

**AGENDA RECAP**  
**MEETING DATE: NOVEMBER 5, 2013**

**REVISIONS & CORRECTIONS**

<b><u>Agenda/Item #</u></b>	<b><u>Purpose</u></b>	<b><u>Requested by</u></b>
	Please revise the agenda to include <b>Public Presentation of Matters by Citizens</b>	<b>County Administration</b>

**WALK - ONS OR CARRY - OVERS**

**Walk-on #/Carry-Over#**

**WO1** Ceremonial presentation Hunger and Homelessness Awareness Week. (#20130945-Commissioner Manning)

**COMMISSIONERS' ITEMS**

**Commissioner Manning**

- Notice of Proposed Rulemaking 31 CFR Part 34, *Resources and Ecosystems, Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States* Federal Register Vol. 79, No 73, Sept. 6, 2013.

**Commissioner Pendergrass**

- Appointments to the 2014 Canvassing Board, one Board member and one alternate. Only Commissioners from districts 1, 3 & 5 would be potential appointees since the other two districts will be in their election cycle.
- Discuss the current status of the Collier Sand Haul.

**Commissioner Kiker**

- Request to schedule a future workshop/meeting to discuss Conservation 20/20.
- Discussion on conflicts of liaison committee appointments with regard to meetings the same day and time.

**COUNTY MANAGER/COUNTY ATTORNEY ITEMS**

Bonita Springs Annexation of Pelican Landing	<b>County Attorney</b>
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**DATE AND TIME DISTRIBUTED:** 11-4-13 9:30 am - Published to web  
11-4-13 4:15 pm - Distributed to staff

November 5, 2013

Via Federal eRulemaking Portal:  
[www.regulations.gov](http://www.regulations.gov)

Department of the Treasury  
Attention: Janet Vail, Room 2050  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

**Re: Notice of Proposed Rulemaking 31 CFR Part 34, *Resources and Ecosystems, Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States* Federal Register Vol. 79, No 73, Sept. 6, 2013**

Dear Ms. Vail:

On behalf of Lee County, Florida, the Board of County Commissioners appreciates the opportunity to comment on the U.S. Department of the Treasury's ("Treasury") proposed regulations ("Proposed Regulations") implementing the RESTORE Act (the "Act"). The Deep Water Horizon oil spill impacted all of Florida's Gulf Coast communities, both in terms of environmental and economic damages. The Act and the Proposed Regulation present an unprecedented opportunity to provide direct relief for these impacts to Gulf Coast communities.

**I. General Comments**

The thrust of our comments are intended to address inconsistencies with the Act, clarify certain processes and procedures required by the Act, and, ultimately, create a user friendly tool for Florida's counties to navigate the various funding opportunities available from the Gulf Coast Restoration Trust Fund ("Trust Fund"). As Florida counties prepare their plans, they must have a clear understanding of how their particular projects, programs and activities may be funded under each source in the Act.<sup>1</sup>

Generally stated, the Proposed Regulations must:

- Avoid inappropriate restating, paraphrasing or supplementing of the Act. Broadly reciting or paraphrasing statutory provisions often creates conflicting or ambiguous provisions. Additionally, rules should only supplement statutory provisions when authorized by statute, and if necessary to effectuate the intent of the statute. In several

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<sup>1</sup> The Trust Fund consists of five sources: Direct Component, Comprehensive Plan Component, Spill Impact Component, NOAA RESOTRE Act Science Program and Centers of Excellence Research Grants Program. *See* the Act, Secs. 1603, 1604 and 1605.

instances, the Proposed Regulations simply restates or attempts to paraphrase provisions of the Act. If already addressed in the Act, then the Proposed Regulations merely need to reference the applicable provisions of the Act.

- Identify and incorporate specific Federal grant law and policy provisions by reference to the applicable sections of the Code of Federal Regulations (“CFR”) that will govern the Trust Fund distribution process. This shall include appropriate qualifying language to incorporate, if adopted, the Office of Management and Budget’s (“OMB”) proposed Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards.<sup>2</sup>
- Include the methodology and sources as approved and recommended by the Florida Gulf Consortium for computing the Direct Component Trust Fund allocations to the 15 nondisproportionately impacted counties.

## II. Specific Comments

### Subpart A: General Provisions

**Section 34.2, Definitions:** contains the following terms that are defined in the Act. For consistency, these definitions must simply reference the Act’s definitions:

“Administrative costs”<sup>3</sup>

“Best available science”

“Coastal political subdivision”

“Council”

“Deepwater Horizon oil spill”

“Gulf Coast Region”

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<sup>2</sup> OMB is currently engaged in rulemaking that proposes to consolidate, streamline and supersede current Federal grant policy. *See Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements* (including Single Audit Act), OMB-2013-0001 and Federal Register /Vol. 78, No. 173 / Friday, Sept. 6, 2013. OMB has prepared a “Crosswalk from Existing Guidance to Proposed Guidance” spreadsheet that can be used to determine that applicable guidance under the new rule if adopted. *See* Doc. No. OMB-2013-0001-0003.

<sup>3</sup> The term “administrative costs” is not listed in the definitions section of the Act, but is listed in eligible activities as “administrative costs of complying with this subsection.” *See* the Act, Sec. 1603- CWA Sec. 311(t)(1)(B)(i)(IX). Cost principles and standards for determining allowable costs for local governments currently includes a process between the awarding agency and the grantee to determine eligible direct and indirect costs. *See* 2 CFR 225, Appendix E. This process recognizes the “diverse characteristics and accounting practices” and the unique types of costs to varying governments units. This process gives the grant recipient the flexibility to determine eligible administrative costs under the Act as it relates to their respective agency and project.

“Gulf Coast State”

“Trust Fund”

“Environmental review and compliance procedures” is defined in Section 34.2 as the procedures under applicable Federal and state environmental laws.<sup>4</sup> For the sake of clarity and bright line standards, this should be defined in terms of the project obtaining any required authorizations or approvals under applicable Federal and state environmental laws. Thus, we recommend modifying these terms, and the definition, in the following manner:

“Environmental review and compliance ~~procedures~~” means the process of securing the ~~procedures~~ required approval or authorization under applicable Federal and state environmental laws for the eligible project, program or activity.

### **Subpart B: Trust Fund**

**Sections 34.100, The Trust Fund, 34.102, Interest earned, and 34.103, Allocation of funds:** are each covered in the Act. In order to prevent potential conflict, these sections can simply reference the applicable provisions of the Act.

**Section 34.104, Expenditures:** paraphrases the Act in regards to expenditures and adds reference to the general Federal policy goal of minimizing disbursement of funds by grantees. This Section should cite the appropriate provisions in the Act and delete reference to the general Federal policy goal. Details on expenditures can be included in the Subparts dedicated to each Component.

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

**Section 34.200, General:** attempts to establish prerequisites for certain component project funding, restates various sections of the Act<sup>5</sup>, and adds specific reference to pre-award costs eligibility for environmental review and compliance procedures. Simply put, this section is confusing. As a result, this entire section should be deleted. We suggest Treasury take a new approach to organizing the Proposed Regulations where all policies and procedures for compliance and funding eligibility are located in one unified section for each respective component of the Trust Fund. This will constitute a more organized regulation, and ensure that

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<sup>4</sup> Additionally, “environmental review and compliance procedures” appears to have been added to the description of the eligible activity of “Planning” in Section 34.201(j) to ensure eligibility for funding of such costs.

<sup>5</sup> Sec. 34.200(a)(4) and Section 34.200(b) are both paraphrased provisions of the Act. *See* the Act, Sec. 1603- CWA Sec. 311(t)(1)(B)(iii)(II) and Sec. 1603- CWA Sec. 311(t)(1)(N).

the unique statutory requirements for each component are clearly recognized. The references to the Act, applicable OMB guidance, applicable environmental review and compliance<sup>6</sup> and pre-award costs<sup>7</sup> can all be relocated and tailored to each respective component.

**Section 34.201, Eligible activities for the Direct Component:** simply restates the eligible activities stated in the Act and should be deleted. In fact, this section provides an example of how restating the Act, instead of using citations to the existing law can be problematic. There appears to be an inaccurate description of the eligible activity “Planning Assistance.”<sup>8</sup> Appropriate citations to the Act for Direct Component eligible activities should be included within Subpart D, Direct Component.

**Sections 34.202, Eligible activities for Comprehensive Plan Component, 34.203, Eligible activities for the Spill Impact Component, 34.204, Limitations of activities, and 34.205, Limitations on administrative costs and administrative expenses:** delete all sections and incorporate into each respective component’s subpart by reference to provisions of the Act, and the appropriate supplemental language.

#### **Subpart D – Gulf RESTORE Program – Direct Component**

**Section 34.301, Responsibility for administration:** includes the statement that “Treasury may develop and apply policies and procedures consistent with this subpart, applicable Federal policies, and the Act.” Any material provisions that address grant policies and procedures must be addressed in the context of the Proposed Regulations. Entities affected, or governed by, the Proposed Regulations must be able to review and understand any policies and procedures that apply to them. Should the Treasury determine to develop additional policies and procedures in the future, then, the Proposed Regulations would need to be modified by

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<sup>6</sup> Sec. 34.200(3) of the Proposed Regulations requires each program, project or activity to comply with applicable environmental review and compliance procedures before being awarded Trust Fund money. As described above, this requirement should be adjusted in terms of “authorizations or approvals” to ensure clarity. Demonstration of this compliance can be achieved by offering evidence of the necessary agency authorizations and approvals related to the environmental laws governing the particular project.

<sup>7</sup> Singling out environmental review and compliance costs for pre-award payment eligibility may imply that this is the only eligible costs for pre-award payment. *See* Sec. 34.200(3). Eligibility for pre-award costs should be developed for each component considering the timing of plan development and grant application submittals. The current local government cost principles and standards for determining allowable costs include and define pre-award costs. *See* 2 CFR 225, Appendix A.

<sup>8</sup> Sec. 34.201(j) lists “Planning limited to the costs of data gathering, studies, analysis, and preparation of plans and actions for eligible activities under Section 34.201(a) through (i), including the costs of environmental review and compliance.” However, the actual language in the Act only states “Planning assistance” as the eligible activity. *See* Sec. 1603- CWA Sec. 311(t)(1)(B)(i)(VIII).

Treasury at that time. The above-quoted statement leaves the impression that the Treasury may develop and apply policies and procedures in the future outside the context of the Proposed Regulations. This defeats the fundamental purpose of having codified regulations.

**Section 34.302, Allocation of funds:** appears to be rephrasing or restating provisions in the Act that governs allocation of the Trust Fund dollars. There is no need to rephrase or restate provisions of the Act. Specific reference to the Act in this section will suffice.

**Section 34.303, Application procedure:** as in Section 34.301, there is a provision in this Section 34.303 of the Proposed Regulations that provides apparent authority to Treasury to “develop an application process for grants...” This section goes on to outline the minimum elements in the application, including the Multiyear Implementation Plan (“Multiyear Plan”) that includes each project that the county intends to fund,<sup>9</sup> whether the county applied for other Act funds, and supporting documentation verifying eligibility and compliance with the Act. It is difficult, if not impossible, for entities subject to the Proposed Regulations to develop plans, projects, programs and activities without having a clear, upfront understanding of the applicable grant application process. Consequently, the application process for grants must be clearly outlined in the Proposed Regulations in its entirety.

The process for determining whether “previously approved projects and programs” are eligible for inclusion into the Multiyear Plan must be clarified. The Act itself does not define a “previously approved projects and programs.”<sup>10</sup> However, it appears that the intent of the Act was to approve and implement certain projects on an expedited basis by providing a less stringent standard of review. In order to clarify the intent of the Act, Section 34.303(b) of the Proposed Regulations must contain a definition of “previously approved projects and programs” and a clear process that defines this reduced standard of review.

**Section 34.304, Grant award process:** this section is intended to outline the grant award process. However, this section provides that Treasury will offer the applicant an agreement, “upon determining that an application meets the requirements of these regulations and the Act”. Again, the Proposed Regulations do not outline a definitive grant application or award process. This should be a fundamental objective of the Proposed Regulations. Entities affected or governed by the Proposed Regulations must be able to review and understand any grant policies and procedures that apply to them.

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<sup>9</sup> The Act requires the both the Multiyear Plan (Direct) and the State Expenditure Plan (Spill Impact) to be submitted prior to receiving Trust Funds. The Proposed Regulations require the grant application be submitted simultaneously with the Multiyear Plan, but not the State Expenditure Plan. See the Act Sec. 1603- CWA Sec. 311(t)(1)(L).

<sup>10</sup> See the Act Sec. 1603- CWA Sec. 311(t)(1)(J).

Subpart D does not contain language regarding potential subgrants, assignees or cooperative/interagency agreements for Direct Component funds.<sup>11</sup> Section 34.803, does include a mandatory condition that grant agreements contain conditions for making “subawards.” However, it is not clear if this standard grant agreement condition is intended to give the counties authority to subgrant funds. The Treasury must revise the Proposed Regulations to clearly indicate whether counties have subgranting authority. Additionally, numerous local government agencies, universities, and non-profit/for-profit entities may seek Direct Component funds from Florida counties. In order to develop an adequate project evaluation and approval process for Multiyear Plans, the Proposed Regulations must be clearly state the authority to subgrant and the type of entities that are eligible for subgranted funds under the Direct Component.<sup>12</sup>

**Section 34.305, Use of funds:** the commentary on the Proposed Regulations states that after a grant agreement is signed, funds will be disbursed to counties as they are needed for authorized expenditures. These comments indicate the intent to use advance payment methods for the Direct Component. Additionally, to ensure timely implementation of projects, programs and activities, and avoid funding/cash flow limitations, advanced payments must be the preferred method of payment. This section must include specific preference for advance payment methods to grantees. Additionally, to the extent that this section recites or paraphrases the Act, it should be revised to simply reference the specific provisions of the Act.

While current grant policy for local governments sets forth the manner in which the counties can change the terms of its grant agreements,<sup>13</sup> the Proposed Regulations should include specific provisions governing the process to amend a Multiyear Plan and grant agreement.

### **Subpart E: Gulf RESTORE Program- Comprehensive Plan Component**

This Subpart proposes procedures for implementing the projects and programs contained in the Gulf Coast Ecosystem Restoration Council’s (“Council”) Comprehensive Plan.

**Section 34.402, Application procedures and grant award process:** states that the Council may establish a selection process for Gulf Coast States and Federal agencies assigned

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<sup>11</sup> Similarly, the Proposed Regulations for the Spill Impact Component do not mention subgrants, assignees or cooperative/interagency agreements. The Comprehensive Plan Component, the NOAA Science Program and the Center of Excellent allocations each have language regarding subgrants, assignees or cooperative/interagency agreements.

<sup>12</sup> The receiving subgrantee’s status determines what grant policy will govern the expenditures. *See* 2 CFR 215.0. In order to assess the potential burden associated with administering subgrants under the Act, counties must be aware of the applicable cost principles and standards for each type of entity eligible for subgrant funds.

<sup>13</sup> *See* 7 CFR 3016.30.

primary responsibility for overseeing and implementing Comprehensive Plan projects and programs. This section further states that in the event the Council does not establish a selection process, the respective Gulf Coast State or Federal agency must use a fair and open selection process that meets Federal or applicable state and local laws. The Proposed Regulations must include provisions that establish a timeframe and framework for the selection process to be codified.

### **Subpart F: Gulf RESTORE Program- Spill Impact Component**

**Section 34.501, Responsibility for administration:** the Proposed Regulations do not reference or recognize in any manner the Council’s Comprehensive Plan adopted on August 28, 2013. The Comprehensive Plan includes the Submittal, Review and Approval Process, the statutory criteria and guidance for development of State Expenditure Plans (“SEP”). Unless and until, the Treasury and the Council work together to develop consistent processes for both the SEP approval and the subsequent grant approval, the Proposed Regulations offer little value. We suggest that the Treasury consult the Council, the Florida Gulf Consortium and the Governor of Florida, during the promulgation of the regulation of the Spill Impact formula or earlier, in an effort to finalize the additional regulations for the Spill Impact Component. These regulations must be consistent with the Submittal, Review and Approval Process for SEP’s set forth in the Comprehensive Plan, and provide for grant administration procedures establishing the process for the State of Florida to apply for and receive its allocation of SEP funds. Furthermore, it is critical that these regulations clearly establish the manner in which Florida county projects, programs and activities will be eligible for inclusion into Florida’s SEP and funded through the grant process.

### **Subpart I: Agreements**

**Section 34.801. Grant agreements:** as with many provisions in the Proposed Regulations, there is a general and far-reaching reference that grant agreements must conform to “all applicable Federal laws, regulations, and policies for grants...” Applicable Federal laws, regulations, and policies for grants, to the extent applicable to the grant programs encompassed by the proposed regulations, must be specifically referenced in the Proposed Regulations. Additionally, grant conditions unique to a component of the Trust Fund should have those conditions included in the component’s respective subpart. For example, as discussed above, the grant agreements must provide terms describing the process to amend the grant agreements and change Multiyear Plans and SEPs.

## **III. Conclusion**

Again, we appreciate the Treasury's efforts, as well as the opportunity for public input regarding the Proposed Regulations to implement the Act. Proposed Regulations governing the administration of the Trust Fund must establish a well-defined and user-friendly process to develop and implement projects, programs and activities that will provide the needed ecological and economic restoration to Florida's Gulf Coast counties.

Sincerely,

Cecil Pendergrass  
Chairman  
Lee County Board of County Commissioners



**FLORIDA STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS**  
PO Box 350 | Tallahassee, FL 32302 | Telephone: (850) 599-9120

October 22, 2013

**Executive Committee  
2013-2014**

President  
Lori Edwards  
President-Elect  
Jerry Holland  
Vice President  
Brian Corley  
Secretary  
Chris Chambless  
Treasurer  
Dana Southerland  
Past President  
Vicki Davis

**Board of Directors  
2013-2014**

Bobby Beasley  
Mark Anderson  
Ion Sancho  
Wesley Wilcox  
Nita Crawford  
Mary Jane Arrington  
Deborah Clark  
Jeff Ussery  
Gertrude Walker  
Brenda Hoots

**General Counsel**

Ronald Labasky, Esq.

Dear Canvassing Board Member:

The 2014 election cycle is almost upon us, and the 2013 Legislative Session brought about many changes to Florida's election laws that will impact your job as a Canvassing Board Member.

In light of these recent changes, the Florida State Association of Supervisors of Elections is hosting a statewide **Canvassing Board Workshop** to be held at The Florida Hotel at the Florida Mall in Orlando on **Friday, January 31, 2014**. This workshop is intended for County Judges, County Commissioners, Supervisors of Elections, alternate members, and Canvassing Board Attorneys.

Our workshop will highlight the important role that each member of the Canvassing Board plays in the elections process.

The registration fee of **\$60.00** covers the workshop, luncheon, and the Canvassing Board CD (Manual) and handouts that you will receive at the workshop that day.

The Florida Hotel at the Florida Mall has extended a special rate of **\$129.00 (government rate)** to FSASE for those attendees who plan to arrive the day before and /or stay for the night after the workshop adjourns.

**To make Hotel Reservations:**

**Online:**

<https://v1web.thefloridahotelorlando.com/v1WebControls/Custom/GroupLogin.aspx>  
(Group ID:18183 Password: 9396)

**By Phone: 800-588-4656**

**Be sure to mention FSASE to receive the contracted rate.**

Continuing education credits for this workshop are being requested for all judges, attorneys, election supervisors and alternates.

We are truly looking forward to your participation and the opportunity to provide you with an informative and educational program.

Sincerely,

Lori Edwards, FSASE President  
Bill Cowles, Chair, Canvassing Board Committee and Host Supervisor

**FACT SHEET**  
**FSASE CANVASSING BOARD WORKSHOP**  
**FRIDAY, JANUARY 31, 2014**

**WHAT:** FSASE Canvassing Board Workshop

**WHEN:** Friday, January 31, 2014  
9:00 AM Registration/ 10:00 AM to 4:00 PM Program

**WHERE:** Florida Hotel at the Florida Mall  
1500 Sand Lake Road  
Orlando, Florida 32809

**WHO:** County Judges, County Commissioners, Supervisors of Elections,  
Alternate Members and Canvassing Board Attorneys

**FEE:** \$60.00 per person made payable to FSASE and mailed to:  
FSASE, P.O. Box 350, Tallahassee, Florida 32302

Deadline for registering is Monday, January 13, 2014  
Deadline for cancellation with refund is Friday, January 24, 2014

**TOPICS TO BE DISCUSSED:**

- Canvassing Board Responsibilities
- Election Law Changes & Challenges
- Ballot Canvassing
- Determining Voter Intent
- Conducting Recounts
- Post-Election Audits
- Preparing for Litigation

**EDUCATIONAL CREDITS:**

Have been requested for County Judges, County Attorneys and Supervisors of Elections

**HOTEL ACCOMMODATIONS:** The Florida Hotel and Conference Center  
1500 Sand Lake Road  
Orlando, Florida 32809  
407/859-1500  
Room Rates - \$129.00 (government rate) which includes the \$18 per day service charge (includes Internet, newspaper, 2 bottles of water, self-parking and 24 hour access to the business and fitness centers).  
**Please bring your county tax exemption for hotel.**  
**Be sure to mention FSASE when making your reservations.**

FSASE CANVASSING BOARD WORKSHOP  
FLORIDA HOTEL AT THE FLORIDA MALL  
ORLANDO, FLORIDA  
FRIDAY, JANUARY 31, 2014  
9AM REGISTRATION  
10:00 AM TO 4:00 PM PROGRAM



**REGISTRATION FORM**

Name as it should appear on the Registration list:

First Name

Last Name

County: \_\_\_\_\_

Please check one:

- County Commissioner                       County Judge-Bar No.: \_\_\_\_\_
- Attorney-Bar No.: \_\_\_\_\_                       Supervisor of Elections
- Other \_\_\_\_\_

Mailing Address:

\_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone No: \_\_\_\_\_ Email: \_\_\_\_\_

Workshop fee is \$60.00 per attendee. Please make all checks payable to **FSASE** and mail to:

**FSASE**  
P.O. Box 350  
Tallahassee, Florida 32302

Event information and registration forms can be accessed online at  
[www.myfloridaelections.org](http://www.myfloridaelections.org).

**Registration Deadline – January 13, 2014**

For more information regarding registration, contact Ron Labasky, General Counsel,  
Florida State Association of Supervisors of Elections at 850-599-9120.

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Office Use Only:

Amt. Paid: \_\_\_\_\_ Date Received: \_\_\_\_\_ Receipt No.: \_\_\_\_\_ By: \_\_\_\_\_