

the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case"). The ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (quoting *United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA,<sup>2</sup> Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); see also *U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required

to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. See also *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

## VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: June 10, 2019

Respectfully submitted,

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On June 20, 2019, the Department of Justice lodged for public comment a proposed Seventh Amendment to a 2008 Consent Decree under the Clean Air Act, 42 U.S.C. 7401, *et seq.* with

Sinclair Wyoming Refining Company (SWRC or Refinery), located in Sinclair, Wyoming. Plaintiff United States and Plaintiff-Intervenor State of Wyoming allege that SWRC violated New Source Performance Standards emission limits for H<sub>2</sub>S, and in some instances SO<sub>2</sub>, in 40 CFR part 60, subparts J and Ja at its North and South Flares and at its three Tail Gas Treatment Units, which were subject to the 2008 Consent Decree. Plaintiffs further allege that SWRC failed to properly operate its monitoring devices at those units.

In the proposed Seventh Amendment, SWRC accepts the applicability of emissions standards put into place after 2008; agrees to maintain adequate capacity to control routine gases in the Flare Gas Recovery System (installed under the 2008 Consent Decree and subsequent amendments); agrees to improve its operation and maintenance of its continuous emissions monitoring systems; and agrees to pay a civil penalty of \$1.6 million. It also agrees to enhanced stipulated penalties. The State of Wyoming joins the United States as a co-plaintiff in this matter.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al. v. Holly Refining and Marketing-Tulsa, LLC, et al.*, DOJ # 90-5-2-1-07793/1. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$ 7.55 (25 cents per page reproduction cost) payable to the United

<sup>2</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

States Treasury. For a paper copy without the exhibits, the cost is \$ 3.00.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**BILLING CODE 4410-15-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; H-1B Technical Skills Training and Jobs and Innovation Accelerator Challenge Grants**

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training (ETA) sponsored information collection request (ICR) titled, "H-1B Technical Skills Training and Jobs and Innovation Accelerator Challenge Grants," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 26, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201905-1205-003](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201905-1205-003). (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, OWCP Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S.

Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Frederick Licari by telephone at 202-693-8073, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the H-1B Technical Skills Training and Jobs and Innovation Accelerator Challenge Grants information collection.

In applying for the H-1B TST, JAIC, and RTW grant programs, grantees agreed to submit participant-level data quarterly for individuals who receive services through these programs. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, grantees summarize data on employment and training services, placement services, and other services essential to successful unsubsidized employment through H-1B programs. This reporting structure features standardized data collection on program participants and quarterly narrative, performance, and Management Information System report formats. All data collection and reporting will be done by grantee organizations (state or local government, not-for-profit, or faith-based and community organizations) or their sub-grantees 29 U.S.C. 414c authorizes this information collection. See 29 U.S.C. 3224a (7).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0507.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on 6/30/2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years,

without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on 12/28/2018 (83 FR 67356).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0507. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-ETA.

*Title of Collection:* H-1B Technical Skills Training and Jobs and Innovation Accelerator Challenge Grants.

*OMB Control Number:* 1205-0507.

*Affected Public:* Private Sector, Not-for-profit institutions.

*Total Estimated Number of Respondents:* 14,814.

*Total Estimated Number of Responses:* 14,958.

*Total Estimated Annual Time Burden:* 21,550 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: June 19, 2019.

**Frederick Licari,**  
*Departmental Clearance Officer.*

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