

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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. *See Microsoft*, 56 F.3d at 1458–62. 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) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).³ In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government's predictions as to the effect of the proposed remedies”);

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).

³ *Cf. BNS*, 858 F.2d at 464 (holding that the court's “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing 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’”).

United States v. Archer-Daniels-Midland Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[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.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). 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. 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. *Id.* at 1459–60. As this Court recently confirmed in *SBC*

Communications, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, 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). The language wrote into the statute what Congress intended when it 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 Senator 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 11.⁴

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.

Dated: July 3, 2008.

Respectfully submitted,

_____/s/_____
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DEPARTMENT OF LABOR

Information Collection Request for Extension (Without Changes) of the Prisoner Reentry Initiative Reporting System; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

⁴ *See 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”); *United States v. Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (“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 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.”); 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.”).

paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the extension of the currently approved reporting and recordkeeping system to support the Prisoner Reentry Initiative (PRI).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.doleta.gov/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 15, 2008.

ADDRESSES: Submit written comments to the Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Gregg Wertz, Telephone number: 202-693-3030 (this is not a toll-free number). Fax: 202-693-3861. E-mail: wertz.greg@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the Prisoner Reentry Initiative grants, Faith-based and Community Organization grantees agree to submit participant data and quarterly aggregate reports for individuals who receive services through PRI programs and their partnerships with One-Stop Centers, local Workforce Investment Boards, employment providers, the criminal justice system, and local housing authorities. The reports include aggregate data on demographic

characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and placement services, housing assistance, mentoring, and other services essential to reintegrating ex-offenders through PRI programs.

This requests an extension of the currently approved information collection to meet the reporting and recordkeeping requirements of the Prisoner Reentry Initiative through an ETA-provided, web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, PRI grantees demonstrate their ability to establish effective partnerships with the criminal justice system, local Workforce Investment Boards, local housing authorities, and other partner agencies. They also document the cost effectiveness of their projects. The MIS reporting and recordkeeping system incorporates each of these aspects necessary for program evaluation.

Five outcome measures are used to measure success in the PRI grants: Entered employment rate, employment retention rate, attainment of a degree or certificate, average six-month postprogram earnings, and recidivism rate. Several of these conform to the common performance measures implemented across federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stayed employed; and how many successfully completed an educational program. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA also collects data from PRI grantees on program activities, participants, and outcomes that are necessary for program management and for conveying full and

accurate information on the performance of PRI programs to policymakers and stakeholders.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold PRI grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

Type of Review: Extension without revisions of a currently approved information collection.

Agency: Employment and Training Administration.

Title: Prisoner Reentry Initiative (PRI) Reporting System.

OMB Number: 1205-0455.

Affected Public: Faith-Based and Community Organization grantees.

Total Respondents: 74 grantees.

Frequency: Quarterly.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours
Participant Data Collection	74	Continual	6,610	1.8	11,898
Quarterly narrative progress report	74	Quarterly	296	16	4,736
Quarterly performance report	74	Quarterly	296	16	4,736
Totals	74	7,202	21,370

Comments submitted in response to this comment request will be summarized in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: July 10, 2008.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E8-16318 Filed 7-16-08; 8:45 am]

BILLING CODE 4510-FT-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 11, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) 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 this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/*e-mail*: king.darrin@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn*: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202-395-4816/Fax: 202-395-6974 (these are not toll-free numbers), *E-mail*: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

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.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Permissible Equipment Testing.

OMB Control Number: 1219-0066.

Form Number: MSHA 2000-38.

Estimated Number of Respondents: 262.

Estimated Total Annual Burden Hours: 4,302.

Estimated Total Annual Cost Burden: \$1,671,381.

Affected Public: Business or other for profits (Mines).

Description: This OMB Control Number pertains to the information collection requirements associated with the procedures by which manufacturers may apply for, and have equipment approved as permissible for use in mines. For additional information, see related notice published on April 21, 2008 at 73 FR 21377.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8-16323 Filed 7-16-08; 8:45 am]

BILLING CODE 4510-43-P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS:

Mississippi River Commission.

TIME AND DATE: 9 a.m., August 11, 2008.

PLACE: On board MISSISSIPPI V at Levee Park, Red Wing, MN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul

District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 13, 2008.

PLACE: On board MISSISSIPPI V at Oneida Landing, Davenport, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 1:30 p.m., August 14, 2008.

PLACE: On board MISSISSIPPI V at City Front, Hannibal, MO.

STATUS: Open to the public for observation but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the Upper Mississippi Illinois River Comprehensive Plan.

TIME AND DATE: 9 a.m., August 15, 2008.

PLACE: On board MISSISSIPPI V at Melvin Price Lock & Dam, Alton, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District and; (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 18, 2008.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District