immediately assume Ralcorp's position as the largest private label cereal producer in the United States. Moreover, General Mills' post-merger share of the RTE cereal market will be between 25 and 31 percent (depending on whether share is measured in pounds or sales dollars), well below levels suggested by the Horizontal Merger Guidelines as the minimum threshold at which the Commission might reasonably presume market power.[2] It is hard to understand under these simple facts how the majority determined that the proposed acquisition will enable General Mills unilaterally to exercise market power.

Unable to presume market power, the Commission instead relies upon a ''close substitutes'' theory of unilateral harm, notwithstanding a paucity of empirical evidence demonstrating that Ralcorp's branded Chex products are the closest substitutes to the branded cereals of General Mills. Although Chex products clearly compete with the branded General Mills RTE cereal products, consumers have a preference for variety when they choose RTE cereals and frequently choose among the many branded and private label cereals produced by RTE cereal manufacturers in the United States. Not surprisingly, Judge Wood reached this conclusion in her opinion explaining why she refused to block the acquisition of the Nabisco RTE cereal assets by Kraft General Foods in early 1993.[3] In *Kraft General Foods*, an empirical analysis of cereal purchasing patterns suggested—as it does in the present matter—that consumers have many attractive alternatives from which to choose in the event that one RTE cereal producer tries to raise prices above competitive levels. Overall, the empirical evidence does not support the Commission's claim, under either a ''close substitutes'' or a dominant firm theory, that General Mills would be able unilaterally to raise the prices of its branded RTE cereals after the acquisition.

Even if I agreed with the majority that this consent agreement rests upon an empirically sound theory of competitive harm, the proposed order would bar General Mills from enforcing an arguably procompetitive non-compete agreement that is properly limited in scope and duration. Covenants not to compete are often included in contracts for the sale of a business, and generally are enforceable when ancillary to an enforceable agreement and reasonable in geographic coverage, scope of activity, and duration. *Lektro-Vend Corp.* v. *Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981) (''The recognized benefits of reasonably enforced non-competition covenants are now beyond question.''), *cert. denied*, 455 U.S. 921 (1982); *United States* v. *Addyston Pipe & Steel Co.*, 85 F. 271, 281–82 (6th Cir. 1898), *aff'd as modified*, 175 U.S. 211 (1899).[4] Judicial inquiry into non-compete provisions generally focuses on whether the restriction is reasonably necessary to protect the legitimate business interests of the party seeking to enforce the provision. *United States* v. *Empire Gas Corp.*, 537 F.2d 296, 307 (8th Cir. 1976), *cert. denied*, 429 U.S. 1122 (1977); *Sound Ship Bldg. Corp.* v. *Bethlehem Steel Corp.*, 387 F. Supp. 252, 255 (D.N.J. 1975), *aff'd*, 533 F.2d 96 (3d Cir.), *cert. denied*, 429 U.S. 680 (1976).

The Commission has often recognized that competitive benefits can flow from a non-compete clause in the context of the sale of a business. The Commission's recent acceptance for public comment of a consent agreement in *Ciba-Geigy, Ltd., et al.*, File No. 961 0055 (consent agreement accepted for public comment, Dec. 16, 1996), is illustrative. In *Ciba-Geigy*, the Commission imposed an affirmative obligation on the newly merged entity, Novartis AG, not to compete in the United States and Canada for six years in the sale of animal flea control products.[5] As the *Ciba-Geigy* order indicates, the Commission clearly recognizes that non-compete clauses—even when long in duration and broad in scope—can serve legitimate procompetitive purposes in some circumstances by allowing an acquiring entity a brief period to re-deploy the acquired assets in a manner that increases competition in the marketplace. I am therefore puzzled why the Commission so hastily condemns a non-compete provision here that is only eighteen months in duration, limited to the manufacture and sale of private label Chex products, and arguably necessary to protect the legitimate interests of the contracting parties.[6]

Because I find that the facts do not support the Commission's theory of unilateral competitive harm in this instance, and because in any event I disagree with the Commission's decision to bar enforcement of the non-compete provision contained in the parties' acquisition agreement, I have voted to reject the consent agreement.

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BILLING CODE 6750–01–M

consisting of ''branded RTE cereal.'' Indeed, the provisions of the proposed order (which affect the disposition of assets used in the production of nonbranded cereals) make sense only in the context of an ''all RTE cereal'' product market.

[2] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 2.211, 4 Trade Reg. Rep. (CCH) ¶ 13,104, at 20573–9.

[3] *State of New York* v. *Kraft General Foods, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 70,911, at 74,039, 74,066 (S.D.N.Y. 1995).

[4] *See also Business Elecs. Corp.* v. *Sharp Elecs. Corp.*, 485 U.S. 717, 729 n.3 (''The classic 'ancillary' restraint is an agreement by the seller of a business not to compete within the market.'').

[5] *See* Paragraph VI of the proposed order in *Ciba-Geigy*.

[6] Barring enforcement of the non-compete agreement might undermine adherence by the parties to the supply agreement, an element of the acquisition agreement found acceptable by the majority.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: ''Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators,'' and ''Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators'' study protocol peer review.

Time and Date: 9 a.m.–3 p.m., February 4, 1997.

Place: NIOSH, CDC, Room L–1047A, 1095 Willowdale Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 20 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the protocols for two NIOSH studies. The first study is entitled ''Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators.'' The second study is entitled ''Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators.'' Peer review panelists will review the study protocols and provide individual advice on the conduct of the studies. Individual viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

Contact Person for Additional Information: Christopher C. Coffey, M/S 1138, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5958, fax (304) 285–6047.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers of Disease Control and Prevention (CDC).

[FR Doc. 97–965 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: ''Postural Stability and Motor Response Times During Scaffold End Frame Handling'' study protocol peer review.

Time and Date: 1–4 P.M., February 13, 1997.

Location: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the NIOSH protocol ''Postural Stability and Motor Response Times During Scaffold End Frame Handling.'' Peer review panelists will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

For Further Information Contact: Brian E. Moyer, M/S 119, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5969.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–964 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care Quarterly Unit Report

OMB No.: New collection

Description: This legislatively-mandated report collects program and participants data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participants and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents (States and Territories) will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF will provide to the respondents a sampling plan which will specify minimum sample size. It is expected to be a monthly sample of approximately 150 cases for large States with smaller samples based on population size adjustments for smaller respondents.

Respondents: States, D.C., Guam, Virgin Islands and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	54	4	20	4,320

Estimated Total Annual Burden Hours: 4,320.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 9, 1997.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 97–940 Filed 1–14–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0488]

Use of Clorsulon Drench in Goats; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data, human food safety data, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for use of a suspension containing 8.5 percent clorsulon as a drench in goats for the treatment of adult liver fluke infestation. The data, contained in Public Master File (PMF) 5440, were compiled under National Research Support Project No. 7 (NRSP–7), a national agricultural program for obtaining clearances for use of new drugs in minor animal species or in any animal species for the control of diseases that occur infrequently or in limited geographical areas.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.