DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0012; Notice No. 217]

RIN 1513–AC82

Proposed Expansion of the Red Hills Lake County Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to expand the ''Red Hills Lake County'' viticultural area by approximately 679 acres. The Red Hills Lake County viticultural area and the proposed expansion area are both located in Lake County, California, and are located within the established Clear Lake and North Coast viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed amendment to its regulations.

DATES: TTB must receive your comments by January 27, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2022–0012 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 217. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish or expand an AVA must include the following:

- Evidence that the region within the proposed expansion area is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area affecting viticulture, including climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Red Hills Lake County AVA

TTB received a petition from Terry Dereniuk of Terry Dereniuk Consulting, submitted on behalf of local vineyard owners, proposing to expand the established Red Hills Lake County AVA. T.D. TTB–15, which published in the **Federal Register** on July 12, 2004 (69 FR 41754), established the Red Hills Lake County AVA (27 CFR 9.169). The Red Hills Lake County AVA is located in Lake County, California, and is within the established Clear Lake (27 CFR 9.99) and North Coast AVAs (27 CFR 9.30). Although the proposed expansion area is also within the established Clear Lake and North Coast AVAs, the proposed expansion would not affect the boundaries of those AVAs.

The proposed expansion area is adjacent to the western portion of the established Red Hills Lake County AVA and covers approximately 679 acres. The petition states that the proposed expansion area consists of three separately-owned parcels of land. One of the parcels, owned by Jim and Diane Fore, is currently planted with vines. The second parcel, owned by Prince Vineyard, LLC, is planned for planting in the near future. The third parcel, owned by Roland and Nell Shaul, is adjacent to the Prince Vineyard property. The Shaul parcel does not have any vineyards planted or planned for the near future but does contain a number of sites that are suitable for

viticultural activity, so the petitioner requests its inclusion in the proposed expansion area. Unless otherwise noted, all information and data pertaining to the proposed expansion area contained in this document come from the petition and its supporting exhibits.

Name Evidence

The expansion petition notes that the original petition to establish the Red Hills Lake County AVA contained the following quote: ''The proposed Red Hills [sic] AVA takes its name from a road, contained entirely within the proposed viticultural area, which runs through the heart of the area. * * * Red Hills Road was itself named for the most striking and unifying features of the area–its prevalent red soils and gently hilly terrain.'' The expansion petition goes on to state that T.D. TTB–15, which established the Red Hills Lake County AVA, describes the AVA's boundary as being based on ''a combination of geography, terrain, soil, and climate factors[.]''

According to the proposed expansion petition, the description of the Red Hills Lake County AVA boundary in T.D. TTB–15 suggests that the AVA is defined by ''this combination of features rather than an officially named geographic feature.'' The proposed expansion petition asserts that, due to the lack of a defined geographic feature known as ''Red Hills,'' adjacent regions that share the red volcanic soils and hilly terrain that are characteristic of the Red Hills Lake County AVA could also reasonably be referred to as the ''Red Hills.'' The petition states that the proposed expansion area shares the same red volcanic soils and hilly terrain of the established AVA. As a result, the petition believes that the name ''Red Hills'' is as applicable to the proposed expansion area as it is to the established Red Hills Lake County AVA.

Boundary Evidence

The established Red Hills Lake County AVA is located just south of Clear Lake, at the base of Mount Konocti. According to T.D. TTB–15, the northern boundary of the AVA excludes elevations on Mt. Konocti above 2,600 feet. The eastern boundary follows a series of ridgelines to exclude regions with different soils, including Anderson Flat and the town of Lower Lake, as well as a steep ridge. The AVA's southern boundary generally coincides with the Clear Lake AVA's southern boundary and separates both AVAs from the Mayacamas Mountains, whose elevations are generally unsuitable for commercial viticulture. The Red Hills Lake County AVA's southwestern corner skirts Boggs Lake, while the western boundary excludes Camel Back Ridge and some lower elevations south and southeast of Kelseyville.

The proposed expansion area is adjacent to Bottle Rock Road, which forms a portion of the southwestern boundary of the Red Hills Lake County AVA. The proposed boundary expansion would begin on the current boundary at the intersection of Bottle Rock Road and Harrington Road. Instead of continuing north-northwesterly along Bottle Rock Road to its intersection with Cole Creek Road, as the current boundary does, the proposed boundary expansion would proceed south along Bottle Rock Road for a short distance before proceeding west to the 2,800-foot elevation contour. The boundary would then follow the elevation contour north-northeasterly before rejoining the current AVA boundary at Bottle Rock Road. This portion of the proposed expansion area would encompass the parcel of land with the vineyard owned by Jim and Diane Fore. The proposed expansion boundary would then follow the current AVA boundary north along Bottle Rock Road to its intersection with an unnamed trail. At that point, the proposed expansion would divert from the current boundary and proceed west and north in a series of straight lines along the low, eastern slopes of Camel Back Ridge. This boundary modification would encompass the parcels of land owned by Prince Vineyard LLC and Roland and Nell Shaul. The proposed expansion boundary would then proceed east and rejoin the current AVA boundary at the point where the 2,000-foot elevation contour intersects Bottle Rock Road.

Distinguishing Features

The expansion petition states that the topography, soils, and climate of the proposed expansion area are similar to those of the established Red Hills Lake County AVA.

Topography

The original petition to establish the Red Hills Lake County AVA described the topography as ''an area of gently sloping, rolling terrain, contained entirely within the Clear Lake volcanic field.'' The original petition noted that within the Red Hills Lake County AVA, slopes range from 0 to greater than 30 percent, but that ''[n]o one group clearly predominates.'' When describing the region west of Bottle Rock Road, which is the location of the proposed expansion area, the original petition stated, ''almost all of the terrain shown has slopes of 15% and above.''

The expansion petition includes a section of a map of the Clear Lake volcanic field (Figure 1).[1] The image shows not only that the region of the proposed expansion area is within the Clear Lake volcanic field but also that it shares the same underlying geology as the established Red Hills Lake County AVA.

The expansion petition also includes an image of a slope and terrain map of the proposed expansion area and the adjacent portion of the Red Hills Lake County AVA (Figure 2).[2] The expansion petition notes that, while the original AVA petition was correct that a large part of the region to the west of Bottle Rock Road does contain steep slopes, it also contains areas with gentler slopes. Figure 2 indicates that the proposed expansion area contains regions with slopes from 0 to 20 percent, as well as slopes from 20 to over 30 percent. Additionally, the expansion petition includes a wider view of the slope and terrain map (Figure 6). Both figures show that the slope angles of the proposed expansion area are similar to those within the Red Hills Lake County AVA, as described in T.D. TTB–15.

Finally, the expansion petition includes an image of the slope and terrain of the Benson Ridge region of Lake County (Figure 7), which was not within the original Red Hills Lake County AVA boundary. The expansion petition notes that during the public comment period for Notice No. 961, which proposed the Red Hills Lake County AVA, a vineyard owner provided evidence to include the Benson Ridge region in the AVA. TTB determined that the evidence supported the region's inclusion and modified the final Red Hills Lake County AVA boundary in T.D. TTB–15. The expansion petition notes that the topography of the proposed expansion area is similar to that of the Benson Ridge region, which has regions with slope angles ranging from 0 to 10 percent, as well as regions with slope angles over 30 percent.

Soils

The original Red Hills Lake County petition stated that the AVA ''encompasses the largest contiguous body of red volcanic soils in Lake County.'' The major soil groups within the AVA are Glenview–Bottlerock–Arrowhead, Konocti–Benridge, and

[1] All figures of the petition are included in Docket TTB–2022–0012 at *https://www.regulations.gov.* You may view a digital version of the same map in Figure 1 at *https://pubs.usgs.gov/imap/2362/i2362_sheet1.pdf.*

[2] You may view a digital version of the same map in Figure 2 at *gispublic.co.lake.ca.us/portal/home.*

Collayomi–Aiken–Whispering. The original petition described these soils as containing ''a high content of rock fragments or gravel in their structure.'' The original petition excluded the region west of Bottle Rock Road from the AVA because the soils ''developed from parent materials of the Franciscan assemblage, which result in poorly drained and often steep soil conditions.'' The original petition also noted that soils west of the AVA contain high levels of serpentine, which offers ''poor soil quality and nutrition.''

The proposed boundary expansion petition states that, while the original petition's description of the soils west of Bottle Rock Road is generally true, the original petition's use of a man-made feature to define the boundary resulted in the omission of acreage that had similar soil characteristics to the Red Hills Lake County AVA. The expansion petition claims that 90 percent of the acreage within the proposed expansion area contains soils of the same soil units described in the original petition and which are of volcanic origin. According to Figure 12 of the expansion petition, the most prominent soil unit in the proposed expansion area is the Glenview–Bottlerock–Arrowhead unit, which comprises approximately 401 acres of the 679-acre proposed expansion area. The Konocti–Benridge, Collayomi, and Collayomi–Aiken–Whispering soil series cover an additional 211 acres of the proposed expansion area. The expansion petition includes an image of a soil map of the proposed expansion area and the adjacent region within the Red Hills Lake County AVA (Figure 13) which shows that, while serpentine soils are found west of Bottle Rock Road as the original petition stated, they are not found within the proposed expansion area.

Finally, the expansion petition includes several photographs of the soils within the proposed expansion area (Figures 8–10) showing pebbles, gravel, and cobbles within the soil, including large quantities of obsidian, a naturally-occurring volcanic glass. The photographs suggest that the proposed expansion area's soils have a rocky, gravelly nature similar to the soils of the Red Hills Lake County AVA.

Climate

According to the brief description of the Red Hills Lake County AVA's climate provided in T.D. TTB–15, the AVA has a climate that is more influenced by Clear Lake than by the Pacific Ocean. The temperature contrasts between the lake and the land create winds that are credited for reducing the risk of frost within the AVA. T.D. TTB–15 states that, by contrast, ''other Lake County viticultural areas require frost protection measures.''

The proposed expansion petition explains that, today, some growers within the Red Hills Lake County AVA have frost protection measures in place, although those may not be needed every year. For example, the expansion petition states that vineyard owner Gregory Graham, whose vineyards are in the lower elevations of the northeastern portion of the AVA, has frost curtains and a movable wind machine. The Fore's vineyard, within the proposed expansion area, also has two wind machines as well as vineyard heaters, but only uses them ''about 2 out of every 5 years.'' By contrast, the expansion petition states that vineyards within the Big Valley District–Lake County AVA (27 CFR 9.232), which is to the northwest of both the Red Hills Lake County AVA and the proposed expansion area, require frost protection every year. TTB notes that Notice No. 134, which proposed the Big Valley District–Lake County AVA, described the low number of frost-free days as a distinguishing feature of the AVA.

The proposed expansion petition also compares the harvest dates within the proposed expansion area to those within the Red Hills Lake County AVA. T.D. TTB–115 did not consider harvest dates as a distinguishing feature of the AVA; however the expansion petition notes that several articles submitted during the public comment period for Notice No. 961 discuss harvest dates as an example of how the climate of the AVA affects viticulture. For example, one article quotes a vineyard manager for Kendall-Jackson as saying they never harvest their Red Hills Lake County AVA vineyards before the first of October.[3] Another article states that within the Red Hills Lake County AVA, ''[g]rowers there don't usually begin harvest before October.''[4]

The expansion petition states that cabernet sauvignon has become the ''signature'' winegrape for the Red Hills Lake County AVA, which it also notes is grown within the proposed expansion area. The expansion petition provides harvest dates from 2005–2018 for this grape varietal grown within the proposed expansion area. During that timeframe, harvest dates within the proposed expansion area occurred before October 1 only three times, suggesting a similar climate to that described for the Red Hills Lake County AVA.

Finally, T.D. TTB–15 also stated that rainfall amounts within the Red Hills Lake County AVA average between 25 and 40 inches a year. The expansion petition documents rainfall amounts from a weather station in the proposed expansion area. However, because the petitioner collected that data for less than a year, TTB is unable to determine if the rainfall amounts within the proposed expansion area are similar to those of the Red Hills Lake County AVA.

TTB Determination

TTB concludes that the petition to expand the boundaries of the established Red Hills Lake County AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for expansion area in the proposed regulatory text published at the end of this proposed rule.

Maps

The proposed boundary change to the Red Hills Lake County AVA would affect the portion of the current AVA boundary shown on the 1:24,000 scale Kelseyville quadrangle map in the list of maps in the regulatory text of 27 CFR 9.169. The petitioner included a copy of this map in the expansion petition. You also may view a map of the proposed expansion of the Red Hills Lake County AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of

[3] Ferguson, Scott. ''Lake County Bears Fruit: California's Lesser-Known North Coast County Gets Respect.'' *Wine Business Monthly.* May 2000, Vol. VII, No. 5. This article was included in Comment 12 to Notice No. 961, which you may view in TTB's online AVA Reading Room at *https://www.ttb.gov/images/pdfs/Red_Hills_Lake_County_comments.pdf.*

[4] Ferguson, Scott. ''More vineyards, four new wineries slated for Lake County.'' *St. Helena Star,* July 5, 2001. This article was also included in Comment 12 to Notice No. 961.

a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The approval of the proposed expansion of the Red Hills Lake County AVA would not affect any other existing viticultural area. The proposed expansion of the Red Hills Lake County AVA would allow vintners to use ''Red Hills Lake County,'' ''Clear Lake,'' and ''North Coast'' as appellations of origin for wines made primarily from grapes grown within the proposed expansion area if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should expand the Red Hills Lake County AVA as proposed. TTB is specifically interested in receiving comments on the similarity of the proposed expansion area to the established Red Hills Lake County AVA, as well as the differences between the proposed expansion area and the areas outside the established AVA. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 217 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may request a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.169 is amended by:
■ a. Revising paragraph (c)(14);
■ b. Redesignating paragraphs (c)(15) through (22) as paragraphs (c)(31) through (38); and
■ c. Adding new paragraphs (c)(15) through (22) and paragraphs (c)(23) through (30).

The revision and additions read as follows:

§ 9.169 Red Hills Lake County.

* * * * *

(c) * * *

(14) Proceed about 0.4 mile northwesterly along Harrington Flat Road to its intersection with Bottle Rock Road in section 18, T21N, R8W; then

(15) Proceed southerly along Bottle Rock Road approximately 2,500 feet to its intersection with an unnamed, unimproved dirt road near the marked 2,928-foot elevation; then

(16) Proceed west along the unimproved dirt road to its intersection with the 2,800-foot elevation contour; then

(17) Proceed northwesterly, then northerly along the meandering 2,800-foot elevation contour to its intersection with the northern boundary of section 18, T12N, R8W; then

(18) Proceed easterly along the northern boundary of section 18 to its intersection with Bottle Rock Road; then

(19) Proceed north along Bottle Rock Road to its intersection with an unnamed trail in section 7, T12N, R8W; then

(20) Proceed west in a straight line to the western boundary of section 7, T12N, R8W; then

(21) Proceed north along the western boundary of section 7 to the southeastern corner of section 1, T12N, R9W; then

(22) Proceed west along the southern boundary of section 1 to its intersection with the 2,600-foor elevation contour; then

(23) Proceed north in a straight line to the intersection with an unnamed, unimproved dirt road known locally as Helen Road; then

(24) Proceed west in a straight line to the fourth intersection with the 2,560-foot elevation contour in section 1, T12N, R9W; then

(25) Proceed south in a straight line to the southern boundary of section 1; then

(26) Proceed west along the southern boundary of section 1 to its intersection with the western boundary of section 1; then

(27) Proceed north along the western boundary of section 1 to its intersection with the northern boundary of section 1; then

(28) Proceed east along the northern boundary of section 1 to its intersection with the 2,000-foot elevation contour; then

(29) Proceed southeasterly along the 2,000-foot elevation contour to its intersection with Bottle Rock Road; then

(30) Proceed northwesterly along Bottle Rock Road to its intersection with Cole Creek Road to the west and an

unnamed, unimproved road to the east in section 25, T13N, R9W; then

* * * * *

Signed: November 15, 2022.

Mary G. Ryan,

Administrator.

Approved: November 16, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–25270 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0294; FRL–10440–01–R4]

Disapproval of Air Quality Implementation Plans; Georgia; Proposed Revisions to Georgia's Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on November 17, 2016. The revision was submitted by Georgia in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for a provision in the Georgia SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing to disapprove the SIP revision and to determine that the SIP revision fails to correct the deficiencies identified in the June 12, 2015, SIP call in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R4–OAR–2022–0294 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached by telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 22, 2013, EPA published in the **Federal Register** a notice of proposed rulemaking that outlined EPA's policy at the time with respect to SIP provisions related to periods of SSM.[1] In that notice, EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events. For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decision[2] that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereinafter referred to as the ''2015 SSM SIP Action.'' *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

Georgia submitted a SIP revision to EPA on November 17, 2016, in response to the SIP call issued in the 2015 SSM SIP Action. In its submission, the State is requesting that EPA approve two new paragraphs into Ga. Comp. R. & Regs. (hereinafter Rule) 391–3–1–.02(2)(a) of the Georgia SIP that would allow sources to comply with certain work practice standards as alternative emission limitations (AELs) during periods of SSM and would describe requirements for minimizing excess emissions during periods of SSM.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[3] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Georgia in 2015. The 2020 Memorandum did, however, indicate

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[3] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.