settlement through the consent decree process.'' [2] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanation 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.[3]

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, 462–63 (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,* 56 F.3d at 1458. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be let, 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 Judgments, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitve effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standards 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.' '' [5]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges 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. Since the ''court's authority to review the decree depends entirely on the Government's exercising its procsecutorial 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 might have but did not purse. *Id.*

VIII. Determinative Material/ Documents

No materials and documents of the type described in the Section 5(b) of the Clayton Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgments. Consequently, none are being filed with this Competitive Impact Statement.

Dated: September 19, 2002.

Respectfully submitted,

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Certificate of Service

I certify that on September 19, 2002, a true and correct copy of the United States' Competitive Impact Statement, related to the proposed Final Judgments in this matter against Defendants and agreed to by Defendants pursuant to the Stipulations And Orders filed with the Court, was served on the following counsel:

Counsel for Wind River Systems, Inc.: Richard L. Rosen, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206. Fax: 202/942–5999.

By: hand delivery.

Counsel for The MathWorks, Inc.: Thane D. Scott, Palmer & Dodge, LLP, 111 Huntington Avenue, Boston, Massachusetts 02199–7163. Fax: 617/227–4420.

By: fax and Federal Express.

J. Mark Gidley, White & Case, LLP, 601 Thirteenth Street, NW., Washington, DC 20005–3807. Fax: 202/639–9355.

By: hand delivery.

David E. Blake-Thomas.

[FR Doc. 02–26631 Filed 10–18–02; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration, Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002, (67 FR 20827), Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for sale to their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., Section 823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above

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[2] 119 Congressional Record 24,598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 173, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), 1974 U.S.C.C.A.N. 6535, 6538.

[3] *United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508 at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt, Inc.,* 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[4] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir,. 1983), *cert denied,* 465 U.S. 1101 (1984).

[5] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151, (D.D.C. 1982) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.* 454 F. Supp. 1215, 1222, (N.D.N.Y. 1978).

firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–26681 Filed 10–18–02; 8:45 am]

BILLING CODE 4410–09–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act; Meeting

TIME AND DATE: 9 a.m. to 12 p.m., Monday, November 18, 2002.

PLACE: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 110 South Church Avenue, Suite 3350, Tucson AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) a report from the Udall Center for Studies in Public Policy; (3) a report on the Native Nations Institute; (4) program reports; (5) a report on the Udall Archives; and (6) a report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, Executive Director, 110 South Church Avenue, Suite 3350, Tucson, AZ 85701, (520) 670–5529.

Dated: October 16, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 02–26788 Filed 10–17–02; 10:05 am]

BILLING CODE 6820–FN–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346, License No. NPF–3]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated April 24, 2002, filed by David Lochbaum on behalf of multiple organizations, hereinafter referred to as the ''Petitioners.'' The Petition was supplemented on May 9, 2002. The Petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1, operated by FirstEnergy Nuclear Operating Company.

The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) issue an Order to FirstEnergy Nuclear Operating Company (the licensee), requiring a verification by an independent party (VIP) for issues related to the reactor pressure vessel (RPV) head problem at Davis-Besse, Unit 1, and that the VIP be tasked with the following:

1. Verifying the adequacy of the problem identification and resolution (PIR) process.
2. Verifying the root cause evaluation prepared by the licensee for the damage to the RPV head.
3. Verifying that the long-term accumulation of boric acid within the reactor containment did not impair the function of safety-related systems, structures, and components (SSCs).
4. Verifying that the licensee has taken appropriate actions in response to NRC generic communications.
5. Verifying that the licensee has not deferred other plant modifications without appropriate justification.
6. Verifying that all entities responsible for safety reviews (e.g., Quality Assurance, INPO, the nuclear insurer, the plant operating review committee, the offsite safety review committee, etc.) are properly in the loop and functioning adequately.
7. Documenting its work in a publicly available report.
8. Presenting its conclusions to the NRC in a public meeting conducted near the plant site.

In support of their request, the Petitioners cite the Order issued by the NRC on August 14, 1996, to Northeast Nuclear Energy Company, the owner of the Millstone Nuclear Power Station in Connecticut, as a recent and relevant precedent for the action they requested. The Petitioners consider that restarting the Davis-Besse plant before an independent team of experts has examined the safety issues related to the RPV head problem would be potentially unsafe and in violation of Federal regulations.

The Petition of April 24, 2002, raises concerns originating in the licensee's identification of extensive degradation to the pressure boundary material of the RPV head on March 6, 2002. The VIP requested by the Petitioners would provide an independent program to verify the adequacy of plant owner performance and to reassure the public that all reasonable safety measures have been taken prior to plant restart.

On May 9, 2002, the Petitioners and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on August 16, 2002. The Petitioners responded with comments on August 29, 2002, and the licensee responded on August 30, 2002. The comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has denied the request to issue an Order. The reasons for this decision are explained in Director's Decision DD–02–01 pursuant to 10 CFR 2.206, the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville, Maryland, and on the NRC's Web site *http://www.nrc.gov/reading-rm/adams.html* (the Electronic Reading Room), via the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML022620366.

The NRC staff finds that its ongoing actions are sufficient to verify the adequacy of the licensee's performance related to RPV head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart. The establishment of the Augmented Inspection Team and the Inspection Manual Chapter (IMC) 0350 Oversight Panel, as well as the comprehensive technical reviews being performed by the staff and investigations being performed by the NRC's Office of Investigations, are responsive to the degradation problem at Davis-Besse. The staff has adequate expertise and resources to monitor the licensee's corrective and preventative actions.