investments in market knowledge whereas their new rivals face significant information costs. *See, e.g.*, Demsetz, *Barriers to Entry*, 72 Amer. Econ. Rev. 47, 50 (1982); Schmalensee, *On the Use of Economic Models in Antitrust: The ReaLemon Case*, 127 U. of Pa. L. Rev. 994, 1021 (1979). Thus in this case, over the last twenty years, before Procter & Gamble there were only two major entrants into General Foods' eastern sales districts, and much evidence linking their success to substantial promotional efforts. Procter & Gamble's own experience shows how successful entry turns on stimulating local consumer demand, and that such efforts are both difficult and expensive. The nation's second largest coffee producer found it neither quick nor easy to erode General Foods' dominance of the east coast and any submarkets therein.

I applaud the time-saving analytical approach taken in the opinion, with its emphasis on doing no more than is necessary to resolve the case. I regret, therefore, that having mapped out such an efficient course, the opinion then immediately strays into a wholly unnecessary discussion of the correct cost standard for predation. I will reserve my full comments on this subject until they are relevant to a Commission decision.[2] I will note briefly, however, that a majority of the Commission apparently feels that pricing above average variable cost is protected by a strong presumption of legality whereas pricing below average variable cost produces a fairly weak presumption of illegality. I believe the relative weights of the presumptions should be reversed.

I believe the opinion does not sufficiently emphasize that there is a lower threshold for competitive harm under the Robinson-Patman Act than under the Sherman Act. Although the Sherman Act and Robinson-Patman Act march together on proof of anticompetitive conduct and intent from below cost pricing, they part company when it comes to proof of injury to competition. The offense of attempted monopolization requires proof of a dangerous probability of success, while Section 2(a) of the Robinson-Patman Act requires only a showing that a price discrimination "may" substantially lessen competition. By phrasing the prohibition prophylactically, Congress intended to prevent the results of full scale anticompetitive behavior by catching price discrimination in its incipiency and preventing its growth. *FTC* v. *Morton Salt Co.*, 334 U.S. 37, 43–47 (1948). Moreover, while Section 2 of the Sherman Act requires attempted monopolization of a "part" of commerce, and therefore looks to general competitive conditions in the line of commerce affected, Section 2(a) of the Robinson-Patman Act requires only an impermissible effect upon competition among the price-discriminating seller's competitors or customers. *William Inglis & Sons Baking Co.* v. *ITT Continental Baking Co.*, 668 F.2d 1014, 1042 (9th Cir. 1981, as amended on denial of rehearing and rehearing *en banc*, 1982), *cert. denied*, 103 S. Ct. 58 (1982). Taken together, I interpret these two provisions of the Robinson-Patman statute to allow somewhat more latitude for a determination of competitive injury than does the Sherman Act.[3] This does not mean that the injury standard is inevitably satisfied by mere diversion of business from a competitor, or even by one competitor's exit from the market due to alleged predatory pricing. On the other hand, the standard can be met by a showing of below-cost pricing which has severely weakened a class of competitors and augmented the predator's market power, albeit not to the very high levels which may be needed to prove a dangerous probability of success. In this case, however, I agree that injury to competition—in any quantum—has not been shown.

[2] I have discussed predation previously, in my February 28, 1983, dissenting statement on the final order in Borden, Inc., Docket No. 8978.

[3] *See generally*, Marasco, Tracing an Antitrust Injury in Secondary Line Price Discrimination Cases, 50 Fordham L. Rev. 909, 911–18 (1982).

[FR Doc. 84-12619 Filed 5-8-84; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We have amended our regulations to clarify section 1611(e)(1)(A) of the Social Security Act (the Act) which states that individuals who are inmates of a public institution throughout a month are not eligible for Supplemental Security Income (SSI) benefits for such month. Section 416.201 of our existing regulations defines a resident of a public institution and excepts from the status of resident of a public institution individuals living in a public educational institution and enrolled in or registered for the educational or vocational training provided by the institution. A "resident" of a public institution means the same thing as an "inmate" of a public institution as used in 1611(e)(1)(A) of the Act. We amended § 416.201 to make it clear that, in order for an individual who is a resident of a public educational institution to come within the exception, the individual must be in the public educational institution primarily to receive educational or vocational training. Further, educational or vocational training is defined as a recognized program to acquire knowledge or skills to prepare for gainful employment and the definition states that the term does not include training limited to acquisition of basic life skills.

EFFECTIVE DATE: These regulations are effective June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Clara B. Powell, Legal Assistant, 3-B-4 Operations Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7459.

SUPPLEMENTARY INFORMATION: On February 10, 1983, we published a Notice of Proposed Rulemaking in the **Federal Register** (48 FR 6133). The public was invited to submit comments pertaining to the proposed rule changes within a period of 60 days from date of publication. We have considered carefully the comments received and have responded to the issues raised later in the preamble. We have revised our rules to clarify the conditions under which a resident of a public educational institution may be eligible for SSI benefits. Section 1611(e)(1)(A) of the Act provides that individuals who are inmates of public institutions throughout a month are not eligible for SSI benefits for such month. Section 416.201 of our existing regulations explains that "resident" means the same thing as "inmate," defines a resident of a public institution, and also provides an exception to that status for individuals who are living in a public educational institution and enrolled in or registered for the educational or vocational training provided by the institution. This definition is now revised because it does not state clearly the circumstances under which individuals in public educational institutions meet the exception to status as residents of public institutions. The lack of specificity in the regulations that these regulations supersede resulted in the filing of applications and payment of benefits on behalf of some severely disabled individuals whose training is not in preparation for gainful employment. Payment to such individuals is contrary to the purpose of the exception to status as a resident of a public institution which is to enable individuals to become self-supporting.

New Regulations

We have amended § 416.201 by adding a definition of educational or vocational training and by rewording the definition of a resident of a public institution. We have defined educational or vocational training as a recognized program for the acquisition of knowledge and skills to prepare an individual for gainful employment. The definition specifically excludes training limited to the acquisition of basic life skills such as eating, dressing, and toilet training. The definition of a resident of a public institution now states that status as a resident of such an institution does not apply to individuals living in public educational institutions for the primary purpose of receiving educational or vocational training as defined in the section. Thus, individuals who live in public educational institutions for the primary purpose of acquiring educational or vocational training that will prepare them for gainful employment and who meet all other requirements for eligibility will be eligible for SSI benefits. The amendments to the regulations are consistent with our interpretation of the existing regulations.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received comments from 19 sources. Each source commented on one or more provisions of the proposed regulations. For ease of comprehension, we have condensed, summarized, or paraphrased the comments and have grouped them according to the subject and issue raised.

Comment: Several commenters suggested that § 416.201 include a cross reference to the other exceptions to the status of "resident of a public institution" currently in §§ 416.211(b) and 416.211(c) so as to prevent possible confusion and misinterpretation.

Response: The final regulations have been revised to reflect the suggested cross references.

Comment: Several commenters viewed the definition of educational or vocational training as too narrow, given the fact the Congress has expressed a desire through Pub. L. 93–112 (Rehabilitation Act of 1973) and Pub. L. 94–142 (Education for All Handicapped Children Act of 1975) to have the term "educational and vocational training" interpreted quite broadly when applied to severely handicapped individuals. One commenter viewed the definition as objectionable in that it has the connotation of placing undue emphasis on the monetary value of such training.

Response: One objective of the SSI program is to provide a needy disabled or blind individual with the opportunity and encouragement to attain or regain the ability to work in order to contribute to his/her own financial support. Through educational or vocational training efforts, many can become self supporting.

The objectives of Pub. L. 93–112 (The Vocational Rehabilitation Act) parallel the SSI objective in that vocational rehabilitation services reasonably may be expected to benefit a disabled individual in terms of employability. Most vocational objectives under Pub. L. 93–112 will meet the definition of educational or vocational training for SSI purposes. The overall objective of Pub. L. 94–142 is to assist States in providing a free appropriate public education to all handicapped children ages 3 to 21. Some kinds of training provided by States or political subdivisions as required under Pub. L. 94–142 are not realistically in preparation for gainful employment in many cases. However, training under Pub. L. 94–142 that teaches skills that could prepare an individual for a work environment (sheltered or competitive) meets the definition of educational or vocational training for SSI purposes.

Comment: Several commenters viewed the attempt to limit the meaning of educational or vocational training as creating new inequities, impacting on funding for training, restricting services to developmentally disabled persons appropriately served in State residential facilities, and affecting the quality of life for individuals who are mentally deficient.

Response: The definition of educational/vocational training in § 416.201 is for SSI purposes only. Thus, existing programs that provide training and services to developmentally disabled individuals are not affected by SSA's definition of what constitutes training for SSI purposes. The SSI program recognizes the need to provide opportunites for developmentally disabled individuals to function in a community setting. For example, section 1611(e)(1)(c) permits payment of SSI benefits to individuals in publicly operated community residences that serve no more than 16 residents. This provision allows SSI eligibility for individuals placed in smaller, more home-like facilties. Along the same lines, we have always provided in the regulations that an individual may receive, or continue to receive, SSI benefits for which he or she would otherwise be eligible but for living in a public institution, if residing there primarily for the purpose of receiving eductional or vocational training. The purpose of this policy is to provide the opportunity and incentive for the individual to try to become self-supporting. To the extent he or she is successful, and is able to work and earn money, the individual may become less dependent on SSI benefits. The present change seeks to make clear this long-standing policy.

Comment: Several commenters suggested that language be included to provide that medical services financed through a Medicaid home and community care waiver, under the provision of section 1915(c) of the Act, not be considered educational or vocational training services for purposes of determining SSI eligibility or benefit level.

Response: Any services that are properly paid for by Medicaid are medical services for SSI purposes. The same services would not be both educational/vocational and medical. Therefore, we see no need to include such language in these regulations.

Comment: One commenter suggested that the regulations should specify which organization(s) is responsible for determining whether an institutional educational/vocational program is a "recognized program". The commenter also indicated that the phrase "to prepare individuals for gainful employment" is unnecessary and should be removed from the regulations on the basis that the participation of an institutionalized individual in an educational/vocational training program, in and of itself, provides sufficient evidence of the participant's efforts to gain skills that will aid in self-sufficiency. Another suggestion was that the regulations should be broadened to include residents of public institutions, in general, as long as the resident is participating in an educational/vocational training program approved by a State Department of Education, and that the exception should apply whether or not the primary purpose of the individual's residence in the public institution is for educational/vocational training as long as the individual is participating in such a program.

Response: The Social Security Administration is responsible for determining whether an educational/vocational program is a "recognized program". However, that information is not appropriately a part of the definition of "educational or vocational training". Our operating procedures are specific in this regard. The specificity regarding "gainful employment" is necessary because some types of training provided by States and political subdivisions are not realistically in preparation for gainful employment in many cases. Thus, the phrase "to prepare individuals for gainful employment" is in keeping with the objective of the SSI program to provide an exception to the nonpayment provision in section 1611(e)(1)(A) of the Act so that needy disabled, blind, and aged individuals may be provided with encouragement and an opportunity to contribute to their own support. It has been longstanding SSA policy that individuals in a public institution that is a multiple purpose facility, part of which is an educational and/or vocational training facility with an approved program and part of which is not, are excepted from the nonpayment provision as long as they are in the public institution primarily to participate in the educational/vocational training. Thus, it is appropriate for the regulations to maintain that intent.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Based on the best available information, these regulations will entail no program costs but will obviate anticipated program and administrative costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Sections 1102 and 1631 of the Social Security Act, as amended; 49 Stat. 1302, as amended; 86 Stat. 1475, as amended; 42 U.S.C. 1302 and 1383)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income.

Dated: December 5, 1983.

Martha A McSteen,

Acting Commissioner of Social Security.

Approved: April 11, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart B is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1614, and 1631 of the Social Security Act as amended, Secs. 211 and 212 of Pub. L. 93-66, 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat. 1466, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154, and 87 Stat. 155, (42 U.S.C. 1302, 1381a, 1382, 1382c, and 1383).

2. In § 416.201 a definition of "Educational or vocational training" is added and the definition of "Resident of a public institution" is revised to read as follows:

§ 416.201 General definitions and terms used in this subpart.

* * * * *

"Educational or vocational training" means a recognized program for the acquisition of knowledge or skills to prepare an individual for gainful employment. For purposes of these regulations, educational or vocational training does not include programs limited to the acquisition of basic life skills including but not limited to eating and dressing.

* * * * *

"Resident of a public institution" means a person who can receive substantially all of his or her food and shelter while living in a public institution. The person need not be receiving treatment and services available in the institution and is a resident regardless of whether the resident or anyone else pays for all food, shelter, and other services in the institution. A person is not a resident of a public institution if he or she is living in a public educational institution for the primary purpose of receiving educational or vocational training as defined in this section. A "resident" of a public institution means the same thing as an "inmate" of a public institution as used in section 1611(e)(1)(A) of the Social Security Act. (See § 416.211 (b) and (c) of this subpart for other exceptions to the status of resident of a public institution.)

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[FR Doc. 84-12454 Filed 5-8-84; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 676

Comprehensive Employment and Training Act Regulations Final Decisions of the Secretary

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing a final rule to revise the procedures governing final decisions of the Secretary under the now expired Comprehensive Employment and Training Act (CETA). This revision to the regulations establishes a time limit within which the Secretary must notify the parties that an appeal of an administrative law judge's CETA decision has been accepted for review. This amendment revises and clarifies the CETA appeals procedures in a manner consistent with the appeals procedures established by the successor Job Training Partnership Act.

EFFECTIVE DATE: May 9, 1984.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Acting Director, Office of Employment and Training Programs, 601 D Street, NW., Room 6402, Washington, D.C. 20213, telephone number: (202) 376-6093.

SUPPLEMENTARY INFORMATION: On October 13, 1982, the President signed into law the Job Training Partnership Act, Pub. L. 97-300 (JTPA). This statute replaces CETA with State administered programs to train economically disadvantaged persons. JTPA programs were implemented by October 1, 1983. Section 181(e) of JTPA provides that CETA administrative proceedings pending on the date of the JTPA enactment or begun between the date of enactment and September 30, 1984 continue in effect.

The Department is amending the CETA regulation in 20 CFR 676.91(f) to establish a time limit for the acceptance of an appeal from an administrative law judge's (ALJ) decision. The amendment also clarifies the present appeals procedure wherein a party dissatisfied with an ALJ decision has 30 calendar days from receipt of the decision to file exceptions with the Secretary. Any exception not specifically urged is waived. Under the amendment, the Secretary has 20 calendar days to notify the parties that the case has been accepted for review. If timely exceptions are not filed and/or the Secretary does not notify the parties that the case has been accepted for review, the ALJ decision automatically becomes the final decision of the Secretary.

This revision concerns the internal processing of administrative appeals and does not change the requirements for filing appeals. Since this modification involves only rules of agency procedure and practice for which notice and comment are not required under 5 USC 553(b)(A), the regulation is being issued in final form.

This final rule is effective upon publication. The rule is procedural and is designed to make more uniform the internal processing of appeals to the Secretary from CETA decisions of ALJs. Accordingly, the Secretary has determined that good cause exists for waiving the customary requirement of delaying the effective date of a final rule for at least 30 days after its publication. 5 USC 553(d).

Regulatory Impact

Executive Order No. 12291

This final rule concerns the agency's processing of matters internally, and, as such, is a rule related to agency management not covered by the requirements of Executive Order No. 12291. E.O. 12291, § 1(a)(3). Accordingly, it was not submitted to the Director, Office of Management and Budget, for review, and no regulatory impact analysis is required.

Regulatory Flexibility Act

This document was not preceded by the publication of a general notice of proposed rulemaking, and, therefore, is not a "rule" as defined in the Regulatory Flexibility Act. 5 U.S.C. 601(2) and 604(a). Accordingly, it was not transmitted to the Chief Counsel for Advocacy, Small Business Administration, and no regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This amendment to the regulations does not require information collection, recordkeeping, or records creation by the public, and, as such, is not covered by the Paperwork Reduction Act of 1980. 44 U.S.C. Ch. 35; see 5 CFR § 1320.3(c).

List of Subjects in 20 CFR Part 676

Grant programs, Labor, Manpower training programs.

Promulgation of Final Rule

Accordingly, for the reasons set forth above, Part 676 of Chapter V of Title 20, Code of Federal Regulations is amended as follows:

PART 676—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

1. The authority citation for Part 676 is as follows:

Authority: Sec. 126 of the Comprehensive Employment and Training Act (20 U.S.C. 801 *et seq.*), unless otherwise noted.

§ 676.91 [Amended]

2. In § 676.91, paragraph (f) is revised to read as follows:

§ 676.91 Post-hearing procedures.

* * * * *

(f) *Final decision.* The decision of the administrative law judge shall constitute final action by the Secretary unless, within 30 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. Thereafter the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 20 days of such filing, has notified the parties that the case has been accepted for review.

* * * * *

Signed at Washington, D.C., this 3rd day of May, 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-12447 Filed 5-8-84; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 80G-0412]

Certain Tocopherols; Affirmation of Gras Status as Direct Human Food Ingredients; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the regulations affirming certain tocopherols as generally recognized as safe (GRAS). This document corrects an omission in the paragraph on economic effects.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-8865 appearing on page 13346 in the issue for April 4, 1984, the following correction is made: On page 13348 in the second column, in the second paragraph under the list of reference, the first line is corrected to read "In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by the Order."

Dated: May 3, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-12416 Filed 5-8-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 555

Animal Drugs, Feeds, and Related Products; Chloramphenicol Capsules; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for chloramphenicol capsules from Lemmon Co. to Drummer Division of Phoenix Pharmaceuticals, Inc.

EFFECTIVE DATE: May 9, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Drummer Division of Phoenix Pharmaceuticals, Inc., 111 Leuning St., South Hackensack, NJ 07606, informed the Center for Veterinary Medicine of a change of sponsor from Drummer Laboratories, Division of Lemmon Co., for NADA 65-345 Chloramphenicol Capsules. Lemmon Co. advised the Center for Veterinary Medicine of the sale to Phoenix of the NADA and certain facilities. The change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or personnel. The animal drug regulations are amended in 21 CFR 510.600(c) and 555.110b to reflect the new sponsor.