, and to modify them over time. Other comments recommended that Treasury collect additional information, in order to identify an activity's potential environmental, social, and economic effects, as well as conflicts with projects funded from other sources. Some

comments expressed concerns about the adequacy of the public comment process. Additional comments requested that applicants give assurances about an activity's environmental benefits, and about how applicants will monitor projects. Other comments asserted that the proposed rule required too much information.

Treasury has revised the proposed rule to address public comments. The Interim Final Rule clarifies that Multiyear Implementation Plans can be amended and prepared incrementally. With litigation ongoing and the ultimate size of the trust fund still unknown, applicants will be allowed to adjust their plans to accommodate new information. The Interim Final Rule clarifies that funding is available for preparing Multiyear Implementation Plans. The Interim Final Rule also extends the public comment period to a minimum of 45 days, and requires applicants to make their Multiyear Implementation Plans available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. Applicants will need to consider the methods most appropriate to obtain broad-based participation, such as accessible public meetings, presentations in languages other than English, and postings on the Internet. Other editorial changes were made for clarity.

Section 34.304 (Grant award process)

This section states that Treasury will execute a grant agreement with the recipient after determining that the Multiyear Implementation Plan and application meet the requirements of the Act and these regulations. Editorial changes have been made for clarity.

Section 34.305 (Use of funds)

This section generally describes how funds can be used. Treasury has amended the proposed rule in several respects in response to comments. A sentence in § 34.305(a) regarding unexpended funds has been removed as unnecessary. Grant recipients should refer to OMB's

Uniform Guidance at 2 CFR 200.343 for more detailed requirements concerning the closeout of grants. Treasury has also added a new provision at § 34.305(c) regarding a grant recipient's ability to issue subawards. Under this provision, a Gulf Coast State, coastal political subdivision, or coastal zone parish that proposes to issue subawards must demonstrate its ability to manage and monitor these subawards in compliance with Federal law and policies on grants. For requirements applying to the monitoring and management of subrecipients, see OMB's Uniform Guidance at 2 CFR 200.330 -- 200.332.

Several comments addressed the topic of contracting preferences, which are discussed in § 34.305(b). Comments asked for clarification on whether Federal, state, or local procurement rules will apply to grant recipients. Comments also recommended that Treasury include local or special hiring preferences for all five components as a means of achieving the goals of the Act.

OMB's Uniform Guidance has an extensive discussion of the administrative rules that apply to procurements under a Federal award. See 2 CFR 200.317 – 200.332. In general, states will use the same policies and procedures that apply to procurements using non-Federal funds, with certain narrow exceptions. Other non-Federal entities, including the Florida counties and Louisiana parishes and subrecipients of states, will use their own documented procurement procedures reflecting applicable state and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards in the Uniform Guidance. 2 CFR 200.317.

The Act discusses geographic preferences for contracts in only two places. In the Direct Component, the Act allows a Gulf Coast State or coastal political subdivision to “give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.” 33 U.S.C. 1321(t)(1)(K). The Act requires the

Council to develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan “that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State” 33 U.S.C. 1321(t)(2)(C)(vii)(V). Because the Act does not include geographic preferences for other components, the Interim Final Rule does not either.

OMB’s Uniform Guidance makes clear that geographic preferences are allowed only when permitted by Federal law. The Uniform Guidance provides in part, that the non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. 2 CFR 200.319(b). OMB’s Uniform Guidance does encourage, however, non-Federal entities to take “all necessary steps” to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are offered contracts when possible. The Uniform Guidance has more information at 2 CFR 200.321.

Sections 34.306 (Reports), 34.307 (Recordkeeping), 34.308 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. Some editorial changes were made to conform to the terms used in OMB’s Uniform Guidance, which has a robust discussion of these topics.

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

Section 34.400 (General)

This section introduces the subpart discussing the Comprehensive Plan Component.

Section 34.401 (Responsibility for administration)

This section generally describes the Council’s responsibility for administering the Comprehensive Plan Component and certain requirements in the Act. Editorial changes have been made for the sake of clarity.

Section 34.402 (Grant administration).

This section broadly describes the Council’s responsibility to establish an application procedure and grant award process. Several comments on the proposed rule requested that Treasury provide more direction to the Council concerning grant administration. The Council, an independent Federal entity, has a great deal of discretion under the Act in its choice of projects and programs, as well as the manner in which these projects and programs are carried out. The Act requires the Council to assign projects and programs to its member states and Federal agencies. Without standards to govern how its members carry out their responsibilities, there is potential for inconsistent application of the Act and OMB’s Uniform Guidance, as well as potential difficulties in compliance monitoring after award. For this reason, the Interim Final Rule requires the Council to develop standards for administering grants under the Comprehensive Plan Component, and to make these standards publicly available.

Section 34.403 (Use of funds)

This section generally states the requirements for funding activities under the Comprehensive Plan Component.

Sections 34.404 (Reports), 34.405 (Recordkeeping), 34.406 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. OMB’s Uniform Guidance has a robust discussion of each of these topics.

Subpart F – Gulf RESTORE Program – Spill Impact Component

Section 34.500 (General)

This section introduces the subpart discussing the Spill Impact Component, and states that funds will be made available as grants.

Section 34.501 (Responsibility for administration)

This section states that the Council is responsible for awarding and administering grants under this subpart. A sentence regarding compliance monitoring has been moved to the section on grant administration.

Section 34.502 (Allocation of funds)

This section states that the Council will allocate amounts to the Gulf Coast States through regulations they will publish.

Section 34.503 (State Expenditure Plans)

This section describes the content of State Expenditure Plans and which entities will prepare them. Treasury received several comments on this section. Comments suggested that requirements in this section be more consistent with those for Multiyear Implementation Plans under the Direct Component. State entities requested that funding be available to develop these plans. Public interest groups also sought opportunities for public comment on these plans.

The Interim Final Rule makes several changes to the requirements for State Expenditure Plans. The rule is more explicit about the content of these plans, and now requires states to make their plans available for public review and comment before submitting them to the Council for approval. As in the Direct Component, the public comment process can help states select projects and plan strategically to use RESTORE Act funds. The plans can be incremental and modified at a later date, to provide the states with flexibility. The Interim Final Rule requires the Council to develop requirements specifying when modifications to a State Expenditure Plan require the Council's approval. Other clarifying changes have also been added to the regulation.

A clarifying change has also been made to the restrictions on infrastructure spending. The Act limits the amounts that can be spent on infrastructure, unless the State Expenditure Plan has required certifications. The Interim Final Rule clarifies that the 25 percent limit applies to the amount the state spends, not to the amount a state proposes to spend in its plan. Because a state may not execute all the projects in its plan, the original language did not carry out the statutory intent of limiting actual expenditures.

Section 34.504 (Grant administration)

This section generally describes the Council's responsibility to establish policies and procedures for administration of the grants it awards, and to make these policies and procedures publicly available. The Interim Final Rule deletes a sentence that requires a state's grant application to demonstrate all the elements of the State Expenditure Plan to the satisfaction of the Federal grant administrator. While the Federal awarding agency cannot proceed with a grant if it has grounds to believe that the underlying facts are inaccurate, requiring a secondary review of the State Expenditure Plan after the Council has approved it was redundant.

Section 34.505 (Use of funds)

This section generally describes the requirements applying to expenditures under the Spill Impact Component.

Sections 34.506 (Reports), 34.507 (Recordkeeping), 34.508 (Audits)

These sections generally discuss reporting, recordkeeping, and audits. OMB's Uniform Guidance has a robust discussion of these topics.

Subpart G – NOAA RESTORE Act Science Program

Section 34.600 (General)

This section introduces requirements for the NOAA RESTORE Act Science Program.

Section 34.601 (Responsibility for administration)

This section generally describes the responsibilities of NOAA and the United States Fish and Wildlife Service for administering this component. Treasury received several comments on this subpart. One comment recommended that Treasury develop guidelines and procedures for NOAA to use when making grant applications and monitoring compliance. Another comment proposed that NOAA use a science-based, competitive process for selecting grant recipients, and that all research findings initiated through the program be publicly accessible and released in a timely manner. A third comment encouraged NOAA to engage with underserved, environmental justice populations by working with community-based organizations.

The Act gives NOAA wide discretion in using RESTORE Act funds, which it may use to fund work through grants, cooperative agreements, contracts, and interagency agreements. Treasury's Interim Final Rule preserves this discretion. NOAA currently plans to award grants and cooperative agreements through its National Center for Coastal Ocean Science within the National Ocean Service. This Center has administered large regional ecosystem science initiatives using competitive processes for more than two decades.

As planned, the science-based, competitive process for selecting successful applicants will include three steps. First, NOAA intends to screen all applications for consistency with the NOAA RESTORE Act Science Framework. Second, NOAA intends to screen applications to ensure they meet the minimum requirements that are spelled-out in the federal funding opportunity. Next, eligible proposals will enter the review process, which may include mail reviews by scientific experts in the field prior to being reviewed by a panel of 5 to 10 individuals with the needed subject matter expertise. NOAA intends to screen all mail and panel members for conflicts of interest. Ratings will be compiled by the program manager, along with a

comprehensive written justification for selecting proposals recommended for funding. These recommendations will travel along a supervisory approval chain to the selecting official for final approval.

Treasury has no compliance role with respect to NOAA's program, other than functions reserved to the Treasury Inspector General. NOAA reports that it plans to use program managers to ensure that the teams of investigators stay on track with milestones, progress reporting and other measures of project performance. Through comprehensive oversight, NOAA anticipates a high rate of return for complex projects that advance knowledge and predictive capabilities for management and restoration of ecosystems.

The Interim Final Rule also does not prescribe how NOAA should engage with the public. NOAA has informed Treasury that it is working with the U.S. Fish and Wildlife Service to conduct a broad set of engagement activities to connect with stakeholders, including community-based organizations throughout the Gulf. Thus far, NOAA has invited the public to in-person events as well as virtual meetings. NOAA plans to connect, as appropriate, with community organizations serving underserved and environmental justice populations in a manner that aligns with the Commerce Department's environmental justice strategy. NOAA also intends to seek input from researchers at institutions of higher education throughout the Gulf of Mexico region, including institutions that focus on the needs of under-served communities. NOAA expects to provide the public with timely access to environmental data and information that are collected and created using RESTORE Act funds, typically no later than two years after the data are collected or created, except where limited by law, regulation, policy or by security requirements.

Further information about the NOAA RESTORE Act Science Program is available at <http://restoreactscienceprogram.noaa.gov/>.

Section 34.602 (Use of funds and eligible activities)

This section describes the activities that can be funded using amounts from the trust fund. Treasury has amended this section to capture all activities permitted by section 1604 of the Act.

Section 34.603 (Limitations on activities)

This section describes limitations on the activities NOAA can fund under the Act. The Interim Final Rule has not changed this section from the proposed rule.

Section 34.604 (Limitations on administrative expenses)

This section describes how the statutory cap is applied to NOAA's administrative expenses, as well as NOAA's ability to seek reimbursement from the trust fund for administrative expenses incurred before the effective date of Treasury's regulations. A sentence from § 34.604(b) has been deleted to be consistent with the cap applying to the Council's administrative expenses.

Sections 34.605 (Reports), 34.606 (Recordkeeping), 34.607 (Audits)

These sections describe general requirements for reports, recordkeeping, and audits. Editorial changes have been made for clarity and consistency with OMB's Uniform Guidance.

Subpart H – Centers of Excellence Research Grants Program

Section 34.700 (General)

This section introduces the subpart containing requirements for the Centers of Excellence Research Grants Program.

Section 34.701 (Responsibility for administration)

This section states that Treasury is responsible for administering grants to the Gulf Coast States. Treasury has developed an application process for these grants, which is consistent with requirements in OMB's Uniform Guidance.

Section 34.702 (Allocation of Funds)

This section identifies the state entities which can apply for grants from Treasury, and the percentage of funds they are entitled to receive. Consistent with the Act, the proposed rule stated that Florida's share would be administered by 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. Treasury received comments urging that the Florida Institute of Oceanography be designated in the final rule as the consortium mentioned in the statute. The statute does not identify the consortium, but it does say that the consortium must include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission. According to their comment on the proposed rule, these agencies agree that the Florida Institute of Oceanography is the proper entity. Given that no other entity could fit the statutory description without the cooperation of these agencies, the Interim Final Rule states that the Florida Institute of Oceanography is Florida's representative for the Centers of Excellence Research Grants Program.

Section 34.703 (Application procedure)

This section generally describes the demonstration a Gulf Coast State must make when it applies for grants. Treasury received several comments concerning the selection of Centers of Excellence.

Several comments pertained to states that announced their selection in advance of Treasury's proposed rule. Some comments proposed that Treasury should allow these selections

to stand. Although the Act requires states to issue competitive grants, some comments asserted that the competition requirements should apply to how the centers award research funding. Other comments proposed additional criteria for selecting the Centers of Excellence, including the centers' geographic location and whether they partner with industry.

Treasury's regulations must implement the language of the Act. Section 1605(a) of the Act makes funds available "to establish centers of excellence to conduct research only on the Gulf Coast Region" Later, section 1605(c) makes clear that states must make funds available through competitive grants to nongovernmental entities and consortia in the Gulf Coast region, including public and private institutions of higher education, and "give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise" in the disciplines mentioned in the Act. The Act gives no latitude to excuse states from using a competitive process when they award grants to establish centers of excellence.

Additional comments requested that Treasury clarify the selection criteria in the rule. One comment urged that entities and consortia have priority if they agree to partner with industry. Another comment requested additional details on the weight states should give to applicants having a cross-section of participants. Other comments stated that the connection required to the Gulf Coast region was unclear, and suggested instead that entities headquartered in and primarily operating in the Gulf Coast region be designated as Centers of Excellence. Another comment asked for clarification that a state may select one center of excellence, and that the states receive equal shares.

The Interim Final Rule does not add any new eligibility criteria for Centers of Excellence. The Act gives states discretion to decide what information to request from

institutions applying to become Centers of Excellence, as well as discretion on the science, technology, and monitoring projects to fund. Accordingly, the Interim Final Rule also gives states discretion in these areas. A state also has discretion in choosing the location of a Center of Excellence. While states must use a competitive selection process that complies with the Act, they do have discretion regarding the geographic location of Centers of Excellence. Accordingly, Treasury has revised the proposed rule to remove the sentence on geographic location.

Treasury has also amended the proposed rule to require more details in state grant applications. The new requirements are designed to measure a state's program against the statutory criteria.

Section 34.704 (Use of funds and eligible activities)

This section describes the activities that can be funded from amounts made available under the Centers of Excellence Research Program. This provision makes grants available to establish Centers of Excellence. Treasury interprets the scope of eligible activities to include the founding of Centers of Excellence, as well as research into the disciplines identified in section 1605(d) of the Act.

Treasury received comments on how the Centers of Excellence should award grants. One comment, made on behalf of several research institutions, suggested that Centers of Excellence prepare a five year progress report for review by independent experts, who would recommend whether the Center should continue or a new competition be held. Another comment requested that the Centers engage with underserved, environmental justice populations.

Treasury is not incorporating performance requirements into its regulations at this time. Because of the discretion afforded states under this program, there may be several approaches for

measuring and monitoring the success of grants. Treasury will expect states to identify appropriate measures for defining and measuring success of the Centers of Excellence, as well as appropriate engagement with affected communities.

Section 34.705 (Ineligible activities)

This section states that activities that are not authorized under § 34.704 are ineligible for funding.

Sections 34.706 (Reports), 34.707 (Recordkeeping), 34.708 (Audits)

These sections generally describe the reporting, recordkeeping, and auditing requirements for the Centers of Excellence Research Grants Program. OMB's Uniform Guidance provides additional details about these requirements. Editorial changes have been made for consistency with the Uniform Guidance.

Subpart I -- Agreements

Section 34.800 (General)

This section introduces the subpart that contains requirements pertaining to grants awarded by the Council, NOAA, Gulf Coast States, coastal political subdivisions, and coastal zone parishes. It also describes Treasury's authority to inspect records and the authority of the Treasury Inspector General. Treasury has revised this section to more accurately describe the content of this subpart.

Section 34.801 (Grant agreements)

This section states that grant agreements must conform to applicable law and Federal policies pertaining to grants.

Section 34.802 (Certifications)

This section includes certifications that must be in grant agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component. In response to comments, the Interim Final Rule clarifies who can sign a certification. The certification pertaining to consideration of public comments has been amended for consistency with the Act. The rule also includes a revised certification pertaining to procurements. The proposed rule required grant recipients to certify that they had followed state procurement laws. While recipients are generally required to comply with state procurement laws, the Uniform Guidance contains exceptions. Recipients should refer to 2 CFR 200.317 – 200.326 for more specific information.

Section 34.803 (Conditions)

This section contains conditions that apply to every grant agreement. The list of conditions is not comprehensive. As noted throughout the regulation, all grant agreements must comply with Federal laws and policies on grants, which include the requirements in OMB's Uniform Guidance.

Treasury has deleted a condition stating that grant recipients must deposit all grant funds into accounts dedicated for that purpose because that condition is inconsistent with OMB's Uniform Guidance. At 2 CFR 200.305(b)(7)(1), the Uniform Guidance precludes Federal awarding agencies from requiring separate depository accounts for funds provided to non-Federal entities. The Uniform Guidance does require non-Federal entities to account for the receipt, obligation, and expenditure of funds. Treasury's regulation retains that requirement as a condition for all grant agreements.

Treasury received several comments pertaining to the condition on program income. The Interim Final Rule continues to provide that grant recipients track program income, but does not

discuss how program income should be used. Grant recipients should refer to OMB's Uniform Guidance for further information on the use of program income. In addition to this change, minor editorial changes have been made for consistency with the Uniform Guidance.

Proposed rule § 34.804 (Records and Reporting)

This section in the proposed rule has been deleted. Section 34.804(a) in the proposed rule gave Treasury broad access to the Council's and NOAA's records and personnel for purposes of assessing compliance with their own obligations under the Act. Because the Act does not authorize Treasury to take enforcement actions with respect to the Council or the NOAA RESTORE Act Science Program, § 34.804(a) went further than necessary. A more narrowly tailored provision now appears in the section addressing Treasury's remedies for noncompliance. Treasury has also deleted § 34.804(b) in the proposed rule. This provision described a reporting requirement for grants lasting more than three years. Because the Federal awarding agency already has authority to require reports as necessary, this requirement was redundant of other authorities in the rule.

Interim Final Rule § 34.804 (Noncompliance)

This section describes Treasury's authority to withhold funds from the Gulf Coast States, coastal political subdivisions, and coastal zone parishes under the Direct Component, Comprehensive Plan Component, and Spill Impact Component. This section implements authorities in section 1603 of the Act (33 U.S.C. 1321(t)(1)(G) and (H)). An introductory statement in the proposed rule was unnecessary and has been deleted.

Treasury received several comments on its compliance functions. Several comments noted overlapping compliance roles for Treasury, the Treasury Inspector General, and the Council. Other comments requested that Treasury develop a review or grievance procedure for

the public to use when funds are not being used in compliance with the Act. Comments also asked Treasury to assess penalties for violations of the Act.

Under the Uniform Guidance, the Federal awarding agency has primary responsibility for overseeing compliance by the recipient. If the recipient, acting as a “pass-through entity,” issues a subaward under the Act, the recipient is responsible for overseeing compliance by the subrecipient. If a non-Federal entity fails to comply with the award agreement, the Federal awarding agency or pass-through entity may impose special conditions, temporarily withhold cash payments, disallow costs, suspend or terminate the Federal award, and take other actions. See 2 CFR 200.338. All of these remedies are available to Treasury, the Council, and NOAA when they are awarding funds under the Act, and to the states and other non-Federal entities when they are the pass-through entity.

Congress gave Treasury supplemental compliance responsibilities with respect to a grant recipient’s use of funds under the Comprehensive Plan Component and the Spill Impact Component. Treasury can withhold funds under appropriate circumstances, but Treasury has no ability to assess monetary penalties under these or the other components. Treasury’s authorities, described in section 1603 of the Act (33 U.S.C. 1321(t)(1)(G) and (H)), do not apply to grants issued by NOAA. Treasury anticipates exercising these authorities only if the entities primarily responsible for compliance under the Uniform Guidance fail to act. Public concerns about compliance with the Act should be referred, in the first instance, to the Federal awarding agency and pass-through entity for resolution.

The Treasury Inspector General will also receive reports from the public about violations of law and information concerning possible waste, fraud, and abuse. Congress gave the Treasury Inspector General broad authority to conduct, supervise, and coordinate audits and investigations

of projects, programs, and activities funded under the Act. Nothing in the Interim Final Rule limits this authority, or constrains the public’s ability to bring their concerns to the Treasury Inspector General’s office.

Section 34.806 (Treasury Inspector General)

This section is new to the Interim Final Rule, and restates the Treasury Inspector General’s authority under the Act.

Audits

Treasury received several comments concerning audits. Some comments sought clarity about the scope and timing of required audits, including whether the Single Audit Act will apply. Other comments suggested using state auditors and raising the ceiling on administrative costs to pay for audits. Several comments also asked Treasury to clarify when it would use its audit authority, and how audits would be coordinated with the Treasury Inspector General and the Council.

The Act does not describe specific audit requirements. Rather, section 1602 of the Act authorizes Treasury to identify “auditing requirements to ensure that amounts in the trust fund are expended as intended” The general audit requirements for the Act are described in OMB’s Uniform Guidance, 2 CFR 200.500 – 200.521. These provisions describe not only audit requirements applying to grant recipients, but also requirements that apply to the Federal awarding agency. Treasury (including the Treasury Inspector General) and the Federal awarding agency may conduct or arrange for additional audits and evaluations of Federal awards. 2 CFR 200.503. If additional audits are needed, the Uniform Guidance encourages Federal agencies to minimize duplication and to build upon work performed by other auditors. 2 CFR 200.503(b).

Because these audits and evaluations may depend on risks associated with individual awards, Treasury's regulations do not address them in detail.

Audit services can be an allowable cost under a Federal award, as described in 2 CFR 200.425. Treasury does not anticipate that the cap on administrative costs will limit a grant recipient's ability to perform required audits, given the definition of *administrative costs* and the provisions at 2 CFR 200.503(d), concerning the cost of audits not required under the Uniform Guidance.

III. National Environmental Policy Act

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, and its implementing regulations, 40 CFR Parts 1500-1508, establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Under NEPA, Federal agencies are required to prepare an environmental analysis for "Federal actions ." 42 U.S.C. 4332(C); see also 40 CFR 1508.18(a) and (b). The purpose of NEPA review is to help public officials make decisions with an understanding of their environmental consequences. An action under consideration must be "potentially subject to Federal control and responsibility." 40 CFR 1508.18. If the Federal agency has no discretion to exercise and no decision to make, and its action is administrative or ministerial, NEPA review would not affect the decision and is therefore not required.

Treasury received several comments about NEPA's application to eligible activities. Comments requested guidance about whether and how NEPA applies to Multiyear Implementation Plans and State Expenditure Plans. Several comments also expressed concern about whether NEPA compliance would delay the completion of plans and the issuance of grants.

The Interim Final Rule does not specifically address NEPA. The Federal agency awarding the funds is primarily responsible for determining how NEPA applies to its actions, and Treasury is not the awarding agency for a majority of funds made available under the Act. The Council has completed a programmatic environmental assessment under NEPA for the Initial Comprehensive Plan, and has begun developing NEPA compliance procedures for projects and programs it decides to fund. The Council is also developing processes to further engage with the public. The Council will determine how NEPA applies to its activities.

Treasury is the Federal awarding agency for grants under the Direct Component and Centers of Excellence Research Grants Program. Treasury will soon publish agency-wide NEPA policy and procedures in the Federal Register for public comment. At this time, however, Treasury does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review. Other Federal actions connected with activities funded through a RESTORE Act grant, such as issuance of a permit, may require NEPA review by the agency issuing the permit. Treasury's view is based on its statutory role for the administration of the Direct Component and Centers of Excellence Research Grants Program.

The RESTORE Act gives Treasury a very limited role in awarding grants. The Direct Component gives Treasury no role in project selection or design; these roles are given to Gulf Coast States, Florida counties, and Louisiana parishes. Treasury also has no role in *approving* Multiyear Implementation Plans. Treasury's limited role for the Centers of Excellence Research Grants Program is particularly evident in section 1605 of the Act, where Treasury is not mentioned at all. Treasury's role in awarding grants arises in part from its responsibility to establish procedures, and to identify conditions and certifications, necessary to ensure compliance with the Act. RESTORE Act section 1602(e); 33 U.S.C. 1321(t)(1)(E). Treasury's

role also arises from its authority to withhold funds under 33 U.S.C. 1321(t)(1)(G) and (H) for non-compliance with the Act. Without explicit instructions in the Act about how to make grant awards, Treasury will review Multiyear Implementation Plans and grant applications to determine whether they satisfy financial and administrative requirements in the Act and these regulations, and apply the administrative requirements in OMB's Uniform Guidance. These are determined to be administrative and ministerial duties that do not require an environmental analysis under NEPA.

IV. Procedural Requirements

A. 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. In the preamble to the proposed rule, Treasury 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 Act itself or other Federal law. Treasury invited comments on this certification.

Treasury received comments on behalf of seven counties in Florida that will receive funds under the Direct Component and have populations of less than 50,000 people. According to the comments, the State of Florida recognizes these counties as “fiscally constrained counties” that have limited resources to meet requirements of a safe society. The comments observed that

compliance with the rule will be costly, in relation to the budgets of these counties. The comments did not quantify the compliance costs.

While these seven counties provided many comments on the proposed rule, directly and through the Gulf Consortium, Levy County's comments provided the most detail about the regulations' cost. Levy County's situation may be representative of the other fiscally constrained counties. Levy County stated that its tax base is so low that it struggles to provide basic government services, and as a result, "the County cannot afford to acquire staff or consultants with the expertise and educational background necessary to comply with the provisions of the Proposed Rule."¹ In particular, Levy County stated that it may not be able to hire people with expertise to develop the Multiyear Implementation Plan or grant application, or to develop and implement projects and programs. To address these needs, Levy County requested that Treasury make funding available for planning and administrative costs prior to the grant application stage, including funding to educate the public, form an advisory committee, develop a Multiyear Implementation Plan, and develop potential projects.

In general, the costs of developing plans and projects, and of complying with Federal grant requirements, arise from the Act and not Treasury's regulations. The Act makes funds available subject to conditions that include plans, public engagement, and financial controls. The counties, however, have considerable discretion in how they comply with these requirements, which enables them to control some of their costs. The Act also provides some latitude concerning when funds are made available. In response to these comments, Treasury has revised the rule to make grants available to develop Multiyear Implementation Plans, including related public engagement activities. These grants will include funds to cover administrative costs. As

¹ Letter from Anne Bast Brown, Levy County Office of the County Attorney, to Dept. of the Treasury (Nov. 4, 2013) at 2-3 (available at www.regulations.gov under number Treas-DO-2013-0005-0016).

noted elsewhere in this preamble, the Florida counties and other grant recipients may also negotiate reimbursement of pre-award costs, as described in OMB's Uniform Guidance. These measures will not reduce the counties' costs in complying with the Act, or exempt the counties from any legal requirement. Every grant recipient is expected to comply with the Act and other Federal requirements that apply to Federal awards. However, these measures do make funding available for allowable costs.

For these reasons, Treasury concludes that the rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The collections of information contained in the notice of proposed rulemaking were 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)) and approved under control number 1505-0250. Treasury requested comments in the following areas:

- 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.

Treasury received comments concerning the content of Multiyear Implementation Plans and State Expenditure Plans and grant applications. Comments also requested more specific information about the reporting requirements stated in the rule. These comments, and resulting changes in the regulation, have been discussed in the section-by-section analysis in this preamble. Treasury received no comments on the accuracy of the burden assessments or suggestions for minimizing the burden of complying with the proposed collections of information.

The collections of information in this Interim Final Rule are in 31 CFR Part 34. This information is required to support applications for grants under the Act and monitor the use of RESTORE Act funds. Respondents will be recipients of these funds. For the Direct Component, recipients will be Alabama, certain Florida counties, Louisiana and certain Louisiana parishes, Mississippi, and Texas. For the Centers of Excellence Research Grants Program, recipients will be Alabama, the Florida Institute of Oceanography, Louisiana, Mississippi, and Texas.

	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.

C. 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. OMB has reviewed the regulation. If adopted, this rule may have an annual effect on the economy of \$100 million or more. 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. A second deposit was made on March 5, 2014, in the amount of \$329,641,425. 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 Act requires Treasury to establish procedures necessary for the deposit into, and expenditure of amounts from, the Gulf Coast Ecosystem Trust Fund. The Interim Final Rule 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.

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 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 Act. Funds are also available to NOAA for a science program, and to the 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 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 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 Council to carry out activities in the Gulf Coast region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). 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 to agencies through interagency agreements, and may permit its Federal and state members to issue grants to or contract with nongovernmental entities.

The 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 expend funds through grants, cooperative agreements, contracts, and interagency agreements.

The fifth 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 Interim Final Rule helps implement the 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 also has significant recreation and tourism.

On April 20, 2010, the largest oil spill in United States history occurred, exacerbating the effects of previous natural disasters. Oil flowed unchecked for three months. 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 Interim Final 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 grant recipients will determine how to advance these efforts using trust fund amounts.

D. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice and comment procedures before promulgation of regulations and a delay in effective date. See 5 U.S.C. 553(b). The APA allows agencies to dispense with notice and comment procedures when the agency finds that good cause exists under 5 U.S.C. 553(b) that such procedures would be unnecessary, impracticable, or contrary to the public interest.

The Department published a notice of proposed rulemaking requesting comment on the proposed rule on September 6, 2013. As explained earlier in this preamble, the Department is issuing this rule as an Interim Final Rule because it believes the rulemaking would benefit from additional public comment on previously proposed provisions as well as provisions adopted in

this interim rule. Further, the Department believes that it would be contrary to the public interest to delay implementation of the rule pending further public comment because of the overwhelming public interest in making funds available under the Act.

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is a “major rule” as defined by 5 U.S.C. 804(2) and will be effective 60 days after publication.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Treasury believes that the regulatory impact assessment provided in this preamble provides the analysis required by the Unfunded Mandates Reform Act.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury amends 31 CFR subtitle A by adding 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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34.105 Waiver.

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

Sec.

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 administrative costs and administrative expenses.

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Subpart D – Gulf RESTORE Program - Direct Component

Sec.

34.300 General.

34.301 Responsibility for administration – Direct Component.

34.302 Allocation of funds – Direct Component.

34.303 Application procedure – Direct Component.

34.304 Grant award process – Direct Component.

34.305 Use of funds – Direct Component.

34.306 Reports – Direct Component.

34.307 Recordkeeping – Direct Component.

34.308 Audits – Direct Component.

Subpart E – Gulf RESTORE Program - Comprehensive Plan Component

Sec.

34.400 General.

34.401 Responsibility for administration – Comprehensive Plan Component.

34.402 Grant administration – Comprehensive Plan Component.

34.403 Use of funds – Comprehensive Plan Component.

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34.406 Audits – Comprehensive Plan Component.

Subpart F – Gulf RESTORE Program - Spill Impact Component

Sec.

34.500 General.

34.501 Responsibility for administration – Spill Impact Component.

34.502 Allocation of funds – Spill Impact Component.

34.503 State Expenditure Plans – Spill Impact Component.

34.504 Grant administration – Spill Impact Component.

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34.506 Reports – Spill Impact Component.

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Subpart G – NOAA RESTORE Act Science Program

Sec.

34.600 General.

34.601 Responsibility for administration – NOAA RESTORE Act Science Program.

34.602 Use of funds and eligible activities – NOAA RESTORE Act Science Program.

34.603 Limitations on activities – NOAA RESTORE Act Science Program.

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34.605 Reports – NOAA RESTORE Act Science Program.

34.606 Recordkeeping – NOAA RESTORE Act Science Program.

34.607 Audits -- NOAA RESTORE Act Science Program.

Subpart H - Centers of Excellence Research Grants Program

Sec.

34.700 General.

34.701 Responsibility for administration – Centers of Excellence Research Grants Program.

34.702 Allocation of funds – Centers of Excellence Research Grants Program.

34.703 Application procedure – Centers of Excellence Research Grants Program.

34.704 Use of funds and eligible activities – Centers of Excellence Research Grants Program.

34.705 Ineligible activities – Centers of Excellence Research Grants Program.

34.706 Reports – Centers of Excellence Research Grants Program.

34.707 Recordkeeping – Centers of Excellence Research Grants Program.

34.708 Audits – Centers of Excellence Research Grants Program.

Subpart I – Agreements

Sec.

34.800 General.

34.801 Grant agreements.

34.802 Certifications.

34.803 Conditions.

34.804 Noncompliance.

34.805 Treasury Inspector General.

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) The Gulf RESTORE Program is authorized under section 311(t) of the Federal Water Pollution Control Act (33 U.S.C. 1221(t)), as amended by the RESTORE Act, and includes the following components:

(1) Direct Component (subpart D of this part), administered by the Department of the Treasury.

(2) Comprehensive Plan Component (subpart E of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(3) Spill Impact Component (subpart F of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(b) NOAA RESTORE Act Science Program (subpart G of this part) is administered by the National Oceanic and Atmospheric Administration.

(c) Centers of Excellence Research Grants Program (subpart H of this part) is administered by the Department of the Treasury.

§ 34.2 Definitions.

As used in this part:

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

Activity means an activity, project, or program, including research and monitoring, eligible for funding under the Act.

Administrative costs means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs may include costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to:

- (1) Facilities;
- (2) Eligible projects, programs, or planning activities; or
- (3) Activities relating to grant applications, awards, audit requirements, or post-award management, including payments and collections.

Administrative expenses means those expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services.

Administrative expenses do not include expenses that are identified specifically with, or readily assignable to:

- (1) Facilities;
- (2) Eligible projects, programs, or planning activities;
- (3) Activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections;
- (4) The Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments;
- (5) The Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component;
- (6) Preparation of reports required by the Act;
- (7) Establishment and operation of advisory committees; or
- (8) Collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem.

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.

Assignee means a member of the Gulf Coast Ecosystem Restoration Council who has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan through a grant or interagency agreement.

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 through grants 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.

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 entity means a party that carries out the duties of a state for the Centers of Excellence Research Grants Program under § 34.702.

Infrastructure means the public facilities or systems needed to support commerce and economic development. These installations and facilities span a wide range, including highways, airports, roads, buildings, transit systems, port facilities, railways, telecommunications, water and sewer systems, public electric and gas utilities, levees, seawalls, breakwaters, major pumping stations, and flood gates. Infrastructure encompasses new construction, upgrades and repairs to existing facilities or systems, and associated land acquisition and planning.

Multiyear Implementation Plan means the plan submitted by entities eligible for funding directly from Treasury under the Direct Component, and described at § 34.303.

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 subaward to a subrecipient to carry out part of a program under the Act.

Planning assistance means data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under § 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and

audit compliance with respect to eligible activities under § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under the Act. As used in these regulations, a recipient also includes a pass-through entity. The term recipient does not include subrecipients.

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, and described at § 34.503.

Subrecipient means a non-Federal entity that receives a subaward from a recipient to carry out an activity under the Act.

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. After these administrative and civil penalties have been deposited into the Trust Fund, the Trust Fund will terminate on the date all amounts owed to the Trust Fund have been returned to the Trust Fund, and all amounts 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. Section 34.302 describes the allocation for each Gulf Coast State.

(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 of the Gulf RESTORE Program.

§ 34.104 Expenditures.

Subject to limitations in the Act and these regulations, amounts in the Trust Fund will be available for the direct and indirect expenses of eligible activities without fiscal year limitation. Recipients must minimize the time between receipt of funds and the disbursement of those funds for authorized expenses.

§ 34.105 Waiver.

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in the 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 that materially change a regulatory requirement.

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

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 of the Gulf RESTORE Program. 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 amounts may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs must comply with administrative requirements and cost principles in applicable Federal law and policies on grants.

(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) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component must not be included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 U.S.C.9509.

(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 an activity that is eligible under §§ 34.201 and 34.203 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. Direct Component activities are carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant. Activities designed to protect or restore natural resources must be based on the best available science. All Direct Component activities must be included in and conform to the description in the Multiyear Implementation Plan required by § 34.303.

(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 assistance. Eligible entities under § 34.202 may apply for planning assistance grants that are necessary to develop and submit the Multiyear Implementation Plan before the plan is submitted to Treasury.

(k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

The Council may expend funds that are available under the Comprehensive Plan Component for eligible activities under 33 U.S.C. 1321(t)(2) and (3), including the following:

(a) The Council may expend funds to carry out activities in the Gulf Coast Region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). An activity selected by the Council is carried out in the Gulf Coast Region when, in the reasonable judgment of the Council, each severable part of the activity is primarily designed to restore or protect that geographic area. The Council must document the basis for its judgment when it selects the activity.

(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to implement, 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.

Activities eligible for funding under the Spill Impact Component must meet the eligibility criteria in § 34.201(a) through (k), as well as the following:

(a) The activities must be included in and conform to the description in a State Expenditure Plan required in § 34.503 and approved by the Council. State entities may apply for a grant from the total amount allocated to that state under the Spill Impact Component before the Council has approved the State Expenditure Plan to fund eligible activities that are necessary to develop and submit that plan.

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

(c) Activities listed in § 34.201(a) through (g) are eligible for funding from the Spill Impact Component to the extent they are carried out in the Gulf Coast Region. For purposes of this component, an activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity developing the State Expenditure Plan under § 34.503, each severable part of the activity is primarily designed to restore or protect that geographic area. State Expenditure Plans must include a demonstration that activities in the plan will be carried out in the Gulf Coast Region.

§ 34.204 Limitations on administrative costs and administrative expenses.

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish in a grant from Treasury under the Direct Component, or in a grant from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in Federal law and policies on grants.

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

§ 34.205 Council's audited financial statements and audits.

(a) 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.

(b) 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.

(c) 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.

(d) The Treasury Inspector General may conduct 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 – Direct Component.

Treasury is responsible for awarding and administering grants and grant agreements under this subpart. Treasury will develop and apply policies and procedures consistent with the

Act and Federal law and policies on grants. Treasury also will establish and implement a program to monitor compliance with its grant agreements.

§ 34.302 Allocation of funds – Direct Component.

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. All administrative duties of the Alabama Gulf Coast Recovery Council must be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Each disproportionately affected county's share is as follows: Bay County, 15.101453044%; Escambia County, 25.334760043%; Franklin County, 8.441253238%; Gulf County, 6.743202296%; Okaloosa County, 15.226456794%; Santa Rosa County, 10.497314919%; Wakulla County, 4.943148294%; and Walton County, 13.712411372%.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Each nondisproportionately impacted county's share is as follows: Charlotte County, 5.162%; Citrus County, 4.692%; Collier County, 7.019%; Dixie County, 3.484%; Hernando County, 4.982%; Hillsborough County, 13.339%; Jefferson County, 3.834%; Lee County, 8.776%; Levy County, 3.894%; Manatee County, 6.809%;

Monroe County, 8.297%; Pasco County, 7.079%; Pinellas County, 11.002%; Sarasota County, 7.248%; and Taylor County, 4.383%.

(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.

(f) No parish will receive funds until the parish 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.

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

(h) 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 – Direct Component.

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) Before an eligible entity may receive a Direct Component activity grant, the grant applicant must submit a Multiyear Implementation Plan describing each activity for which it

seeks funding under the Direct Component. Applications to fund preparation and amendment of the Multiyear Implementation Plan are exempt from this requirement.

(b) For each activity, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements;

(3) Location;

(4) Budget;

(5) Milestones;

(6) Projected completion dates;

(7) 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;

(8) The plan was made available for public review and comment for a minimum of 45 days in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations; and

(9) Each activity in the plan was adopted after consideration of meaningful input from the public. Treasury may require a standard format and additional information in the plans. Plans can be phased and incremental and may be modified later by the applicant, subject to the same submittal requirements. If the applicant has requested or anticipates requesting funding for any part of the activity from other sources, including other components in the Act, the applicant must identify the source, state the amount of funding, and provide the current status of the request. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(e).

(c) The applicant must include supporting information in each grant application that:

(1) Proposed activities meet the statutory requirements for eligibility; and

(2) Each activity designed to protect or restore natural resources is based on best available science.

(d) An applicant may satisfy some or all of the requirements in §§ 34.303 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 activities that are substantively the same as the requirements in § 34.303 and 34.802(a) through (e).

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

§ 34.304 Grant award – Direct Component.

Upon determining that the Multiyear Implementation Plan and the grant application meet the requirements of these regulations and the Act, Treasury will execute a grant agreement with the recipient that complies with subpart I of this part, the Act, and other Federal laws and policies on grants.

§ 34.305 Use of funds – Direct Component.

(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.

(b) When awarding contracts to carry out an activity 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.

(c) A Gulf Coast State, coastal political subdivision, or coastal zone parish may propose to issue subawards for eligible activities. Recipients that propose to issue subawards must demonstrate their ability to conduct subrecipient monitoring and management, as required by Federal law and policies on grants.

§ 34.306 Reports – Direct Component.

Recipients must submit reports as prescribed by Treasury.

§ 34.307 Recordkeeping – Direct Component.

Recipients must maintain records as prescribed by Treasury and Federal policies on grants, and make the records available to Treasury, including the Treasury Inspector General.

§ 34.308 Audits – Direct Component.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of recipient's accounts and activities relating to the Act 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 33 U.S.C. 1321(t)(2) and will include activities the Council intends to carry out, subject to available funding. When selecting activities to carry out in the first three years, except for certain projects

and programs that were authorized prior to July 6, 2012, the Council will give highest priority to projects meeting one or more of the criteria in 33 U.S.C. 1321(t)(2)(D)(iii).

§ 34.401 Responsibility for administration – Comprehensive Plan Component.

(a) 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, which are called *assignees* in these regulations. In assigning responsibility, the Council must enter into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. Any grant agreement must be consistent with applicable Federal laws and policies on grants. The Council must specify whether any part of an assignee's responsibility may be further assigned to another entity and under what terms.

(b) When an assignee's grant or subaward to, or cooperative agreement with, a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that activity, the Council must publish in the Federal Register and deliver to the following Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the recipient or subrecipient; a brief description of the activity, including its purpose; and the amount of the award.

(1) House of Representatives 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 Grant administration – Comprehensive Plan Component.

The Council must publish policies and procedures for administration of Comprehensive Plan Component grants that are consistent with applicable Federal laws and policies for grants. These grant policies and procedures must include uniform guidelines for assignees to use when selecting subrecipients, awarding grants and subawards, and monitoring compliance. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.403 Use of funds – Comprehensive Plan Component.

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 – Comprehensive Plan Component.

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

§ 34.405 Recordkeeping – Comprehensive Plan Component.

Assignees 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 – Comprehensive Plan Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of assignee's accounts and activities relating to the Act 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 will be in the form of grants.

§ 34.501 Responsibility for administration – Spill Impact Component.

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

§ 34.502 Allocation of funds – Spill Impact Component.

The Council will allocate amounts to the Gulf Coast States based on the Act and regulations promulgated by the Council. The Council will make allocated funds available through grants for activities described in a State Expenditure Plan approved by the Council.

§ 34.503 State Expenditure Plans – Spill Impact Component.

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 activity for which the state seeks funding. The Council must develop requirements for these plans, including the requirements below.

(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 describe how it takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Comprehensive Plan. In addition, the State Expenditure Plan must describe the processes used:

(1) To evaluate and select activities included in the plan;

(2) To assess the capability of third party entities that will implement activities in the plan;

(3) To prevent conflicts of interest in the development and implementation of the plan;

(4) To obtain public review and comment in accordance with § 34.503(g); and

(5) To verify compliance with the requirements of § 34.203 and this subpart.

(c) For each activity in the State Expenditure Plan, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements of § 34.203 and this subpart;

(3) Location;

(4) Budget;

(5) Milestones;

(6) Projected completion dates; and

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region. Plans can be phased or incremental and may be modified with the Council's approval. If funding has been requested from other sources, including other components of the Act, the plan must identify the source, state how much funding was requested, and provide the current status of the request.

(d) The State Expenditure Plan must demonstrate how the activities in the plan will contribute to the overall economic and ecological recovery of the Gulf Coast, and how each 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.

(e) The State Expenditure Plan must demonstrate that activities described in § 34.201(a) through (g) will be carried out in the Gulf Coast Region, as described in § 34.203(c).

(f) No more than 25 percent of funding under the Spill Impact Component is available to a Gulf Coast State under this subpart to pay for infrastructure, unless the Governor or the Governor's representative on the Council certifies that:

(1) The ecosystem restoration needs in the state will be addressed by the activities 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) Before being submitted to the Council for approval, a State Expenditure Plan must be available for public review and comment for a minimum of 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

(h) 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.

(i) The Council must publish guidelines explaining when modifications to a State Expenditure Plan require the Council's approval.

§ 34.504 Grant administration – Spill Impact Component.

The Council must publish policies and procedures for administration of the Spill Impact Component grants that are consistent with applicable Federal law and policies for grants. The

Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.505 Use of funds – Spill Impact Component.

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 – Spill Impact Component.

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

§ 34.507 Recordkeeping – Spill Impact Component.

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

§ 34.508 Audits – Spill Impact Component.

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of a recipient's accounts and activities relating to the Act 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 RESTORE Act Science Program.

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 law and policies for grants. NOAA must monitor compliance with its grant agreements, cooperative agreements, contracts and 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 Use of funds and eligible activities.

(a) Amounts made available to NOAA may be expended to carry out a program comprised of activities described in section 1604 of the Act. These activities include coordination of science and technology programs and stakeholder engagement, in accordance with section 1604(f) of the Act, as well as the following activities with respect to the Gulf of Mexico:

- (1) Marine and estuarine research.

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

(3) Data collection and stock assessments.

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

(5) Cooperative research.

(b) 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 – NOAA RESTORE Act Science Program.

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 – NOAA RESTORE Act Science Program.

(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.

(b) 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 RESTORE Act Science Program.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping – NOAA RESTORE Act Science Program.

Recipients and other entities receiving funds under the NOAA RESTORE Act Science Program must maintain records as prescribed by NOAA and make the records available to NOAA.

§ 34.607 Audits – NOAA RESTORE Act Science Program.

NOAA and the Treasury Inspector General may conduct audits and reviews of recipient's accounts and activities relating to the Act as either of them 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 of excellence 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 – Centers of Excellence Research Grants Program.

Treasury is responsible for awarding grants to the Gulf Coast States, which 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 will develop and apply policies and procedures consistent with this Act and Federal law and policies on grants. Each Gulf Coast State entity issuing grants must establish and implement a program to monitor compliance with its grant agreements.

§ 34.702 Allocation of funds – Centers of Excellence Research Grants Program.

An equal share of funds will be available to each Gulf Coast State 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, or such administrative agent as it may designate.
- (b) In Florida, the Florida Institute of Oceanography.
- (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 – Centers of Excellence Research Grants Program.

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

(a) Each Gulf Coast State must describe the competitive process that the state will use to select one or more Centers of Excellence. The competitive process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher education, to compete. The process must give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants in the grant with interest and expertise in science, technology, and monitoring in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest.

(b) Each Gulf Coast State must describe rules and policies for the grants it will issue to subrecipients to ensure compliance with the Act and Federal law and policies for grants. Each Gulf Coast State must demonstrate in its application that its rules and policies, including the competitive selection process, were published and available for public review and comment for a minimum of 45 days, and that they were adopted after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. This requirement does not apply to state statutes and regulations that may apply to grants made by the state under this subpart.

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

§ 34.704 Use of funds and eligible activities – Centers of Excellence Research Grants

Program.

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act and Federal law and policies for grants.

(b) Gulf Coast States may use funds available under this subpart to award competitive subawards 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 – Centers of Excellence Research Grants Program.

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

§ 34.706 Reports – Centers of Excellence Research Grants Program.

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 subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient 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) Reports as prescribed by Treasury.

§ 34.707 Recordkeeping – Centers of Excellence Research Grants Program.

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

§ 34.708 Audits – Centers of Excellence Research Grants Program.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each recipient's accounts and activities relating to the Act 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 subdivisions, and coastal zone parishes in making awards under

subparts D, E, F, G, and H of this part. It also describes Treasury's authority to inspect records and the Treasury Inspector General's authority under the Act.

§ 34.801 Grant agreements.

The grant agreements used must conform to the Act and Federal laws and policies on 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 entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question.

(a) I certify that each activity funded under this Agreement has been primarily 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 Region.

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

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

(d) I certify that each 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 recipient has procedures in place for procuring property and services under this award that are consistent with the procurement standards applying to Federal grants. This recipient agrees that it will not request funds under this award for any contract unless this certification remains true and accurate.

(f) I certify that a conflict of interest policy is in effect and covering each 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 recipient maintains written documentation sufficient to support each certification made above, and that this recipient's compliance with each of these certifications is a condition of this recipient's initial and continuing receipt and use of the funds provided under this Agreement.

§ 34.803 Conditions.

At a minimum, each grant agreement under subparts D, E, F, G, and H of this part must contain the following conditions:

(a) The recipient 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) The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds. The recipient must track program income.

(c) Prior to disbursing funds to a subrecipient, the recipient must execute a legally binding written agreement with the entity receiving the subaward. The written agreement will extend all the applicable program requirements to the subrecipient.

(d) The recipient must use the funds only for the purposes identified in the Agreement.

(e) The 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 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 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 can legally bind the organization, and who has oversight and authority over the administration and use of the funds in question.

(f) Trust Fund amounts may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(g) 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.

§ 34.804 Noncompliance.

(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 recipient from any part of the Trust Fund until the recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity 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 recipient from any part of the Trust Fund until the recipient corrects the violation.

(c) As a condition of receiving funds, recipients and subrecipients shall make available their records and personnel to Treasury in order to carry out the purposes of this section.

§ 34.805 Treasury Inspector General.

In addition to other authorities available under the Act, the Office of the Inspector General of the Department of the Treasury is authorized to conduct, supervise, and coordinate audits and investigations of activities funded through grants under the Act.

David A. Lebryk,
Fiscal Assistant Secretary.

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