

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *United States v. Microsoft Corp.*, 56 F.3d 1448, 1457-62 (D.C. Cir. 1995).

In conducting this inquiry, "the 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."³ Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1997 WL 4352 at *8, 1997-1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1997).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert denied, 454 U.S. 1083 (1981); see also *Microsoft Corp.*, 56 F.3d at 1458, Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate

requirements might undermine the effectiveness of antitrust enforcement by consent decree.⁴

The Proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)." *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 151, (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

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 the 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. Because "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing the 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 might have but did not pursue. *Id.* at 1459-60. This is particularly true where, as here, the court's review of the decree is informed not merely by the allegations contained in the Complaint, but also by the extensive factual and legal record resulting from the district and appellate court proceedings.

IX. Determinative Material/Documents

No materials and documents of the type described in the section 2(b) of the APPA were considered in formulating the Proposed Final Judgment. Consequently, none are being filed with this Competitive Impact Statement.

Dated: November 15, 2001.

Respectfully submitted,

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219-8904 or Email Howze-Marlene@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Payment of Compensation Without Award.

OMB Number: 1215-0022.

Affected Public: Business of other for-profit.

Frequency: On Occasion.
Number of Respondents: 900.
Number of Annual Responses: 26,100.
Estimated Time Per Response: 15 minutes.

Total Burden Hours: 6,525.
Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 10,224.25.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The OWCP district offices use the information provided on Form LS-206 to determine the payment status of a given case. If the information were not collected the OWCP would have no way of determining whether compensation payments had been made by liable insurance carriers and self-insured employers.

Type of Review: Revision of currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Black Lung Provider Enrollment Form.

OMB Number: 1215-0137.

Affected Public: Business or other for-profit.

Frequency: On Occasion.
Number of Respondents: 9,000.
Number of Annual Responses: 9,000.
Estimated Time Per Response: 8 minutes (new enrollees) and 3 minutes (existing respondents).

Total Burden Hours: 1,017.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$3,330.

Description: The Division of Coal Mine Workers' (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of the miner's residence and for payment of certain medical bills for services and supplies provided to the miner under the Black Lung Benefits Act [30 U.S.C. 901 *et seq.*, 20 CFR 725.704(a) and 725.705(b)].

The OWCP-1168 is used to obtain profile information on each provider

such as tax identification number, specialty, and addresses. Failure to obtain this data will prolong the bill payment process and increase the burden on providers by requiring them to resubmit bills that were previously rejected by DCMWC due to inadequate provider information.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements.

OMB Number: 1215-0151.

Affected Public: Individuals or households.

Frequency: Annually.

Number of Respondents: 50,000.

Number of Annual Responses: 50,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 16,667.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$18,500.

Description: The information request on the CA-1032 is obtained from claimants receiving continuing compensation on the periodic disability roll. The form requests information on the claimant's earnings, dependents, third party settlements, and other Federal benefits received. The information collected on this form is used to ensure that compensation being paid on the periodic roll is correct and to ensure that compensation payments meet the terms and conditions set forth in the Federal Employees' Compensation Act. Without this information, claimants might receive compensation to which they were not entitled, resulting in an overpayment of compensation.

Ira L. Mills,

Departmental Clearance Officer.

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DEPARTMENT OF LABOR

Office of the Secretary

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Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

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- * 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.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Census of Fatal Occupational Injuries.

OMB Number: 1220-0133.

Affected Public: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms and Federal Government.

Number of Respondents: 2,665.

Number of Annual Responses: 27,500.

Estimated Time Per Response and Total Burden Hours:

Form	Total respondents	Frequency	Average time per response (min.)	Estimated total burden (hours)
BLS CFOI-1	2,500	Once	20	833