

FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06-AEA-06]

#### PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9, Airspace Designations and Reporting Points, dated September 1, 2006 and effective September 15, 2006, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth*

\* \* \* \* \*

##### AEA PA E5, SAYRE, PA (New)

Robert Packer Hospital  
Point in Space Coordinates

(Lat. 41°58'53" N., long 76°32'06" W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Robert Packer Hospital, Sayre, PA.

\* \* \* \* \*

Issued in Jamaica, New York on October 2, 2006.

**Mark D. Ward,**

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8687 Filed 10–16–06; 8:45 am]

**BILLING CODE 4910–13–M**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA 2006–0083]

RIN 0960–AG19

#### Continuing Disability Review Failure To Cooperate Process

**AGENCY:** Social Security Administration.  
**ACTION:** Final rules.

**SUMMARY:** We are amending our regulations to provide that we will suspend your disability benefits before we make a determination during a continuing disability review (CDR) under title II and title XVI of the Social Security Act (the Act) when you fail to comply with our request for necessary information. Should you remain non-compliant for a period of one year following your suspension, we will then terminate your disability benefits. Although our current title XVI regulations generally provide for the termination of payments after 12 months of suspension, we are amending our regulations by adding this policy to our title II regulations and by restating it in the title XVI CDR regulatory provisions.

**DATES:** These final rules are effective December 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Don Harvey, Social Insurance Specialist, Office of Program Development and Research, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1026 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at [www.socialsecurity.gov/](http://www.socialsecurity.gov/).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Statutory Background

Sections 221(i) and 1614(a)(3)(H)(ii)(I) of the Act and §§ 404.1589, and 416.989 of our regulations require that after we find that you are disabled, we evaluate your impairment(s) from time to time to determine if you remain disabled. We call this evaluation a continuing disability review (CDR). If the medical and other evidence shows that you are not disabled under the standards set out in sections 223(f) and 1614(a)(4) of the

Act, we will end the payment of cash benefits and terminate your period of disability.

Section 1614(a)(3)(H)(iii) of the Act and § 416.987 of our regulations require that if you are eligible for payments as a child under title XVI by reason of disability, we redetermine that eligibility during the one-year period beginning on your 18th birthday, or, in lieu of a CDR, whenever we determine that your case is subject to such a review. We call this evaluation an age-18 redetermination. If the medical and other evidence shows that you are not disabled under the standards set out in section 1614(a)(3)(A)–(B) of the Act, we will end the payment of cash payments and terminate your period of disability.

Sections 223(f) and 1614(a)(4) of the Act provide that, in general, if you receive disability benefits under titles II and/or XVI of the Act, we may find that you are no longer disabled if substantial evidence shows that there has been medical improvement in your impairment or combination of impairments, and you are now able to do substantial gainful activity. Under title XVI, if you are a child (an individual under age 18), substantial evidence must show that there has been medical improvement in your impairment or combination of impairments, and the impairment(s) must no longer cause marked and severe functional limitations. We call this the medical improvement review standard (MIRS), and we apply it whenever we do a CDR for an adult or a child. The statute also provides, however, for several exceptions to the “medical improvement” requirement where we will not apply the MIRS. One of those exceptions to applying the MIRS is the situation where you fail, without good cause, to cooperate with us when we do a CDR.

#### Continuing Disability Review and Age-18 Redetermination Processes Under Our Current Regulations

When we begin a CDR or an age-18 redetermination, we notify you that we are reviewing your eligibility for disability benefits and explain why we are reviewing your eligibility; what standard will apply, either the MIRS in a CDR or the initial claims criteria in an age-18 redetermination; that our review could result in the termination of your benefits; and that you have the right to submit medical and other evidence for us to consider during the CDR or the age-18 redetermination. Before we determine whether you are still disabled, we develop a complete medical history covering at least the 12 months preceding the date that you

complete a report about your continuing disability status. If our review shows that we should stop your benefits, we notify you in writing and give you the opportunity to appeal. (See §§ 404.1589 and 416.989 of our regulations.) We explain when and how often we will do a CDR in §§ 404.1590 and 404.1591 of our title II regulations and in §§ 416.990 and 416.991 of our title XVI regulations. We explain when we will do an age-18 redetermination in § 416.987 of our title XVI regulations.

When we do a CDR or age-18 redetermination, §§ 404.1594(e)(2), 416.987(e)(3), 416.994(b)(4)(ii) and 416.994a(f)(2) of our regulations set out the general principle that is reflected in sections 223(f) and 1614(a)(4) of the Act; *i.e.*, that you have the responsibility to cooperate with us, or take any required action that we decide is necessary to allow us to complete the CDR or age-18 redetermination. If you do not cooperate with us, and you do not have good cause as defined in §§ 404.911 and 416.1411 of our regulations for not cooperating, we will find that your disability has ended.

We currently have no provision in our regulations that allows us to suspend your benefits under title II of the Act if you fail to cooperate with us when we request necessary information during a CDR. However, § 416.1322 of our title XVI regulations provides general authority that allows us to suspend your payments under title XVI of the Act, when you fail to cooperate with our requests for information, including during a CDR or age-18 redetermination.

When we suspend your title XVI payments for such failure to cooperate under § 416.1322, we follow § 416.714(b) of our regulations, which gives you thirty days from the date of our written request to comply with the request for information. We also follow § 416.1336 of our regulations, which provides that before we suspend, reduce, or terminate your title XVI payments, we will give you advance notice of our intent and provide you with appeal rights and payment continuation rights pending resolution of the appeal. When we terminate your title XVI payments due to continuous suspension of payments, we follow § 416.1335 of our regulations, which provides that we will terminate your eligibility for payments following 12 consecutive months of payment suspension.

#### **Why Are We Revising Our Regulations?**

We are continually exploring ways to improve the disability process. These revisions will allow us to make our rules consistent for all beneficiaries

under both titles II and XVI, implement a more efficient CDR process, encourage beneficiaries to cooperate during the CDR or age-18 redetermination process, and make the process less burdensome.

As a result of the revisions, your failure to cooperate in the CDR process will result initially in a suspension rather than a termination of benefits based on a determination that you are no longer entitled to benefits. To have your benefits resumed, you will only have to contact your local Social Security office and provide the requested information and you will have up to 12 months to do so. Accordingly, during the 12 month period, you will not have to file an appeal in order to have your benefits resumed. In addition, you will not have to request, prepare for, and attend a hearing for your benefits to be resumed.

#### **When Will We Start To Use These Final Rules?**

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to CDRs and age-18 redeterminations that we initiate on or after the effective date.

#### **What Revisions Are We Making?**

We are revising §§ 404.1587 and 404.1596 of our title II regulations and adding a new § 416.992 to our title XVI regulations. With respect to § 404.1587, we are revising the title to reflect that your benefits may be terminated as well as suspended. In addition, we are designating the current paragraph as paragraph (a) and adding a heading to it. We are also adding new paragraphs (b) and (c). Under the new § 404.1587(b), we will suspend your benefits during a CDR when you do not cooperate with us by failing, without good cause, to comply with our written request for any necessary information. If you subsequently give us the information that we requested, we will reinstate your benefits and continue with the CDR process. We will reinstate your benefits for any previous month for which they are otherwise payable.

The regulatory language in this final rule has been changed from the language that appeared in the notice of proposed rulemaking (NPRM), (70 FR at 72418). We have reordered the phrases in final § 404.1587(b) to state that “we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.” This was done in response to a public comment that the regulatory language in the proposed

rules could be misinterpreted to mean that we will not reinstate benefits until we complete the CDR process.

Accordingly, the phrase was restructured for clarity in § 404.1587(b) and also in the parallel language in new §§ 404.1596(d) and 416.992.

Under the new § 404.1587(c), we will terminate your benefits following 12 consecutive months of benefit suspension when you fail to comply with our written request for any necessary information made during a CDR. This termination will be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have benefit continuation rights.

Under the revised § 404.1596, the title will reflect that your benefits may be terminated as well as suspended. We are also removing current paragraphs (c)(1) and (c)(2) and adding new paragraphs (d) and (e) to explain that we will not make a medical determination when you do not cooperate with us by failing to comply with our written request for any necessary information. We will suspend your benefits only after we give you advance notice as described in § 404.1595. The advance notice will tell you what you need to do so that your benefits are not suspended as outlined in § 404.1595(b)(3) of our regulations.

In the new § 404.1596(d), we are adding language to explain that if we suspend your benefits because you fail to cooperate and you subsequently give us the information that we requested, we will reinstate your benefits and continue with the CDR process. We will reinstate your benefits for any previous months for which they are otherwise payable. As noted above, as a result of a public comment, we have reordered the phrases in the final regulation § 404.1596(d) to make them consistent with § 404.1587(b).

With respect to the new § 404.1596(e), we explain that if we suspend your benefits because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we will terminate your benefits. The termination will be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have benefit continuation rights.

We are adding a new § 416.992 to explain that we will suspend your payments before we make a determination regarding your continuing eligibility for disability payments if you fail to comply with our

request for information for your CDR or age-18 redetermination. We will suspend your payments only after we give you advance notice as described in § 416.995. As outlined in § 416.1336 of our regulations, the advance notice will tell you what you need to do so that your payments are not suspended. If we suspend your payments because you fail to cooperate and you subsequently give us the information that we requested, we will reinstate your payments and continue with the CDR or age-18 redetermination process. We will reinstate your payments for any previous month for which they are otherwise payable. If we suspend your payments because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we will terminate your payments. The termination will be effective with the start of the 13th month after your payments were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have payment continuation rights.

In response to a public comment, the regulatory language in this final rule has been changed from the language that appeared in the proposed rules. We have revised the language in the final regulation § 416.992 to reflect that payments will only be suspended if good cause has not been established. This is consistent with the language in the final regulation § 404.1587(b). We have also reordered the phrases in final regulation § 416.992 to make them consistent with §§ 404.1587(b) and 404.1596(d).

#### Public Comments

We published these regulatory provisions in the **Federal Register** as a NPRM on December 5, 2005 (70 FR 72416). We provided the public with a 60-day comment period. We received comments from 10 individuals and 11 organizations. Because some of the comments submitted were detailed, we have tried to summarize or paraphrase the views presented in these comments accurately and to respond to the significant issues raised in the comments that were within the scope of the proposed rules.

*Comment:* Several commenters stated that they disagreed with the proposed rule changes because of the potential for problems with the delivery of mail. The commenters said that we should be mindful of the widespread deficiencies in mail delivery.

*Response:* We will exhaust all efforts to locate the beneficiary/payee and follow-up on all requests for information before deciding to suspend

benefits. To ensure that we have made every reasonable effort to contact the beneficiary/payee, we will attempt to secure the most current address from the Post Office, financial institutions, etc. If we suspend an individual's benefits he or she will only have to contact his or her local Social Security office and provide the requested information within the 12 month period to have his or her benefits resumed.

*Comment:* Along the same lines, one commenter related an incident in which her benefits had been terminated because the Postal Service was unable to locate her, despite residing at the same address for 13 years. The commenter suggested that all correspondences relating to requests for information should be sent via certified mail.

*Response:* We did not need to make any changes in these final rules as a result of this comment. If a beneficiary fails to respond to our initial notice, our procedures require that we send a certified letter to a beneficiary's address of record prior to initiating a suspension action.

*Comment:* One commenter expressed a view that individuals who have developmental or mental health diagnoses may not be able to read and understand the information that we send to them. The commenter said that this proposal may impose a hardship on these individuals and go against the intent of the Act.

*Response:* In all situations, we are sensitive to circumstances in which an individual, including those individuals who have developmental or mental health diagnoses, may require assistance to comply with our requests. We will consider the individual's impairment and use all available resources to obtain needed information, and if necessary, determine whether a representative payee or change of representative payee is needed.

*Comment:* Several commenters stated that they did not support our proposed rule changes because of the potential for misunderstandings about information being requested and vaguely worded notices. The commenters also stated that they did not support our proposed rule changes because of the potential for representative payees not fulfilling their reporting responsibilities. The commenters urged us to ensure that policies are in place to make certain that individuals continue to receive the benefits to which they are entitled prior to implementation of these final regulations.

*Response:* As we stated above, we are sensitive to situations in which an individual may require assistance to comply with our requests. When

appropriate, we will consider the beneficiary's capability and/or consider the need for a new payee. Before suspending benefits, we will send a notice that clearly explains that benefits will be suspended if the beneficiary/payee does not provide the necessary information. If we suspend an individual's benefits he or she will only have to contact his or her local Social Security office and provide the requested information within the 12 month period to have his or her benefits resumed.

*Comment:* One commenter recommended that we send requests for information to the representative payee, an automatic reinstatement provision be provided when the beneficiary/payee provides the necessary information, and include a place on the form for the individual to state they do not understand a question or need assistance in filling out the form.

*Response:* These final rules do not change our regulations on the use of representative payees. If a beneficiary has a representative payee, it is our policy to send all notices to the payee. Additionally, as soon as the beneficiary/payee provides the requested information, benefits will be reinstated, including any previous month for which they are otherwise payable. The beneficiary/payee will not have to request that benefits be reinstated. The form that an individual must complete during a CDR includes a remarks section where the individual can indicate that he or she does not understand a question or needs assistance completing the form. In addition, the letter that advises the individual that a CDR is being done also advises the individual that he or she may contact us at any time if he or she has any questions or requires assistance.

*Comment:* One commenter applauded our decision to suspend rather than terminate benefits when a beneficiary fails to cooperate during a CDR and urged that we continue the existing policy that benefits be continued when despite a lack of cooperation the evidence establishes continued eligibility.

*Response:* We are not changing our existing policy that benefits be continued when despite a lack of cooperation, evidence establishes continued eligibility.

*Comment:* Several commenters stated that the proposed language of §§ 404.1587, 404.1596 and 416.992, "we will continue with the CDR process and reinstate your benefits for any month for which they are otherwise payable" should be reordered to make clear that benefits will be restored immediately

upon the individual's cooperation with us. The commenters further stated that the "without good cause" language that appeared in §§ 404.1587 and 404.1596 in the proposed rules did not appear in the regulatory language in § 416.992 in the proposed rules and should be corrected in the final regulations. The commenters also suggested that the regulations should spell out what constitutes "good cause" in the situation where a person fails to cooperate with a CDR or an age-18 redetermination.

*Response:* We agree that the order of the language that appeared in the regulatory section of the proposed rules might be misread. We have reordered the phrases in §§ 404.1587, 404.1596, and 416.992 by changing the language to state that "when we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process." Also, we have rewritten § 416.992 to include the reference to the regulatory language "without good cause" to make it consistent with §§ 404.1587 and 404.1596, since it was inadvertently omitted. For clarity when referring to "good cause," we are adding a parenthetical to the final rules referencing the "good cause" citations (§§ 404.911 and 416.1411) in the regulatory text of §§ 404.1587(b), 404.1596(d), and 416.992, as appropriate.

*Comment:* The same commenters also stated that the regulations should include specific statements that we will meet with the individual on the day he or she first visits the Social Security office to report that he or she did not receive the monthly check. Also, the commenters stated that the final regulations should note that we will assist those who need extra help and that such provision, among others, is required by our obligation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

*Response:* We have not rewritten these sections to include specific statements that we will meet with the individuals on the day he or she first visits a Social Security office or to assist individuals who need extra help because it is already our policy to do so. Further, we comply with all applicable laws relating to our programs to ensure maximum accessibility of all our programs and proceedings. If a beneficiary contacts one of our field offices with the necessary information, the field office will meet with them and take action to reinstate their benefits.

*Comment:* One commenter suggested that if benefits are suspended for non-

cooperation, benefits should be reinstated only if the information subsequently provided demonstrates that the beneficiary is still disabled.

*Response:* We did not adopt this comment. The purpose of these final rule changes is to implement a more efficient CDR process and to encourage beneficiaries to cooperate during the CDR process. Accordingly, if the beneficiary provides us with the necessary information or evidence requested, benefits will be reinstated. We will then continue with the CDR process.

## Regulatory Procedures

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were reviewed by OMB.

### Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

### Paperwork Reduction Act

These final regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

(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; 96.006, Supplemental Security Income.)

### List of Subjects

#### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

#### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 11, 2006.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of

chapter III of title 20 of the Code of Federal Regulations, as set forth below:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

### Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)—(h), 216(i), (221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)—(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); section 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Section 404.1587 is revised to read as follows:

#### § 404.1587 Circumstances under which we may suspend and terminate your benefits before we make a determination.

(a) *We will suspend your benefits if you are not disabled.* We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

(b) *We will suspend your benefits if you fail to comply with our request for necessary information.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause (see § 404.911), to comply with our request for necessary information. When we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.

(c) *We will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (b) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

■ 3. Section 404.1596 is amended by revising the heading, removing paragraphs (c)(1) and (c)(2), redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(1) and (c)(2), and

adding new paragraphs (d) and (e) to read as follows:

**§ 404.1596 Circumstances under which we may suspend and terminate your benefits before we make a determination.**

\* \* \* \* \*

(d) *When the suspension is effective.* We will suspend your benefits effective with the month in which it is determined in accordance with paragraph (b)(2)(i) of this section that your disability benefits should stop due to your failure, without good cause (see § 404.911), to comply with our request for necessary information for your continuing disability review. This review is to determine whether or not you continue to meet the disability requirements of the law. When we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.

(e) *When we will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with paragraph (b)(2)(i) of this section. We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (d) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart I—[Amended]**

■ 4. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1) and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and (5), 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note and 1382h note).

■ 5. Section 416.992 is added to read as follows:

**§ 416.992 What happens if you fail to comply with our request for information.**

We will suspend your payments before we make a determination regarding your continued eligibility for disability payments if you fail to comply, without good cause (see § 416.1411), with our request for information for your continuing disability review or age-18 redetermination. The suspension is

effective with the month in which it is determined in accordance with § 416.1322 that your eligibility for disability payments has ended due to your failure to comply with our request for necessary information. When we have received the information, we will reinstate your payments for any previous month for which they are otherwise payable, and continue with the CDR or age-18 redetermination process. We will terminate your eligibility for payments following 12 consecutive months of payment suspension as discussed in § 416.1335.

[FR Doc. E6–17181 Filed 10–16–06; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1310**

[Docket No. DEA–254F]

**RIN 1117–AA90**

**Control of Sodium Permanganate as a List II Chemical**

**AGENCY:** Drug Enforcement Administration (DEA), U.S. Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** On March 1, 2005, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (70 FR 9889) which proposed the addition of sodium permanganate as a List II chemical because of its direct substitutability for potassium permanganate (a List II chemical) in the illicit production of cocaine.

This rulemaking finalizes control of sodium permanganate. As a List II chemical, handlers of sodium permanganate shall be subject to Controlled Substances Act (CSA) chemical regulatory controls including recordkeeping, reporting, and import/export requirements. DEA has determined that these controls are necessary to prevent the diversion of this chemical to cocaine laboratories.

This rulemaking is also establishing a cumulative threshold of 55 kilograms and 500 kilograms (respectively) for domestic and international transactions. As such, all transactions which meet or exceed these quantities (in a calendar month) shall be considered regulated transactions, subject to recordkeeping, reporting and/or import/export notification requirements. Additionally, as a result of this rulemaking, chemical mixtures having greater than 15 percent

sodium permanganate shall be subject to CSA chemical regulatory control provisions.

All handlers of the List II chemical sodium permanganate shall also be subject to the applicable civil and criminal penalty provisions found in 21 U.S.C. 841, 842, 843, 959 and 960.

**DATES:** *Effective Date:* December 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** The CSA and its implementing regulations, specifically 21 U.S.C. 802(35) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as “List II” chemicals if they are used in the manufacture of a controlled substance in violation of the CSA. This authority has been delegated to the Administrator, Drug Enforcement Administration (DEA) by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix section 12.

On March 1, 2005, the DEA published a Notice of Proposed Rulemaking (70 FR 9889) which proposed the addition of sodium permanganate as a List II chemical because of its direct substitutability for potassium permanganate (a List II chemical) in the illicit production of cocaine. Additionally, the Notice of Public Rule Making (NPRM) proposed that a threshold of 55 kilograms and 500 kilograms be established (respectively) for domestic and international transactions.

DEA also proposed that chemical mixtures (containing sodium permanganate) having less than or equal to 15 percent sodium permanganate shall qualify for automatic exemption from CSA chemical regulatory controls pursuant to 21 CFR Part 1310. Since DEA recognizes that the concentration limit exemption criteria cannot identify all mixtures that should receive exemption status, DEA has implemented an application process to exempt additional mixtures (21 CFR 1310.13). This application process was finalized in a Final Rule published in the **Federal Register** May 1, 2003 (68 FR 23195). Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that