

representations challenged as false in the proposed complaint for Jogging in a Jug or any substantially similar product.

Part II of the proposed order prohibits the respondents from making any representation about the performance, safety, benefits, or efficacy of any food, food or dietary supplement, or drug, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates it.

Part III of the proposed order prohibits the respondents from misrepresenting that any product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

Part IV of the proposed order prohibits the respondents from misrepresenting that any endorsement for any product reflects the typical or ordinary experience of members of the public who use the product.

Parts V and VI of the order are safe harbor provisions. Part V allows representations for any drug that is permitted in the labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA"), or under any new drug application approved by the FDA. Part VI allows representations permitted in labeling for any product by regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Part VII of the order requires that the respondents cease using the name "Jogging in a Jug" or any name that communicates the same or similar meaning unless the material containing such name clearly and prominently contains the disclosure "THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS." The terms of Part VII do not apply to: (1) The use of such name on items that are sold or given or caused to be sold or given to consumers for their personal use; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of corporate letterhead, on shipping labels, or on crates provided only to purchasers for resale.

Part VIII of the order requires respondents to pay to the Commission the sum of four hundred and eighty thousand dollars (\$480,000). The Commission will then determine, in its sole discretion, whether to use the payment to provide direct redress to consumers or to pay the funds to the United States Treasury if redress is not practicable.

Part IX of the order requires the respondents to send a letter describing this settlement to identifiable past purchasers of Jogging in a Jug. Part X of the order requires the respondents to send a similar letter to their purchasers for resale. Part X further requires the respondents to notify their purchasers for resale that if the purchasers for resale do not stop using promotional materials containing claims covered by the order, the respondents are required to stop doing business with them. Part XI of the order requires that the respondents maintain for five years copies of all communications with consumers and purchasers for resale pursuant to the terms of Parts IX and X.

Parts XII, XIII, XIV, XV, and XVI relate to the respondents' obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in employment or corporate structure, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, Third Option Laboratories, Inc., File No. 942 3027

Today, the Commission accepts for public comment a consent agreement to remedy various misrepresentations concerning the purported health benefits of a drink called "Jogging in a Jug." The record shows that the claims are far removed from reality, and there is ample reason to believe they violated section 5 of the FTC Act. I concur in the complaint on which the order is based except to the extent that it alleges as a violation the content of newspaper articles that are reproduced in the respondents' promotional materials and those materials accurately identify and reproduce such articles in their original format without modification. Complaint ¶ 7 and Exhibit F.

Second, I dissent from Part VII of the order. Although the complaint does not challenge as materially misleading the unadorned use of the product's name, Jogging in a Jug (nor would I, given the absence of evidence), Part VII of the order prohibits, in connection with the advertising and sale of Jogging in a Jug (or any similar product), use of the name Jogging in a Jug, or any other name communicating a similar meaning, unless the name is

accompanied clearly and prominently by a disclosure stating: "THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [or other name] PROVIDES ANY HEALTH BENEFITS," and which includes six extensive paragraphs minutely detailing what will constitute "clearly and prominently" for purposes of compliance with this requirement.

The Commission in the past has used this form of relief, which can substantially limit potentially lawful conduct, to remedy health claims that seem more credible than those likely to be taken by reasonable consumers here. For example, the Commission imposed a similar requirement to remedy the pain relief claim it found to have been conveyed by the name "Aspercreme" in *Thompson Medical Co.*, 104 F.T.C. 648 (1984). The likelihood that a consumer would expect that a product named Aspercreme would contain aspirin and would rely on that claim to his or her detriment seems to me far greater than the likelihood that a consumer would rely to his or her detriment on an implied message that a product called Jogging in a Jug would provide the health benefits of jogging.

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GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103-40).

Sessions will be held at the U.S. Government Printing Office, 732 North Capitol Street, Carl Hayden Room—8th Floor, Washington, DC 20401, on Wednesday, May 24, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online, **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and

reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; U.S. Code; and GAO Reports.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by telephone: 202-512-1525; by fax: 202-512-1262; or by Internet e-mail at john@eids05.eids.gpo.gov. Seating reservations will be accepted through Monday, May 22, 1995.

Michael F. DiMario,

Public Printer.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-94]

Notice of Availability of Administrative Reports of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of nine ATSDR health effects studies.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-31, Atlanta, Georgia 30333, telephone (404) 639-6200.

SUPPLEMENTARY INFORMATION: Sections 104(i)(1), (7), (8), and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(1), (7), (8), and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous

substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities." The primary purpose of that rule, which created a new regulation at 42 CFR Part 90, was to set forth general procedures that ATSDR will follow relating to certain agency activities, including the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of CERCLA will be available to the general public upon request.

Availability

The reports of the health effects studies listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22151, telephone: 1-800-553-6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
Soil-Related Lead Poisoning in Socorro, New Mexico. ATSDR/HS-94/36.	PB94-193406
A Standardized Test Battery for Lung and Respiratory Diseases for Use in Environmental Health Field Studies. ATSDR/HS-94/37.	PB94-205556
Immune Function Test Batteries for Use in Environmental Health Field Studies. ATSDR/HS-94/38.	PB94-204328
National Exposure Registry Policies and Procedures Manual (Revised). ATSDR/HS-95/39.	PB95-154571
National Exposure Registry Trichloroethylene (TCE) Subregistry Baseline Technical Report (Revised). ATSDR/HS-95/40.	PB95-154589
Mortality Study of Children Residing Near ASARCO Copper Smelting in Ruston, Washington. ATSDR/HS-95/41.	PB95-142022
Health Study to Assess the Human Health Effects of Mercury Exposure to Fish Consumed from the Everglades. ATSDR/HS-95/42.	PB95-167276

Health effects study	NTIS document No.
Exposure to PCBs from Hazardous Waste Among Mohawk Women and Infants at Akwesasne. ATSDR/HS-95/43.	PB95-159935
Jasper County, Missouri Superfund Site Lead and Cadmium Exposure Study. ATSDR/HS-95/44.	PB95-179404

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 35 final reports of health effect studies and a software package for the analysis of disease clusters [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; 58 FR 29413, May 20, 1993; 58 FR 63378, December 1, 1993; and 59 FR 47879, September 19, 1994]. Additional final reports will be announced semiannually in the **Federal Register** as they become available.

Dated: May 5, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

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Centers for Disease Control and Prevention

[Announcement 550]

Enhancing Partnerships With Private Sector Health Care Provider Organizations; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to enhance partnerships with private sector health care provider organizations and to promote the improvement of immunization coverage in primary care settings.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)