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October 11, 2013

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

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

Dear Ms. Bleakley:

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

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

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

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

In summary, our comments address the following:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Grover Robinson, Commissioner District 4

Enclosure: Proposed Treasury RESTORE Regulation Comments

Rule-Specific Comments:

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

Subpart A – General Provisions

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34.1 Purpose.

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Subpart G – NOAA RESTORE Act Science Program

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Subpart H - Centers of Excellence Research Grants Program

- 34.700 General.
- 34.701 Responsibility for administration.
- 34.702 Allocation of funds.
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- 34.706 Reports.
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Subpart I – Agreements

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

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

Subpart A – General Provisions

§ 34.1 Purpose.

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

(a) Gulf RESTORE Program:

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

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

§ 34.2 Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Eligible Activities means those activities authorized for expenditure pursuant to approved Multi-Year Implementation Plans or State Expenditure Plans, including activities to promote tourism and seafood in the Gulf Coast region.¹

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

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

Entity means non-Federal entity.ⁱⁱ

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

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

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

Gulf Coast Region means:

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

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

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

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

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

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

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

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

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

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

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

NOAA means the National Oceanic and Atmospheric Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trust Fund means the Gulf Coast Restoration Trust Fund.

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

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

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

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

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

Comment [ED21]: Similar to concept in ED20.

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Subpart B - Trust Fund

§ 34.100 The Trust Fund.

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

§ 34.101 Investments.

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

§ 34.102 Interest earned.

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

§ 34.103 Allocation of funds.

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

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

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

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

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

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

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

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

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

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

(3) Fifty percent for the Comprehensive Plan Component.

§ 34.104 Expenditures.

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

§ 34.105 Waiver.

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

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

§ 34.200 General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 34.201 Eligible activities for the Direct Component.

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

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

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

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

(e3) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(4d) Workforce development and job creation.

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

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

(7g) Coastal flood protection and related infrastructure.

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

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

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

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

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

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

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

§ 34.202 Eligible activities for the Comprehensive Plan Component.

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

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

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

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

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

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

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

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

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

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

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

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

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component

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

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

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

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

§ 34.204 Limitations on activities.

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

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

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

§ 34.205 Limitations on administrative costs and administrative expenses.

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

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

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

§ 34.206 Audited financial statements and audits.

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

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

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

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

- (1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.
- (2) Results of operations of the Council.
- (b) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.
- (c) The Treasury Inspector General may conduct performance audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

Subpart D – Gulf RESTORE Program - Direct Component
§ 34.300 General.

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

§ 34.301 Responsibility for administration.

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

§ 34.302 Allocation of funds.

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

- (a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.
- (b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Treasury will divide the funds among these counties according to the formula mutually-agreed upon by the counties and included in the multiyear implementation plan submitted by each disproportionately affected county.
- (c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Treasury will divide the funds among these counties according to the formula in section 311(t)(1)(C)(ii) of the Federal Water Pollution Control Act.
- (d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana.
- (e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes based on the formula in section 311(t)(1)(D)(i) of the Federal Water Pollution Control Act. No parish will receive funds until its chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the State's Coastal Master Plan approved by the Louisiana legislature.
- (f) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.
- (g) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Governor.

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

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

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

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

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

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

§ 34.303 Application procedure.

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

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

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

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

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

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

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

§ 34.304 Grant award process.

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

§ 34.305 Use of funds.

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

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

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Comment [ED42]: Better tracks the Act.

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

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

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

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

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

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

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

Comment [ED50]: Consistent language throughout the Rule.

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

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

§ 34.306 Reports.

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

§ 34.307 Recordkeeping.

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

§ 34.308 Audits.

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

Subpart E – Gulf RESTORE Program – Comprehensive Plan Component

§ 34.400 General.

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

§ 34.401 Responsibility for administration.

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

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

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

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

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

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

§ 34.402 Application procedure and grant award process.

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

§ 34.403 Use of funds.

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

§ 34.404 Reports.

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

§ 34.405 Recordkeeping.

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

§ 34.406 Audits.

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

Subpart F – Gulf RESTORE Program - Spill Impact Component

§ 34.500 General.

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

§ 34.501 Responsibility for administration.

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

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

§ 34.502 Allocation of funds.

The Council will allocate amounts to the Gulf Coast States, or other authorized entities based on a formula in the Act and a regulation that the Council promulgates subject to public review and comment.

The Council will make allocated funds available to Gulf Coast States, or other authorized entities, through grants for programs, projects, and activities described in a State expenditure plan which must be first approved by the Council.

§ 34.503 State Expenditure Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 34.504 Grant administrationward process.

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

§ 34.505 Use of funds.

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

§ 34.506 Reports.

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

§ 34.507 Recordkeeping.

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

§ 34.508 Audits.

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

Subpart G – NOAA RESTORE Act Science Program

§ 34.600 General.

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

§ 34.601 Responsibility for administration.

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

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

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

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

Comment [ED57]: Consistent language throughout the Rule.

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

§ 34.602 Activities for the NOAA RESTORE Act Science Program.

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

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

§ 34.603 Limitations on activities.

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

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

§ 34.604 Limitations on administrative expenses.

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

§ 34.605 Reports.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping.

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

§ 34.607 Audits.

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

Subpart H – Centers of Excellence Research Grants Program

§ 34.700 General.

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

§ 34.701 Responsibility for administration.

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

§ 34.702 Allocation of funds.

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

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

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

§ 34.703 Application procedure.

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

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

§ 34.704 Use of grant funds and eligible activities.

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

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

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

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

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

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

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

§ 34.705 Ineligible activities.

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

§ 34.706 Reports.

Each Gulf Coast State entity must submit the following reports:

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

(b) Other reports required by Treasury.

§ 34.707 Recordkeeping.

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

§ 34.708 Audits.

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

Subpart I – Agreements

§ 34.800 General.

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

§ 34.801 Grant Award agreements.

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

§ 34.802 Certifications.

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

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

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

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

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

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

(e) I certify that each project, program, and activity funded under this Agreement, this Grantee has followed in every material respect the applicable procurement rules applying to contracts in the Grantee and the awarding of a contract for the expenditure of amounts received, are consistent with State for each project, program, and activity funded under this Agreement, with the standard procurement rules and regulations governing a comparable project or program in that Recipient's State, including rules for competitive bidding and audit requirements.⁵⁰ This GranteeRecipient agrees that it will not request funds under this grant award for any contract unless this certification remains true and accurate with respect to that contract. *[The Council may adapt this certification to account for any standard contract terms that it develops under section 311(t)(2)(C)(vii)(V) of the Federal Water Pollution Control Act.]*

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

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

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

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

§ 34.803 Conditions.

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

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

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

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

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

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

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

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

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

§ 34.804 Records.

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

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

§ 34.805 Noncompliance.

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

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

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

Richard L. Gregg

Fiscal Assistant Secretary

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

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

ⁱⁱⁱ Circular A-87 Revised 5/10/2004.

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

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

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

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

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

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

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

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

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

^{xiii} Glossary, www.grants.gov

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See § 34.604(c).

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

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

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

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

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

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

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

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

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