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Dated: October 15, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

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RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220-AA99

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) updates its regulations to reflect a change in how it evaluates pain and other subjective symptoms when determining if an individual is disabled from all regular employment to reflect recent changes in law.

DATES: This rule is effective on October 22, 2003.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751-4945, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: Courts have consistently held that disability for all regular employment under section 2(a)(1)(v) of the Railroad Retirement Act (45 U.S.C. 231a(a)(1)(v)) is synonymous with the inability to perform any substantial gainful activity under section 223(d) of the Social Security Act (42 U.S.C. 423(d)). Therefore, the Board has generally patterned its regulations dealing with the adjudication of claims for disability based upon the inability to engage in all regular employment (20 CFR Part 220) on regulations promulgated by the Social Security Administration (20 CFR Part 404, Subpart P). On November 14, 1991, the Social Security Administration published its final rule (56 FR 57928) expanding its regulations pertaining to how it evaluates symptoms, including pain, in its disability adjudication. The Board has generally followed these regulations in adjudication of claims for disability based on inability to engage in

regular employment and now amends its regulations to conform thereto.

Section 220.100(f) explains how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments found in Appendix 1 of this part. Appendix 1 contains medical criteria for finding a person disabled on medical factors alone without consideration of the person's age, education, and work experience.

Section 220.112(a) is amended by eliminating the reference to remarried widow(ers) and surviving divorced spouses. Section 5103 of Public Law 101-508 revised the standard of disability for these groups of beneficiaries to require the consideration of other than medical factors, such as age, education, and experience, in determining disability for all substantial activity for these groups. Prior to the amendment, only medical factors were required to be used in a disability determination for these beneficiaries.

Section 220.114 is revised to parallel the Social Security regulation dealing with the same subject. See § 404.1529 of this chapter. Section 220.114 provides guidance on the evaluation of symptoms, including pain. The regulation conforms to the Board's current procedures and applicable court decisions on the evaluation of symptoms, especially pain, in making disability determinations.

Section 220.114(a) is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that the Board will consider a claimant's symptoms along with other objective medical evidence and other evidence relating to a claimant's condition.

Section 220.114(b) explains that the Board will not find that pain will affect an individual's ability to do basic work activities unless the claimant first establishes that he or she has a medically determinable physical or mental impairment, supported by medical signs and laboratory findings, to which the allegation of pain can reasonably be related.

Section 220.114(c) provides that when a symptom, such as pain, is established, the Board must then evaluate the intensity and persistence of the symptom with respect to how it limits the claimant's capacity for work. In making this evaluation the Board considers all available evidence, including the claimant's medical history, statements from the claimant and his treating physician, and statements from others who have knowledge of the claimant's situation.

Section 220.114(d) explains how symptoms, such as pain, are evaluated in the sequential evaluation process required in disability adjudication.

Section 220.120 is revised to explain that in determining the claimant's residual functional capacity the Board considers the claimant's symptoms, such as pain, and that such pain or other symptoms may limit the claimant's residual functional capacity beyond what can be determined from anatomical or physiological abnormalities taken alone. Consistent with the revision of § 220.120, a new § 220.135 explains that a claimant's symptoms, such as pain, may cause both exertional and nonexertional limitations. This new section defines those terms. Only when the claimant's impairments and related symptoms impose solely exertional restrictions do the rules set forth in Appendix 2 of this part direct a conclusion.

Appendix 2 contains the medical-vocational guidelines or "grids". The grids direct a finding of disabled or not disabled based on specified limitations combined with the individual's age, education and work experience. The amendment to § 200.00 of Appendix 2 of this part conforms the section to the revised § 220.120.

Collection of Information Requirements

The amendments to this part do not impose information collection and recordkeeping requirements. Consequently, the final rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this final rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. This rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

The amendments made by this rule are not significant. The amendments to sections of part 220 update the Board's regulations to reflect a change in the manner in which pain and other subjective symptoms are evaluated when determining if an individual is disabled from all regular employment. The amendments also clarify the use of Appendices 1 and 2, and make other amendments to reflect recent changes in law.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(l). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local government, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

The proposed rule was published in the **Federal Register** on September 11, 1995 (60 FR 47122). Comments were solicited and one was received. That commenter suggested that the Board could strengthen its disability program by establishing a mechanism for reevaluating an individual's entitlement to disability annuities being paid by the Board. The Board has an active program of reevaluating disability annuitants by its continuing disability review program. The guidelines for that program are set forth in § 220.186 of this part.

The Board has modified the proposed rule by removing the suggested addition of a paragraph (g) to § 220.110 and a paragraph (d) to § 220.134. That proposed text has been removed as it was inconsistent with regulations governing the cross-referencing by one agency to the regulations of another agency. See 1 CFR 21.21(c).

List of Subjects in 20 CFR Part 220

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board amends part 220 of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

■ 2. Section 220.110 is amended by adding a new paragraph (f) to read as follows:

§ 220.110 Listing of Impairments in Appendix 1 of this part.

* * * * *

(f) *Symptoms as criteria of listed impairment(s).* Some listed impairment(s) include symptoms usually associated with those impairment(s) as criteria. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are present.

■ 3. The penultimate sentence of § 220.112(a) is revised to read as follows:

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) * * * The decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education and past work experience. * * *

■ 4. Section 220.114 is revised to read as follows:

§ 220.114 Evaluation of symptoms, including pain.

(a) *General.* In determining whether the claimant is disabled, the Board considers all of the claimant's symptoms, including pain, and the extent to which the claimant's symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, the Board means medical signs and laboratory findings as defined in §§ 220.113(b) and (c) of this part. By other evidence, the Board means the kinds of evidence described in §§ 220.45 and 220.46 of this part. These include statements or reports from the claimant, the claimant's treating or examining physician or psychologist, and others about the claimant's medical history, diagnosis, prescribed treatment, daily activities,

efforts to work, and any other evidence showing how the claimant's impairment(s) and any related symptoms affect the claimant's ability to work. The Board will consider all of the claimant's statements about his or her symptoms, such as pain, and any description by the claimant, the claimant's physician, or psychologist, or other persons about how the symptoms affect the claimant's activities of daily living and ability to work. However, statements alone about the claimant's pain or other symptoms will not establish that the claimant is disabled; there must be medical signs and laboratory findings which show that the claimant has a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of the claimant's pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that the claimant is disabled. In evaluating the intensity and persistence of the claimant's symptoms, including pain, the Board will consider all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings and statements about how the claimant's symptoms affect the claimant. (Section 220.112(b) of this part explains how the Board considers opinions of the claimant's treating source and other medical opinions on the existence and severity of the claimant's symptoms, such as pain.) The Board will then determine the extent to which the claimant's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how the claimant's symptoms affect the claimant's ability to work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce symptoms, such as pain.* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the claimant's ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological

abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. The finding that the claimant's impairment(s) could reasonably be expected to produce the claimant's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the claimant's symptoms. The Board will develop evidence regarding the possibility of a medically determinable mental impairment when the Board has information to suggest that such an impairment exists, and the claimant alleges pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of symptoms, such as pain, and determining the extent to which the claimant's symptoms limit his or her capacity for work.*—(1) *General.* When the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain, the Board must then evaluate the intensity and persistence of the claimant's symptoms so that it can determine how the claimant's symptoms limit the claimant's capacity for work. In evaluating the intensity and persistence of the claimant's symptoms, the Board considers all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings, and statements from the claimant, the claimant's treating or examining physician or psychologist, or other persons about how the claimant's symptoms affect the claimant. The Board also considers the medical opinions of the claimant's treating source and other medical opinions as explained in § 220.112 of this part. Paragraphs (c)(2) through (c)(4) of this section explain further how the Board evaluates the intensity and persistence of the claimant's symptoms and how it determines the extent to which the claimant's symptoms limit the claimant's capacity for work, when the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence

of this type is a useful indicator to assist the Board in making reasonable conclusions about the intensity and persistence of the claimant's symptoms and the effect those symptoms, such as pain, may have on the claimant's ability to work. The Board must always attempt to obtain objective medical evidence and, when it is obtained, the Board will consider it in reaching a conclusion as to whether the claimant is disabled. However, the Board will not reject the claimant's statements about the intensity and persistence of the claimant's pain or other symptoms or about the effect the claimant's symptoms have on the claimant's ability to work solely because the available objective medical evidence does not substantiate the claimant's statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the Board will carefully consider any other information the claimant may submit about his or her symptoms. The information that the claimant, the claimant's treating or examining physician or psychologist, or other persons provide about the claimant's pain or other symptoms (e.g., what may precipitate or aggravate the claimant's symptoms, what medications, treatments or other methods he or she uses to alleviate them, and how the symptoms may affect the claimant's pattern of daily living) is also an important indicator of the intensity and persistence of the claimant's symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which the claimant, his or her treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether the claimant is disabled. The Board will consider all of the evidence presented, including information about the claimant's prior work record, the claimant's statements about his or her symptoms, evidence submitted by the claimant's treating, examining or consulting physician or psychologist, and observations by Board employees and other persons. Section 220.112 of this part explains in detail how the Board considers and weighs treating source and other medical opinions about the nature and severity of the claimant's impairment(s) and any related symptoms, such as pain. Factors

relevant to the claimant's symptoms, such as pain, which the Board will consider include:

- (i) The claimant's daily activities;
- (ii) The location, duration, frequency, and intensity of the claimant's pain or other symptoms;
- (iii) Precipitating and aggravating factors;
- (iv) The type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate the claimant's pain or other symptoms;
- (v) Treatment, other than medication, the claimant receives or has received for relief of pain or other symptoms;
- (vi) Any measures the claimant uses or has used to relieve pain or other symptoms (e.g., lying flat on the claimant's back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and
- (vii) Other factors concerning the claimant's functional limitations and restrictions due to pain or other symptoms.

(4) *How the Board determines the extent to which symptoms, such as pain, affect the claimant's capacity to perform basic work activities.* In determining the extent to which the claimant's symptoms, such as pain, affect the claimant's capacity to perform basic work activities, the Board considers all of the available evidence described in paragraphs (c)(1) through (c)(3) of this section. The Board will consider the claimant's statements about the intensity, persistence, and limiting effects of the claimant's symptoms, and the Board will evaluate the claimant's statements in relation to the objective medical evidence and other evidence, in reaching a conclusion as to whether the claimant is disabled. The Board will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the claimant's statements and the rest of the evidence, including the claimant's medical history, the medical signs and laboratory findings, and statements by the claimant's treating or examining physician or psychologist or other persons about how the claimant's symptoms affect the claimant. The claimant's symptoms, including pain, will be determined to diminish the claimant's capacity for basic work activities to the extent that the claimant's alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* The Board follows a set order of steps to determine whether the claimant is

disabled. If the claimant is not doing substantial gainful activity, the Board considers the claimant's symptoms, such as pain, to evaluate whether the claimant has a severe physical or mental impairment(s), and at each of the remaining steps in the process. Section 220.100 explains this process in detail. The Board also considers the claimant's symptoms, such as pain, at the appropriate steps in the Board's review when the Board considers whether the claimant's disability continues. Subpart O of this part explains the procedure the Board follows in reviewing whether the claimant's disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether the claimant's impairment or combination of impairment(s) is severe. (See § 220.100(b)(2) of this part.)

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 220.100(f) of this part explains how the Board considers the claimant's symptoms when the claimant's symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If the claimant's impairment is not the same as a listed impairment, the Board must determine whether the claimant's impairment(s) is medically equivalent to a listed impairment. Section 220.111 of this part explains how the Board makes this determination. Under § 220.111(b) of this part, the Board will consider equivalence based on medical evidence only. In considering whether the claimant's symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, the Board will look to see whether the claimant's symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, the Board will not substitute the claimant's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the claimant's impairment(s) to that of a listed impairment. If the symptoms, signs, and laboratory findings of the claimant's impairment(s) are equivalent in severity to those of a listed impairment, the Board will find the claimant disabled. If it does not, the Board will consider the impact of the claimant's symptoms on the claimant's residual functional capacity. (See paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity.* If the claimant has a medically determinable severe physical or mental impairment(s), but the claimant's impairment(s) does not meet or equal an impairment listed in Appendix 1 of this part, the Board will consider the impact of the claimant's impairment(s) and any related symptoms, including pain, on the claimant's residual functional capacity. (See § 220.120 of this part.)

■ 5. Section 220.120 is revised to read as follows:

§ 220.120 The claimant's residual functional capacity.

(a) *General.* The claimant's impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what the claimant can do in a work setting. The claimant's residual functional capacity is what the claimant can still do despite the claimant's limitations. If the claimant has more than one impairment, the Board will consider all of the claimant's impairment(s) of which the Board is aware. The Board will consider the claimant's ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even the claimant's own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the claimant's medical condition. Observations by the claimant's treating or examining physicians or psychologists, the claimant's family, neighbors, friends, or other persons, of the claimant's limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the claimant's medical records to enable us to decide to what extent the claimant's impairment(s) keeps the claimant from performing particular work activities. This assessment of the claimant's remaining capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite the claimant's impairment(s). Then, using the guidelines in §§ 220.125 and 220.134 of this part the claimant's vocational background is considered along with the claimant's residual

functional capacity in arriving at a disability determination or decision. In deciding whether the claimant's disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant has experienced is related to the claimant's ability to work as discussed in § 220.178 of this part.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board first assesses the nature and extent of the claimant's physical limitations and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the claimant's ability to do past work and other work.

(c) *Mental abilities.* When the Board assesses the claimant's mental abilities, the Board first assesses the nature and extent of the claimant's mental limitations and restrictions and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce the claimant's ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If the claimant has this type of impairment(s), the Board considers any resulting limitations and restrictions which may reduce the claimant's ability to do past work and other work in deciding the claimant's residual functional capacity.

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this part, the Board will consider the limiting effects of all of the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity.

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and nonmedical evidence, including the information described in § 220.114 of this part.

■ 6. A new § 220.135 is added to Subpart K to read as follows:

§ 220.135 Exertional and nonexertional limitations.

(a) *General.* The claimant's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit the claimant's ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect the claimant's ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 220.132 and 220.134 of this part explain how the Board uses the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect the claimant's ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 220.100(b)(5) and 220.180(h) of this part explain that if the claimant can no longer do the claimant's past relevant work because of a severe medically determinable impairment(s), the Board must determine whether the claimant's impairment(s), when considered along with the claimant's age, education, and work experience, prevents the claimant

from doing any other work which exists in the national economy in order to decide whether the claimant is disabled or continues to be disabled. Paragraphs (b), (c), and (d) of this section explain how the Board applies the medical-vocational guidelines in Appendix 2 of this part in making this determination, depending on whether the limitations or restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the Board considers that the claimant has only exertional limitations. When the claimant's impairment(s) and related symptoms only impose exertional limitations and the claimant's specific vocational profile is listed in a rule contained in Appendix 2 of this part, the Board will directly apply that rule to decide whether the claimant is disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the demands of jobs other than the strength demands, the Board considers that the claimant has only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

- (i) Difficulty functioning because the claimant is nervous, anxious, or depressed;
- (ii) Difficulty maintaining attention or concentration;
- (iii) Difficulty understanding or remembering detailed instructions;
- (iv) Difficulty in seeing or hearing;
- (v) Difficulty tolerating some physical feature(s) of certain work settings, e.g., the claimant cannot tolerate dust or fumes; or
- (vi) Difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If the claimant's impairment(s) and related symptoms, such as pain, only affect the claimant's ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the

regulations, giving consideration to the rules for specific case situations in Appendix 2 of this part.

(d) *Combined exertional and nonexertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength and demands of jobs other than the strength demands, the Board considers that the claimant has a combination of exertional and nonexertional limitations or restrictions. If the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength and demands of jobs other than the strength demands, the Board will not directly apply the rules in Appendix 2 unless there is a rule that directs a conclusion that the claimant is disabled based upon the claimant's strength limitations; otherwise the rules provide a framework to guide the Board's decision.

Appendix 2 to Part 220—Medical-Vocational Guidelines

■ 7. Revise section 200.00(c) of Appendix 2 to part 220—Medical-Vocational Guidelines to read as follows:
200.00 *Introduction.*

* * * * *

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, the Board considers his or her symptoms (such as pain), signs, and laboratory findings together with other evidence the Board obtains.

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Dated: October 16, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 402

[Regulations No. 2]

RIN 0960-AF91

Availability of Information and Records to the Public

AGENCY: Social Security Administration.

ACTION: Final rules.