

## PART 1800—SPILL IMPACT COMPONENT

### Subpart A—Definitions

Sec.

1800.1 Definitions.

### Subpart B—Minimum Allocation Available for Planning Purposes

1800.10 Purpose.

1800.20 Minimum allocation available for planning purposes.

### Subpart C—Spill Impact Formula

1800.100 Purpose.

1800.101 General formula.

1800.200 Oiled shoreline.

1800.201 Miles of shoreline that experienced oiling as a result of the *Deepwater Horizon* oil spill.

1800.202 Proportionate number of miles of shoreline that experienced oiling as a result of the *Deepwater Horizon* oil spill.

1800.300 Inverse proportion of the average distance from *Deepwater Horizon* at the time of the explosion.

1800.301 Distances from the *Deepwater Horizon* at the time of the explosion.

1800.302 Inverse proportions.

1800.400 Coastal county populations.

1800.401 Decennial census data.

1800.402 Distribution based on average population.

1800.500 Allocation.

AUTHORITY: 33 U.S.C. 1321(t).

SOURCE: 80 FR 1586, Jan. 13, 2015, unless otherwise noted.

### Subpart A—Definitions

#### § 1800.1 Definitions.

As used in this part:

*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.

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

*Gulf Consortium* means the consortium of Florida counties formed to develop the Florida State Expenditure Plan pursuant to 33 U.S.C. 1321(t)(3)(B)(iii)(II).

*Inverse proportion* means a mathematical relation between two quan-

ties such that one proportionally increases as the other decreases.

*Minimum allocation* means the amount made available to each Gulf Coast State which totals at least five percent of the total allocation made available under the Spill Impact Component.

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

*Spill Impact Component* means the component of the Gulf RESTORE program authorized by section 311(t)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1321(t)(3)), 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.

*Spill Impact Formula* means the formula established by the Council in accordance with section 311(t)(3)(A)(ii) of the Federal Water Pollution Control Act, as added by section 1603 thereof.

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

*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.

[80 FR 1586, Jan. 13, 2015, as amended at 80 FR 77584, Dec. 15, 2015]

### Subpart B—Minimum Allocation Available for Planning Purposes

#### § 1800.10 Purpose.

This subpart establishes that up to the statutory minimum allocation (five percent) is available under the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (Pub. L. 112-141, 126 Stat. 405, 588-607) for planning purposes associated with development of a State Expenditure Plan.

**§ 1800.20**

**40 CFR Ch. VIII (7–1–25 Edition)**

**§ 1800.20 Minimum allocation available for planning purposes.**

A Gulf Coast State or its administrative agent, or the Gulf Consortium, may apply to the Council for a grant to use the minimum allocation available under the Spill Impact Component of the RESTORE Act for planning purposes. These planning purposes are limited to development of a State Expenditure Plan, and includes conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects. It also does not include any pre-award costs incurred prior to August 22, 2014.

**Subpart C—Spill Impact Formula**

SOURCE: 80 FR 77584, Dec. 15, 2015, unless otherwise noted.

**§ 1800.100 Purpose.**

This subpart establishes the formula applicable to the Spill Impact Component authorized under the RESTORE Act (Pub. L. 112–141, 126 Stat. 405, 588–607).

**§ 1800.101 General formula.**

The RESTORE Act provides that thirty percent (30%) of the funds made available from the Trust Fund for the Oil Spill Impact Component be disbursed to each of the Gulf Coast States of Alabama, Florida, Louisiana, Mississippi and Texas based on a formula established by the Council (Spill Impact Formula), through a regulation, that is based on a weighted average of the following criteria:

(a) Forty percent (40%) based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill;

(b) Forty percent (40%) based on the inverse proportion of the average distance from the mobile offshore drilling unit Deepwater Horizon at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State; and

(c) Twenty percent (20%) based on the average population in the 2010 Decennial Census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

**§ 1800.200 Oiled shoreline.**

Solely for the purpose of calculating the Spill Impact Formula, the following shall apply, rounded to one decimal place with respect to miles of shoreline:

**§ 1800.201 Miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.**

According to Shoreline Cleanup and Assessment Technique and Rapid Assessment Technique data provided by the United States Coast Guard, the miles of shoreline that experienced oiling on or before April 10, 2011 for each Gulf Coast State are:

- (a) Alabama—89.8 miles.
- (b) Florida—174.6 miles.
- (c) Louisiana—658.3 miles.
- (d) Mississippi—158.6 miles.
- (e) Texas—36.0 miles.

**§ 1800.202 Proportionate number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.**

The proportionate number of miles for each Gulf Coast State is determined by dividing each Gulf Coast State's number of miles of oiled shoreline determined in § 1800.201 by the total number of affected miles. This calculation yields the following:

- (a) Alabama—8.04%.
- (b) Florida—15.63%.
- (c) Louisiana—58.92%.
- (d) Mississippi—14.19%.
- (e) Texas—3.22%.

**§ 1800.300 Inverse proportion of the average distance from Deepwater Horizon at the time of the explosion.**

Solely for the purpose of calculating the Spill Impact Formula, the following shall apply, rounded to one decimal place with respect to distance:

**§ 1800.301 Distances from the Deepwater Horizon at the time of the explosion.**

(a) Alabama—The distance from the nearest point of the Alabama shoreline

## Gulf Coast Ecosystem Restoration

## § 1800.402

that experienced oiling from the Deepwater Horizon oil spill was 89.2 miles. The distance from the farthest point of the Alabama shoreline that experienced oiling from the Deepwater Horizon oil spill was 103.7 miles. The average of these two distances is 96.5 miles.

(b) Florida—The distance from the nearest point of the Florida shoreline that experienced oiling from the Deepwater Horizon oil spill was 102.3 miles. The distance from the farthest point of the Florida shoreline that experienced oiling from the Deepwater Horizon oil spill was 207.6 miles. The average of these two distances is 154.9 miles.

(c) Louisiana—The distance from the nearest point of the Louisiana shoreline that experienced oiling from the Deepwater Horizon oil spill was 43.5 miles. The distance from the farthest point of the Louisiana shoreline that experienced oiling from the Deepwater Horizon oil spill was 213.7 miles. The average of these two distances is 128.6 miles.

(d) Mississippi—The distance from the nearest point of the Mississippi shoreline that experienced oiling from the Deepwater Horizon oil spill was 87.7 miles. The distance from the farthest point of the Mississippi shoreline that experienced oiling from the Deepwater Horizon oil spill was 107.9 miles. The average of these two distances is 97.8 miles.

(e) Texas—The distance from the nearest point of the Texas shoreline that experienced oiling from the Deepwater Horizon oil spill was 306.2 miles. The distance from the farthest point of the Texas shoreline that experienced oiling from the Deepwater Horizon oil spill was 356.5 miles. The average of these two distances is 331.3 miles.

### § 1800.302 Inverse proportions.

The inverse proportion for each Gulf Coast State is determined by summing the proportional average distances determined in § 1800.301 and taking the inverse. This calculation yields the following:

- (a) Alabama—27.39%.
- (b) Florida—17.06%.
- (c) Louisiana—20.55%.
- (d) Mississippi—27.02%.
- (e) Texas—7.98%.

### § 1800.400 Coastal county populations.

Solely for the purpose of calculating the Spill Impact Formula, the coastal counties bordering the Gulf of Mexico within each Gulf Coast State are:

(a) The Alabama Coastal Counties, consisting of Baldwin and Mobile counties;

(b) The Florida Coastal Counties, consisting of Bay, Charlotte, Citrus, Collier, Dixie, Escambia, Franklin, Gulf, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Okaloosa, Pasco, Pinellas, Santa Rosa, Sarasota, Taylor, Wakulla, and Walton counties;

(c) The Louisiana Coastal Parishes, consisting of Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, and Vermilion parishes;

(d) The Mississippi Coastal Counties, consisting of Hancock, Harrison, and Jackson counties; and

(e) The Texas Coastal Counties, consisting of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, and Willacy counties.

### § 1800.401 Decennial census data.

The average populations in the 2010 decennial census for each Gulf Coast State, rounded to the nearest whole number, are:

(a) For the Alabama Coastal Counties, 297,629 persons;

(b) For the Florida Coastal Counties, 252,459 persons;

(c) For the Louisiana Coastal Parishes, 133,633 persons;

(d) For the Mississippi Coastal Counties, 123,567 persons; and

(e) For the Texas Coastal Counties, 147,845 persons.

### § 1800.402 Distribution based on average population.

The distribution of funds based on average populations for each Gulf Coast State is determined by dividing the average population determined in § 1800.401 by the sum of those average populations. This calculation yields the following results:

- (a) Alabama—31.16%.
- (b) Florida—26.43%.
- (c) Louisiana—13.99%.
- (d) Mississippi—12.94%.

## § 1800.500

(e) Texas—15.48%.

### § 1800.500 Allocation.

Using the data from §§ 1800.200 through 1800.402 of this subpart in the formula provided in § 1800.101 of this subpart yields the following allocation for each Gulf Coast State:

- (a) Alabama—20.40%.
- (b) Florida—18.36%.
- (c) Louisiana—34.59%.
- (d) Mississippi—19.07%.
- (e) Texas—7.58%.

## PARTS 1801–1849 [RESERVED]

### PART 1850—AVAILABILITY OF RECORDS

#### Subpart A—Production or Disclosure Under the Freedom of Information Act

Sec.

- 1850.1 Purpose and scope.
- 1850.2 Definitions.
- 1850.3 General provisions.
- 1850.4 Public reading room.
- 1850.5 Requirements for making requests.
- 1850.6 Responding to requests.
- 1850.7 Appeals.
- 1850.8 Authority to determine.
- 1850.9 Maintenance of files.
- 1850.10 Fees.
- 1850.11 Requests for confidential treatment of business information.
- 1850.12 Requests for access to confidential commercial or financial information.
- 1850.13 Classified information.

#### Subpart B—Production or Disclosure Under the Privacy Act

- 1850.31 Purpose and scope.
- 1850.32 Definitions.
- 1850.33 Procedures for requests pertaining to individual records in a record system.
- 1850.34 Times, places, and requirements for identification of individuals making requests.
- 1850.35 Disclosure of requested information to individuals.
- 1850.36 Special procedures: Medical records.
- 1850.37 Request for correction or amendment to record.
- 1850.38 Council review of request for correction or amendment to record.
- 1850.39 Appeal of initial adverse agency determination on correction or amendment.
- 1850.40 Disclosure of record to person other than the individual to whom it pertains.
- 1850.41 Fees.
- 1850.42 Penalties.

## 40 CFR Ch. VIII (7–1–25 Edition)

AUTHORITY: 33 U.S.C. 1321(t); 5 U.S.C. 552; 5 U.S.C. 552a.

SOURCE: 80 FR 29451, May 22, 2015, unless otherwise noted.

### Subpart A—Production or Disclosure Under the Freedom of Information Act

#### § 1850.1 Purpose and scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. These regulations supplement the FOIA, which provides more detail regarding requesters' rights and the records the Council may release.

The regulations of this subpart provide information concerning the procedures by which records may be obtained from the Council. Official records of the Council made available pursuant to the requirements of the FOIA shall be furnished to members of the public only as prescribed by this subpart. Information routinely provided to the public as part of a regular Council activity (for example, press releases) may be provided to the public without following this subpart.

The FOIA applies to third-party requests for documents concerning the general activities of the Government, and of the Council in particular. When a U.S. citizen or an individual lawfully admitted for permanent residence requests access to his or her own records, he/she is making a first-person Privacy Act request, not a FOIA request, subject to subpart B of these rules. The Council maintains records about individuals under the individual's name or personal identifier. Although the Council determines whether a request is a FOIA request or a Privacy Act request, the Council processes requests in accordance with both laws. This provides the greatest degree of lawful access to requesters while safeguarding individuals' personal privacy.

#### § 1850.2 Definitions.

(a) *Commercial Use Request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the

## Gulf Coast Ecosystem Restoration

## § 1850.2

person on whose behalf the request is made.

(b) *Confidential Commercial Information* means commercial or financial information, obtained by the Council from a submitter, that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

(c) *Council* means the Gulf Coast Ecosystem Restoration Council.

(d) *Days*, unless stated as “calendar days,” are business days and do not include Saturday, Sunday, or federal holidays.

(e) *Direct costs* means those expenses the Council actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) documents in response to a request made under §1850.5. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the documents are stored.

(f) *Duplication* means the making a copy of a document, or other information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microfilm, audio-visual materials, or electronic records, among others. The Council shall honor a requester’s specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(h) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication. The three fee categories are:

(1) Commercial requesters;

(2) Non-commercial scientific or educational institutions or news media requesters; and

(3) All other requesters.

(i) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(j) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(k) *News* means information about current events or that would be of current interest to the public.

(l) *Noncommercial scientific institution* means an institution that is not operated on a “commercial” basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(m) *Perfected request* means a written FOIA request that meets all of the criteria set forth in §1850.5.

(n) *Reading room* means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

(o) *Records* under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(p) *Records Management Officer* means the person designated by the Executive Director of the Council to oversee all aspects of the Council’s records management program, including FOIA.

(q) *Representative of the news media, or news media requester*, means any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes the work to an audience. Examples of news-media entities are television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate

### § 1850.3

### 40 CFR Ch. VIII (7–1–25 Edition)

“news” and make their products available through a variety of means to the general public including news organizations that disseminate solely on the Internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A “freelance journalist” shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but the Council shall also look to the past publication record of a requester in making this determination. The Council’s decision to grant a requester media status will be made on a case-by-case basis based upon the requester’s intended use of the material.

(r) *Requester* means any person, partnership, corporation, association, or foreign or State or local government, which has made a request to access a Council record under FOIA.

(s) *Requester category* means one of the three categories in which agencies place requesters to determine whether the agency will charge a requester fees for search, review, and duplication. The categories include commercial requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(t) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under §1850.12 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(u) *Search* means the process of looking for and retrieving documents or information that is responsive to a request. Search time includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(v) *Submitter* means any person or entity from whom the Council obtains confidential commercial information, directly or indirectly.

(w) *Unusual circumstances* include situations in which the Council must:

(1) Search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(3) Consult with another Federal agency having a substantial interest in the determination of the FOIA request.

### § 1850.3 General provisions.

The Council shall prepare an annual report to the Attorney General of the United States regarding its FOIA activities in accordance with 5 U.S.C. 552(e).

### § 1850.4 Public reading room.

The Council maintains an electronic public reading room on its Web site, <http://www.restorethegulf.gov>, which contains the records FOIA requires the Council to make available for public inspection and copying, as well as additional records of interest to the public.

### § 1850.5 Requirements for making requests.

(a) *Type of records made available.* The Council shall make available upon request, pursuant to the procedures in this section and subject to the exceptions set forth in FOIA, all records of the Council that are not available under §1850.4. The Council’s policy is to make discretionary disclosures of records or information otherwise exempt from disclosure under FOIA unless the Council reasonably foresees

## Gulf Coast Ecosystem Restoration

## § 1850.6

that such disclosure would harm an interest protected by one or more FOIA exemptions, or otherwise prohibited by law. This policy does not create any enforceable right in court.

(b) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables Council staff to identify and produce the records with reasonable effort. The requester should include as much specific information as possible regarding dates, titles, and names of individuals. In cases where the request requires production of voluminous records, or is not reasonably described, a Council representative may suggest the requester, or the individual acting on the requester's behalf, to verify the scope of the request and, if possible, narrow the request. Once narrowed, the Council will process the request. All requests must be submitted in writing (including by email, fax or mail) to the Council's Records Management Officer. Requesters shall clearly mark a request as a "Freedom of Information Act Request" or "FOIA Request" on the front of the envelope or in the subject line of the email.

(c) *Contents of request.* The request, at minimum, shall contain the following information:

(1) The name, telephone number, and non-electronic address of the requester;

(2) Whether the requested information is intended for commercial use, or whether the requester represents an education or noncommercial scientific institution, or news media; and

(3) A statement agreeing to pay the applicable fees, identifying any fee limitation desired, or requesting a waiver or reduction of fees that satisfies § 1850.10(j)(1) to (3).

(d) *Perfected requests.* The requester must meet all the requirements in this section to perfect a request. The Council will only process perfected requests.

(e) *Requests by an individual for Council records pertaining to that individual.* An individual who wishes to inspect or obtain copies of Council records that pertain to that individual must file a request in accordance with subpart B of this part.

(f) *Requests for Council records pertaining to another individual.* Where a request for records pertains to a third

party, a requester may receive greater access by submitting a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or by submitting proof the individual is deceased (*e.g.* a copy of the death certificate or an obituary). The Council may require a requester to supply additional information if necessary to verify that a particular individual has consented to disclosure.

(g) Requesters may submit a request for records, expedited processing or waiver of fees by writing directly to the Records Management Officer via email at [FOIArequest@restorethegulf.gov](mailto:FOIArequest@restorethegulf.gov), or first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

(h) Any Council officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the Records Management Officer. Any Council officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

### § 1850.6 Responding to requests.

(a) *Receipt and processing.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Council by another agency, is the date the Council actually receives the request. The Council normally will process requests in the order they are received. However, in the Records Management Officer's discretion, the Council may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as defined by paragraph (d) of this section. When using multi-track processing, the Records Management Officer may provide requesters in the complex track(s) with an opportunity to limit the scope of

## § 1850.6

## 40 CFR Ch. VIII (7–1–25 Edition)

their requests to qualify for the simple track and faster processing.

(b) *Authorization.* The Records Management Officer and other persons designated by the Council's Executive Director are solely authorized to grant or deny any request for Council records.

(c) *Timing.* (1) When a requester submits a request in accordance with §1850.5, the Records Management Officer shall inform the requester of the determination concerning that request within 20 days from receipt of the request, unless "unusual circumstances" exist, as defined in §1850.2(w). The Records Management Officer also shall provide requesters with a unique tracking number, an estimated date of completion (once the request is perfected), and a fee estimate (when applicable). The Records Management Officer shall also include in the Council's acknowledgment letter a brief description of the subject of the request.

(2) When additional time is required as a result of "unusual circumstances," as defined in §1850.2(w), the Records Management Officer shall, within the statutory 20 day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(3) The Council may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until the Council receives the information reasonably requested from the requester. The Council may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

(d) *Expedited processing.* (1) A requester may request expedited processing by submitting a statement, certified to be true and correct to the best

of that person's knowledge and belief, that demonstrates a compelling need for records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(2) The Records Management Officer will notify a requester of the determination to grant or deny a request for expedited processing within ten days of receipt of the request. If the Records Management Officer grants the request for expedited processing, the Council staff shall process the request as soon as practicable subject to §1850.10(d) and (e). If the Records Management Officer denies the request for expedited processing, the requester may file an appeal in accordance with the process described in §1850.7.

(3) The Council staff will give expedited treatment to a request when the Records Management Officer determines the requester has established one of the following:

(i) Circumstances in which the lack of expedited treatment reasonably could be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(iii) The loss of substantial due process rights;

(iv) A matter of widespread and exceptional media interest raising possible questions about the Federal government's integrity which affects public confidence; or

(4) These procedures for expedited processing also apply to requests for expedited processing of administrative appeals.

(e) *Denials.* If the Records Management Officer denies the request in whole or part, the Records Management Officer will inform the requester in writing and include the following:

(1) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s) and a description of those exemptions;

(2) An estimate of the volume of records or information withheld;

(3) If technically feasible, the precise amount of information deleted at the place in the record where the deletion was made, and the exemption under

## Gulf Coast Ecosystem Restoration

## § 1850.6

which a deletion is made on the released portion of the record, unless including that information would harm an interest protected by the exemption;

(4) The name and title or position of the person responsible for the denial of the request;

(5) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(6) The requirement that the appeal be received within 45 days of the date of the denial.

(f) *Referrals to another agency.* (1) When the Council receives a request for a record (or a portion thereof) in its possession that originated with another Federal agency subject to the FOIA, the Council shall, except as provided in paragraph (f)(4) of this section, refer the record to that agency for direct response to the requester. However, if the Council and the originating agency jointly agree that the Council is in the best position to respond regarding the record, then the record may be handled as a consultation.

(2) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name of the agency to which the record was referred, including that agency's FOIA contact information.

(3) The Council's response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740, [ogis.archives.gov](mailto:ogis.archives.gov), Email: [ogis@nara.gov](mailto:ogis@nara.gov), Telephone: 202-741-5770, Facsimile: 202-741-5769, Toll-free: 1-877-684-6448.

(4) The referral procedure is not appropriate where disclosure of the identity of the agency, typically a law en-

forcement agency or Intelligence Community agency, to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy and national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Council shall coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination shall then be conveyed to the requester by the Council.

(g) *Consulting with another agency.* In instances where a record is requested that originated with the Council and another agency has a significant interest in the record (or a portion thereof), the Council shall consult with that agency before responding to a requester. When the Council receives a request for a record (or a portion thereof) in its possession that originated with another agency that is not subject to the FOIA, the Council shall consult with that agency before responding to the requester.

(h) *Providing responsive records.* (1) Council staff shall send a copy of records or portions of records responsive to the request to the requester by regular United States mail to the address indicated in the request or by email to the email address provided by the requester, unless the requester makes other acceptable arrangements or the Council deems it appropriate to send the records by other means. The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format. The Council need not provide more than one copy of any record to a requester.

(2) The Records Management Officer shall provide any reasonably segregable portion of a record that is responsive to the request after redacting those portions that are exempt under FOIA or this section.

(3) The Council is not required to create, compile, prepare or obtain from outside the Council a record to satisfy a request. Retrieving data from a Council database or running a report from a database is permissible.

## § 1850.7

(i) *Prohibition against disclosure.* Except as provided in this subpart, no member or employee of the Council shall disclose or permit the disclosure of any non-public information of the Council to any person (other than Council members, employees, or agents properly entitled to such information for the performance of their official duties), unless required by law to do so.

### § 1850.7 Appeals.

(a) Requesters may administratively appeal an adverse determination regarding a request by writing directly to the General Counsel via email at *GeneralCounsel@restorethegulf.gov* or first class United States mail at 500 Poydras Street, Suite 1117, New Orleans, LA 70130. Administrative appeals sent to other individuals or addresses are not considered perfected. An adverse determination is a denial of a request and includes decisions that: The requested record is exempt, in whole or in part; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has previously been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(b) FOIA administrative appeals must be in writing and should contain the phrase "FOIA Appeal" on the front of the envelope or in the subject line of the electronic mail.

(c) Appellants are encouraged to include a copy of the original request and the initial denial (if any) in the appeal. The appeal letter may include as much or as little related information as the appellant wishes, as long as it clearly identifies the component determination (including the assigned request number, if known) that is being appealed.

(d) Requesters submitting an administrative appeal of an adverse determination must ensure that the Council receives the appeal within 45 days of the date of the denial letter.

(e) Upon receipt of an administrative appeal, Council staff shall inform the

## 40 CFR Ch. VIII (7-1-25 Edition)

requester within 20 days of the determination on that appeal.

(f) The determination on an appeal shall be in writing and, when it denies the appeal, in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;

(2) A statement that the decision is final for the Council;

(3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

### § 1850.8 Authority to determine.

The Records Management Officer or Council Executive Director, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative appeal as provided in § 1850.7. The Council General Counsel shall deny or grant an administrative appeal requested under § 1850.7.

### § 1850.9 Maintenance of files.

The Records Management Officer shall maintain files containing all material required to be retained by or furnished to them under this subpart. The Council shall preserve all correspondence pertaining to the FOIA requests that it receives, as well as copies of all requested records, until a General Records Schedule (GRS) published by the National Archives and Records Administration (NARA) or another NARA-approved records schedule authorizes the office to dispose of or destroy the records. All materials identified as responsive to a FOIA request will be retained while the request or a related appeal or lawsuit is pending even otherwise authorized for disposal or destruction under a GRS or other NARA-approved records schedule. The material shall be filed by a unique tracking number.

**Gulf Coast Ecosystem Restoration**

**§ 1850.10**

**§ 1850.10 Fees.**

(a) *Generally.* Except as provided elsewhere in this section, the Records Management Officer shall assess fees where applicable in accordance with this section for search, review, and duplication of records requested. The Records Management Officer shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public

interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b)(1) *Fee schedule; waiver of fees.* The fees applicable to a request for Council records pursuant to §1850.5 are set forth in the following uniform fee schedule:

Service	Rate
(i) Manual search .....	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.
(ii) Computerized search .....	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction .....	\$0.05 per page.
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform) .....	Actual direct cost, including operator time.
(iv) Review of records (including redaction) .....	Actual salary rate of employee involved, plus 16 percent of salary rate to cover benefits.

(2) *Search.* (i) The Council shall charge search fees for all requests, subject to the limitations of paragraph (b)(5) of this section. The Records Management Officer shall charge for time spent searching for responsive records, even if no responsive record is located or if the Records Management Officer withholds records located as entirely exempt from disclosure. Search fees shall equal the direct costs of conducting the search by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

operator time, of making copies produced by computer, such as tapes or printouts. The Records Management Officer will charge a requester the direct costs of providing other forms of duplication.

(ii) For computer searches of records, the Council will charge requesters the direct costs of conducting the search. In accordance with paragraph (f) of this section, however, the Council will charge certain requesters no search fee and certain other requesters are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs attributable to the salary of an operator/programmer performing a computer search.

(4) *Review.* The Council will charge review fees to requesters who make a commercial use request. Review fees generally are limited to the initial record review, i.e., the review done when the Records Management Officer determines whether an exemption applies to a particular record at the initial request level. The Council will not charge a requester for additional review at the administrative appeal level. Review fees consist of the direct costs of conducting the review by the Council employee involved, plus 16 percent of the salary rate to cover benefits.

(3) *Duplication.* The Council will charge duplication fees to all requesters, subject to the limitations of paragraph (b)(5) of this section. The fee for a paper photocopy of a record (no more than one copy of which need be supplied) is 5 cents per page. The Records Management Officer will charge the requester for the direct costs, including

(5) *Limitations on charging fees.* (i) The Council will not charge a search fee for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

(ii) The Council will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(iii) The Council will not charge a fee to a requester whenever the total fee calculated under this paragraph is \$25 or less for the request.

§ 1850.10

40 CFR Ch. VIII (7-1-25 Edition)

(iv) Except for requesters seeking records for a commercial use, the Council will provide without charge the first 100 pages of duplication (or the cost equivalent) and the first two hours of search.

(v) The provisions of paragraphs (b)(5)(iii) and (iv) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$25.

(vi) No search fees shall be charged to a requester when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(vii) No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or non-commercial scientific institution when the Council does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, unless unusual or exceptional circumstances (as those terms are defined by the FOIA) apply to the processing of the request.

(c) *Payment procedures.* All requesters shall pay the applicable fee before the Council sends copies of the requested records, unless the Records Management Official grants a fee waiver. Requesters must pay fees by check or money order made payable to the "Treasury of the United States." Checks and money orders should be mailed to 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

(d) *Advance notification of fees.* If the estimated charges exceed \$25, the Records Management Officer shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer

with the Records Management Officer to reformulate the request to lower the costs. Council staff shall suspend processing the request until the requester provides the Records Management Officer with a written guarantee that the requester will make payment upon completion of processing (*i.e.*, upon completion of the search, review and duplication, but prior the Council sending copies of the requested records to the requester).

(e) *Advance payment.* The Records Management Officer shall require advance payment of any fee estimated to exceed \$250. The Records Management Officer also shall require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by \$1 or more, the Council shall refund the difference to the requester. The Council shall suspend the processing of the request and the statutory time period for responding to the request until the Records Management Officer receives the required payment.

(f) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Records Management Officer shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Records Management Officer may seek additional clarification before categorizing the request.

(1) *Commercial use requester:* The fees for search, duplication, and review apply.

(2) *Educational institutions, non-commercial scientific institutions, or representatives of the news media requesters:* The fees for duplication apply. The Council will provide the first 100 pages of duplication free of charge.

(3) *All other requesters:* The fees for search and duplication apply. The Council will provide the first two hours of search time and the first 100 pages of duplication free of charge.

Category	Chargeable fees
(i) Commercial Use Requesters .....	Search, Review, and Duplication.
(ii) Education and Non-commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).

**Gulf Coast Ecosystem Restoration**

**§ 1850.10**

Category	Chargeable fees
(iii) Representatives of the News Media .....	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters .....	Search and Duplication (excluding the cost of the first 2 hours of search and first 100 pages of duplication).

(g) *Nonproductive search.* The Council may charge fees for search even if no responsive documents are found.

(h) *Interest charges.* The Records Management Officer may assess interest charges on any unpaid bill starting on the 31st calendar day following the date the Council sent the bill to the requester. The Council will charge interest at the rate prescribed in 31 U.S.C. 3717 on fees payable in accordance with this section. The Council will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregated requests.* A requester may not file multiple requests at the same time solely in order to avoid payment of fees. If the Council reasonably believes that a request, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Council may aggregate any such requests and charge accordingly. The Records Management Officer may reasonably presume that one requester making multiple requests on the same topic within a 30-day period has done so to avoid fees.

(j) *Waiver or reduction of fees.* To seek a waiver, a requester shall include the request for waiver or reduction of fees, and the justification for such based on the factors set forth in this paragraph, with the request for records to which it pertains. If a requester requests a waiver or reduction and has not indicated in writing an agreement to pay the applicable fees, the time for responding to the request for Council records shall not begin until the Records Management Officer makes a determination regarding the request for a waiver or reduction of fees.

(1) Records responsive to a request shall be furnished without charge, or at a reduced rate below that established in paragraph (b) of this section, where

the Council determines, after consideration of all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Council will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be likely to contribute to such an understanding.

(iii) The contribution to an understanding of the subject by the public: Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area

## § 1850.11

as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities. The public’s understanding of the subject in question prior to disclosure must be significantly enhanced by the disclosure.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Council will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Council shall consider any commercial interest of the requester (with reference to the definition of “commercial use request” in §1850.2(b)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure if “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified if the public interest standard (paragraph (j)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. The Council shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

## 40 CFR Ch. VIII (7–1–25 Edition)

(4) A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraphs (j)(2) and (3) of this section, insofar as they apply to each request. The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) Where only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(6) The Records Management Officer shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the General Counsel in accordance with §1850.7.

### **§ 1850.11 Requests for confidential treatment of business information.**

(a) *Submission of request.* Any submitter of information to the Council who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Council at the time the information is submitted or within a reasonable time after submission. These designations will expire ten years after the date of submission unless the submitter requests, and provides justification for, a longer period.

(b) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements indicating that release of the information would cause competitive harm generally are not sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* A submitter shall clearly mark all information it considers confidential as “PROPRIETARY” or “BUSINESS CONFIDENTIAL” in the submission and shall separate information so marked from other information submitted. Failure by the submitter to segregate confidential commercial or financial information from other material may result in

## Gulf Coast Ecosystem Restoration

## § 1850.12

release of the nonsegregated material to the public without notice to the submitter.

### § 1850.12 Requests for access to confidential commercial or financial information.

(a) *Notice to submitters.* The Council shall provide a submitter with prompt notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (b) of this section, except as provided in paragraph (e) of this section, in order to give the submitter an opportunity under paragraph (c) of this section to object to disclosure of any specified portion of that information. The notice shall either describe the business information requested or include copies of the requested records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(b) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The Council has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(c) *Opportunity to object to disclosure.* The Council shall allow a submitter seven days from the date of receipt of the written notice described in paragraph (a) of this section to provide the Council with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: That is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time frame specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides

under this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The Council shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If the Council decides to disclose business information over a submitter's objection, the Council shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the Council intends to disclose the information seven days from the date the submitter receives the notice.

(e) *Exceptions to notice requirements.* The notice requirements of paragraphs (a) and (d) of this section shall not apply if:

(1) The Council determines that the information is exempt and will be withheld under a FOIA exemption, other than exemption (b)(4);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under this section or §1850.11 appears obviously frivolous, except that, in such a case, the Council shall provide the submitter written notice of any final decision to disclose the information seven days from the date the submitter receives the notice.

(f) *Notice to requester.* The Council shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(g) *Notice of lawsuits.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Council shall promptly notify the submitter.

## § 1850.13

## 40 CFR Ch. VIII (7–1–25 Edition)

### § 1850.13 Classified information.

In processing a request for information classified under Executive Order 13526 or any other Executive Order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the Council or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by the Council because it contains information classified by another agency, the Council shall refer the responsibility for responding to the request to the agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with § 1850.7.

### Subpart B—Production or Disclosure Under the Privacy Act

#### § 1850.31 Purpose and scope.

This subpart contains the regulations of the Gulf Coast Ecosystem Restoration Council (Council) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Council under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Council. Council records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE), Equal Employment Opportunity Commission (EEOC) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for ac-

cess to, for amendment of or for an accounting of disclosures to the Council in accordance with § 1850.33.

#### § 1850.32 Definitions.

(a) For purposes of this subpart, the terms *individual*, *maintain*, *record*, and *system of records* shall have the meanings set forth in 5 U.S.C. 552a(a).

(b) *Working days* are business days and do not include Saturday, Sunday, or federal holidays.

#### § 1850.33 Procedures for requests pertaining to individual records in a record system.

(a) Any person who wishes to be notified if a system of records maintained by the Council contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the FEDERAL REGISTER. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice;

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail; and

(5) Any additional information required by § 1850.34 for proper verification of identity or authority to access the information.

(b) Requests pertaining to records contained in a system of records established by the Council and for which the Council has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Council records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT-1 (General Personnel Records), OPM/GOVT-2 (Employee Performance File System Records), OPM/GOVT-3 (Records of Adverse Actions and Actions Based on

## Gulf Coast Ecosystem Restoration

## § 1850.35

Unacceptable Performance), GSA/GOVT-4 (Contracted Travel Services Program), OPM/GOVT-5 (Recruiting, Examining and Placement Records), OPM/GOVT-6 (Personnel Research and Test Validation Records), OPM/GOVT-7 (Applicant Race, Sex, National Origin, and Disability Status Records), OPM/GOVT-9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT-10 (Employee Medical File System Records) and DOL/ESA-13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), or any other government-wide system of record not specifically listed, to the [restorecouncil@restorethegulf.gov](mailto:restorecouncil@restorethegulf.gov); and

(2) For systems OGE/GOVT-1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT-2 (Confidential Statements of Employment and Financial Interests) and MSPB/GOVT-1 (Appeal and Case Records), to the General Counsel at [restorecouncil@restorethegulf.gov](mailto:restorecouncil@restorethegulf.gov).

(c) Any person whose request for access under paragraph (a) of this section is denied, may appeal that denial in accordance with § 1850.39.

### § 1850.34 Times, places, and requirements for identification of individuals making requests.

(a) If a person submitting a request for access under § 1850.33 has asked that the Council authorize a personal inspection of records pertaining to that person, and the appropriate Council official has granted that request, the requester shall present himself or herself at the time and place specified in the Council's response or arrange another, mutually convenient time with the appropriate Council official.

(b) Prior to personal inspection of the records, the requester shall present sufficient personal identification (*e.g.*, driver's license, employee identification card, social security card, credit cards). If the requester is unable to provide such identification, the requester shall complete and sign in the presence of a Council official a signed statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully

seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to \$5,000.

(c) Any person who has requested access under § 1850.3 to records through personal inspection, and who wishes to be accompanied by another person or persons during this inspection, shall submit a written statement authorizing disclosure of the record in such person's or persons' presence.

(d) If an individual submitting a request by mail under § 1850.33 wishes to have copies furnished by mail, he or she must include with the request a signed and notarized statement asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to \$5,000.

(e) A request filed by the parent of any minor or the legal guardian of any incompetent person shall: State the relationship of the requester to the individual to whom the record pertains; present sufficient identification; and, if not evident from information already available to the Council, present appropriate proof of the relationship or guardianship.

(f) A person making a request pursuant to a power of attorney must possess a specific power of attorney to make that request.

(g) No verification of identity will be required where the records sought are publicly available under the Freedom of Information Act.

### § 1850.35 Disclosure of requested information to individuals.

(a) Upon receipt of request for notification as to whether the Council maintains a record about an individual and/or request for access to such record:

(1) The appropriate Council official shall acknowledge such request in writing within 10 working days of receipt of the request. Wherever practicable, the acknowledgement should contain the notification and/or determination required in paragraph (a)(2) of this section.

(2) The appropriate Council official shall provide, within 30 working days

### § 1850.36

of receipt of the request, written notification to the requester as to the existence of the records and/or a determination as to whether or not access will be granted. In some cases, such as where records have to be recalled from the Federal Records Center, notification and/or a determination of access may be delayed. In the event of such a delay, the Council official shall inform the requester of this fact, the reasons for the delay, and an estimate of the date on which notification and/or a determination will be forthcoming.

(3) If access to a record is granted, the determination shall indicate when and where the record will be available for personal inspection. If a copy of the record has been requested, the Council official shall mail that copy or retain it at the Council to present to the individual, upon receipt of a check or money order in an amount computed pursuant to §1850.41.

(4) When access to a record is to be granted, the appropriate Council official will normally provide access within 30 working days of receipt of the request unless, for good cause shown, he or she is unable to do so, in which case the requester shall be informed within 30 working days of receipt of the request as to those reasons and when it is anticipated that access will be granted.

(5) The Council shall not deny any request under §1850.33 concerning the existence of records about the requester in any system of records it maintains, or any request for access to such records, unless that system is exempted from the requirements of 5 U.S.C. 552a.

(6) If the Council receives a request pursuant to §1850.33 for access to records in a system of records it maintains which is so exempt, the appropriate Council official shall deny the request.

(b) Upon request, the appropriate Council official shall make available an accounting of disclosures pursuant to 5 U.S.C. 552a(c)(3), unless that system is exempted from the requirements of 5 U.S.C. 552a.

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal

### 40 CFR Ch. VIII (7-1-25 Edition)

the denial in accordance with §1850.39. All appeals must be submitted in writing to the General Counsel at *GeneralCounsel@restorethegulf.gov*.

(d) Nothing in 5 U.S.C. 552a or this subpart allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

### § 1850.36 Special procedures: Medical records.

In the event the Council receives a request pursuant to §1850.33 for access to medical records (including psychological records) and the appropriate Council official determines disclosure could be harmful to the individual to whom they relate, he or she may refuse to disclose the records directly to the requester but shall transmit them to a physician designated by that individual.

### § 1850.37 Request for correction or amendment to record.

(a) Any person who wishes to request correction or amendment of any record pertaining to him or her that is contained in a system of records maintained by the Council, shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records. If the request is submitted by mail, the envelope should be clearly labeled "Personal Information Amendment." The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records as set forth in the system notice to which the request relates;

(3) A description of the nature (*e.g.*, modification, addition or deletion) and substance of the correction or amendment requested; and

(4) Any other information specified in the system notice.

(b) Any person submitting a request pursuant to paragraph (a) of this section shall include sufficient information in support of that request to allow the Council to apply the standards set forth in 5 U.S.C. 552a(e) requiring the Council to maintain accurate, relevant, timely, and complete information.

(c) All requests to amend pertaining to personnel records described in