execute their option orders. It is the Commission's view that the Exchange, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of which enter orders for less than seventy-five contracts—by making the AUTO–X sytstem less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[15]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–99–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29186 Filed 11–14–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00-5 (6)]

Salamalekis v. Apfel; Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—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 00-5(6).

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0446.

SUPPLEMENTARY INFORMATION: 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 Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after November 15, 2000. If we made a determination or decision on your application for benefits between July 20, 2000, the date of the Court of Appeals' decision, and November 15, 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 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: October 19, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–5 (6)

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Issue: Whether a claimant's return to substantial gainful activity (SGA) within 12 months of the alleged onset date of his or her disability, and prior to an award of benefits, precludes an award of benefits and entitlement to a trial work period.

Statute/Regulation/Ruling Citation: Sections 222(c), 223, 1614(a)(3) and (4) and 1619 of the Social Security Act (42 U.S.C. 422(c), 423, 1382c(a)(3) and (4) and 1382h); 20 CFR 404.1505, 404.1520, 404.1592, 416.905, 416.906, 416.920; Social Security Ruling (SSR) 82-52.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee).

Salamalekis v. *Apfel*, 221 F.3d 828 (6th Cir. 2000).

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: Manuel G. Salamalekis applied for Social Security disability insurance benefits on October 1, 1991, alleging disability since April 24, 1991, due to a heart condition and Parkinson's Disease. On March 2, 1992, less than a year after the alleged onset of disability, Mr. Salamalekis returned to work and promptly notified the Agency of his return. On the same day that Mr. Salamalekis returned to work, we ''determined he was entitled to receive disability insurance benefits'' and an award notice was sent to Mr. Salamalekis on March 8, 1992. It was not disputed that we were unaware that Mr. Salamalekis had returned to work when we determined his eligibility for benefits. We subsequently learned of his return to work. In May of 1992, we notified Mr. Salamalekis that his claim would be reviewed when his ''9th month of trial work'' ended. He

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

continued to work and received benefits for approximately the next 2 years.

On March 25, 1994, we notified Mr. Salamalekis that we intended to revise our initial award determination finding him disabled to a determination that he was never disabled because he returned to work on March 2, 1992, prior to the Agency's award of benefits and less than 12 months after the onset of his impairment. We revised our initial award determination, ceased payment of Mr. Salamalekis' benefits and assessed him with a $30,080.20 overpayment. An ALJ affirmed the revised determination and the Appeals Council denied review. Mr. Salamalekis sought judicial review in the Federal district court where a United States Magistrate Judge affirmed SSA's final decision.

On his appeal to the United States Court of Appeals for the Sixth Circuit, Mr. Salamalekis argued that he was disabled and was entitled to a 9-month trial work period beginning with his return to work in March 1992, plus a 3-month reentitlement period. For this reason, Mr. Salamalekis contended that the Agency should not have considered his work during this period as evidence of substantial gainful activity demonstrating that he was not disabled.

Holding: The Sixth Circuit held that Mr. Salamalekis was entitled to a trial work period regardless of whether he returned to work before or after SSA's award of benefits. Consequently, it reversed and remanded the case to the district court with instructions to return the case to SSA for a recalculation of the overpayments owed by Mr. Salamalekis. The court found that according to the plain language of the Social Security Act (the Act), an individual may take advantage of a trial work period once he becomes entitled to disability insurance benefits.

According to the court, Mr. Salamalekis had satisfied all five prerequisites for entitlement to benefits under section 223(a) of the Act when he returned to his job. He was insured for disability insurance benefits; he was below retirement age; he filed an application for benefits; the 5-month waiting period had expired; and he was under a disability. The court rejected the Agency's argument that it should apply SSR 82-52 and find that Mr. Salamalekis was never disabled in view of his return to work within 12 months of his alleged disability onset date. In so doing, the court noted that at the time Mr. Salamalekis returned to work his impairment was ongoing and was expected to last for 12 months.

The court found that the relevant language from SSR 82-52 was inconsistent with the plain language of the Act. In addition, the court noted ''the Seventh, Eighth and Tenth Circuits have also held that a claimant is entitled to a trial work period if the waiting period has expired and the claimant's impairment is expected to last for 12 months, regardless of whether the Agency has made an award determination and regardless of whether the impairment has actually lasted 12 months.'' [1]

Statement as to How Salamalekis Differs From SSA's Interpretation of the Social Security Act

Under the Act, an individual who is entitled to disability insurance benefits is generally entitled to a trial work period. The individual can test his or her ability to work for up to 9 months without that work activity affecting his or her entitlement to benefits. However, to be entitled to a trial work period, the individual must be entitled to disability insurance benefits. In order to be entitled to disability insurance benefits, the individual must be disabled, i.e., he or she must have an impairment that has prevented, or can be expected to prevent him or her from performing substantial gainful activityfor at least 12 months. *See* Sections 223(a)(1)(D) and (d)(1)(A) of the Act.

SSR 82-52 contains a clear statement of SSA policy on this issue [2] as follows:

> When the [individual's] return to work demonstrating ability to engage in SGA occurs before approval of the award and prior to the lapse of the 12-month period after onset, the claim must be denied.

The Sixth Circuit held, however, that SSR 82-52 is inconsistent with the plain language of section 222(c) of the Act.[3] The holding in *Salamalekis* is inconsistent with our policy because it permits a claimant to be found to be under a disability, and entitled to benefits and a trial work period even if he or she engages in work activity demonstrating the ability to engage in substantial gainful activity before the lapse of the 12-month period after the alleged disability onset date and before a decision by SSA to award benefits.[4] Our interpretation is that a claimant cannot be found to have been under a disability if, at the time we are adjudicating the claim, the evidence shows that his or her impairment no longer prevents the performance of substantial gainful activity and that it had not done so for at least 12 continuous months. In the preamble to our August 10, 2000, final rules, we explain why we believe that this interpretation is consistent with the relevant statutory language and with the legislative history of the 12-month duration requirement. That legislative history indicates that Congress intended that the disability program not ''result in the payment of disability benefits in cases of short-term, temporary disability.'' [5]

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

This Ruling applies only to cases in which the claimant resides or resided in Kentucky, Michigan, Ohio or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

This Ruling applies to claims for title II benefits based on disability. It also applies to claims for title XVI benefits based on disability as explained below.

A claim for title II disability insurance benefits, widow(er)'s insurance benefits based on disability or child's insurance benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted a trial work period if the following conditions are met:

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[1] The courts in *Newton* v. *Chater*, 92 Cir. 1996); *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991); *McDonald* v. *Bowen*, 818 F.2d 559 (7th Cir. 1986) found that the pertinent provision of SSR 82-52 was inconsistent with the Social Security Act.

[2] SSR 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in this AR does not relate to those former procedures and the cited policy statement in SSR 82-52 remains in effect.

[3] Section 222(c)(2) of the Act provides that ''any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether disability has ceased in a month during such period.'' Section 222(c)(3) of the Act provides, in pertinent part, that ''[a] period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits * * * '' Under section 222(c)(4) of the Act, a trial work period ends with the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not the 9 months are consecutive), or, if earlier, with the month in which disability ceases.

[4] While the court in *Salamalekis* addressed SSR 82-52 in its opinion issued July 20, 2000, it should be noted that final rules that reflect, clarify, and provide a more detailed explanation and justification for the SSR 82-52 policy at issue were published in the **Federal Register** on July 11, 2000 (65 FR 42772) with an effective date of August 10. The court in *Salamalekis*, apparently unaware of the July 11th publication, simply noted that the proposed rules to incorporate SSA's position in SSR 82-52 had been published, but had not been finalized; the court did not discuss the more detailed explanation and justification for our policy provided in the preamble to the final rules.

[5] That legislative history is found at S. Rep. No. 404, 89th Cong. 1st Sess. 98-99, *reprinted* in 1965 U.S. Code Cong. & Ad. News, 1943, 2038-39.

(1) the claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) the claimant returns to work after the waiting period (if a waiting period is applicable) but within the 12-month period following the established onset date; and

(3) the return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

A claim for title XVI benefits based on disability in which the claimant returns to work within 12 months of the established onset date of an impairment which could otherwise be the basis for a finding of disability should be allowed and the claimant granted section 1619 status [6] if the following conditions are met:

(1) The claimant establishes that, at the time he or she returned to work and thereafter, the impairment was still expected to last for at least 12 consecutive months from the date of onset;

(2) The claimant returns to work in a month subsequent to the month of established onset but within the 12-month period following the established onset date;

(3) The claimant is eligible to receive ''regular'' SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) based on the impairment (disregarding the effect the claimant's return to work within 12 months after the date of onset would otherwise have on eligibility for such benefits or payment) for at least 1 month in the period preceding the month in which he or she returns to work;

(4) The claimant meets all other nondisability requirements for section 1619 status; and

(5) The return to work demonstrating an ability to engage in substantial gainful activity occurs either before or after approval of the award.

[FR Doc. 00-29191 Filed 11-14-00; 8:45 am]

BILLING CODE 4190-29

[6] Pursuant to statutory amendments made by Public Law 99-643, effective July 1, 1987, the trial work period provisions no longer apply to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive ''regular'' SSI benefits under section 1611 of the Act (or a federally administered State supplementary payment) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This Ruling extends to such individuals, i.e., a claim for title XVI benefits based on disability should be allowed and the claimant granted section 1619 status if the claimant would otherwise be eligible for section 1619 status and the same conditions set out above for title II claims based on disability are met.

DEPARTMENT OF STATE

[Public Notice No. 3466]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Monday, December 11, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 44th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on September 17–21, 2001, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Review of results from the previous Session (SLF 43),

b. Harmonization of damage stability provisions in the IMO instruments,

c. Revision of technical regulations of the 1966 International Load Line Convention,

d. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–29244 Filed 11–14–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3467]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, December 14, 2000, in Room 6103 of the U.S. Coast Guard Headquarters, 2100 2nd Street SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 32nd Session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping, which is scheduled for January 22 to 26, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

— Training and certification of maritime pilots
— Unlawful practices associated with certificates of competency (*i.e.*, forged certificates)
— Standard Marine Communication Phrases
— Training in the use of Electronic Chart Display and Information Systems
— Guidance for training in ballast water management
— Guidance for ships operating in ice-covered waters
— Validation of an IMO model course on assessment of competence
— Guidance associated with the International Convention on Standards of Training,

Certification and Watchkeeping for Fishing Vessel Personnel Convention, as adopted by the 1995 conference; not yet ratified or in force.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, Room 1210, 2100 2nd Street SW., Washington, DC 20593–0001 or by calling (202) 267–0229.

Dated: November 8, 2000.

Stephen Miller,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 00–29245 Filed 11–14–00; 8:45 am]

BILLING CODE 4210–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–58]

WTO Dispute Settlement Proceeding Regarding Section 609 of Public Law 101–162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the government of