

specifically requested that, where an investor directly or indirectly acquires 10 percent or more but less than 20 percent of a public utility's outstanding voting securities and is eligible to file a statement of beneficial ownership with the Securities and Exchange Commission (SEC) on SEC Schedule 13G,<sup>3</sup> such investment would not be deemed to result in a disposition of the public utility's jurisdictional facilities under FPA section 203(a)(1) or to result in affiliation with the public utility for purposes of the Commission's market-based rate requirements under FPA section 205.

3. Commission staff held a workshop to address the issues raised by EPSA in its request. Comments were submitted in response to the workshop. In the course of considering the comments submitted and the discussions at the workshop, the Commission determined that the issues may call for more formal treatment and issued the NOPR in light of the comments and discussions.

4. In the NOPR, in connection with EPSA's proposal to rely on the filing of SEC Schedule 13G to demonstrate conclusively that an investor will not control the public utility in which it has invested, the Commission stated that while it has relied on these filings, in conjunction with other conditions and reporting requirements in the past for various purposes, it believed the Commission could better fulfill its statutory responsibilities if it did not rely exclusively on the Schedule 13G. The Commission stated that the primary regulatory purpose behind the beneficial ownership disclosure requirements under section 13(d) of the 1934 Act is to provide companies and their shareholders with information about large accumulations of a company's stock and that the requirements of section 13(d) do not bar an investor from acquiring control of a company,

Docket No. EL08-87-000 (filed Sept. 2, 2008) (Petition). The petition was originally docketed in Docket No. EL08-87-000 but was subsequently redocketed in Docket No. PL09-3-000. *Elec. Power Supply Ass'n*, Notice Redocketing Proceeding, Docket Nos. EL08-87-000 and PL09-3-000 (Nov. 5, 2008).

<sup>3</sup> Schedule 13G is filed with the SEC pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (1934 Act), and the SEC's rules thereunder, by any person when such person has acquired beneficial ownership of more than five percent but less than 20 percent of the outstanding voting equity securities of a company that are registered under section 12 of and the 1934 Act and such person certifies that it has not acquired, and does not hold, such securities for the purpose of or with the effect of changing or influencing the control of the issuer. Amendments to Beneficial Ownership Reporting Requirements, File No. S7-16-96, 1998 SEC LEXIS 63, at \* 17 n. 20 (Jan. 12, 1998).

which is of utmost importance to this Commission.<sup>4</sup>

5. With these concerns in mind, the Commission provided an alternative proposal in the NOPR. The Commission first proposed to amend part 33 of its regulations to grant a blanket authorization under section 203(a)(2) of the FPA, as well as a parallel blanket authorization under section 203(a)(1), for acquisitions of 10 percent or more, but less than 20 percent of the outstanding voting securities of a public utility or holding company, where the acquiring company files a statement certifying that such securities were not acquired and not held for the purpose or with the effect of changing or influencing the control of the public utility and such acquiring company complies with certain conditions designed to limit its ability to exercise control (Affirmation). Under the proposed amendment to part 33, a public utility whose voting securities are acquired, directly or indirectly, in any such transaction would be exempt from the requirements of an "affiliate" in part 35. The Commission also proposed to amend subpart H and subpart I of part 35 of the Commission's regulations to define an "affiliate" of a specified company as any person that controls, is controlled by, or is under common control with such specified company.

6. The Commission received several comments in response to the proposal in the NOPR. A number of commenters raised concerns about the scope of the proposal, including the content of the proposed Affirmation and the commitments that the Commission proposed an acquiring company would need to agree to. Commenters also raised concerns regarding implementation of the proposal.

## II. Discussion

7. Upon further consideration and after review of the comments received in response to the NOPR, we will withdraw the NOPR and terminate this proceeding. We also terminate the proceeding on EPSA's Petition requesting guidance in Docket No. PL09-3-000.

8. As noted above, in the course of considering the discussions at the workshop to address the issues raised by EPSA in its Petition and the comments received following the workshop, the Commission determined that the issues may call for more formal treatment and issued the NOPR. We appreciate the feedback that the Commission received in response to the

<sup>4</sup> See NOPR, FERC Stats. & Regs. ¶ 32,650 at P 35.

NOPR. As previously indicated, the comments submitted raised concerns regarding the scope and implementation of the proposal. Having considered these comments, we are persuaded to not seek to adopt the Affirmation and blanket authorization that the Commission originally proposed.

9. As a result, we withdraw the NOPR and terminate this rulemaking proceeding. We also terminate the proceeding on EPSA's Petition requesting guidance in Docket No. PL09-3-000.

By the Commission.

Issued: October 28, 2016.

**Nathaniel J. Davis, Sr.**,

*Deputy Secretary.*

[FR Doc. 2016-26540 Filed 11-8-16; 8:45 am]

**BILLING CODE 6717-01-P**

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## RAILROAD RETIREMENT BOARD

### 20 CFR Part 220

RIN 3220-AB68

#### Providing Evidence of Disability

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to amend our regulations regarding the submission of evidence in disability claims to require you to inform us or submit all evidence known to you that "relates to" your disability claims with exceptions for privileged communications and duplicates. This requirement would include the duty to submit all evidence obtained from any source in its entirety, subject to one of these exceptions. These modifications to our regulations would better describe your duty to submit all evidence that relates to your disability claim and will enable us to have a more complete case record which will allow us to make more accurate determinations of your disability status.

**DATES:** Submit comments on or before January 9, 2017.

**ADDRESSES:** You may submit comments, identified by [3220-AB68], by any of the following three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to RIN number 3220-AB68.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change, with any personal information provided. We

strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet*: Email comments to the Secretary to the Board at [SecretarytotheBoard@rrb.gov](mailto:SecretarytotheBoard@rrb.gov).

2. *Fax*: Fax comments to (312) 751-7102.

3. *Mail*: Address your comments to the Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092, (312) 751-4945, TTD (312) 751-4701.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Railroad Retirement Act (Act) gives the Railroad Retirement three member Board (Board) the authority to issue regulations governing the production of evidence used to adjudicate both occupational disability and total and permanent disability claims under the Act.<sup>1</sup>

There has been recent interest by members of Congress in ensuring that Railroad Retirement disability benefits are reserved for only those who are truly disabled under either the standards of the occupational disability or total and permanent disability programs.<sup>2</sup> Additionally, the Social Security Administration (SSA) has recently published new regulations requiring the comprehensive submission of all evidence known to the claimant that 'relates to' the claimant's disability claims with exceptions for privileged communications and duplicates. Previously, Social Security disability claimants were required to submit evidence that was 'material' to the disability determination. The effect of the SSA's new regulations is to require that claimants submit evidence that is both favorable and unfavorable to their claims.<sup>3</sup>

The analogy between total and permanent disability under the Railroad Retirement Act and the Social Security Act (SS Act) is well-established. See,

*e.g. Webb v. Railroad Retirement Board*, 358 F. 2d 451 (6th Cir. 1966); *Peppers v. Railroad Retirement Board*, 728 F. 2d 404 (7th Cir. 1984); *Goodwin v. Railroad Retirement Board*, 546 F. 2d 1169 (5th Cir. 1977).

Additionally, the Railroad Retirement Board's (RRB) occupational disability program incorporates the records requirements of the total and permanent disability program.<sup>4</sup> The SSA's regulations specify a broader scope for claimants when providing records in support of his or her disability claim than the RRB's current regulations. Revising the RRB's regulations would allow the RRB to similarly obtain more complete case records and adjudicate disability claims more precisely.

#### Proposed Changes

##### *Providing Evidence of Disability*

We propose to revise § 220.45(a) to require you to inform the Board about or submit all evidence known to you that relates to your claimed disability.<sup>5</sup> The RRB's current regulations require that the "[t]he claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to do work." 20 CFR 220.45(a). Additionally, RRB's regulations require that "[t]he claimant must provide medical evidence showing that he or she has an impairment(s) and how severe it is during the time the claimant claims to be disabled." 20 CFR 220.45(b).

The RRB's regulations further state that the Board may ask the claimant to provide evidence about his or her- (1) Age; (2) Education and training; (3) Work experience; (4) Daily activities both before and after the date the claimant says that he or she became disabled; (5) Efforts to work; and (6) Any other evidence showing how the claimant's impairment(s) affects his or her ability to work." 20 CFR 220.45(b)(1) through (6).

The proposed rule would amend § 220.45(a) by adding "you must inform the Board about or submit all evidence known to you that relates to the claimed disability. This duty is ongoing and requires you to disclose any additional related evidence about which you

become aware. This duty applies at each level of the administrative review process, including the appeals level, if the evidence relates to the period on or before the date of the hearing officer's decision."

The proposed rule would also amend § 220.45(b) by expanding the explanation of the kinds of evidence to be submitted and excluding certain information protected by attorney-client privilege or by the attorney work product doctrine.

#### Clarity of This Proposed Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand.

For example:

- Are the requirements for the rule clearly stated?
- Have we organized the material to meet your needs?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand?

#### When will we start to use this rule?

We will not use this proposed rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of relevant comments we received, if any, and responses to them. We will also include an explanation of how we will apply the new rule.

#### Regulatory Procedures

*Executive Order 12866, as Supplemented by Executive Order 13563*

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

#### *Regulatory Flexibility Act*

We certify that this proposed rule would not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

<sup>1</sup> See 45 U.S.C. 231a(a)(2) and (3).

<sup>2</sup> See, *e.g.*, Is the Railroad Retirement Board Doing Enough to Protect Against Fraud? Hearing Before the H. Comm. on Oversight and Government Reform: Subcommittee on Government Operations, 114th Cong. (2015), <https://www.congress.gov/congressional-record/2015/5/1/daily-digest>.

<sup>3</sup> Submission of Evidence in Disability Claims, 80 FR 14828, March 20, 2015.

<sup>4</sup> See 20 CFR 222.12.

<sup>5</sup> Under the Act, a claimant will be considered to be occupationally disabled if he or she has a current connection to the railroad industry and a permanent physical and mental condition such as to be disabling for work in his or her regular occupation. 45 U.S.C. 231a(a)(1)(iv). A claimant will be considered to be totally and permanently disabled if his or her permanent physical or mental condition is such that he or she is unable to engage in any regular employment. 45 U.S.C. 231a(a)(1)(v).

*Paperwork Reduction Act*

This NPRM imposes no reporting or recordkeeping requirements subject to OMB clearance.

**List of Subjects in 20 CFR Part 220**

Disability benefits, Railroad retirement.

The Railroad Retirement Board proposes to amend title 20, chapter II, subchapter F, part 220 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(1); 45 U.S.C. 231f.

■ 2. Revise § 220.45 to read as follows:

**§ 220.45 Providing evidence of disability.**

(a) *General.* You are responsible for providing all evidence of the claimed disability and the effect of the disability on your ability to work. You must inform the Board about or submit all evidence known to you that relates to the claimed disability. This duty is ongoing and requires you to disclose any additional related evidence about which you become aware. This duty applies at each level of the administrative review process, including the appeals level, if the evidence relates to the period on or before the date of the hearing officer's decision. The Board will assist you, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the expense of the Board as explained in §§ 220.50 and 220.51.

(b) *Kind of evidence.* (1) You must provide medical evidence proving that you have an impairment(s) and how severe it is during the time you claim to be disabled. The Board will consider only impairment(s) you claim to have or about which the Board receives evidence. Before deciding your disability status, the Board will develop a complete medical history (*i.e.*, evidence from the records of the your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed an application. The Board will make every reasonable effort to help you in getting medical reports from your own medical sources when you give the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one follow-up request to your medical source to obtain the medical evidence

necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the follow-up request to reply (unless experience indicates that a longer period is advisable in a particular case). In order to expedite processing, the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board asks you to do so, you must contact the medical sources to help us get the medical reports.

(2) *Exceptions.* Notwithstanding paragraph (a) of this section, evidence does not include:

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us; or  
(ii) Your representative's analysis of your claim, unless he or she voluntarily discloses it to us. Your representative's "analysis of your claim," means information that is subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to benefits (See paragraph (b)(2)(iv) of this section).

(iii) The provisions of paragraph (b)(2)(i) of this section apply to communications between you and your non-attorney representative only if the communications would be subject to the attorney-client privilege, if your non-attorney representative were an attorney. The provisions of paragraph (b)(2)(ii) of this section apply to the analysis of your claim by your non-attorney representative only if the analysis of your claim would be subject to the attorney work product doctrine, if your non-attorney representative were an attorney.

(iv) The attorney-client privilege generally protects confidential communications between an attorney and his or her client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allows you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are entitled to benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse

to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in his or her analysis of your claim or made handwritten notes on the face of the report.

(c) *Your responsibility.* You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. When you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise. The Board may also ask you to provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 220.125 through 220.134, we discuss in more detail the evidence the Board needs when it considers vocational factors.)

Dated: November 3, 2016.

By Authority of the Board.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2016-27060 Filed 11-8-16; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2016-0799]

RIN 1625-AA87

**Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Technical correction.

**SUMMARY:** The Coast Guard is publishing this notice to correct a misstatement and typographical error in a previous