

VII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(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 consideration bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific inquiry 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 recently 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. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go on 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."¹ 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 explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

¹ 119 Cong. Rec. 24598 (1973). See also *United States v. Gillette Co.*, 406 F. Supp. 713, 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 APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. 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. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas 61,508, at 71,980 (W.D. Mo. 1977)

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*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

[t]he balancing of competing social and political interest 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.²

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 certainly 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 its 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.'"³ (citations omitted).³

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.

For Plaintiff United States of America:

Date: June 18, 1998.

² *United States v. Bethtel*, 648 F.2d at 666 (internal 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); *Gillette*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

³ *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom, *Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Respectfully submitted,
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Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner and on the date set forth below:

By the first class mail, postage prepaid:

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Dated: June 18, 1998.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for Individual Manufacturing Quota for Basic Class of Controlled Substance; Extension of a Currently Approved Collection.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 7, 1998 in volume 63, page 17017, allowed for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public

comment until July 31, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department of Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. 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.
2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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.

Overview of the information collection:

1. *Type of Information Collection:* Extension of currently approved collection.
2. *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance.
3. *Agency form number:* DEA Form 189, if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Business or other for-profit.

Title 21, Section 1303.22 of the Code of Federal Regulations requires that any person who is registered to manufacture any basic class of controlled substance listed in Schedule I or II and who desires to manufacture a quantity of such class shall apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

5. *An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond:* 27 respondents at approximately 10 responses per year at .5 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 135 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: June 24, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

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DEPARTMENT OF LABOR

Office of the Secretary

Job Training Partnership Act (JTPA), Title IV-D, Demonstration Program: Women in Apprenticeship and Nontraditional Occupations

AGENCY: Women's Bureau, Department of Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA 98-04).

SUMMARY: All information required to submit a proposal is contained in this announcement. Applicants for grant funds should read this notice in its entirety and respond as directed. Grant proposals that are not completed as directed will be judged nonresponsive and will not be evaluated.

The Women's Bureau (WB), U.S. Department of Labor (DOL) announces the fifth (5) year of the Solicitation for Grant Applications (SGAs) first authorized by the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act under its grant provision to Community-Based Organizations (CBOs) to deliver Technical Assistance (TA) to private

sector Employers and Labor Unions (E/LUs) to prepare them to increase the recruiting, training, promotion, and retention of women in apprenticeship and nontraditional occupations (A/NTOs) in their workplaces. WANTO is a competitive grant program funded through the Job Training Partnership Act (JTPA) Title IV-D. While the Women's Bureau has responsibility for implementing the competitive grant process, the WANTO Act is jointly administered by the Department of Labor's Bureau of Apprenticeship and Training (BAT)/Employment and Training Administration (ETA) and the Women's Bureau (WB).

The Department expects to make up to eight (8) WANTO awards to experienced, private nonprofit CBOs from the funds allocated for FY 1998. With the fifth year of WANTO grants, the Department will give priority consideration to proposals for technical assistance that leverage WANTO funds in Federally designated Empowerment Zones (EZ) and Enterprise Communities (EC) in both rural and urban areas. (See Appendix A for a listing of Urban EZ/EC cities and Appendix B for a listing of Rural EZ/EC areas and contacts.) The Department expects WANTO funded CBOs to assist employers and labor unions to make commitments to increase the participation of EZ/EC area women who are returning to work after welfare and related long-term work disruptions. The DOL is particularly concerned with obtaining the commitment of employers and labor unions who have jobs/careers in information technology, manufacturing, and *apprenticeship* in skilled construction building trades. Employers and labor unions will be encouraged to assist returning women to enter and remain in apprenticeship training and other nontraditional employment in these industries by (1) providing them with information on the realities of work and the company's promotion and employee development practices, (2) creating a firm-specific individual development plan, (3) providing for firm-specific skill/job development to promote job advancement, and (4) providing for support services utilizing both firm and community resource networks. CBOs should note well that WANTO training is for employer or labor union firm/company-specific (demand) and is not to increase the general store (supply) of trained workers in apprenticeship and nontraditional occupations. Finally, each proposal MUST include a specific defined internal program evaluation design.

In this time of economic prosperity and skill shortage, it is clear that CBOs'