

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 the United States District Court for the District of Columbia 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.⁽⁵⁾

VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: October 13, 2008.

Respectfully submitted,

/s/

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Footnotes

1. During the past two years, the FCC has auctioned off additional spectrum that can be used to support mobile wireless telecommunications services, including Advanced Wireless Spectrum (1710–1755 MHz and 2110–2155 MHz bands) and 700 MHz band spectrum. However, it will be

several years before mobile wireless telecommunications services utilizing this spectrum are widely deployed, especially in rural areas.

2. The existence of local markets does not preclude the possibility of competitive effects in a broader geographic area, such as a regional or national area, though plaintiff United States does not allege such effects in this transaction.

3. The 2004 amendments substituted "shall" for "may" in directing relevant factors for the court to 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).

4. 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'").

5. 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.").

[FR Doc. E9–26351 Filed 11–2–09; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 28, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (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 each 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: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—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: 202–395–5806 (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: Main Fan

Operation and Inspection.

OMB Control Number: 1219–0030.

Form Number: N/A.

Estimated Number of Respondents: 6.

Estimated Total Annual Burden

Hours: 1,980.

Estimated Total Annual Cost Burden (does not include hourly wage costs): \$1,200.

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

Description: Main fans for all underground metal and nonmetal gassy mines must have pressure-recording systems. The fans are required to be examined daily while operating if persons are underground. The pressure-recording systems indicate whether the fans are in good operating condition. 30 CFR 57.22204 requires the pressure recordings to be kept one year. Information collected through the pressure recordings has been and is used by mine operators and MSHA for maintaining a constant vigilance on mine ventilation and for ensuring that unsafe conditions are identified early and corrected. Technical consultants may occasionally review such information in addressing main fan or ventilation problems. For additional information, see related notice published at Vol. 74 FR 40610 on August 12, 2009.

Agency: Mine Safety and Health Administration.

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

Title of Collection: Escape and Evacuation Plan (Pertains to Surface Coal Mines & Surface Work Areas of Underground Coal Mines).

OMB Control Number: 1219-0051.

Form Number: N/A.

Estimated Number of Respondents: 351.

Estimated Total Annual Burden Hours: 1,695.

Estimated Total Annual Cost Burden (does not include hourly wage costs): \$0.

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

Description: The Department's regulations at 30 CFR 77.1101 require operators of surface coal mines, including surface facilities, and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas in the event of a fire. The escape and evacuation plan is prepared by the mine operator and is used by mines, MSHA, and persons involved in rescue and recovery. The plan is used to instruct employees in the proper methods of exiting structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow

should a fire occur. For additional information, see related notice published at Vol. 74 FR 40611 on August 12, 2009.

Agency: Mine Safety and Health Administration.

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

Title of Collection: Records of Preshift and Onshift Inspections of Slope and Shaft Areas. (Pertains to slope and shaft sinking operations at coal mines).

OMB Control Number: 1219-0082.

Form Number: N/A.

Estimated Number of Respondents: 35.

Estimated Total Annual Burden Hours: 14,823.

Estimated Total Annual Cost Burden (does not include hourly wage costs): \$0.

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

Description: The Department's regulations at 30 CFR 77.1901 require coal mine operators to conduct inspections of slope and shaft areas of hazardous conditions, including tests for methane and oxygen deficiency, before and during each shift and before and after blasting. Records of the results of the inspections are required to be kept. The records are used by slope and shaft supervisors and employees, State mine inspectors, and Federal mine inspectors. The records show that the examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety and health of slope and shaft sinking employees. For additional information, see related notice published at Vol. 74 FR 40612 on August 12, 2009.

Darrin A. King,

Departmental Clearance Officer.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09-093)]

NASA Advisory Committee; Notice of Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of the Charter for the NASA Advisory Council.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Public Law 92-463), and after consultation with the

Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration (NASA) has determined that a renewal and amendment of the Charter for the Agency-established NASA Advisory Council is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. In connection with this renewal, a number of amendments have been made to the Charter as part of the overall restructuring of the NASA Advisory Council. The purpose of the NASA Advisory Council is to provide advice and make recommendations to the NASA Administrator on Agency programs, policies, plans, financial controls and other matters pertinent to the Agency's responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Advisory Committee Management Officer, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, 202-358-4510.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

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NUCLEAR REGULATORY COMMISSION

[NRC-2009-0474]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 8, 2009 to October 21, 2009. The last