



Billing Code: 3510-EA

GULF COAST ECOSYSTEM RESTORATION COUNCIL

40 CFR Part 1800

Docket Number: 140819111-4111-01

RESTORE Act Spill Impact Component Planning Allocation

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Interim Final Rule.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) is issuing a final regulation authorizing the Gulf Coast State members of the Council, or their administrative agents, and the Gulf Consortium of Florida counties to apply for grants to fund planning activities to develop individual State Expenditure Plans (SEP) using funds up to the statutory minimum that each Gulf Coast State must receive under the Spill Impact Component of the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: This Interim Final Rule becomes effective on [insert date of publication in the **FEDERAL REGISTER**]. Comments on the Interim Final Rule are due [insert date 30 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: The Council invites comments on the planning allocation contained in this Interim Final Rule. Comments may be submitted through one of these methods:

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a

comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> web site can be viewed by other commenters and interested members of the public.

Mail: Send to Gulf Coast Ecosystem Restoration Council, c/o US Custom House, Suite 419, 423 Canal Street, Suite 419, New Orleans, LA 70130.

Email: Send to RestoreCouncil@RestoreTheGulf.gov.

In general, the Council will post all comments to www.regulations.gov without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. Comments may also be submitted anonymously. The Council will also make such comments available for public inspection and copying on its website, <http://www.restorethegulf.gov/>. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jeffrey Roberson at 202-482-1315.

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act, Pub. L. 112-141 (July 6, 2012), codified at 33 U.S.C. 1321(t) and note, makes funds available for the restoration and protection of the Gulf Coast Region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). The Trust Fund will contain 80 percent of the administrative and civil penalties paid by the responsible parties after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. These funds will be invested and made available through five components of the RESTORE Act. On August 15, 2014, the

Department of Treasury (Treasury) issued regulations (79 FR 48039) applicable to all five components, and which generally describe the responsibilities of the Federal and State entities that administer RESTORE Act programs and carry out restoration activities in the Gulf Coast Region.

Two of the five components, the Comprehensive Plan and Spill Impact Components, are administered by the Council, an independent federal entity created by the RESTORE Act. Under the Spill Impact Component (33 U.S.C. 1321(t)(3)), the subject of this regulation, 30 percent of funds in the Trust Fund will be disbursed to the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) or their administrative agents based on an allocation formula established by the Council by regulation based on criteria in the RESTORE Act. The RESTORE Act establishes a statutory minimum under which each of the five Gulf Coast States is guaranteed five percent of the funds made available in a fiscal year under this component. In order for funds to be disbursed to a Gulf Coast State, the RESTORE Act requires each Gulf Coast State to develop a SEP and submit it to the Council for approval. The RESTORE Act specifies the particular entity within each Gulf Coast State that will prepare the individual SEPs: in Alabama, the Alabama Gulf Coast Recovery Council; in Florida, a consortium of local political subdivisions that includes a minimum of one representative of each affected county (officially named the “Gulf Consortium” as organized under Florida law); in Louisiana, the Coastal Protection and Restoration Authority of Louisiana; in Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and in Texas, the Office of the Governor or an appointee of the Office of the Governor. 33 U.S.C. 1321(t)(3)(B)(iii).

SEPs must meet the statutory requirements of the RESTORE Act, including: (1) all projects, programs and activities included in the SEP are eligible activities as defined by the

RESTORE Act; (2) all projects, programs and activities included in the SEP contribute to the overall economic and ecological recovery of the Gulf Coast; (3) the SEP takes the Council's Comprehensive Plan into consideration and is consistent with the goals and objectives of the Comprehensive Plan; and (4) no more than 25 percent of the allotted funds are used for infrastructure projects unless the SEP contains certain certifications from the Gulf Coast State submitting the SEP. The funds the Council disburses to the Gulf Coast States upon approval of a SEP will be in the form of grants. As required by federal law, the Council will award a grant or grants to each of the Gulf Coast States and incorporate into the grant award(s) standard administrative terms on such topics as recordkeeping, reporting, and auditing. The Council is currently developing another set of regulations to more fully implement the Spill Impact Component of the RESTORE Act. These regulations will be published in the Federal Register at a later date and will establish how funds made available from the Trust Fund will be allocated based on the formula between the five Gulf Coast States. It will also generally describe the responsibilities of the Gulf Coast States in applying for and administering the financial assistance awards made under the Spill Impact Component.

II. This Interim Final Rule

Each of the five Gulf Coast States, Alabama, Florida, Louisiana, Mississippi, and Texas, are statutorily guaranteed a minimum of five percent of amounts made available from the Trust Fund under the Spill Impact Component each fiscal year. 33 U.S.C. 1321(t)(3)(A)(iii). A Gulf Coast State may receive more than the statutory minimum depending on the calculation of each Gulf Coast State's share using an allocation formula established by the Council by regulation based on criteria specified in the Act. 33 U.S.C. 1321(t)(3)(A)(ii). The Council is developing a

regulation to be published in the Federal Register at a later date establishing this allocation formula.

The Council is issuing this regulation as an Interim Final Rule in order to facilitate expeditious development of SEPs by the Gulf Coast States and thus make funds available sooner for the restoration and protection of the Gulf Coast Region. The Council is not providing a waiting period for implementation of this Interim Final Rule because the five affected parties (four of the Gulf Coast States and the Gulf Consortium of Florida counties) are already on notice of the contents of the Interim Final Rule and it does not change any existing requirement that would necessitate any sort of transition period.

Under this regulation an amount of funds less than or equal to the statutory minimum allocation (five percent of funds available under the Spill Impact Component) would be available to a Gulf Coast State, or eligible entity for a SEP that funds planning activities only, an eligible activity under the Spill Impact Component. 33 U.S.C. 1321(t)(1)(B)(i)(VIII); 33 U.S.C. 1321(t)(3)(B)(i)(I). Eligible entities include the States of Louisiana, Mississippi, and Texas, the Alabama Gulf Coast Recovery Council, and the Gulf Consortium of Florida counties. All planning activities authorized under the Interim Final Rule would relate solely to the development of a comprehensive SEP, including 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 the date of publication of this Interim Final Rule; any pre-award costs incurred after the date of publication will be evaluated pursuant to 2 CFR Part 200. In order to receive a grant for planning activities under this Interim Final Rule, the Gulf Coast State or eligible entity must submit an application for grant funding to the Council for approval.

The Council will accept comments on the Interim Final Rule for 30 days after publication, and publish a Final Rule after considering any comments.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that this Interim Final Rule will not have a significant economic impact on a substantial number of small entities. The Council hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities, for the following reasons.

This rule, if implemented, would only affect the those Gulf Coast States that are eligible recipients of these funds, and States are not considered “small entities” under the Regulatory Flexibility Act. For two Gulf Coast States, Alabama and Florida, the Act mandates that entities not officially part of the Executive Office of the State’s government develop the SEPs. The Alabama Gulf Coast Recovery Council, in the context of the Act, serves as an administrative agent of the State of Alabama so the effects of this rule are still directed solely at the State. For the State of Florida, while the Gulf Consortium of counties is tasked with developing the SEP, it is a consortium of 23 counties with a population of greater than 50,000. As such neither entity is considered “small entities” under the Regulatory Flexibility Act.

Additionally, while this rule describes procedures concerning the allocation and expenditure of amounts from the Trust Fund under the Spill Impact Component, most of these requirements come from the RESTORE Act itself or other Federal law. The RESTORE Act

determines the statutory minimum percentage of funds available to the Gulf Coast States under the Spill Impact Component.

Because no small entities will be impacted by this rule no initial regulatory flexibility analysis is required, and none has been prepared. Notwithstanding this certification, the Council invites comments on this rule's impact on small entities.

B. Paperwork Reduction Act

The collections of information contained in this Interim Final Rule would at most require submissions of grant paperwork from five entities (four of the Gulf Coast States, or their administrative agents, and the Gulf Consortium) below the threshold requirement for application of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). As such, any request for information under this Interim Final Rule is not considered a "collection of information" subject to the Paperwork Reduction Act of 1995. Notwithstanding this determination, the Council invites comments on the application of the Paperwork Reduction Act to this Interim Final Rule.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

As an independent federal entity that is composed of, in part, six federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to this rule.

List of Subjects in 40 CFR Part 1800

Coastal zone, Fisheries, Grant programs, Grants administration, Gulf Coast Restoration Trust Fund, Gulf RESTORE Program, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife.

Dated: August 19, 2014

Justin R. Ehrenwerth

Executive Director, Gulf Coast Ecosystem Restoration Council

For the reasons set forth in the preamble, the Gulf Coast Ecosystem Restoration Council amends 40 CFR to establish a new chapter VIII, consisting of part 1800, to read as follows:

Title 40 — Protection of Environment

Chapter VIII — Gulf Coast Ecosystem Restoration Council

PART 1800 –SPILL IMPACT COMPONENT

Sec.

Subpart A – Definitions

1800.1 Definitions.

Subpart B – Minimum Allocation Available for Planning Purposes

1800.10 Purpose.

1800.20 Minimum allocation available for planning purposes.

Authority: 33 USC 1321(t).

Subpart A – Definitions

§ 1800.1 Definitions.

As used in this part:

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).

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

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.

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.

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. No. 112-141, 126 Stat. 405, 588-607) for planning purposes associated with development of a State Expenditure Plan.

§ 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 in a fiscal year 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 [Insert the date of publication in the **FEDERAL REGISTER**].

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