

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

SUBJECT: Questions/Comments on Draft Dept. of Treasury Rules, 31 CFR Part 34: Gulf Coast Restoration Trust Fund, **RIN 1505-AC44** (RESTORE Act Draft Treasury Rules) dated Sept 6, 2013

SUBMITTED BY: Dave Parisot, Okaloosa County Commissioner and Okaloosa County Director, Gulf Consortium

DATE: November 1, 2013

[**Comments** are referenced to individual paragraphs of subject.]

SUPPLEMENTARY INFORMATION:

A. **II. This Proposed Rule, Direct Component:** States: “A grant agreement between Treasury and the State will memorialize the grant terms as required by Federal law.”

Comment: In Florida, the Direct Component funds go to 23 individual counties, not to the State of Florida. Will this have any effects on this statement?

B. **II. This Proposed Rule, Direct Component:** States: “After a grant agreement is signed, funds will be disbursed to the ... counties ... as they are needed for authorized expenditures.”

Comment: Will these be advance funds or “progress payments” after work is performed?

C. **IV. Regulatory Flexibility Act:** States: “In the Direct Component, the RESTORE Act did not specify a method for determining the percentage of funds available to each of the eight disproportionately affected counties in the State of Florida. Treasury invites comments on the allocation of funds to certain counties in Florida.” **Comment:** The formula for the eight disproportionately affected counties in Florida (Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, and Wakulla) was derived using the following factors: 20% divided equally among the 8 counties; the remaining 80% was divided using the following factors: 30% based on shoreline oiled; 30% based on per capita sales tax; 20% based on the 2010 Census population of each county; and 20% based on distance from the Deepwater Horizon oil spill. This formula resulted in the following allocations to each of the eight counties: Escambia 25.334%; Okaloosa 15.226%; Bay 15.101%; Walton 13.712%; Santa Rosa 10.497%; Franklin 8.441%; Gulf 6.743%; and Wakulla 4.943%. This formula was unanimously adopted by Joint Resolution of the Boards of County Commissioners of each of the eight counties in December, 2012 [Copy attached at Attachment 1a]. Concur with this formula.

D. **IV. Regulatory Flexibility Act:** “Treasury invites comments on the rule’s impact on small entities (counties).” **Comment:** When developing the eight county formula in C above, concessions and allowances were made for the four smallest counties (Walton, Franklin, Gulf, and Wakulla) by adjusting the original formula agreed to in 2011 (which allocated only 10% to each of the eight counties equally) to an upward adjustment to 20% to be divided among each

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

county equally. This change resulted in increases in the percentages of funds going to the four smallest of the eight disproportionately affected counties and decreases in the percentages of funds going to the four largest of the eight disproportionately affected counties. Each of the Boards of Commissioners in the eight counties unanimously agreed to this formula by Joint Resolution in December 2012 (see C above).

Subpart A—General Provisions

E. **Para. 34.2 Definitions:** The RESTORE Act states in para. (3) OIL SPILL RESTORATION IMPACT ALLOCATION., (B) DISBURSEMENT OF FUNDS., (iii) DEVELOPMENT, (II): “ in the State of Florida, a consortia of local political subdivisions that includes at a minimum 1 representative of each affected county;” **Comment:** Recommend a definition of a “**Consortia of Local Political Subdivisions (Florida)**” be included in “Definitions” and defined as “**The Gulf Consortium formed by Interlocal Agreement Relating to Establishment of the Gulf Consortium dated September 19, 2012, among the 23 coastal counties abutting the Gulf of Mexico and by a Memorandum of Understanding Between the State of Florida & Gulf Consortium** executed on June 12, 2013 by Governor Rick Scott.” **Rationale:** Including this definition in this section will clarify the agencies in Florida responsible for the Spill Impact Component. [Copies of the Interlocal Agreement and the Memorandum of Understanding are at Attachments 2 and 3.]

F. **Para. 34.2 Definitions:** **Comment:** There is not a definition of “Planning Costs” in para. 34.2. Recommend the following definition be included: “**Planning Costs means direct and indirect costs of data gathering, studies, analyses, and preparation of plans for eligible activities under Section 34.201(a) through (i), including the costs of staff, public comment requirements and environmental review and compliance of plans and projects. Planning costs can include preparation and revision of a Multi-Year Implementation Plan or a State Expenditure Plan.**” **Rationale:** Including this definition will better clarify what costs and expenditures may be used for planning.

Subpart B—Trust Fund

G. **Para. 34.104 Expenditures:** The statement: “Grantees must minimize the time between the receipt of funds and the distribution of those funds” implies that project funds may be received in a lump sum for a project rather than as a reimbursement grant. **Comment:** Please clarify.

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

H. **Para. 34.200 General., subpara (b):** This para. states: “Funds available under the Direct Component or Spill Impact Component may be used to satisfy the non-Federal cost-share of a

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

project or program that is an eligible activity and authorized by Federal law.” **Comment:** The announcements of these Federal grants with “local matches” are most often received with a short suspense for application, usually a 30-90 day window. In order to take advantage of these Federal grants to leverage RESTORE funds, the agencies involved with the planning and expenditures of funds in the Direct Component and the Spill Impact Component must be given flexibility to make submissions for these projects outside of the confines of the Multi-Year Implementation Plans. Perhaps this could be done via a “supplemental submission” to the respective Multi-Year Implementation Plan. The current Draft Treasury Rules do not have these provisions. Also, strongly recommend that RESTORE funds for the Direct Component and the Spill Impact Component be able to be used as the “local match” for State grant projects.

I. **Para. 34.200 General, subpara. (a):** **Comment:** Recommend adding two new subsections to read:

(5) Pre-award costs of preparing the State Expenditure Plan or Multi-Year Implementation Plans for the Direct Component are allowable. These costs may be charged directly to Trust Fund awards. All such costs should be identified in a grant application.

(6) A gulf Coast State, including the Gulf Consortium (Florida), a coastal political subdivision, or other authorized entities may seek reimbursement of administrative costs to the extent permitted by Federal laws. Such costs should be identified in a grant application for approval by Treasury or the Council.

Rationale: The rules should expressly allow Federal reimbursement for the up-front costs to develop the State Expenditure Plans (Spill Impact Component) and the Multi-Year Implementation Plans (Direct Component) that have been incurred after the date of enactment of the RESTORE Act (July 6, 2012). Currently, only one section of the Draft Treasury Rules provide authorization for pre-award cost [Sec. 34.200(a)(3)], and that section is limited to costs for environmental review and compliance.

J. **Para. 34.201 Eligible Activities for the Direct Component, subparas. (e) and(f):**
Subpara.(e): **Comment:** Amend to include not only State parks, but any publicly owned county and municipal parks. Recommend rewording to read “(e) Improvements to or on State, County, or Municipal parks located in coastal areas affected by the Deepwater Horizon oil spill.”

Subpara (f): “Infrastructure projects”. **Comment:** Do these infrastructure projects include “capital improvement projects” (CIPs)? Hopefully the answer is YES as these are areas where the RESTORE dollars can have the greatest positive impacts on communities and can often be leveraged via local matching funds. Recommend re-wording to read: “Infrastructure projects

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

(to include capital improvement projects) benefitting the economy or ecological resources, including port infrastructure.”

K. **Para. 34.201 Eligible Activities for the Direct Component, subpara. (j): Comment:** Is it safe to assume that expenses incurred in developing and writing the Multi-Year Implementation Plans are inclusive in “planning costs”? If not, they need to be included as reimbursable expenditures as consultant services are absolutely required to develop all of the aspects and criteria required for these Plans. Also, many of the individual projects and programs will require engineering and other professional services to comply with RESTORE Act and Treasury Rules criteria. These should also be allowed as “planning costs”.

L. **Para. 34.203 Eligible Activities for the Spill Impact Component: Comment: Strongly recommend** including the following in this Para.:

“(c) A Gulf Coast State or other authorized entity, including the Gulf Consortium (Florida) may expend funds to develop and publish a State Expenditure Plan, and to carry out, amend, and update the State Expenditure Plan as required by the Act or the Council or as necessary.

(d) A Gulf Coast State or other authorized entity, including the Gulf Consortium (Florida) may expend funds to prepare reports and audits as required by the Act, the Council, these regulations, and other Federal law.

(e) A Gulf Coast State or other authorized entity, including the Gulf Consortium (Florida) may expend funds to establish and operate one or more advisory committees as may be necessary to assist the entity.”

Rationale: Inclusion of the above paragraphs will ensure that these required expenditures will be reimbursable to the Spill Impact Component agencies just as they are with the Comprehensive Plan Component to the Council.

M. **Para. 34.205 Limitations on Administrative Costs and Administrative Expenses, subpara (a): Comment:** How is a “fiscal year” defined, i.e., the Federal fiscal year (Oct-Sept) or the fiscal year of the political entity, e.g., a state or county?

N. **Para. 34.205 Limitations on Administrative Costs and Administrative Expenses, subparas. (a) and (b):** Subpara (a) applies to a Gulf Coast State, coastal political subdivision, or coastal zone parish receiving funds under the Direct Component, the Comprehensive Plan Component, and the Spill Impact Component and states that: “... not more than three percent may be used for administrative costs, including staff. The three percent limit is applied to the total amount of funds received ***under each grant.***” Subpara. (b), however, applies to the Council under the Comprehensive Plan Component and states: “The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

later.” **Comment:** Recommend subpara. 34.205(a) be amended to read: “Of the amounts received by a Gulf Coast State, coastal political subdivision, coastal zone parish, or other authorized entity, including the Gulf Consortium (Florida) under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, not more than three percent may be used for administrative costs, including staff. The three percent limit is applied to the total amount of funds received by the Gulf Coast State, coastal political subdivision, coastal zone parish, or other authorized entity, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.” **Rationale:** Adopting these changes will put the Gulf Coast States, coastal political subdivisions, coastal zone parishes, and other authorized entities on the “same playing field” as the Council in accounting for administrative expenditures. In many cases it is difficult to allocate administrative costs to a particular project or program. This is especially of concern when considering extra staff that was hired to work RESTORE Act issues, e.g., in Purchasing due to added workloads for creating proposals for bids and subsequent monitoring, or in grants management due to additional workload, or for planning costs. Applying the same criteria of the three percent administrative limit to the total amount of funds received by the States, coastal political subdivisions, coastal zone parishes, and other authorized entities will greatly alleviate having to allocate administrative costs to individual projects.

Subpart D—Gulf RESTORE Program - Direct Component

O. **Para. 34.301 Responsibility for Administration:** States that “Treasury will establish and implement a program to monitor compliance with its grant agreements.” **Comment:** Any timeframe on these additional rulemakings? Respectfully request that a minimum 30-day comment period be allowed prior to finalization of program establishment and implementation by Treasury.

P. **Para. 34.302 Allocation of Funds., subpara (b):** **Comment:** I interpret this to mean that each of the eight disproportionately affected counties (Florida) must include the 8-county formula in their Multi-Year Implementation Plan.

Q. **Para. 34-303 Application Procedure:** States: “Treasury will develop an application process for grants available under this part that is consistent with the Act and Federal policies on grants.” **Comment:** When can we expect this application process from Treasury? (Delay in receipt will cause delays in development of Multi-Year Implementation Plans.) Respectfully request that a minimum 30-day comment period on the draft of the application process be allowed prior to final adoption. The criteria and requirements of this process could result in high costs to the Direct Component agencies in both dollars and time.

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

R. **Para. 34-303 (a)**: States: “The applicant must submit a multiyear implementation plan ...” **Comment**: This rule does not specify a time-period for the multiyear implementation plan. For the Direct Component, recommend a period of 3-5 years on the initial plan. Also, we need provisions to amend or supplement the initial plan due to changing needs and to take advantage of Federal and State grants to leverage RESTORE funds used as a local match, as the opportunities for grant applications usually have a short window of 30-90 days. (See para. G above under Subpart C comments).

S. **Para. 34-303(a)**: States at the end: “Treasury may require a standard format for the plans and additional information.” **Comment**: When will we know? Delays in receiving such guidance from Treasury, if it is to be forthcoming, will delay development of the Multi-Year Implementation Plans. In addition, all recipients of Direct Component funding should be allowed a comment period of 30-days on any formats and criteria proposed by Treasury prior to finalization.

T. **Para. 34-305 Use of Funds: Subpara (a)** States: “Unexpended funds at the end of the grant period or conclusion of the project, program, or activity, whichever is later, must be returned to the Trust Fund.” **Comment**: This seems to imply that grant funds may be provided “up-front” for the costs of the projects. Please clarify. Also, will there be provisions for unexpected or unanticipated cost overruns in completing a project? In addition, will any funds returned under this paragraph be returned to and re-credited to the particular account from which drawn originally, i.e., if drawn from the Okaloosa County, FL “Direct Component” any returned funds should be credited to this same account.

Subpart F—Gulf RESTORE Program-Spill Impact Component

U. **Para. 34-501 Responsibilities for Administration**: States: “The Council must establish and implement a program to monitor compliance with its grant agreements.” **Comment**: Will the Council’s program be incorporated into the Treasury Rules or will they be in a separate document?

V. **Para. 34-503 State Expenditure Plan**: **Comment**: Recommend rewriting first sentence to read: “Each Gulf State, through its Governor or the Governor’s designee, or, in the case of Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the Deepwater Horizon oil spill, must submit a State Expenditure Plan ...”

W. **Para. 34-504 Grant Administration**: **Comment**: Recommend rewriting first sentence to read: “If the Council approves a State Expenditure Plan, the State (or 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) may apply for a grant ...”

Ms. Janet Vail, Dept. of Treasury, Nov. 1, 2013

Subpart I--Agreements

X. **Para. 34-802 Certifications:** **Comment:** Who does the certifications for each component? For Florida, for the Direct Component would it be the Chairman of the Board of County Commissioners? For the Spill Impact Component would it be the Governor (or designated representative), or the elected Chairman of the Gulf Consortium (for Florida)?

Y. **Para. 34.805(a)** States: "If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that grantee from any part of the Trust Fund until the grantee has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the grantee to expend an equal amount from the grantee's own funds for a project or program that meets the requirements of the Act."

Comment: What "due process" procedures will be available for the grantee, should it be required, to contest the Treasury Department's determination?