

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, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "[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.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 responses to comments in order to determine whether those explanations are reasonable under the circumstances.

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 at 1460-62. 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.²

¹ 119 Cong. Rec. 24598 (1973). See *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. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

² *United States v. Bechtel*, 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,

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)." ³

VII

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: September 5, 1997.

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 set forth below:

By first class mail, postage prepaid:

W. Todd Miller, Esquire, Baker & Miller
PLLC, Suite 615, 700 Eleventh Street,
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1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716; see also *Microsoft*, 56 F.3d at 1461 (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.'" (citations omitted).

³ *United States v. American Tel. and 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 *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Key. 1985).

Dated: September 5, 1997.

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BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Meeting

AGENCY: National Aeronautics and
Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement, industry, and the public.

DATES: November 12, 1997, from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Florida Solar Energy Center Auditorium located at 1679 Clearlake Road, Cocoa, Florida.

FOR FURTHER INFORMATION CONTACT:
Joy Colston, NASA Kennedy Space
Center, Code OP, Kennedy Space
Center, FL 32899, (407) 867-7212.

SUPPLEMENTARY INFORMATION:

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance

Doors will open at 1:30 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 120 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its

ongoing Procurement Initiatives, some of which include the following:

Consolidated Contracting Initiative

The CCI initiative emphasizes developing, using, and sharing contract resources to meet Agency objectives.

Single Process Initiative/Block Changes

The purpose of the Single Process Initiative/Block changes is to eliminate duplicative, highly-tailored or customer-unique requirements from contracts and adopt instead, a single process proposed by the contractor.

Contractor Performance Assessment Program

The Contractor Performance Assessment Program assesses the overall performance of NASA's top contractors across all of their major NASA contracts.

Performance Based Contracting

This initiative is focused on structuring an acquisition around the purpose of the work to be performed instead of how the work is to be performed or broad and imprecise statements of work.

Electronic Contracting

NASA's EC initiative is moving procurement transactions from traditional paper-based systems to electronic processing whenever possible. These transactions include solicitation and award documents as well as payment for our goods and services.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

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BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: September 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 627, Washington, DC 20506, (202) 682-5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, USC, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Ana M. Steele, Deputy Chairman for Management and Budget
Laurence M. Baden, Director of Administration
Scott Shanklin Peterson, Deputy Chairman for Grants and Partnership
Alfred B. Spellman, Jr., Director of Office of Guidelines and Panel Operations

Maxine C. Jefferson,

Director of Human Resources, National Endowment for the Arts.

[FR Doc. 97-25062 Filed 9-19-97; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[IA 97-070]

In the Matter of Magdy Elamir, Newark, New Jersey; Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Magdy Elamir, M.D. (Dr. Elamir), is the Owner/President of Newark Medical Associates, P.A. (licensee). The licensee holds Byproduct Nuclear Material License No. 29-30282-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

During a new license inspection conducted on January 29, 1997, at the licensee's facility, several apparent violations of NRC requirements were identified. Subsequent to the inspection, the NRC initiated an investigation

which led the NRC to issue to Dr. Elamir, on July 31, 1997, an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 FR 43360). That Order was issued pending completion of the NRC staff review of the results of the investigation, which was conducted by the NRC's Office of Investigations (OI). The NRC staff's review of the results of the OI investigation is now complete.

III

The OI investigation focused, in part, on Dr. Elamir's actions in causing the licensee to be in violation of NRC requirements. The NRC learned during the investigation that Dr. Elamir transmitted an inaccurate license application (NRC Form 313, dated February 21, 1996) to the NRC. The license application named Newark Medical Associates as the prospective licensee. The license application was inaccurate in that it named Gerard W. Moskowitz, M.D. (Dr. Moskowitz), as the only authorized user and Radiation Safety Officer (RSO) without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz's ever having been affiliated or associated with the licensee. Dr. Moskowitz did not ever perform the role of authorized user or RSO at the licensee's facility, and did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued. These inaccurate statements in the license application submitted by Dr. Elamir, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996.

On October 17, 1996, Dr. Elamir notified the NRC by letter that Newark Medical Associates was initiating activities authorized by the license; and during the period from November 1996 through February 6, 1997, Dr. Elamir, in his capacity as president and owner of Newark Medical Associates, caused and permitted the licensee to conduct NRC-licensed activities even though he knew that the licensee did not employ the authorized user or the RSO named in the license application and, subsequently, on the NRC license, and that the named individual did not serve in these capacities. Based on the results of the OI investigation, the NRC has determined that Dr. Elamir's actions constitute violations of the Commission's requirements as follows:

A. 10 CFR 30.10(a)(2) requires, in part, that any licensee or employee of a licensee may not deliberately submit to