

Office of the Secretary of the Treasury

Pt. 34

(b) [Reserved]

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

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

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Subpart A—General Provisions

§ 34.1 Purpose.

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

(a) The Gulf RESTORE Program is authorized under section 311(t) of the Federal Water Pollution Control Act (33 U.S.C. 1321(t)), as amended by the RESTORE Act, and includes the following components:

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

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

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

(b) NOAA RESTORE Act Science Program (subpart G of this part) is administered by the National Oceanic and Atmospheric Administration, and authorized by the RESTORE Act, section 1604, 33 U.S.C. 1321 note.

(c) Centers of Excellence Research Grants Program (subpart H of this part) is administered by the Department of the Treasury, and authorized by the RESTORE Act, section 1605, 33 U.S.C. 1321 note.

§ 34.2 Definitions.

As used in this part:

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

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

Administrative costs means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR 200.414.

Administrative expenses means those expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative expenses do not include expenses that are identified specifically with, or readily assignable to:

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

Alabama Gulf Coast Recovery Council means the entity identified in section

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311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

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

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

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

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

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

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

Council means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast

Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

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

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

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

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

Gulf Coast Region means:

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

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

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

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

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

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

Infrastructure means the public facilities or systems needed to support commerce and economic development. These installations and facilities span

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

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

NOAA means the National Oceanic and Atmospheric Administration.

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

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

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a program under the Act.

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

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

Spill Impact Component means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of

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the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

State Expenditure Plan means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component, and described at §34.503.

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

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

Trust Fund means the Gulf Coast Restoration Trust Fund.

Subpart B—Trust Fund

§ 34.100 The Trust Fund.

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

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

§ 34.102 Interest earned.

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

§ 34.103 Allocation of funds.

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

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

(1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program. Section 34.302 describes the allocation for each Gulf Coast State.

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

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

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

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

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

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

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

(3) Fifty percent for the Comprehensive Plan Component of the Gulf RESTORE Program.

§ 34.104 Expenditures.

Subject to limitations in the Act and these regulations, amounts in the Trust Fund will be available for the direct and indirect expenses of eligible activities without fiscal year limitation.

§ 34.105 Waiver.

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

Subpart C—Eligible Activities for the Section 311(f) Gulf RESTORE Program Components

§ 34.200 General.

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

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

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

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

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

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(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§34.201 and 34.203 and authorized by Federal law.

§ 34.201 Eligible activities for the Direct Component.

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

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

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

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

(d) Workforce development and job creation.

(e) Improvements to or on state parks located in coastal areas affected by the *Deepwater Horizon* oil spill.

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

(g) Coastal flood protection and related infrastructure.

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

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

(j) Planning assistance. Eligible entities under §34.302 may apply for planning assistance grants to fund preparation and amendment of the Multiyear Implementation Plan.

(k) Administrative costs.

§ 34.202 Eligible activities for the Comprehensive Plan Component.

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

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

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

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

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

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

(f) Administrative expenses.

§ 34.203 Eligible activities for the Spill Impact Component.

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

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

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

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

§34.204 Limitations on administrative costs and administrative expenses.

(a)(1) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish from Treasury under the Direct Component, or from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit on administrative costs may be applied to the total amount of funds received by a recipient under each of the three components either on a grant-by-grant basis or on an aggregate basis. For the latter method, amounts used for administrative costs under each of the three components may not at any time exceed three percent of the aggregate of:

(i) The amounts received under a component by a recipient, beginning with the first grant through the most recent grant, and

(ii) The amounts in the Trust Fund that are allocated to, but not yet re-

ceived under such component by a Gulf Coast State, coastal political subdivision, or coastal zone parish under §34.103, consistent with the definition of administrative costs in §34.2.

(2) The three percent limit does not apply to the administrative costs of subrecipients. All recipient and subrecipient costs are subject to the cost principles in Federal laws and policies on grants.

(3) Treasury will conduct a retrospective analysis of this provision no later than seven years after the date it becomes effective. This review will consider whether the revision ensures that the Gulf Coast States, coastal political subdivisions, and coastal zone parishes have the necessary funding to efficiently and effectively oversee and manage projects and programs for ecological and economic restoration of the Gulf Coast Region while ensuring compliance with the statutory three percent administrative cost cap.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses. The three percent limit is applied to the amounts it receives under the Comprehensive Plan Component before termination of the Trust Fund. Amounts used for administrative expenses may not at any time exceed three percent of the total of the amounts received by the Council and the amounts in the Trust Fund that are allocated to, but not yet received by, the Council under §34.103.

[80 FR 77243, Dec. 14, 2015, as amended at 81 FR 66530, Sept. 28, 2016; 84 FR 12932, Apr. 3, 2019]

§34.205 Council's audited financial statements and audits.

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

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

(1) The overall financial position of the accounts and activities covered by

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the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

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

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

Subpart D—Gulf RESTORE Program—Direct Component

§ 34.300 General.

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

§ 34.301 Responsibility for administration—Direct Component.

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

§ 34.302 Allocation of funds—Direct Component.

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

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate. All administrative duties of the Alabama Gulf Coast Recovery Council must be performed by public officials and employees that are sub-

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ject to the ethics laws of the State of Alabama.

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

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Each nondisproportionately impacted county's share is as follows: Charlotte County, 5.162%; Citrus County, 4.692%; Collier County, 7.019%; Dixie County, 3.484%; Hernando County, 4.982%; Hillsborough County, 13.339%; Jefferson County, 3.834%; Lee County, 8.776%; Levy County, 3.894%; Manatee County, 6.809%; Monroe County, 8.297%; Pasco County, 7.079%; Pinellas County, 11.002%; Sarasota County, 7.248%; and Taylor County, 4.383%.

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

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes. Each coastal zone parish's share is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu, 5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Tangipahoa, 3.40337%; Terrebonne, 9.91281%; and Vermilion, 3.02766%.

(f) No parish will receive funds until the parish chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the

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Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the state's Coastal Master Plan approved by the Louisiana legislature.

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

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

§ 34.303 Application procedure—Direct Component.

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury has developed an application process for grants available under this subpart that is consistent with the Act and Federal laws and policies on grants. The application process includes the following requirements:

(a) Before an eligible entity may receive a Direct Component activity grant, the grant applicant must submit a Multiyear Implementation Plan describing each activity for which it seeks funding under the Direct Component. Applications to fund preparation and amendment of the Multiyear Implementation Plan are exempt from this requirement.

(b) For each activity, the Multiyear Implementation Plan must include a narrative description demonstrating:

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

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

(3) Location of the activity;

(4) Budget for the activity;

(5) Milestones for the activity;

(6) Projected completion dates for the activity;

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region impacted by the *Deepwater Horizon* oil spill;

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

tribes, and non-profit organizations; and

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

(c) Material modifications to a Multiyear Implementation Plan are subject to all applicable requirements in paragraph (b) of this section.

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

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

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

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

(1) The applicant established conditions to carry out activities that are substantively the same as the requirements in this section and § 34.802(a) through (e).

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

§ 34.304 Grant award process—Direct Component.

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

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§ 34.305 Use of funds—Direct Component.

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

(b) When awarding contracts to carry out an activity under the Direct Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the state of project execution consistent with Federal laws and policies on grants.

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

§ 34.306 Reports—Direct Component.

Recipients must submit reports as prescribed by Treasury.

§ 34.307 Recordkeeping—Direct Component.

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

§ 34.308 Audits—Direct Component.

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

Subpart E—Gulf RESTORE Program—Comprehensive Plan Component

§ 34.400 General.

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with 33 U.S.C. 1321(t)(2) and will include activities the Council intends to carry out, subject to available funding. When selecting activities to carry out in the first three

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

§ 34.401 Responsibility for administration—Comprehensive Plan Component.

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

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

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

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

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

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§ 34.402 Grant administration—Comprehensive Plan Component.

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

§ 34.403 Use of funds—Comprehensive Plan Component.

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

§ 34.404 Reports—Comprehensive Plan Component.

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

§ 34.405 Recordkeeping—Comprehensive Plan Component.

Assignees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of assignees available to Treasury, including the Treasury Inspector General.

§ 34.406 Audits—Comprehensive Plan Component.

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

Subpart F—Gulf RESTORE Program—Spill Impact Component

§ 34.500 General.

This subpart describes the policies and procedures applicable to the Spill

Impact Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of grants.

§ 34.501 Responsibility for administration—Spill Impact Component.

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

§ 34.502 Allocation of funds—Spill Impact Component.

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

§ 34.503 State Expenditure Plans—Spill Impact Component.

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each activity for which the state seeks funding. The Council must develop requirements for these plans, including the requirements below.

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

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

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

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

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

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

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

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

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

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

(4) To obtain public review and comment in accordance with paragraph (g) of this section; and

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

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

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

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

(3) Location of the activity;

(4) Budget for the activity;

(5) Milestones for the activity;

(6) Projected completion dates for the activity; and

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

(d) The State Expenditure Plan must demonstrate how the activities in the plan will contribute to the overall economic and ecological recovery of the Gulf Coast, and how each activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

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

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

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

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

(g) Before being submitted to the Council for approval, a State Expenditure Plan must be available for public review and comment for a minimum of 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

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

(i) The Council must publish guidelines explaining when modifications to a State Expenditure Plan require the Council's approval. Material modifications to a State Expenditure Plan are subject to the requirements of paragraphs (b) through (g) of this section.

§ 34.504 Grant administration—Spill Impact Component.

The Council must publish policies and procedures for administration of the Spill Impact Component grants that are consistent with applicable Federal laws and policies on grants. The Council must also establish and implement a program to monitor compliance with its grant agreements.

§ 34.505 Use of funds—Spill Impact Component.

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

§ 34.506 Reports—Spill Impact Component.

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

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§ 34.507 Recordkeeping—Spill Impact Component.

Recipients must maintain records as prescribed by the Council and make the records available to the Council, and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of recipients available to Treasury, including the Treasury Inspector General.

§ 34.508 Audits—Spill Impact Component.

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

Subpart G—NOAA RESTORE Act Science Program

§ 34.600 General.

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

§ 34.601 Responsibility for administration—NOAA RESTORE Act Science Program.

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

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

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

- (1) Marine and estuarine research.
- (2) Marine and estuarine ecosystem monitoring and ocean observation.
- (3) Data collection and stock assessments.
- (4) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.
- (5) Cooperative research.

(b) NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

§ 34.603 Limitations on activities—NOAA RESTORE Act Science Program.

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

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

§ 34.604 Limitations on administrative expenses—NOAA RESTORE Act Science Program.

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

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(b) The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

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

§ 34.605 Reports—NOAA RESTORE Act Science Program.

NOAA must submit reports as prescribed by Treasury.

§ 34.606 Recordkeeping—NOAA RESTORE Act Science Program.

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

§ 34.607 Audits—NOAA RESTORE Act Science Program.

NOAA and the Treasury Inspector General may conduct audits and reviews of recipient's accounts and activities relating to the Act as either of them deems appropriate.

Subpart H—Centers of Excellence Research Grants Program

§ 34.700 General.

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

§ 34.701 Responsibility for administration—Centers of Excellence Research Grants Program.

Treasury is responsible for awarding grants to the Gulf Coast States, which will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury will develop

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and apply policies and procedures consistent with this Act and Federal laws and policies on grants. Each Gulf Coast State entity issuing grants must establish and implement a program to monitor compliance with its subaward agreements.

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

An equal share of funds will be available to each Gulf Coast State to carry out eligible activities. The duties of a Gulf Coast State will be carried out by the following entities:

(a) In Alabama, the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.

(b) In Florida, the Florida Institute of Oceanography.

(c) In Louisiana, the Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority of Louisiana.

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

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

§ 34.703 Application procedure—Centers of Excellence Research Grants Program.

Treasury has developed an application process for grants available to the Gulf Coast States under this subpart that is consistent with the Act and Federal laws and policies on grants. The process includes the following requirements:

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

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process must also guard against conflicts of interest.

(b) Each Gulf Coast State must describe in its application the state rules and policies applying to subawards it will issue under this subpart. At a minimum, these state rules and policies must include the competitive selection process and measures to guard against conflicts of interest.

(c) Each Gulf Coast State must demonstrate in its application that the state rules and policies applying to subawards it will issue under this subpart were published and available for public review and comment for a minimum of 45 days, and that they were approved after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. These requirements do not apply to state statutes and regulations, or to policies that were in effect prior to August 15, 2014.

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

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

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

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

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

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

(3) Offshore energy development, including research and technology to improve the sustainable and safe develop-

ment of energy resources in the Gulf of Mexico.

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

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

§ 34.705 Ineligible activities—Centers of Excellence Research Grants Program.

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

§ 34.706 Reports—Centers of Excellence Research Grants Program.

Each Gulf Coast State entity must submit the following reports:

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

(b) Reports as prescribed by Treasury.

§ 34.707 Recordkeeping—Centers of Excellence Research Grants Program.

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

§ 34.708 Audits—Centers of Excellence Research Grants Program.

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

Subpart I—Agreements

§ 34.800 General.

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

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Coast States, coastal political subdivisions, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part. It also describes Treasury's authority to inspect records and the Treasury Inspector General's authority under the Act.

§ 34.801 Grant agreements.

The grant agreements used must conform to the Act and Federal laws and policies on grants, including audit requirements.

§ 34.802 Certifications.

At a minimum, grant applications and agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question. The certification in paragraph (c) of this section does not apply to planning assistance funds for the preparation and amendment of the Multiyear Implementation Plan.

(a) I certify that each activity funded under this Agreement has been designed to plan for or undertake activities to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast Region.

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

(c) I certify that each activity funded under this Agreement was part of a plan made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, and that the activity was selected after consideration of meaningful input from the public, as described in the grant application.

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

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

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

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

§ 34.803 Conditions.

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

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

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

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

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

(e) The recipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement.

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

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

§ 34.804 Noncompliance.

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

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

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

§ 34.805 Treasury Inspector General.

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

PART 35—PANDEMIC RELIEF PROGRAMS

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APPENDIX A TO PART 35—EMERGENCY CAPITAL INVESTMENT PROGRAM MODEL EXCESSIVE OR LUXURY EXPENDITURES POLICY

AUTHORITY: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; 12 U.S.C. 5701–5710; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182 (12 U.S.C. 4703a); Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

SOURCE: 86 FR 13455, Mar. 9, 2021, unless otherwise noted.

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

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