

cause a sufficient number of purchasers to switch to sardine snack brands not presently marketed in the United States to make the increase unprofitable. The relevant geographic market, therefore, within the meaning of Section 7 of the Clayton Act is no larger than the United States.

#### B. Anticompetitive Effects

15. The sardine snack market is highly concentrated, and the defendants are, by far, the largest sellers of those products in the United States. Connors and Bumble Bee both sell well established sardine brands. Brand recognition is important to consumers of sardines, and the transaction has combined the two owners of the four most successful sardine snack brands in the United States (Connors' Brunswick, Beach Cliff and Port Clyde brands, and Bumble Bee). Connors accounts for an approximately 63 percent market share and Bumble Bee's share is approximately 13 percent. Together, the two firms account for more than 75 percent of United States sales of sardine snacks, and the remaining sales are widely dispersed among numerous firms with small individual market shares.

16. The acquisition of Bumble Bee by Connors would substantially increase concentration and lessen competition in the United States sardine snack market. Using a measure of concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Exhibit A, combining Connors and Bumble Bee would substantially increase the already high concentration in the market. The combination would increase the HHI from about 4200 to more than 5800, well in excess of levels that raise significant antitrust concerns.

17. The acquisition of Bumble Bee by Connors gives Connors the power profitably to increase prices unilaterally for one or more of its brands of sardine snacks, to the detriment of consumers.

#### C. Entry and Expansion

18. It is difficult to enter into the sale of sardine snacks in the United States, or to significantly expand sales of smaller brands. New entry or expansion requires years of effort and the investment of substantial sunk costs, including promotional expenditures and slotting allowances (for sales through grocery stores) to create brand awareness among consumers. Therefore, new entry or expansion would not be timely, likely or sufficient to thwart the anticompetitive effects of the acquisition.

#### V. Violation Alleged

19. The effect of Connors' acquisition of Bumble Bee may be to substantially lessen competitive and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

20. The combination will likely have the following effects, among others:

- a. Competition generally in the sale of sardine snacks in the United States would be substantially lessened;
- b. Actual and potential competition between Connors and Bumble Bee in the sale of sardine snacks in the United States would be eliminated; and
- c. Prices for sardine snacks sold in the United States likely would increase.

21. Unless restrained, the acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

#### VI. Requested Relief

Plaintiff requests:

1. That Connors' acquisition of Bumble Bee be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;
2. That Connors be ordered to divest Bumble Bee, and defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of the defendants;
3. That plaintiff be awarded its costs of this action; and
4. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

Dated: August 31, 2004.  
Respectfully submitted,  
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*Assistant Attorney General.*

J. Bruce McDonald  
*Deputy Assistant Attorney General.*

J. Robert Kramer, II, Pa. Bar #23963,  
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*Trial Attorneys, United States Department of Justice, Antitrust Division, Transportation, Energy and Agriculture Section, 325 7th Street, NW.; Suite 500, Washington, DC 20530. Telephone: (202) 307-6351. Facsimile (202) 307-2784.*

#### Exhibit A—Definition of "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2,600$ ). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Program Year (PY) 2005 Workforce Information Core Products and Services Grants Planning Guidance

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance 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)]. PRA95 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.

**DATES:** Submit comments on or before January 10, 2004.

**ADDRESSES:** Send comments to Mr. Anthony Dais, Chief, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S-4231, Washington, DC 20210, 202-693-2784 (this is not a toll-free number) or [dais.anthony@dol.gov](mailto:dais.anthony@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Olaf Bjorklund, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S-4231, Washington, DC 20210, 202-693-2870 (this is not a toll-free number) or [bjorklund.olaf@dol.gov](mailto:bjorklund.olaf@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Employment and Training Administration (ETA) published a planning guidance for PY 2004 Workforce Information Core Products and Services grants to states in Training and Employment Guidance Letter (TEGL) 1-04, on July 2, 2004. The Office of Management and Budget (OMB) has reviewed and granted a temporary approval of the Information Collection Request for TEGL 1-04 (OMB Control Number 1205-0417). The approval expires February 28, 2005. ETA is requesting that the information collection requirements specified in TEGL 1-04 be continued as a regular OMB approval for three years. This **Federal Register** notice is requesting public comments and recommendations regarding the continuance of the information collection.

The collection from each grantee includes:

(a) Submission of an annual plan narrative signed by both the Administrator of the State Workforce Agency (SWA) and the Chair of the State Workforce Investment Board (SWIB), or by the Governor if the SWA and SWIB cannot agree on grant deliverables.

(b) A documented assessment of customer satisfaction with the information products and services provided with the grant funds.

(c) Submission of an annual performance report signed by both the administrator of the SWA and chair of the SWIB, or by the Governor.

**II. Desired Focus of Comments**

*Comments should:*

- 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.

A copy of the proposed collection can be obtained by contacting the office listed above in the addressee section of this notice.

**III. Current Actions**

*Type of Review:* Continuing.

*Agency:* Employment and Training Administration.

*Title:* PY 2004 Workforce Information Core Products and Services grants.

*OMB Number:* 1205-0417.

*Affected Public:* States.

*Total Burden Cost (Capital/Startup):* \$0.

*Total Burden Cost (Operating/Maintaining):* \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: November 3, 2004.

**Gay M. Gilbert,**

*Administrator, Office of Workforce Investment.*

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**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hoist Operators Physical Fitness**

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce 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 ensure that requested data is 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.

**DATES:** Submit comments on or before January 10, 2005.

**ADDRESSES:** Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to [stoehr.melissa@dol.gov](mailto:stoehr.melissa@dol.gov). Ms. Stoehr can be reached at (202) 693-9837 (voice), or (202) 693-9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Contact the employee listed in the **ADDRESSES** section of this notice.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Title 30 CFR 56.19057 and 57.19057 require the annual examination and certification of a hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operator, in routine and emergency evacuations. Improper movement, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. While small mine operators are likely to have fewer hoists and hoist operators, Congress intended that the Mine Act be enforced at all mining operations within its jurisdiction regardless of size and that information collection and record keeping requirements be consistent with efficient and effective enforcement of the Mine Act. However, Congress did