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DEPARTMENT OF THE TREASURY

31 CFR Part 34

RIN 1505-AC52

Gulf Coast Restoration Trust Fund

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim Final Rule.

SUMMARY: The Department of the Treasury is issuing this Interim Final Rule to change when the statutory three percent cap on administrative expenses is applied to the Gulf Coast Ecosystem Restoration Council (Council) under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act or Act).

DATES: Effective date for the Interim Final Rule: [INSERT DATE OF PUBLICATION.] Written comments on the Interim Final Rule must be received on or before: [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Treasury invites comments on the topic addressed in this Interim Final Rule. Comments may be submitted by any of the following 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 Department to make them available to the public. Comments submitted electronically through

the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public.

Mail: Send to Department of the Treasury, Attention Janet Vail, Office of Gulf Coast Restoration, Office of the Fiscal Assistant Secretary, Room 2112; 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury also will make such comments available for public inspection and copying in Treasury's Library, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Janet Vail, Office of Gulf Coast Restoration, restoreact@treasury.gov or 202-622-6873.

SUPPLEMENTARY INFORMATION:

I. Background

The Act makes funds available for the restoration and protection of the Gulf Coast region, and certain programs with respect to the Gulf of Mexico, through a trust fund in the Treasury of the United States known as the Gulf Coast Restoration Trust Fund (trust fund). The trust fund holds 80 percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in

connection with the *Deepwater Horizon* Oil Spill. The Act gives Treasury several roles in administering the trust fund. One role is to establish procedures, in consultation with the Departments of the Interior and Commerce, concerning the expenditure of amounts from the trust fund and compliance measures for the programs and activities carried out under the Act. On December 14, 2015, Treasury promulgated final regulations on the RESTORE Act, 80 FR 77239, which became effective on February 12, 2016.

The Act established an independent Federal entity, the Gulf Coast Ecosystem Restoration Council (Council), to administer certain components of the Act, including the Comprehensive Plan Component. The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, currently the Secretary of Agriculture, serves as Chairperson of the Council. The authority for the Council terminates on the date all funds in the trust fund have been expended.

The Council is responsible for developing and implementing a Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region. To carry out the Comprehensive Plan, the Act makes available to the Council, 30 percent of penalties deposited into the trust fund plus one half of interest earned on trust fund investments.

The Act provides that “[o]f the amounts received by the Council . . ., not more than 3 percent may be used for administrative expenses, including staff,” to carry out the Comprehensive Plan. 33 U.S.C. 1321(t)(2)(B)(iii).

The Act does not specify when the statutory three percent cap on administrative expenses is applied to the Council.¹ In its final regulations, Treasury specified that “the three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later.” 31 C.F.R. 34.204(b). The final regulations recognized that as a new independent Federal entity, the Council’s startup administrative expenses would be greater in its initial years, and as a result the final regulations apply the three percent cap for administrative expenses at the end of the fourth fiscal year, and at the end of each fiscal year thereafter.

However, in the Supplementary Information section of the final regulations, Treasury stated that it “will propose to cap the Council’s administrative expenses at three percent of amounts the Council receives under the Comprehensive Plan Component before the termination of the Trust Fund,” and open this proposal for a 45 day comment period.² Under this formulation, the application of the three percent limit to the Council’s administrative expenses would be extended from the end of the fourth fiscal year to the date that the trust fund terminates. Treasury expects that the trust fund will terminate after 2032. Treasury included this language because the Council expressed a need for more flexibility on when the statutory three percent cap on administrative expenses will be applied. Specifically, Treasury understands that the Council anticipated its annual

¹ Treasury considered whether the three percent limitation applies at any time, but determined that Congress did not provide for such a requirement. Specifically, the Act was enacted as part of Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 contains non-RESTORE Act sections that include limitations that apply “at any time.” See MAP-21 § 100121. Treasury believes that if Congress had intended the three percent limitation on administrative expenses to apply “at any time,” Congress would have included those words in the RESTORE Act just as it did elsewhere in MAP-21. Moreover, such a requirement would undermine the RESTORE Act’s purpose of ensuring effective and long-term planning in the restoration of the Gulf Coast.

² 80 FR 77239, 77241.

administrative expenses would remain relatively constant, while the amount of funds received and transferred by the Council for projects undertaken by its members may vary considerably from one year to the next, depending on the Council's funded priorities list. The Council also anticipated that its members would seek to fund large-scale projects under the Comprehensive Plan Component, but anticipated that such large-scale projects would occur in later years after sufficient civil penalties had been deposited into the trust fund. Treasury supports the Council's goal of restoring and protecting the Gulf Coast region under the Comprehensive Plan Component, and is amending section 34.204(b), with a 45 day comment period.

II. This Interim Rule

For the reasons described above, Treasury is amending when the statutory three percent cap on administrative expenses is applied to the Council under 31 CFR 34.204(b). This Interim Final Rule provides that the Council's three percent limit applies to the total amount the Council will receive under the Comprehensive Plan Component and ensures that the Council will not exceed the statutory three percent cap before the termination of the trust fund. Specifically, the Interim Final Rule provides that amounts used by the Council for administrative expenses may not at any time exceed three percent of the total of the amounts received by the Council from the trust fund and the amounts in the trust fund that are allocated to, but not yet received by, the Council. Treasury believes that this Interim Final Rule balances the Council's need for greater flexibility with compliance with the statutory limitation. The Interim Final Rule amends only section 34.204(b) pertaining to when the three percent cap on administrative expenses is measured. It does not amend the definition of "administrative expenses" found at section

34.2. Nor does it amend section 34.204(a) regarding limitations on administrative costs associated with grants from the Council under the Comprehensive Plan Component.³

Treasury requests public comment on the amendment to section 34.204(b).

III. Procedural Requirements

A. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

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

The amendment to the regulation is a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Accordingly, it has been reviewed by the Office of Management and Budget.

C. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 et seq.) (APA) provides that agencies issue regulations with prior notice and an opportunity for public comment and that rules should become effective 30 days after publication in the Federal Register. See 5 U.S.C. 553. The APA, however, allows agencies to dispense with these procedures when the agency finds that good cause exists. In this case, Treasury finds that good cause exists to dispense with prior notice and comment procedures and make this rule immediately effective. As discussed earlier in the preamble, the revision in this Interim Final Rule amends when the Council calculates the statutorily required three percent administrative expense limitation, and does not impose any new obligations on the Act's

³ The final regulations define the term "administrative expenses." 31 C.F.R. 34.2. Note that the final regulations distinguish "administrative expenses" from "administrative costs," also defined in 31 C.F.R. 34.2.

eligible recipients. While Treasury had previously indicated it would issue a proposed rule, Treasury has determined that the revision will have minimal, and more than likely no, effect on the Act's eligible recipients. Nor does the Interim Final Rule impact the receipt and deposit into the trust fund of the civil penalties which are generally fixed by consent decree. Finally, the revision will help ensure that the Council can continue to function effectively by supporting predictable, long term financial planning and operations. As a result, Treasury has determined that prior notice and comment and a delayed effective date are unnecessary and that good cause exists to make this Interim Final Rule effective immediately.

List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant Programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts, Wildlife

For the reasons set forth herein, the Department of the Treasury amends 31 CFR Part 34 to read as follows:

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

1. The authority citation for part 34 continues to read as follows:

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

2. Revise paragraph (b) of §34.204 to read as follows:

§34.204 Limitations on administrative costs and administrative expenses.

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

David A. Lebryk,
Fiscal Assistant Secretary.

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