III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] The Exchange represents that the proposed rule change:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the proposed rule change, more than five business days prior to the date of filing the proposed rule change.

The Commission finds that it is appropriate to designate this proposal to become operative today because such designation is consistent with the protection of investors and the public interest.[12] Specifically, the proposal is an across-the-board assessment on all seat owners intended to raise revenues to provide capital improvements to the Exchange. The Phlx represent that the fee is necessary to help the Phlx remain competitive with other markets by enabling it to make technological and capital improvements. The Exchange represents that the revenue raised from this fee is necessary to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, trading floor expansion, and communication enhancements. Moreover, absent acceleration of the operative date, the Phlx's ability to collect these fees will lapse, because the initial phase of the pilot program has expired. Accordingly, based on the representations of the Exchange, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis until July 6, 2000.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–29 and should be submitted by May 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–11006 Filed 5–2–00; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12)

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00–2(7)]

Hickman v. Apfel; Evidentiary Requirements for Determining Medical Equivalence to a Listed Impairment—Titles II and XVI of the Social Security Act.

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00-2 (7).

EFFECTIVE DATE: May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-5044.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Seventh Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after May 3, 2000. If we made a determination or decision on your application for benefits between August 6, 1999, the date of the Court of Appeals' decision, and May 3, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR

404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005—Special Benefits for Disabled Coal Miners; 96.006—Supplemental Security Income.)

Dated: April 26, 2000

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–2 (7)

Hickman v. *Apfel*, 187 F.3d 683 (7th Cir. 1999)—Evidentiary Requirements for Determining Medical Equivalence to a Listed Impairment—Titles II and XVI of the Social Security Act.

Issue: Whether a determination of medical equivalence under regulations 20 CFR 404.1526 and 416.926 must be based solely on evidence from medical sources.[1]

Statute/Regulation/Ruling Citation: Sections 216(i), 223(d)(2)(A) and 1614(a)(3) of the Social Security Act (42 U.S.C. 416(i), 423(d)(2)(A) and 1382c(a)(3)); 20 CFR 404.1526(a), 416.926(a), 404.1526(b), and 416.926(b); 20 CFR Part 404, Subpart P, Appendix 1.

Circuit: Seventh (Illinois, Indiana, Wisconsin).

Hickman v. *Apfel*, 187 F.3d 683 (7th Cir. 1999).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: In 1985 and again in 1986, an application for Supplemental Security Income benefits was filed on behalf of Steven Hickman alleging that he had been disabled since birth. In 1985, Hickman was diagnosed with elephantiasis, which resulted in abnormal growth of his extremities. Various doctors reported that Hickman had difficulty with balance and gait. Otherwise, his extremities functioned normally and his condition was generally good. We denied each application and Hickman did not appeal on either occasion.

Subsequently, Hickman's right foot began to increase in size, until his entire right foot and calf were gigantesque. In April and May 1992, he was hospitalized with chronic swelling of both legs. Support stockings were prescribed for the gigantism, and compression garments were prescribed for the swelling. Hickman's condition then improved somewhat, but his ability to walk remained impaired.

In August 1992, Hickman reapplied for Supplemental Security Income and was informed that SSA reopened his 1985 application in order to reevaluate it under *Sullivan* v. *Zebley,* 493 U.S. 521 (1990). SSA denied the reopened application under *Zebley* both initially and on reconsideration, and Hickman requested a hearing before an ALJ. At the hearing in April 1994, Hickman argued that his condition met or medically equaled the impairment described in 20 CFR Part 404, Subpart P, Appendix 1, § 101.03A [2], and that he was therefore disabled. Hickman testified that it was hard for him to walk but that he played basketball and ran relay races. Hickman further testified that he walked short distances to the school bus and to classes in school.

Upon receipt of additional medical evidence, a supplemental hearing was held in October 1994. Hickman submitted a report of a comprehensive evaluation done by Dr. Richard Lindseth, a pediatric orthopedist. Dr. Lindseth concluded that Hickman's gait was ''very slow, energy inefficient and would limit his walking and standing ability to a considerable degree, length of his stride and step were reduced to two-thirds of normal,'' and ''maximum walking would be a block or two and that his standing on both legs would be limited to 15 to 20 minutes.'' Testimony was taken from Hickman's gym teacher, who testified that if he were tested ''in standardized testing, he would flunk.''

The ALJ issued his decision and concluded that ''the evidence of record did not show that [Hickman's] impairments meet or equal the requirements of any listed impairment.'' The ALJ observed that his ability to walk was not ''markedly reduced in speed and distance'' and denied Hickman's application for benefits. In July 1996, the Appeals Council denied Hickman's request for review. Hickman then initiated his action in district court. The district court issued a decision that the ALJ ''properly considered both medical and testimonial evidence in assessing the severity of [Hickman's] impairment'' and affirmed that ''the limitation from his impairment did not meet or equal the severity required by Listing 101.03A.'' Hickman appealed to the United States Court of Appeals for the Seventh Circuit. On appeal, Hickman argued that the ALJ improperly determined that his impairment did not medically equal Listing 101.03A. Hickman contended that the ALJ could not rely on lay testimony in deciding whether his impairment medically equaled a listing, because the regulations require that the determination of medical equivalence be based on medical evidence alone.

Holding: The Seventh Circuit noted that the ALJ relied on nonmedical testimonial evidence to determine that Hickman's impairment did not medically equal Listing 101.03A. The court held that reliance on nonmedical testimonial evidence was inappropriate. The court observed that 20 CFR 416.926(a) states that ''[w]hen we make a finding regarding medical equivalence, we will consider all relevant evidence in your case record.'' However, the court stated that the regulation is quite clear that ''medical case records'' are considered the primary ''relevant'' form of evidence. Moreover, the court cited 20 CFR 416.926(b), which states that ''[w]e will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only.'' Hickman argued ''that the ALJ improperly discounted Dr. Lindseth's report in favor of evidence gleaned from nonmedical witnesses during the hearing.'' The Seventh Circuit agreed, stating that SSA's regulations require that the findings regarding medical equivalence must be made based on medical evidence alone.[3]

[1] Although Hickman was a childhood disability case involving the interpretation of the title XVI regulation, the same standard for determining medical equivalency applies to adults and children under both title II and title XVI programs.

[2] 20 CFR Part 404, Subpart P, Appendix 1, Listing 101.03 states in pertinent part ''Deficit of musculoskeletal function due to deformity or musculoskeletal disease and one of the following: A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices.''

[3] The court noted that when SSA amended the regulations in 1997 it added a rule that explicitly eliminates any recourse to nonmedical evidence. The new rule, 20 CFR 416.926(b), provides that medical equivalence must be based on medical findings only. The title II regulation was not amended nor does it include similar language. However, in the preamble to the amended regulations, we stated: ''[T]his is not a substantive change, but a clearer statement of our longstanding policy. Although some of the text of 20 CFR 416.926(a) will differ from the text of 20 CFR 404.1526(a), both sections will continue to provide

The Seventh Circuit concluded that Hickman had a medical condition that was medically equivalent to the impairment set forth in Listing 101.03. The Seventh Circuit reversed the judgment of the district court and remanded the case with instructions to enter judgment in Hickman's favor.

Statement as to How Hickman Differs From SSA's Interpretation of the Regulations

The Seventh Circuit based its findings on 20 CFR 416.926(b), which states, ''[w]e will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only.'' However, we intended the phrase ''medical evidence only'' in this context only to exclude consideration of the vocational factors of age, education, and work experience. Other than such vocational factors, however, in accordance with 20 CFR 416.926(a), SSA considers all relevant evidence in the case record when it makes a finding on medical equivalence.[4]

The Seventh Circuit decision differs from SSA's national rule by requiring it to consider only a narrow definition of medical evidence, that is, evidence from medical sources, in determining medical equivalence and not permitting the use of other relevant evidence. The agency, on the other hand, interprets ''medical evidence'' broadly so as to include not just objective test results or other findings reported by medical sources, but other information about a claimant's medical conditions and their effects, including the claimant's own description of his or her impairments. Thus, the court's decision that medical equivalence is decided based solely on evidence from medical sources interprets the ''medical evidence only'' language of the regulation more narrowly than we intend.

Explanation of How SSA Will Apply The Hickman Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides in Illinois, Indiana or Wisconsin at the time of the determination or decision at any level of administrative review; i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In determining medical equivalence, we will use only information obtained from health care professionals. We will not use any evidence from a source other than a health care professional in determining medical equivalence.

We intend to clarify the language at issue in this case at 20 CFR 404.1526 and 416.926 through the issuance of a regulatory change, and we may rescind this Ruling once we have clarified the regulations.

[FR 00–10934 Filed 5–3–00; 8:45am]

Billing Code 4191–02–F

the same substantive rules.'' 62 FR 6408, February 11, 1997, at 6413.

[4] In accordance with 20 CFR 416.926(a), SSA considers all relevant evidence in the case record when it makes a finding on medical equivalence. Although the companion regulation for title II, 20 CFR 404.1526(a), does not contain this language, SSA applies the same equivalency policy under both titles.

DEPARTMENT OF STATE

[Public Notice 3304]

Amendment to Bureau of Educational and Cultural Affairs Request for Proposals: Small Grants Competition; Grassroots Citizen Participation in Democracy

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State announces the addition of Brazil to the Latin American geographic region for which proposals will be accepted.

The Small Grants Competition was announced on April 20, 2000 in the **Federal Register** (Volume 65, pg. 21061). The deadline for proposals is June 2, 2000.

ADDITIONAL INFORMATION: Interested organizations should contact Laverne Johnson, 202/619–5337; E-Mail *ljohnson@usia.gov.*

Dated: April 26, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–11023 Filed 5–2–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3306]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

April 27, 2000.

SUMMARY: On April 25, 2000, the Department of State certified, pursuant to Section 609 of Public Law 101–162 (''Section 609''), that 16 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 25 other countries do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2000 pursuant to Section 609.

EFFECTIVE DATE: May 3, 2000.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) that the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 25, 2000, the Department certified 16 nations on the basis that their sea turtle protection program is comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Indonesia, Mexico, Nicaragua, Nigeria, Panama, Suriname, Thailand, Trinidad and Tobago, and Venezuela. Honduras, certified on these grounds in 1998, did not retain their certification. Honduras failed to demonstrate that its regulations requiring the use of sea turtle excluder devices (TEDs) were being adequately enforced. The Department expects that Honduras will take steps necessary to regain certification in 2000.

The Department also certified 25 shrimp harvesting nations as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Nine nations only harvest shrimp using small boats