

equivalent or more stringent restrictions on municipal advisors than rule 206(4)–5 (the “SEC Pay to Play Rule”) under the Investment Advisers Act of 1940 (the “Advisers Act”) imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

DATES: This Order was issued by the Commission on September 20, 2016.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Sirimal R. Mukerjee, Senior Counsel, Melissa Roverts Harke, Senior Special Counsel, or Sara Cortes, Assistant Director, at (202) 551–6787 or IRules@sec.gov, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The SEC Pay to Play Rule [17 CFR 275.206(4)–5] under the Advisers Act [15 U.S.C. 80b] prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (“covered associates”) make a contribution to certain elected officials or candidates. Rule 206(4)–5 also prohibits an adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any third-party for a solicitation of advisory business from any government entity on behalf of such adviser, unless such third-party is a “regulated person” (“third-party solicitor ban”). Rule 206(4)–5 defines a “regulated person” as an SEC-registered investment adviser, a registered broker or dealer subject to pay to play restrictions adopted by a registered national securities association that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made, or a registered municipal advisor subject to pay to play restrictions adopted by the Municipal Securities Rulemaking Board (the “MSRB”) that prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made. In addition, in order for a broker-dealer or municipal advisor to be a regulated person under rule 206(4)–5, the Commission must find, by order, that these pay to play rules impose substantially equivalent or more stringent restrictions on broker-dealers or municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and are consistent with the objectives of the SEC Pay to Play Rule.

On December 16, 2015, the MSRB filed with the Commission proposed amendments to the MSRB Pay to Play Rule to extend its application to municipal advisors, which the Commission published for notice and comment on December 23, 2015 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and rule 19b–4 thereunder (Exchange Act Rel. No. 76763 (Dec. 23, 2015) [80 FR 81710 (Dec. 30, 2015)]). On February 17, 2016, the MSRB published a regulatory notice announcing that the proposed amendments to the MSRB Pay to Play Rule were deemed approved by the Commission under section 19(b)(2)(D) of the Exchange Act on February 13, 2016 and that the effective date of the rule was August 17, 2016.

On August 25, 2016, the Commission issued a notice of intent to issue an order (Investment Advisers Act Rel. No. 4512 (Aug. 25, 2016) [81 FR 60651 (Sept. 2, 2016)]) finding that the MSRB Pay to Play Rule imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule. The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued unless a hearing was ordered. The Commission has not received a request for a hearing.

Accordingly, the Commission hereby finds that the MSRB Pay to Play Rule imposes substantially equivalent or more stringent restrictions on municipal advisors than the SEC Pay to Play Rule imposes on investment advisers and is consistent with the objectives of the SEC Pay to Play Rule.

By the Commission.

Dated: September 20, 2016.

Brent J. Fields,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–D–2335]

Use of the Term “Healthy” in the Labeling of Human Food Products: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled “Use of the Term ‘Healthy’ in the Labeling of Human Food Products: Guidance for Industry.” The guidance advises manufacturers who wish to use the implied nutrient content claim “healthy” to label their food products as provided by our regulations. More specifically, the guidance advises food manufacturers of our intent to exercise enforcement discretion with respect to the implied nutrient content claim “healthy” on foods that have a fat profile of predominantly mono and polyunsaturated fats, but do not meet the regulatory definition of “low fat”, or that contain at least 10 percent of the Daily Value (DV) per reference amount customarily consumed (RACC) of potassium or vitamin D.

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food

and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2016–D–2335 for “Use of the Term ‘Healthy’ in the Labeling of Human Food Products: Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets

Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled “Use of the Term ‘Healthy’ in the Labeling of Human Food Products: Guidance for Industry.” We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 101.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

Under section 403(r)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(r)(1)(A)), a food is misbranded if it bears claims, either express or implied, that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA (see section 403(r)(2) of the FD&C Act). Our food labeling regulations at § 101.65(d) (21 CFR 101.65(d)) provide the regulatory definition for use of the term “healthy” or related terms (such as “health,” “healthful,” “healthfully,” “healthfulness,” “healthier,” “healthiest,” “healthily,” and “healthiness”) as an implied nutrient content claim on the label or in labeling of a food. This definition establishes the following nutrient conditions for bearing a “healthy” claim: (1) Specific criteria for nutrients to limit in the diet, such as total fat, saturated fat, cholesterol, and sodium; and (2) requirements for nutrients to encourage in the diet, including vitamin A, vitamin C, calcium, iron, protein, and fiber. The criteria are linked to elements in the Nutrition Facts label and serving size regulations (see §§ 101.9 and

101.12). The nutrient criteria to use the claim can vary for different food categories (e.g., fruits and vegetables, or seafood and game meat) (§ 101.65(d)(2)).

In the **Federal Register** of May 27, 2016, we issued final rules updating the Nutrition Facts label and serving size information for packaged foods to reflect new scientific information, including the link between diet and chronic diseases such as obesity and heart disease (see 81 FR 33742, “Food Labeling: Revision of the Nutrition and Supplement Facts Labels”; 81 FR 34000 “Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments”). Updates to the Nutrition Facts label include changes in the individual nutrients that must be declared and also changes to the DV of other individual nutrients, reflecting changes in recommended intake levels, based on current science.

Because the science supporting public health recommendations for intake of various nutrients has evolved, as reflected in the updated Nutrition Facts Label, FDA intends to exercise enforcement discretion with respect to some of the criteria for bearing the implied nutrient content claim “healthy.” In particular, we intend to exercise enforcement discretion with respect to the current requirement that any food bearing the nutrient content claim “healthy” meet the low fat requirement provided that: (1) The amounts of mono- and polyunsaturated fats are declared on the label; and (2) the amounts declared constitute the majority of the fat content.

Similarly, we intend to exercise enforcement discretion with respect to the current requirement that any food bearing the nutrient content claim “healthy” contain at least 10 percent of the DV per RACC of vitamin A, vitamin C, calcium, iron, protein, or fiber, if the food instead contains at least 10 percent of the DV per RACC of potassium or vitamin D.

We are issuing this guidance without prior public comment under 21 CFR 101.115(g)(2) because we have determined that prior public participation is not feasible or appropriate, as this guidance implements a temporary enforcement policy while we update our regulations to be consistent with the final Nutrition Facts Label rule. However, as with all Agency guidances, the public may comment on the guidance at any time.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/FoodGuidances> or <http://www.regulations.gov>. Use the FDA Web sites listed in the previous sentence to find the most current version of the guidance.

Dated: September 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-23367 Filed 9-27-16; 8:45 am]

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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:* September 28, 2016. Written comments on the Interim Final Rule must be received on or before: November 14, 2016.

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> Web site 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 CFR 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

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.