

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.

SUMMARY: These final rules amend our regulations to reflect organizational changes and to correct a typographical error. We are changing the title of the official responsible for decisions on Freedom of Information Act (FOIA) requests to conform to organizational changes. These revisions will inform the public of the change in the official designated as SSA's Freedom of Information Officer.

EFFECTIVE DATE: October 22, 2003.

FOR FURTHER INFORMATION CONTACT:

Ethel Burrows, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, 1500 Dunleavy Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, regulations@ssa.gov, (410) 965-3948 or TTY (410) 966-5609 for information about this rule. For information on eligibility or filing for benefits: Call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778 or visit our Internet website, Social Security Online, at <http://www.socialsecurity.gov>.

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>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: On October 10, 2002, we published a notice of organizational and functional changes within the Office of the General Counsel (OGC) (67 FR 63185). The notice established the Office of Public Disclosure in OGC, which is now responsible for FOIA activities in SSA. The Office of Program Support, Office of Disclosure Policy previously performed this function, in the Office of Disability and Income Security Programs. On November 15, 2002, we published a notice deleting the Office of Program Support as an organization (67 FR 69287).

We last published final rules revising these sections in the **Federal Register** on January 29, 1997 (62 FR 4154). These changes we are publishing today do not affect any programs or the eligibility criteria for any programs.

Regulatory Procedures

Justification for Final Rule and for Waiving the 30-Day Delay in the Effective Date

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA

provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for these rules. Good cause exists because we are making no substantive changes in these final rules. We are merely updating the sections of our regulations where the organizational structure changed for the Office of Public Disclosure and making one typographical correction. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as final rules. In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in our regulations.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These rules impose no additional reporting and recordkeeping requirements that require 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; and 96.020 Special Benefits for Certain World War II Veterans.)

List of Subjects in 20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

Dated: October 10, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 402 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

■ 1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905, 26 U.S.C. 6103; 36 U.S.C. 923b; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Section 402.125 is amended by removing the words “Director, Office of Disclosure Policy” and adding in their place the words “Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.”

■ 3. Section 402.135 is amended by removing the words “The Director, Office of Disclosure Policy” and adding in their place the words “The Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.”

■ 4. In section 402.180, paragraph (a), the cross-reference to § 402.120 is revised to § 402.140.

■ 5. In § 402.190, paragraph (a) is amended by removing the words “Director, Office of Disclosure Policy” and adding in their place the words “Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.”

■ 6. Section 402.195, paragraph (a) is amended by removing the words “Director of the Office of Disclosure Policy” and adding in their place the words “Deputy Executive Director for the Office of Public Disclosure, Office of the General Counsel.”

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