

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.

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(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