

FOR FURTHER INFORMATION CONTACT:

Phillip Feiger, Refuge Manager,
Eastern Neck National Wildlife
Refuge, Route 2, Box 225, Rock
Hall, Md. 21661, 301-639-7415.

SUPPLEMENTARY INFORMATION:

§26.34 Special regulations concerning
public access, use, and recreation for
individual wildlife refuge areas.

MARYLAND

EASTERN NECK NATIONAL WILDLIFE
REFUGE

Entry into and travel on the Eastern Neck National Wildlife Refuge is permitted year-round during daylight hours for photography, hiking, nature study, bicycling, and for access to public waters for fin fishing, shellfishing, and crabbing on areas designated by signs as open. These open areas are delineated on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Ser-

vice, One Gateway Center, Suite 700, Newton Corner, Mass. 02158.

Recreational uses shall be in accordance with all State and Federal regulations, subject to the following special regulations:

1. Bicycles and registered motor vehicles are permitted only on designated roads and parking areas. Parking and leaving vehicles unattended along refuge roads is not permitted.

2. Designated nature trails, boardwalks and recreation sites are closed during refuge deer hunts for safety purposes.

3. Boat access is permitted year-round at Bogle's Wharf for commercial and sport fin fishing, shellfishing, and crabbing.

4. The Ingleside Recreation Area and associated picnicking and boat launching sites are open from May 1, 1978 through September 30, 1978.

5. Pets are not permitted out of cars except in designated parking areas where they must be on a leash not exceeding ten feet in length.

6. Camping on the refuge is specifically prohibited.

7. During the period May 1 through September 30, 1978, the following activities are not permitted in an area delineated by posting at Eastern Neck Narrows: stopping or parking vehicles; standing on or fishing and crabbing from the roadside or shoreline; launching or removing boats.

The provisions of this special regulation supplement the regulations which govern public entry and use on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

WILLIAM C. ASHE,
*Acting Regional Director, United
States Fish and Wildlife Service.*

FEBRUARY 27, 1978.

[FR Doc. 78-5915 Filed 3-6-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-37]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[7 CFR Part 2853]

MEATS, PREPARED MEATS, AND MEAT PRODUCTS

Grading, Certification, and Standards

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Revision and addition of locations for public hearings.

SUMMARY: The locations where the public hearings in San Francisco and Omaha were scheduled for persons to present oral comments on the proposed revisions in certain official U.S. standards for grades of meat and the related meat grading regulations and a companion rule to revise Federal meat inspection regulations pertaining to marking and labeling requirements have been changed to different sites. In addition, to provide a more easily accessible location for persons in the south-central United States to present oral comments, a fifth session is now scheduled for March 30, 1978, in Dallas, Tex.

DATES: See below.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry Goodall, Acting Director, Meat Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4727.

SUPPLEMENTARY INFORMATION: The hearing sessions' locations and dates as listed in the January 23, 1978, FEDERAL REGISTER (43 FR 3140) are now revised as follows:

1. March 16, 1978, Washington, D.C. 20250, Jefferson Auditorium, South Agriculture Building, 14th and Independence Avenue SW.

2. March 21, 1978, San Francisco, Calif. 94102, State Office Building, Room 1194, 455 Golden Gate Avenue.

3. March 23, 1978, Omaha, Nebr. 68102, Civic Auditorium, Assembly Hall, 17th Street and Capitol Avenue.

4. March 28, 1978, Atlanta, Ga. 30303, Federal Office Building, Room 556, 275 Peachtree Street NW.

5. March 30, 1978, Dallas, Tex. 75202, Federal Building, Room 7A23, 1100 Commerce Street.

Persons who wish to be heard at the Dallas session are requested to notify

the Administrator, Food Safety and Quality Service, Washington, D.C. 20250, on or before March 14, 1978, stating how much time they will need to present their statement. Although advance notice will facilitate the conduct of the hearing, any person who wishes to be heard will be afforded such opportunity, whether or not that person has given advance notice.

Dated: March 2, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc. 78-5837 Filed 3-6-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Office of Conservation and Solar Application

[10 CFR Part 1010]

ELECTRIC AND HYBRID VEHICLE RESEARCH DEVELOPMENT, AND DEMONSTRATION PROJECT

Cancellation of Public Hearing

AGENCY: Department of Energy.

ACTION: Cancellation of public hearing.

SUMMARY: The Department of Energy is canceling the public hearing on proposed regulations for performance standards for electric and hybrid vehicles which was announced in a Notice of Proposed Rulemaking and Public Hearing issued on February 6, 1978 (43 FR 5841, February 10, 1978). The public hearing is canceled due to the lack of sufficient interest in the hearing. The deadline for comments remains the same as set forth in the February 6 notice.

FOR FURTHER INFORMATION CONTACT:

Charles E. Pax, Office of Conservation and Solar Applications, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-4893.

Issued in Washington, D.C., March 3, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-6055 Filed 3-6-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 404, 416]

[Regs. No. 4, 16]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The proposed amendments will expand existing regulations to include additional detailed criteria for the evaluation of those cases involving claims based on disability under title II and title XVI of the Social Security Act in which the determination as to disability cannot be made on medical severity alone or on the ability to do past work. In such instances the individual's impairment will be considered in conjunction with the individual's age, education, and work experience to determine his or her ability to engage in substantial gainful activity. In publishing the proposed amendments, the Social Security Administration intends to consolidate and elaborate upon longstanding medical-vocational evaluation policies for adjudicating disability claims in which an individual's age, education, and work experience must be considered in addition to the medical condition.

DATES: Comments must be received on or before May 8, 1978.

ADDRESSES: Prior to final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be avail-

able for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

William J. Ziegler, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION:

The proposed amendments will expand existing regulations to include additional detailed criteria for the evaluation of those cases involving claims based on disability under title II and title XVI of the Social Security Act in which the determination as to disability cannot be made on medical severity alone or on the ability to do past work. In such instances the individual's impairment will be considered in conjunction with the individual's age, education, and work experience to determine his or her ability to engage in substantial gainful activity. The rules in Appendix 2 consider only impairments which result in exertional limitations. They do not apply where the impairment(s) causes only nonexertional limitations; e.g., certain mental, sensory or skin impairments. The regulations text provides the framework in which to evaluate impairments resulting only in nonexertional limitations. In any case where a numbered Appendix 2 rule does not apply, full consideration must be given to all the facts of the case in accordance with the definitions and discussions of each factor in the regulations.

These proposed amendments have no applicability in determining whether or not statutory blindness exists under title II or title XVI of the Social Security Act, or whether children under age 18 are disabled for purposes of title XVI or in determining disability of applicants for widows' or widowers' benefits under title II.

In order to obtain the public's views and comments before proceeding with the proposed amendments, public meetings were held in Baltimore, Md. (41 FR 51471), Dallas, Tex., and San Francisco, Calif. (42 FR 8223) on December 8, 1976, March 1, and March 3, 1977, respectively. All comments pertaining to the proposed amendments have been carefully considered and all issues identified in the comments are addressed in the preamble.

In publishing the proposed amendments, the Social Security Administration intends to consolidate and elaborate upon longstanding medical-vocational evaluation policies for adjudicating disability claims in which an in-

dividual's age, education, and work experience must be considered in addition to the medical condition. These policies have in the past been reflected in fragmented guides and have not been readily available in the same format at all levels of adjudication. While the majority of disability cases are resolved on the basis of medical considerations alone, or the ability to do past work, those cases that require the full consideration of an individual's age, education, and work experience are the most difficult to resolve at all levels of adjudication as well as for the general public to understand. Consolidating and incorporating these policies into the regulations will serve to make clearer to claimants and their representatives how disability is determined where vocational factors must be considered. In addition, it will serve to better assure the soundness and consistency of disability determinations in all claims that are filed regardless of the level at which adjudicated; and finally, it should promote better understanding and acceptance by the public and the courts of disability determinations that are made.

BACKGROUND

Congress first amended the Social Security Act in 1954 to preserve the insurance rights of individuals who have periods of total disability before reaching retirement age. The 1954 provision defined disability, in pertinent part, as:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration * * *

(Section 106(d), Act of September 1, 1954, C. 1206, 68 Stat. 1080.)

The law, on its face, did not initially mandate consideration of any vocational factors. However, the Congress envisaged that the determination in every case be an individual one. Accordingly, since the inception of the social security disability program in 1954, in applying the statutory test, consideration has been given to the individual's vocational capacity, where pertinent, in determining whether the individual is disabled. However, because of the clearly limited statutory definition, those factors which relate primarily not to disability but to an individual's ability to obtain employment have been excluded from consideration.

The Social Security Administration's first effort in developing rules for disability determinations was in February 1955 when the Commissioner of Social Security appointed a Medical Advisory Committee to provide technical advice on administering guides and standards designed to provide equal consider-

ation to all individuals in the evaluation of their disabilities under the 1954 law. This committee suggested that age, education, training, experience, and other individual factors would need consideration in any case requiring evaluation of facts beyond the medical report and work record even though the law did not specifically require consideration of such factors.

In 1956, the law was further amended to provide for payment of disability insurance benefits to insured individuals who were disabled; the above quoted statutory definition of disability was adopted for this purpose (Social Security Act as amended by section 103(a) of Pub. L. 84-880, approved August 1, 1956, (C836, 70 Stat. 815)). Regulations promulgated in 1957 to implement the statute also provided for the consideration of vocational factors. Section 404.1501 of Regulations No. 4 provided in pertinent part:

"(b) In determining whether an individual's impairment makes him unable to engage in such activity [substantial gainful activity] primary consideration is given to the severity of his impairment. Consideration is also given to such other factors as the individual's education, training and work experience.

"(c) It must be established by medical evidence, and where necessary by appropriate medical tests, that the applicant's impairment results in such a lack of ability to perform significant functions—such as moving about, handling objects, hearing or speaking, or, in a case of mental impairment, reasoning or understanding—that he cannot, with his training, education and work experience, engage in any kind or substantial gainful activity." (Emphasis added.)

The initial years of operation of the disability program were reviewed by the Subcommittee on the Administration of the Social Security Laws of the Committee on Ways and Means. This Subcommittee's Preliminary Report, issued on March 11, 1960, stated, in commenting on "nonmedical standards" in the disability program, that:

The Subcommittee believes it is essential that there be a clear distinction between this program and one concerned with unemployment. It also believes it is desirable that disability determinations be carried out in as realistic a manner as possible, and that theoretical capacity in a severely impaired individual can be somewhat meaningless if it cannot be translated into an ability to compete in the open labor market.

In August 1960 the regulations were further amended. Among other things, the amended regulations continued to provide for the consideration of vocational factors including age, education, training, and work experience, in determining disability, and specifically stated:

The physical or mental impairments must be the primary reason for the individual's inability to engage in substantial gainful ac-

tivity. Where for instance, an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because of the hiring practices of certain employers, technological changes in the industry in which he has worked, or local or cyclical conditions, such individual may not be considered under a disability ***

Reflecting concern about the disability insurance benefit program and the way the definition was being interpreted by the courts, the 1967 amendments to the law clarified the definition of disability. This legislation emphasized the role of medical standards in determining disability by stating that an individual is not to be considered under a disability unless the individual's impairment is of such severity that he or she is not only unable to do his or her previous work but cannot (considering his or her age, education, and work experience) engage in any other kind of substantial gainful work which exists in the national economy.

Specifically, the statutory definition of disability in section 223 of the Act was amended by the 1967 amendments to read, in pertinent part, as follows:

(d)(1) the term 'disability' means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) [blindness].

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country. (Emphasis added.)

(3) For purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. (Section 158(b), Pub. L. 90-248, January 2, 1968.)

The legislative history of this amendment indicates that the Congress clearly intended that medical factors be given predominant importance in making disability determinations. The House Report (H.R. Rep. No. 544, 90th Cong., 1st Sess. (1967)) states, at page 30:

*** In most cases the decision that an individual is disabled can be made solely on the basis that his impairment or impairments are of a level of severity (as determined by the Secretary) to be sufficient so that, in the absence of an actual demonstration of ability to engage in substantial gainful activity, it may be presumed that he is unable to so engage because of the impairment or impairments. (Emphasis in original.)

Further, for the first time, albeit in a limited fashion, Congress specifically alluded to vocational factors in the statutory language (Section 223(d)(2)(A)) to provide guidance as to their applicability. In discussing such factors which must be applied to individuals whose medical impairments are not of a sufficient level of severity so that the presumption of disability would apply, the House Report went on to state, on the same page:

*** that such an individual would be disabled only if it is shown that he has a severe medically determinable physical or mental impairment or impairments; that if, despite his impairment or impairments, an individual still can do his previous work, he is not under a disability; and that if, considering the severity of his impairment together with his age, education, and experience, he has the ability to engage in some other type of substantial gainful work that exists in the national economy even though he can no longer do his previous work, he also is not under a disability regardless of whether or not such work exists in the general area in which he lives or whether he would be hired to do such work. It is not intended, however, that a type of job which exists only in very limited numbers or in relatively few geographic locations would be considered as existing in the national economy. While such factors as whether the work he could do exists in his local area, or whether there are job openings, or whether he would or would not actually be hired may be pertinent in relation to other forms of protection, they may not be used as a basis for finding an individual to be disabled under this definition. It is, and has been, the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences or to the state of the local or national economy.

Except for the existing appendix to the regulations listing specific medical impairments which are presumptive of disability due to the severity involved, the existing regulations have provided general guidance in the determination of disability. They have been supported by a wide array of specific administrative materials which have been used primarily at the initial and reconsideration levels in the making of each

decision. Such materials (provided primarily from surveys of industry by the Department of Labor, the Bureau of the Census and State employment services) include a variety of specific, published documentations of jobs existing in the local and national economy and specific physical, mental and skill requirements of such jobs (e.g., the County Business Patterns, published by the Bureau of the Census, which show distribution of employment in the United States by locality and by industry; the Census Reports, published by the Bureau of the Census, which give detailed characteristics of the working population on a national, regional, and local level; occupational analyses of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies; the Occupational Outlook Handbook, published by the Bureau of Labor Statistics, which shows the nature of work, the training and other qualifications needed and working conditions and employment outlook for certain occupations; and the third edition of the Dictionary of Occupational Titles, published by the Department of Labor, which provides job definitions, requirements, worker traits, industry designations and indicators of skills). Thus, the relationship between the physical abilities of specific individuals and the physical, mental, and skill requirements of specific jobs available in the national economy has been administratively determinable. The administrative notice which is taken of the mentioned reference materials is based on the fact that they are generally recognized in business, industry, and government as representing authoritative sources on jobs throughout the national economy. As later editions are published, e.g., the fourth edition of the Dictionary of Occupational Titles now being prepared by the Department of Labor, they will be used in the same manner.

Consistent with the definition of disability prescribed by the law and regulations issued thereunder, and the relationship between the physical abilities of specific individuals and the physical, mental, and skill requirements of specific jobs available in the national economy, detailed guides for determining whether disability exists have been developed by the Social Security Administration and have been provided in the form of administrative issuances at the initial and reconsideration levels for use in the adjudication of each case. Thousands of such cases are adjudicated each year under these evaluation guides. These guides are now proposed as rules for incorporation into the regulation. Their publication in this form will facilitate a sound determination of disability in those cases where the vocational impact of age, education, and work experience

must be assessed in conjunction with the severity of an individual's medical impairment(s), better assure consistency of determinations, and better serve to advise the public, adjudicatory personnel within the Social Security Administration, and the courts, of the specific rules followed by the Social Security Administration.

This need for publication of additional, more definitive medical-vocational rules has been further heightened by the advent of the recent title XVI (Supplemental Security Income) legislation which introduced into general adjudicative consideration for the first time a factor not normally present in the title II disability program—the vocational impact upon adult individuals who have no relevant work experience at all.

Under title II, the "insured status" requirement, which applies to most disability claimants, requires that the claimant have a significant and recent work history covered under the title II program. Under title XVI, the same test of disability is used as under title II, but the collateral requirements are directed to financial need rather than participation in a work-related contributory system. Therefore, needy disabled individuals may qualify under title XVI even if they have no work history.

PROPOSED AMENDMENTS EXPANDING THE REGULATIONS

GENERAL

For consistency with the statutory definition of disability, the proposed regulations contain a technical clarification of the language in Regulations No. 4 and Regulations No. 16 to reflect that an impairment that is "not severe" would support a finding that an individual is not disabled.

The proposed regulations specifically define the adjudicative weight to be given to impairment severity, age, education, and work experience. They emphasize that the adjudicative judgment is to be based on consideration of the interaction of all of the individual factors. They also add a new Appendix 2 which is composed of rules that reflect the major functional and vocational patterns that are encountered in cases where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. The rules in Appendix 2 also reflect the analysis of the various vocational factors in combination with the individual's residual functional capacity in evaluating the individual's ability to engage in substantial gainful activity in other than vocationally relevant past work. These rules are not pre-

sumptive, but are conclusive where the necessary findings with regard to each individual establish that a particular rule is met. That is, where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a factual conclusion as to whether the individual is or is not disabled. However, these individual findings of fact are subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a factual conclusion.

Because the rules consider only impairments which result in exertional limitations, they are not applicable where an individual's impairment(s) cause only non-exertional limitations, e.g., certain mental, sensory, or skin impairments. Further, the rules may not apply where a combination of impairments significantly limits the range of work an individual can perform at a given exertional level; nor do the rules apply where a finding of fact concerning age, education, or work experience differs from the vocational characteristics required by a rule. The rules, however, are useful as adjudicative guides in considering borderline cases and cases involving combinations of impairments. In any case where a rule does not apply, full consideration must be given to all the facts of the case in accordance with the definitions and discussions of each factor in the regulations.

The proposed criteria are considered in appropriate sequence in the context of the overall disability sequential evaluation process. This sequence, conforming to existing social security regulations, and left substantially unchanged by the proposed amendments, is applied in the following manner.

1. *Determinations based on an individual engaging in substantial gainful activity.* Where an individual is actually engaging in substantial gainful activity, a finding will be made that such an individual is not under a disability without consideration of either medical or vocational factors.

2. *Determinations based solely on the medical severity of impairments.* a. Medical considerations alone can justify a finding that the individual is not under a disability where the medically determinable physical or mental impairment(s) is not severe, e.g., does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

b. On the other hand, medical considerations alone would (except where other evidence rebuts a finding of disability, e.g., the individual is actually

engaging in substantial gainful activity) justify a finding of disability where the impairment meets the duration requirement (i.e., is expected to last at least 12 months or result in death) and meets or equals the severity of a listed impairment published in the Appendix (to be designated "Appendix 1") of the disability regulations.

3. *Determinations based on vocational as well as medical considerations.* a. Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor, is not working and is no longer able to perform such labor because of a significant impairment or impairments, such an individual may be found to be under a disability.

b. Where a finding of disability (or its absence) is not made under any of the foregoing steps, the individual's impairment(s) is evaluated in terms of physical and mental demands of the individual's past relevant work. If the impairment(s) does not prevent the performance of past relevant work, disability will be found not to exist.

c. If an individual cannot perform his or her past relevant work but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed in the past, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

The proposed amendments and the addition of Appendix 2 primarily concern the last two steps of the process (3 b and c above) and principally the last step (3c above). They provide a logical sequence for evaluating disability within the last step, the step where it is necessary to evaluate the severity of the individual's impairment(s) in conjunction with his or her vocational profile (i.e., his or her age, education, and work experience). These rules apply only after a determination has been made that the individual's impairment(s), although severe, does not meet or equal the listing of impairments in Appendix 1 and the individual is unable to perform past relevant work. Moreover, the rules apply only

after the impairments have been translated into the individual's physical and mental ability to perform functions necessary for the performance of work. In the determination of the individual's impairments and ability to function, all medical evidence is evaluated. The individual has the burden of proving his or her case by furnishing evidence of disability, but all evidence adduced in the case from any source is fully considered. If, however, nothing in the evidence raises a question regarding a particular impairment or function, such as seeing or hearing, the individual is considered to be able, in that respect, to perform work activities.

The proposed amendments focus on the vocational factors of age, education, and work experience. They are premised on the necessity to adjudicate each case individually to determine exactly what work a specific individual is able to do. This includes a specific consideration of the individual's vocational profile. In making determinations of disability, administrative notice is taken of authoritative publications and studies which identify the kinds and numbers of jobs that exist in the national economy and their skill and exertional requirements.

Most sources not connected with the Social Security Administration which deal with the vocational implications of limitations resulting from impairments, age, education, and work experience do so from the standpoint of job placement rather than the social security concept of disability, which is concerned with the physical and mental ability to engage in jobs that exist. Such sources entail consideration of elements such as employer hiring practices which are precluded from consideration in social security disability adjudication. Thus, most of their findings are not directly applicable. Such data do, however, provide an overview of the realities of the labor market and some specific reference points that can be utilized. The extensive experience of the Social Security Administration is also used as a basis for consideration of vocational factors.

Recognizing the primary importance of the individual's impairment(s) and any limitations resulting therefrom, the proposed amendments require first that sound professional judgments be made as to an individual's maximum sustained work capability as a result of his or her impairment(s)—the individual's residual functional capacity. Then, a reliable basis is needed to relate the individual's residual functional capacity to what he or she could be expected to do in terms of work at various exertional levels. The individual has the burden of proving that he or she is disabled and where no issue is raised by his or her allegations or the

evidence adduced as to specific physical or mental capacities, findings as to such capacities are not required.

In order to consider the individual's residual functional capacity in terms of the level of work his or her exertional capabilities would represent, the designations of sedentary, light, medium, heavy and very heavy work are used as such terms are defined in the third edition of the Dictionary of Occupational Titles published by the Department of Labor. This provides a "bridge" between assessment of residual functional capacity and the identification of ranges of work and types of jobs that remain within the individual's functional capabilities. The rules attach vocational significance to the functional capability for various ranges of work in terms of the relative numbers of jobs represented by the various capabilities.

The functional ability to perform heavy work, which includes the functional capability for work at all of the lesser functional levels as well, indicates the functional capability for almost all work that is listed in the third edition of the Dictionary of Occupational Titles. The functional ability to perform very heavy work includes the functional capability for all work that is listed in the third edition of the Dictionary of Occupational Titles.

The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work and indicates a substantial work capability. Approximately 2,500 separate unskilled sedentary, light and medium occupations are identified in the Selected Characteristics of Occupations, a supplement to the third edition of the Dictionary of Occupational Titles. Each occupation represents numerous jobs found throughout the national economy.

The functional ability to perform a full or wide range of light work represents substantial work capability in diverse jobs and industries at all skill levels. Approximately 1,600 separate unskilled light and sedentary occupations can be identified in the Supplement to the Dictionary of Occupational Titles (third edition), each occupation representing numerous jobs found throughout the national economy.

Most sedentary occupations are skilled or semi-skilled, and fall within the professional, administrative, technical, clerical, machine trade, and benchwork classifications. There are also approximately 200 separate unskilled sedentary occupations which can be identified in the Supplement to the Dictionary of Occupational Titles (third edition), each occupation representing numerous jobs found throughout the national economy. While sedentary work represents a significantly restricted range of work, this range

itself is not so restricted as to negate work capability for substantial gainful activity. As with the other factors, the functional level of work which an individual can perform is not, in itself, determinative of disability but must be considered in conjunction with the individual's age, education, and work experience.

The proposed Appendix 2 considers the functional level of work which an individual can perform in relation to the individual's age, education, and work experience. Various combinations of these functions are arranged to direct a factual conclusion as to whether the individual is disabled. Where findings of fact as to the individual's remaining functional capacity, age, education and work experience coincide with the criteria of a specific rule, the indicated factual conclusion obtains. Where any one of the individual findings of fact does not coincide with a criterion specified in a particular rule, the rules does not apply in that particular case and, therefore, does not direct a factual conclusion of disabled or not disabled. In such instances the Appendix 2 rules will provide a guide for decision-making along the discussions of each factor in the body of the regulations.

If it is found that an individual does not have the physical-mental capacity to perform work even at a sedentary level—the level requiring the least exertion—disability will be determined to exist, absent specific evidence to the contrary (e.g., the individual is working in substantial gainful activity). (In such a situation, the individual should ordinarily have been determined to be disabled based solely on consideration of the medical severity of impairment under Step 2b in the sequential process described above.) If, on the other hand, it is found that the individual, although severely impaired, does have the physical-mental capacity to perform work at some exertional level (i.e., sedentary through heavy), consideration then must be given, as provided in the law, to whether "jobs exist in the national economy" that are within the individual's capability, considering his or her residual functional capacity in the light of his or her age, education, and work experience.

As previously set out, the law provides that "jobs exist in the national economy" when they exist in significant numbers either in the region where an individual lives or in several regions of the country. Further, in defining what constitutes disability, under sections 223(d) and 1614(a)(3) of the Social Security Act, the Congressional intent is that where an individual's physical or mental impairment(s) and his or her age, education, and past work experience are compatible with the performance of substantial gainful

activity, the individual cannot be considered under a disability because he or she is unsuccessful in obtaining work he or she can do; or because work he or she could do does not exist in his or her local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work he or she could otherwise perform. On the other hand, an individual may be determined to be under a disability if the individual's physical or mental impairments are of such severity that the individual is not only unable to do his or her previous work but cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

In view of the provisions of the law and data which show that significant numbers of unskilled jobs do exist in the "national economy" at each of the levels of required exertion from sedentary through heavy and very heavy, an individual would not meet the requirements for disability if the individual has the residual functional capacity to do work at any of these levels and the individual's vocational capabilities, considering his or her age, education, and work experience, are not so adverse as to preclude his or her ability to engage in such work. Thus, for example, an individual who retains the physical ability to do a wide range of light work, who is not of advanced age, and is able to communicate, read, and write on an elementary level, would generally be considered to still be in the competitive labor market for light, unskilled work, despite the absence of special experience or skills. This is a longstanding guide used by social security disability program adjudicators and has been available in administrative issuances.

Within the context of the preceding discussion concerning the overall impact of vocational considerations in assessing disability, the expanded regulations also provide specific rules for assessing each of the vocational factors of age, education, and work experience. The bases for these rules are discussed below:

AGE

Reference sources and materials dealing with chronological age in terms of vocational relationship deal principally with employment and rehabilitation activities, basing their conclusions mainly on the rate of participation in the labor force, the unemployment rate, duration of unemployment, and the proportion of hires to applicants. It appears from such materials that the "older worker" is

usually considered as an individual 45 years of age and older. See, for example "Services to Older Workers" by the Public Employment Service (May 1957), page 9; Training and Employment of the Older Worker, Recent Findings and Recommendations Based on Older Worker Experimental and Demonstration Projects by Sarah F. Leiter (February 1968), pages 1 and 2; The Productive Years Age 45-65 (undated) published by the National Association of Manufacturers; Meeting the Manpower Challenge of the Sixties with 40-plus Workers, a November 1960 Department of Labor publication, page 12.

It is further noted in publications that age 55 represents a critical point in the attempts of "older workers" to obtain employment. See, for example, A Survey of the Employment of Older Workers (1965) by the State of California, Department of Employment and Citizens' Advisory Committee on Aging, page 96; The Vocational Adjustment of the Older Disabled Worker, A Selective Review of the Recent Literature, by Herbert Rusalen, Ed. D. (a study for the Vocational Rehabilitation Administration), pages 9, 10, and 12; Services to Older Workers by the Public Employment Service (May 1957).

In viewing the overall implications of the data in the sources cited, it must be recognized that there is a direct relationship between age and the likelihood of employment. However, the statutory definition of disability provides specifically that vocational factors must be viewed in terms of their effect on the ability to perform jobs rather than the ability to obtain jobs—in essence, in terms of how the progressive deteriorative changes which occur as individuals get older affect their vocational capacities to perform jobs. Since no data or sources are available which relate varying specific chronological ages to specific vocational limitations for performing jobs, it has been necessary to analyze and interpret for performing jobs, it has been necessary to analyze and interpret the available age—employment data to ascertain a point where it would be realistic to ascribe vocational limitations based on chronological age.

Prior experience of the Social Security Administration in determining when age makes a difference in disability determinations has also been considered, e.g., as shown in the Social Security Disability Applicant Statistics/1970 published by the U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, September 1974, as well as the Veterans Administration Schedule for rating disabilities (38 CFR 4.17).

In this respect, while the data reflect employment problems as develop-

ing at age 45, they recognize that this problem becomes significantly intensified at age 55. It is at this point, age 55, where it can reasonably be anticipated, therefore, that the deteriorative changes which occur in older persons which affect vocational capacities would most likely occur. Further, the vocational adversity of age 55 was recognized in Report of the 1971 Advisory Council on Social Security published by the U.S. Government Printing Office, April 5, 1971; and age 55 has already gained Congressional recognition in legislation establishing special provisions for disability because of blindness (see 42 U.S.C. 423(d)(1)(B)).

Thus, from the standpoint of chronological age, the proposed amendments reflect age 55 and over as advanced age representing the point when age could be expected to be an adverse consideration in determining an individual's vocational adaptability to work differing from that of his or her past experience. This designation of age is an expectancy only and not an arbitrary limit and may not be crucial in a particular case. Indeed, whatever disadvantage "advanced age" may have generally may be offset in a specific case by an advantage such as skills or training. Further, no general application or inferences are intended regarding employer hiring practices with respect to age. (The Age Discrimination in Employment Act of 1967 prohibits discrimination in hiring practices because of age.) As noted earlier, employer hiring practices, regardless of their legality, are excluded from consideration in social security disability adjudication. The ultimate finding of whether an individual of advanced age can or cannot reasonably be expected to adjust to work other than that which the individual has performed in the past, is dependent upon an evaluation of the extent of the individual's limitations resulting from medically determinable impairments in interaction with his or her age, education, training, past work experience (or lack of work experience), and skills. In addition, these amendments take cognizance of the fact that the vocational impact of age does not abruptly change from a favorable to an adverse vocational consideration precisely at the point of attaining age 55. Therefore, the proposed amendments provide for consideration of a lesser, but nevertheless significant, degree of vocational adversity as advanced age is approached. The chronological ages shown in the Appendix 2 Rules (45, 50, 55, 60) as representative of the increasing adversity of age within the scope of consideration of this factor in social security disability adjudication are intended as specific indicators, but are not intended to be applied mechanically in borderline situations.

EDUCATION

Formal education is given adjudicative weight to the extent that it relates to an individual's ability to meet reasoning abilities, language, and arithmetical requirement of jobs. Reasoning ability would affect the individual's ability to follow instructions and make judgments in a work situation. Language competence relates to ability to read, write, and speak. The inability to meet the language requirements at an elementary level would restrict even the number of unskilled jobs a person would be able to do. Similarly, the inability to perform single calculations in addition and subtraction would represent vocational restrictions in performing some unskilled jobs. On the other hand the Dictionary of Occupational Titles, third edition, and particularly the supplement thereto, Selected Characteristics of Occupations published by the Department of Labor, reflects that individuals with basic competences in speaking, reading, writing, and making simple calculations do have the educational capabilities for performing unskilled work. The Occupational Outlook Handbook, published by the Bureau of Labor Statistics (page 778, 1970-1971 edition and page 764, 1974-1975 edition), also reflects that people who have less than a high school education and no previous experience often can qualify for unskilled jobs. Other materials indicate similar correlations and reflect that employability tends to increase with education. See, for example, in the Occupational Outlook Handbook, published by the Bureau of Labor Statistics (1974-1975 edition), the section within each occupational listing entitled "Training Other Qualifications, and Advancement," for example, see page 764; The Long Term Unemployed, Educational Attainment (October 1964) published by the Manpower Administration of the Department of Labor in cooperation with the Oklahoma Employment Security Commission (pages vi, and 18); Monthly Labor Review of January 1974, an article entitled "Educational Attainment of Workers, March 1973" (pages 58-61); Automation Manpower Services Program Report by the New Jersey State Employment Service entitled "The 'Mack' Worker, The Impact of His Job Loss 2½ Years Later (December 1965) (pages 14 and 15); A Survey of the Employment of Older Workers (1965), by the State of California Department of Employment and Citizens' Advisory Committee on Aging; The Impact of Technological Change in the Meatpacking Industry, published by the Division of Employment, Department of Labor in March 1966 (page 16). Illiteracy as an adverse factor has also been discussed in certain sources (e.g., Rehabilitation of the Aging prepared by Portland State

College under auspices of Vocational Rehabilitation; Monthly Labor Review, September 1972, an article titled "How Employers Screen Disadvantaged Job Applicants").

An education of high school level or above may serve as a partial substitute for loss of physical capacity, i.e., better educated individuals are more likely to be engaged in sedentary and professional jobs. Thus, they are not as likely to apply for benefits or to be classified as disabled. In support of this, the data do not show the better educated to be heavily represented among the disabled; see, for example, Social Security Disability Applicant Statistics/1970, DHEW Pub. No. (SSA) 75-11911, pages 45, 46, 47, tables 18, 19, and 20.

In viewing the overall implications of the data in the sources cited, it must be recognized that there is a direct relationship between the level of education attained and the likelihood of employment. These sources indicate that young people who have less than a high school education and no previous work experience often can only qualify for employment in unskilled jobs such as kitchen workers, dishwashers, or construction laborers. Also, it is noted that individuals with the least schooling tend to have the most unemployment. In the blue collar classification, skilled workers tend to have a higher educational attainment than semi-skilled workers. In the white collar classification, most employees are high school graduates. Additionally, upon becoming unemployed or laid off, individuals with at least a high school education have better success in finding new employment. As a corollary, the chronically unemployed tend to be functionally illiterates since most employers require that prospective employees at least be able to read and write. This is true even in the case of some unskilled work.

Thus, it can be seen that employability tends to increase and unemployment tends to decrease as the level of education increases. Increasing adaptability to changing working conditions and acquisition of more readily transferable skills occurs with increased education. Further, when jobs require a specified minimal educational background, the lack of an adequate education, especially if illiteracy exists, serves to exclude such individuals from consideration for such jobs even though they might otherwise be able to perform satisfactorily. In considering the impact of education in social security disability adjudication, judgments must be made beyond the mere use of the number of grades of formal schooling an individual has achieved. In applying the rules in appendix 2, the factor of education must represent the individual's demonstrated compe-

tences in addition to or instead of a particular number of years of formal schooling or a lack of formal schooling.

WORK EXPERIENCE

An individual's past work experience is considered as demonstrating most persuasively the kinds of work and skill level at which an individual is qualified to perform. In the proposed regulations, previous experience, particularly if it resulted in work skills that are transferable to other jobs, is treated as a substantial vocational asset in accordance with sources which reflect that workers with skills tend to have fewer and shorter periods of unemployment, and that skilled workers are often in demand, even at age levels when some workers without acquired skills are experiencing difficulty in the labor market. Some of these sources are: *Counseling and Placement Services for Older Workers* (September 1956) published by the Department of Labor, Page 4, Section C.2.c; page 12, No. 14; page 15, No. 8, page 77, Section H.1; *A Survey of the Employment of Older Workers 1964*, published by the State of California, Department of Employment and Citizens' Committee on Aging, Page 9, Section B.1; Page 10, under the heading "Experience"; Page 49, Section A.; Page 70, Section 2.a.; and *Services to Older Workers* by the Public Employment Service (May 1957), published by the U.S. Department of Labor; Page 7, Section C. However, to be under a disability an individual must not only be unable to do his or her customary work but also must be unable to do any other kind of work that exists in significant numbers in the national economy. Although past work experience provides an individual with familiarity with certain work environments, as previously noted the third edition of the *Dictionary of Occupational Titles* and other sources identify many unskilled jobs in the national economy at all levels of exertion which do not require skills or previous work experience, and even individuals without past work experience may vocationally qualify for such jobs. Notwithstanding this fact, the expanded regulations do recognize that where the applicant has had no prior work experience (a significant number of applicants for Supplemental Security Income benefits fall in this category) this is an adverse vocational factor which must be taken into consideration, particularly for individuals of advanced age.

PUBLIC COMMENTS

In order to obtain the public's views and comments before proceeding with the proposed amendments, public meetings were held in Baltimore, Md. (41 FR 51471), Dallas, Tex., and San Francisco, Calif. (42 FR 8223) on De-

December 8, 1976, March 1, 1977, and March 3, 1977, respectively. All comments pertaining to the proposed amendments have been carefully considered.

Several significant changes have been made as a result of written comments from members of the public and statements by persons who attended the public meetings. First, we have made it clear that the rules in Appendix 2 direct a factual conclusion of disabled or not disabled only where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule. Therefore, a disability claimant, or his or her representative, may introduce evidence to show that the criteria embodied in any rule in respect to age, education, previous work experience, and residual functional capacity do not apply in his or her specific case. Second, we have also explained that the rules do not preclude a younger individual from being found disabled and have included examples reflecting allowances of disability claims of younger persons. Third, we have emphasized that the number of grades of formal schooling does not always reflect educational accomplishments. Fourth, we have revised the proposed regulations to reflect existing policy in that the inability to communicate in English will generally represent a vocational handicap regardless of where the claimant resides. It should at the same time be emphasized strongly that inability to speak English will in no way cause an individual to be considered uneducated. Finally, we have deleted the word "objective" in describing the type of evidence necessary for an individual to establish inability to engage in substantial gainful activity. Using this word led many people to believe that the regulations would implement more rigid requirements for findings of disability. We have also made other changes of a clarifying nature.

There follows a discussion of issues which were identified from comments made by the public as a result of the public meetings held in Baltimore, Md. (December 8, 1976), Dallas, Tex. (March 1, 1977), and San Francisco, Calif. (March 3, 1977). These issues were identified both from oral testimony which was made during the course of the meetings and from written comments which were submitted. A number of the comments that were received pertain to social security matters which are not within the purview of these proposed regulatory amendments. All such comments have been referred for consideration to the appropriate components of the Social Security Administration.

The major objections to these proposed regulations are discussed. Some

of the objections were repeatedly made at the Baltimore, Dallas, and San Francisco public meetings and in written comments submitted to the Social Security Administration. Other objections were only made by one or two members of the public. However, there is no significance to the order in which the objections are discussed. Many of the written comments received and statements made by individuals who spoke at the public meetings necessarily had to be condensed, summarized or paraphrased. However, we have tried to adequately express everyone's views and to respond to the issues raised.

The proposed regulations provide for making disability determinations on the basis of an "average man" concept. The question was raised by many commenters as to whether the proposed regulations—specifically Appendix 2—represent a change from individualized adjudication to an "average man" concept. Other writers described this in terms of "computerized" adjudication. It was suggested that this change would be brought about by treating claimants according to categories or classes rather than as individuals, and by forcing them into "pigeon holes" or "slots," whether or not they individually fit such classifications. One writer stated that this would impact most heavily on supplemental security income claimants, who are generally less sophisticated and less able to protect an attempt to force them into a "pigeon hole." Another commenter stated that the proposed regulations provide an excuse for the Social Security Administration not to gather all facts pertinent to an individual.

The proposed regulations, including Appendix 2, do not represent a departure from the concept of individualized adjudication and are not intended to promote expediency. They provide for individual assessments of each claimant's remaining functional capacity, age, education, and work experience, as presently required, while additionally setting out the policy guides in the form of rules showing the interaction of various combinations of these individual factors. It is not contemplated that all individuals will meet the criteria of a particular rule. The Social Security Administration's years of experience in the disability program supports the position that many will not. However, it must be recognized that it would be impossible to administer the social security disability program without guides and standards, whether in the form of medical standards alone as in the existing appendix to the regulations, or as medical-vocational standards as set out in the proposed regulations. The rules in Appendix 2 represent such standards and provide all adjudicative levels a regulatory structure for assur-

ing more equitable, uniform assessment of individuals with similar factors wherever in the country they may file a claim, without loss of individualized assessment.

In light of the public concerns that the proposed regulations represent a change in policy to an "average man" concept with a loss of individualized adjudication, the proposed amendments have been modified to more clearly show the continuity of the Social Security Administration's commitment to individualized adjudication; and guard against any misuses of the proposed regulations—particularly Appendix 2. The modifications are:

(1) The addition of language in the explanatory material to emphasize the nature and use of the rules in Appendix 2; and

(2) The addition of language to preclude any tendency to cite a specific rule as justifying a finding of disabled or not disabled when all of the judgments resulting from individual assessments of all factors do not coincide with all of the criteria of that rule.

The proposed regulations will result in more denials of disability claims. The additional clarification and explanations of the intent and usage of the proposed amendments also serve to respond to the concerns of the many commenters who believe that the proposed amendments would result in a marked increase in denials of disability claims to the disadvantage of some claimants, as well as to various State assistance programs that would require additional funding to aid denied disability claimants. It is not intended—and not expected, based on extensive past experience—that the proposed amendments will result in any significant change in evaluating vocational factors under the disability programs. Existing policy is being set out in the same manner in the proposed amendments as it has been understood and practiced in the past. Past emphasis, however, has been on the initial and reconsideration levels of adjudication since statements of policy in administrative materials and internal guides and training sessions may not have been fully shared with the Bureau of Hearings and Appeals. However, recognizing the rather complex types of claims that are ordinarily dealt with at the hearing level, it would not be anticipated that any marked changes would take place on a national basis.

The proposed regulations discriminate against the younger person. Comments were received from several sources contending that the proposed amendments will force a denial of all claimants under 45 years of age unless they meet or equal the criteria of the medical listings. This, in fact, is not the case; no change of policy is involved in this area. In view of the ap-

parent misunderstanding, however, it has been further emphasized by additional language in the proposed amendments that any rule in Appendix 2 will apply in the case of a particular individual and, therefore, direct a factual conclusion of disabled or not disabled only where that individual's particular circumstances as reflected in the judgments made as to his or her remaining functional capacity, age, education, and work experience coincide with the criteria of that rule. Otherwise, the rule does not apply in the case of that particular individual and full consideration must be given to all of the relevant facts of the case in arriving at a decision as to disability. Since most of the examples of case situations of individuals under age 45 suggested by the commenters would not fit any of the numbered rules in proposed Appendix 2, they could not be denied on the basis of any of the rules—in effect the rule would not apply, as indicated above, and adjudication would proceed as set out in the explanatory material in Appendix 2. In order to additionally ensure that individual claims will be handled in the manner intended, the explanation of the consideration of individuals under age 45 has been expanded to include two specific case examples in which such claimants would be found disabled—as in the past—under the proposed regulations.

The proposed regulations, in using the word "objective" in describing necessary evidence, exclude consideration of subjective symptoms. Multiple comments were received expressing concerns about the addition of the word "objective" in describing the evidence necessary for an individual to establish inability to engage in substantial gainful activity. The commenters believe that the inclusion of this word would result in excluding subjective symptoms—particularly pain—from consideration in arriving at a disability decision.

The types of evidence needed to establish disability, the individual's responsibility for furnishing such evidence, and other rules concerning evidence are set forth in 20 CFR 404.1523 through 404.1530 and 20 CFR 416.923 through 416.930. The administrative law judge's responsibilities for inquiring fully into a case and establishing a sound record on which to base the decision are detailed in 20 CFR 404.927 and 416.1434. None of these regulatory sections are affected by the proposed amendments.

Inclusion of the word "objective" was in no way intended to alter the evidentiary requirements or to violate the established disability adjudicative process concerning subjective symptoms. Rather, the word was added to give emphasis to the need for evidence that is consistent with the require-

ments set forth in the regulations. However, since the use of "objective" in this sense has apparently caused some apprehension that more stringent evidence requirements would be employed, it has been removed from the proposed amendments.

The proposed regulations are unrealistic in evaluating non-English speaking peoples. Some commenters noted the change from existing policy in the proposed regulations regarding the adjudicative consideration of an individual's inability to communicate in English. One of these commenters stated that consideration of such a factor in regard to employability is racist in nature and to the detriment of non-English speaking persons. The Social Security Administration does not consider the additional adversity imposed upon an impaired individual by virtue of the inability to communicate in English, the predominant language in the national economy, in terms of employer hiring practices or preferences. Such considerations are, in fact, prohibited. However, in considering ranges of work and numbers of jobs that exist because of a medically determinable impairment, factors which diminish that range of work or preclude the performance of certain types of jobs must be recognized. Since individuals who are unable to communicate in English are further restricted in the range and types of work for which they are functionally capable of performing, this adverse factor should remain as an adjudicative consideration. Thus, it is not the racial or prejudicial factor that is being considered, but rather the reduced capability reflected by the inability to satisfactorily carry out the duties of those jobs which require communication in English. As the proposed regulations have now been revised, an individual's inability to communicate in English may be a decisive factor resulting in a finding of disabled but will not direct a finding of not disabled.

Other commenters questioned the policy as set out in the proposed amendments which is based upon the incidence of individuals with similar language capabilities in the area in which he or she resides. One writer asked what change in the Social Security Administration's experience brought about the change in this policy from the previously held position that inability to communicate in English was generally considered equally adverse in the terms of work remaining in the national economy regardless of the individual's place of residence. There has, in fact, been no change in the experience regarding this policy; accordingly, upon further consideration and in response to the public comments, the policy regarding the adjudicative treatment of the inability to communicate in English has

been restored in the proposed amendments to agree with existing policy; i.e., the factor is generally considered a handicap to work adjustment without regard to an individual's place of residence. It has also been emphasized that the factor for adjudicative consideration is the inability to communicate in English in even a basic manner and that the particular non-English language in which an individual may be fluent is immaterial.

The proposed regulations will reduce the use of vocational witnesses at hearings. Several persons indicated that under the proposed regulations, vocational experts would be used much less frequently at the hearing level, particularly in relation to the taking of administrative notice of the existence of significant numbers of unskilled, entry-level sedentary and light jobs in the national economy. One individual concluded that the proposed regulations would entirely eliminate the need for vocational evidence of the existence of particular jobs which a particular individual can perform. Some pointed out that making judgments on issues such as the transferability of skills is beyond the expertise of an administrative law judge. Others commented that vocational experts are "preferable to a set of appendices," and that the basic due process guarantee of the right to cross-examine adverse witnesses might be eliminated or undermined.

The proposed regulation amendments do not contravene the basic social security regulations, 20 CFR 404.927 and 416.1434, which provide that the administrative law judge's responsibility is to inquire fully into the case before him or her and to establish a sound record on which to base his or her decision. In the past, not every disability hearing which involved vocational factors has included the testimony of a vocational expert (approximately one in four disability cases decided on their merits involve live vocational expert testimony); and, in several judicial districts, administrative notice of the existence of unskilled, entry-level sedentary and light jobs has been permitted in certain circumstances. Use of a vocational expert is at the discretion of the administrative law judge; this discretion is not being abridged. However, when the sole issue is one of a claimant's exertional limitation to sedentary or light work as defined by the Department of Labor and quoted in these proposed regulations, the services of a vocational expert should not be necessary merely to establish that the national economy contains significant numbers of these jobs. In such cases, the use of the regulations rather than vocational experts to support the conclusion is valid and does not conflict with any "due process" guarantees. On the other

hand, the medical findings of fact may be complex and lead to difficult judgments; e.g., a claimant may have one condition which limits him or her to light exertion, another which prevents him or her from being in contact with certain substances encountered in his or her usual occupation, and yet another which narrows the range of light work which the individual can perform. In situations such as this, it would be the proper function of a vocational expert to determine whether there are, in fact, significant numbers of appropriate light jobs in the national economy which are compatible with the claimant's impairments. A further complexity would be added where the claimant was older and had done skilled work, for then an allowance or denial would depend upon whether he or she could readily transfer his or her work skills to specific occupations within his or her remaining functional capacity; a vocational expert would have the expertise to determine this and to testify as to the existence in significant numbers of such jobs in the national economy. Hence, it is anticipated that many issues on hearing will continue to require the services of vocational experts.

In view of the considerable public misapprehension about the intent of prior references to lessening the need for vocational testimony, all such references have been deleted from the proposed amendments.

Rule 201.05, pertaining to "education" in the proposed regulations is erroneous. Two commenters stated that Rule 201.05 in proposed Appendix 2 is excessively harsh—that an unfavorable decision in this situation cannot but be an erroneous conclusion. Another indicated that this rule is illustrative of faulty "legal reasoning" on the Secretary's part and suggested that if this rule is erroneous, there may also be "errors in other categories." This rule provides that an advanced age claimant whose sustained work capability is limited to sedentary work and who has a high school education or more—education that provides for direct entry into skilled work—will be found not disabled whether or not he previously worked.

Rule 201.05 is consistent with the other rules in Appendix 2 that provide for the weighing of education and/or skills to offset unfavorable vocational considerations. Where an individual, even though of advanced age, possesses education or skills that permit direct entry into skilled work, he or she possesses significant advantages for effecting adjustment to new work over an uneducated, unskilled, older worker.

While the particular situation set forth in Rule 201.05 occurs rarely, the provision for this situation is included as a rule in recognition of the possibil-

ity that it may occur. We concur, however, that additional clarifications of the intent of the rule to prevent misapplication is indicated. This has been done by the inclusion of additional explanatory language in section 201.00(d) of proposed Appendix 2. The explanatory language clearly indicates that in order for education, in and of itself, to provide for direct entry into skilled work (in the absence of skilled work experience), the education must have been recently acquired.

The proposed regulations are outside the legal authority of the Secretary. The Social Security Act (the "Act") has given the Secretary very broad authority to make rules and regulations. Section 205(a) of the Act provides that

The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of (title II), which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Section 1613(d)(1) of the Act states that the provisions of section 205(a) shall apply with respect to title XVI to the same extent as they apply in the case of title II. In addition, section 1102 of the Act provides that the Secretary shall make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of the functions with which he is charged under the Act.

The statute, thus, bestows very broad authority upon the Secretary to issue regulations to discharge his responsibilities for administering the social security programs, subject only to the limitation that the Secretary's rules, regulations and procedures should not be "inconsistent" with the provisions of the Act. There is nothing in the legislative history of the Act's disability provisions to indicate that Congress intended to remove from this broad grant of authority the power to issue rules for adjudicating disability claims or, more specifically, rules for relating a claimant's impairment, age, education, and work experience to his or her ability or inability to engage in substantial gainful activity.

Indeed, it is apparently the view of the staff of the House Ways and Means Committee that Congress intended the Secretary to have not only the power, but also the duty, to issue regulations in this area. The staff, commenting on the broad language of the disability definition enacted by Congress, concluded that:

the original idea was that the broad language of the statutory definition would be amplified by regulations based on operational experience. (Staff of the House Commit-

tee on Ways and Means, 93d Cong., 2d Sess., Committee Staff Report on the Disability Insurance Program 6 (July 1974).)

The staff went on to suggest that the Department

*** should explore the possibilities as to whether the definition of disability can be stated more specifically in the law or regulation, and whether more operational presumptions may be incorporated into its administration ***

The staff also endorsed the conclusion of the 1960 Harrison Subcommittee report which urged the Department to develop and refine criteria for the weight to be given vocational factors and make them available to the evaluators and to the public in the form of published regulations.

Thus, in the view of the staff of the House Committee directly responsible for social security legislation, the Secretary does have statutory authority to promulgate regulations which establish rules, including presumptions, guidelines and procedural and evidentiary rules concerning the effect of vocational factors.

Not only does the Social Security Act authorize the issuance of such regulations but, under the Administrative Procedure Act, important policies governing claims adjudication (such as the current vocational guidelines) are required to be published as regulations. 5 U.S.C. 552(a)(1), 553.

The clear language of the Social Security Act, apparent Congressional intent, and the provisions of the Administrative Procedure Act, all support a conclusion that regulations in some form are "necessary or appropriate" to carry out the disability provisions of titles II and XVI and are thus within the Secretary's power to issue as long as they are not inconsistent with the Act.

The proposed regulations are not clear on how transferable work skills are determined. With respect to transferable work skills, one question at a public meeting related to how they are determined, and whether a decision is made by comparing two specific jobs or a specific job with a broad range of work. A writer suggested that, to make the fact-finding process more objective, the words "definite relationship" should be included in the proposed regulations to clarify the connection between a person's previous occupation and other occupations for which he or she has transferable skills. Transferability of skills is determined by comparing the essential elements and functions of jobs in a person's past experience with those required in other, specific occupations he or she may reasonably be expected to perform. Where the skill is so specialized or was acquired in such an isolated work setting that it is not readily usable in other industries, jobs and work environments, an individual's vo-

cational outlook may be as limited as if he or she had no skills. Conversely, skills such as clerical ones are generally transferable to a great number of occupations in varied industries, while very specialized skills such as those in nuclear physics may be highly marketable but only in a narrow range of work. To compensate for the adversity of advanced age, a finding of transferability of skills should be made only where very little adjustment is required by someone at age 55 or older. Transferability is most probable and meaningful among jobs in which (a) the same or a lesser degree of skill is required; (b) the same or similar tools and machines are used; and (c) the same or similar raw materials, products, processes or services are involved. This does not contemplate a direct relationship between the occupations themselves but does necessarily imply a similarity of these factors as they relate to past work and other potential work under consideration; however, a complete similarity of all three factors is not necessary to warrant the inference of transferability. To require that there be a "definite relationship" between a person's previous occupation and other occupations for which he or she has transferable skills would be an abridgement of sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act, which state that an individual " * * * shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *." Therefore, no change is being made as a result of this comment.

The proposed regulations are not a codification of existing vocational evaluation policies. Several commenters were concerned as to whether the proposed amendments are actually a codification of existing vocational evaluation policies. As now explained elsewhere in this preamble, the proposed regulations do, in fact, represent a consolidation and elaboration of longstanding medical-vocational evaluation policies which have their bases in the Social Security Act and are in accordance with Congressional intent. These policies, however, have heretofore been reflected in fragmented guides and have not been readily available in the same format at all levels of adjudication. For example, at the initial and reconsideration levels, the existing regulations are supplemented by vocational evaluation guides published by the Bureau of Disability Insurance. While these supplemental guides are all reflective of existing vocational evaluation policies, the risk of variance in policy interpretations is obvi-

ously enhanced by the fact that the guides are not consolidated and fully explained in a common, structured format which is binding at all adjudicative levels. The Social Security Administration is convinced that implementation of the proposed amendments will promote greater consistency in the disability determination process at all levels of adjudication and will provide a better understanding of the social security disability programs by all concerned.

The proposed regulations do not consider a person's personal preference for kinds of work. One commenter indicated that the proposed regulations are remiss in that they provide no consideration for personal preference of work along with the consideration of age, education and work experience. Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act state that disability shall be determined if physical or mental impairments are of such severity that an individual cannot, *considering his age, education and work experience*, engage in substantial gainful work existing in the national economy (italic added).

The proposed regulations are not clear as to what impact they will have on the workloads of administrative law judges. One participant in a public meeting asked what impact the proposed regulations would have on administrative law judges' workloads. In the long run, when applicants know what facts are to be at issue and adjudicative personnel have definitive and comprehensive vocational evaluation instructions which they must follow, it is expected that fewer claims will be pursued beyond the initial and reconsideration levels. Of course, there will always be cases involving complex issues which will be pursued to the hearing level, as well as others where the claimant simply believes that an erroneous decision has been made. However, it is likely that a hearing decision can be made more promptly in those cases not involving highly complex issues once the necessary findings of fact have been made.

The proposed regulations do not consider employers' hiring practices. Two commenters expressed concern about the Social Security Administration's failure to consider employer attitudes and hiring practices in the disability adjudication process and, further, that there is no concession made to this consideration in the proposed revision of regulations. Another writer suggested that a separate and distinct set of vocational factors regulations is needed for title XVI claimants which would consider employer attitudes toward the developmentally disabled. Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act state that a finding of disabled

may not be made if work exists in the national economy that an individual can physically and mentally do, regardless of whether " * * * a specific job vacancy exists for him or whether he would be hired if he applied for work" (italic added). This statutory provision effectively precludes from consideration all hiring practices of employers, whether by reason of certain attitudes, local current (cyclical) conditions, technological changes or employer interpretation of insurance restrictions or of what constitutes a safety hazard. While it is recognized that economic conditions, local cyclical business conditions, technological conditions, employer attitudes and employer hiring practices contribute to unemployment, these conditions represent non-disability reasons for unemployment.

Under the proposed regulations, not all of a claimant's impairments would be properly evaluated. To commenters expressed the fear that not all of a claimant's impairments would be identified, delineated and considered if findings are to be made only with respect to issues of specific physical or mental capacities raised by the individual or in the evidence adduced. One suggested, as an example, that a deep depression might be overlooked unless it were detected by attentive observation at a hearing.

This matter does not pertain to vocational factors, *per se*, but to the preliminary medical issue of identifying a claimant's impairments and establishing the level of severity of the impairments including, in appropriate cases, the residual functional capacity. There are countless physical and mental abnormalities which a person may have. However, where an applicant does not refer to a certain physical or mental condition, and it is not mentioned in any of the medical reports or other evidence obtained, and the evidence pertaining to that claimant appears to be complete, it must be presumed that the evidence accurately portrays the situation and that such abnormality does not affect the person's ability to work. In the administration of the Social Security disability programs which process over 2,000,000 cases annually, it has not proved necessary nor would it be administratively or fiscally sound, to give each claimant a comprehensive general physical and mental examination in order to learn what other abnormalities may be present in addition to those detectable by our usual and customary development practices. In the event that a claimant alleged only a heart condition, for example, but also suffered from a deep depression, the second abnormality probably would not escape notation in medical reports since a physician is a trained medical observer and has competence in under-

standing when his or her patient has difficulty in speaking of certain problems.

The proposed regulations are being promulgated for the purpose of conserving trust fund reserves. Several commenters suggested that the proposed amendments were drafted in response to "short falls" in the trust fund reserves and represent an effort by the Social Security Administration to conserve the trust fund. There has been a great deal of concern and attendant publicity about the depletion of the social security trust funds and efforts to deal with that problem. These proposed regulations, however, are in no way related to those efforts and concerns. As explained in greater detail elsewhere in this preamble, the proposed regulations are intended as a consolidation and elaboration of long-standing medical-vocational evaluation policies. Since the purpose of the proposed regulations is not to increase nor decrease the allowance/denial ratio, it is anticipated that their publication would virtually have no effect on the trust funds.

The proposed regulations will require more detailed medical reports. One commenter was concerned that the proposed regulations will require additional medical evidence, particularly for the purpose of establishing range of motion and related information. The evidence requirements for establishing disability, which are set forth in the existing regulations (20 CFR 404.1523 through 404.1530 and 416.923 through 416.930) have not been altered by the proposed amendments. Further, the existing regulations require evaluation of an individual's ability to perform such significant functions as moving about, handling objects, hearing, speaking, reasoning and understanding, for the purpose of assessing whether such individual can do previous work or work commensurate with previous work or any other kind of substantial gainful work which exists in the national economy. The provisions in the proposed regulations clarify and refine these guidelines for considering such functions in order to assist an adjudicator in reaching a decision about an individual's ability to do past or other work in the economy while providing for greater uniformity in the adjudicative process. They do not, however, affect the requirements for that decision. In view of the foregoing, there should be no need for claimants to furnish more evidence under the proposed amendments than has been required in the past.

Administrative law judges were not asked for their views on these proposed regulations. One participant in a public meeting inquired whether administrative law judges have been asked for their views on the proposed

regulatory amendments and, if so, what is their consensus. Individual administrative law judges have not had the proposed regulations officially submitted to them for comments. However, through the administrative process, the draft was made available to some administrative law judges and, as a consequence, the Association of Administrative Law Judges provided comments on the proposed regulations. Additionally, individual administrative law judges, one of whom provided testimony, were present at the public meetings. Their comments, which expressed some of the same concerns which were voiced by members of the public, are being afforded the same careful consideration as the public comments and are being addressed in this preamble.

The proposed regulations rely too much upon the Dictionary of Occupational Titles, which is out of date and does not apply to impaired workers. One speaker at a public meeting noted that the "Dictionary of Occupational Titles (DOT), Third Edition," was published in 1966 and suggested that it is out of date. The DOT, published by the Department of Labor in 1965, provides the most comprehensive information available concerning jobs in the national economy. Supplements to the publication have been issued by the Department of Labor, and a thoroughly updated and revised edition is soon to be published. The fourth edition and subsequent editions will be used as they become available.

Another commenter on the "Dictionary of Occupational Titles" wrote that it is not directly applicable for use as indicated in the proposed regulations. He feared that a claimant would have an unreasonable burden of proof to rebut the presumption that he could do light work, as an example, rather than specific light occupations which are known to exist currently. In the adjudication of a claim in which a finding of fact is that the claimant can do a wide range of light work, the claimant does have an opportunity to present evidence showing that the finding of fact was incorrect. Aside from the possibility of an erroneous conclusion, however, a conclusion that an individual can do light work at the entry level does not mean that the person can do each and every unskilled light job in the national economy; the import is that he or she would have a reasonable employment opportunity among all the 1,400 unskilled light occupations, each representing many jobs in the country. Furthermore, since the functional capacity to perform a full range of light work encompasses the capacity to perform sedentary work, such a claimant would also be expected to adjust to the approximately 200 separate unskilled sedentary occupations, each again rep-

resenting numerous jobs in the national economy. When a claimant has slight limitations within light work, such as the need to avoid hazards or certain environmental substances he may present evidence to show that he is unable to perform selected occupations. However, this would not necessarily establish that he is unable to perform the preponderance of light and sedentary jobs.

Still another writer asked if, in view of the generalizations and partial outdatedness shortly after publication of the "Dictionary of Occupational Titles" and "Occupational Outlook Handbook," a claimant's eligibility status would fluctuate from year to year with the occupational outlook. There must, of course, be a certain amount of stability and predictability in a program such as disability under social security so that neither persons already receiving benefits nor individuals applying for them would be subjected to year-by-year fluctuations in standards. The test in this program is whether a person retains the physical and mental capacity to do a job, not whether there is a job opening for him or her. Within these limitations, experience has shown that these resource materials, which are the most complete and authoritative sources available on the subject, are adequate for the purpose and that little would be gained by having daily, monthly or otherwise more current reference works.

The proposed regulations are unrealistic in using a "national economy test" when jobs do not exist locally. Three inquiries focused on the use of a national economy test in determining ability to work, indicating that taking administrative notice of jobs available in the nation, when none exist locally, is not realistic.

The disability definition in sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act is comprised of multiple considerations. One of these considerations is ability (or inability) to do work "which exists in the national economy." Job availability is addressed on a national basis by design, since it was intended by the Congress that the statute provide a definition of disability which could be uniformly and consistently applied throughout the nation without regard to the place of an individual's residence. For this reason, the issue of job availability is satisfied when work which the individual can perform "exists in significant numbers either in the region where such individual lives or in several regions of the country," regardless of whether such work exists in the immediate area where the individual lives (italic added). While provisions of the law specifically preclude application of local economy criteria, provisions of regulations have been extended to ex-

clude from consideration isolated jobs of types that exist only in very limited numbers or that exist in relatively few geographic locations.

The proposed regulations are not clear as to vocational rehabilitation services. One writer commented on the lack of identifiable relationships and referral mechanisms to State vocational rehabilitation regulations. The Administration for Handicapped Individuals of the Department's Office of Human Development Services and the Social Security Administration jointly promulgate regulations (45 CFR 1361.110-1361.118 and 45 CFR 1361.120-1361.128) which govern rehabilitation programs pertaining to disability claimants under titles II and XVI of the Social Security Act. However, 20 CFR 416.1703 describes the referral mechanism for title XVI cases; the referral mechanism for title II cases is described in operating instructions. Additionally, 20 CFR 404.422 and 20 CFR 416.1705 describe the non-payment of benefits when an individual refuses, without good cause, to accept vocational rehabilitation services. The proposed regulations presented here are not addressed to the rehabilitation aspects of the disability programs.

The proposed regulations do not give sufficient consideration to the impact of multiple impairments. A writer commented that the amendments should contain specific language to the effect that the combined impact of multiple impairments shall be considered in determining whether an individual is disabled. Existing regulations provide considerable scope for the exercise of sound judgment in determining the severity of an individual's condition as a result of a combination of impairments. With respect to determining the impact of an individual's medical condition, proposed regulations are quite explicit in requiring that limitations imposed by multiple impairments, both physical and mental, be considered.

The proposed regulations were not submitted to Congress for approval. One commenter asked if Congress had been requested to provide opinions on the proposed regulatory amendments. As discussed in this preamble, the proposed amendments are considered to reflect Congressional intent as expressed in the Social Security Act, rather than being representative of a change of direction in policy. However, the draft amendments were provided on request to the staff of the Subcommittee on Social Security of the Committee on Ways and Means, House of Representatives, and were subsequently included in two of the Subcommittee's publications:

(1) "Reports of Consultants on Actuarial and Definitional Aspects of Social Security Disability Insurance," dated May 17, 1976; and

(2) "Disability Insurance Program, Public Hearings Before the Subcommittee on Social Security of the Committee on Ways and Means, House of Representatives, Nineth-Fourth Congress, Second Session," May 17, 21, 24; June 4, 11, 1976.

While this does not imply Congressional endorsement of the proposed regulations, it does indicate a general awareness of the Social Security Administration's intent to proceed with the proposed amendments. It has not generally been the practice to solicit Congressional opinions before drafting a proposed regulation.

The proposed regulations do not give proper consideration to non-exertional impairments. A number of commenters indicated that under the proposed amendments non-exertional impairments would not be considered, or if considered would not be accorded proper adjudicative weight. One writer was specifically concerned that the charts in Appendix 2 relate only to strength requirements of jobs, and that using the Appendix 2 rules would result in summary decisions of not disabled on the basis of strength requirements alone, effectively precluding consideration of other than strength limitations. One physician's comments included suggestions as to how skin impairments could be evaluated in terms of the exertional levels of work defined in the proposed amendments.

In fact, the proposed amendments represent no change in the adjudication of non-exertional impairments, and language in the proposed amendments has been modified and supplemented to emphasize this point. The specific rules in proposed Appendix 2 are to be used as sole indicators of disabled or not disabled only where the judgments as to each individual factor coincide with the criteria of a specific rule. For example, the rules do not apply to non-exertional impairments. However, even where a rule does not apply, as was the case in most of the examples cited by the commenters, a reference to the rules in many instances would aid an adjudicator in assessing the extent of a claimant's limitations in relation to other claimants. For example, reference to the rule nearest the individual's exertional limitations (or absence thereof) resulting from a medically determinable impairment(s) would provide an adjudicator with a frame of reference in which to evaluate the effect of any additional limitations resulting from medically determinable non-exertional impairments. As has been explained in this preamble, the Social Security Administration intends to continue to work on more definitive standards for medical-vocational evaluation of non-exertional impairments.

In a related comment, one writer stated that the rules in proposed Ap-

pendix 2 would "regulate" only a small number of claims—those in which an impairment has resulted in a limitation of an individual's weight-lifting capacity. Exertional limitations, as set out in the definitions in the proposed amendments, encompass more than an individual's ability to lift weight, although such ability is a basic requirement of work, varying only in the amount and frequency of lifting required.

The proposed regulations, in adding the words "not severe" will result in a substantially larger percentage of claims being denied on medical considerations alone. Two writers expressed concern that proposed regulations, which provide that an individual is not under a disability where the medically determinable impairment(s) is "not severe," would result in a substantially larger percentage of claims that are denied based on medical consideration alone. Similarly, a few writers asked if the use of the word "severe" in describing impairment(s) throughout the proposed regulations contemplates a more serious impairment(s) than previously needed for a finding of disability when vocational factors are adverse. One writer suggested that a physician's classification of an individual's impairment(s) as "moderate" would not meet the "severe" requirement. Another writer foresees no problem with the use of the term.

The Social Security Act, Sections 223(d)(2)(A) and 1614(a)(3)(B) provide, in pertinent part, that an individual shall be determined to be under a disability only if his physical or mental impairment(s) is of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other substantial gainful work which exists in the national economy. (Also, see H.R. Rep. 544, 90th Cong., 1st Sess., p. 30 and Senate Rep. No. 744, 90th Cong. 1st Sess., pp. 46-50.) There are, of course, various levels of impairment severity. On the basis of the statutory provisions, existing regulations provide that medical considerations alone can justify a finding of disabled (absent rebutting evidence) where the requisite duration requirement is met and the impairment(s) is listed in the appendix to the regulations or is medically the equivalent of a listed impairment. This, in effect, represents the upper range of impairment severity. Conversely, there is a point in the range of impairment severity below which the effects of the impairment(s) have such a minimal effect on the individual that they would not be expected to interfere with his or her ability to work, irrespective of his or her age, education, and work experience.

Introducing the term "not severe" in the proposed amendments and the

word "severe" when describing impairments elsewhere in the proposed amendments, was not intended to alter the levels of severity for a finding of disabled or not disabled on the basis of medical considerations alone, or on the basis of medical and vocational considerations. Rather, it was intended only to clarify the circumstances under which a finding of not disabled would be justified on the basis of medical considerations alone.

The proposed regulations are contradictory in requiring a mentally impaired individual to submit evidence to establish his disability. Another commenter stated that a contradiction exists in proposed regulations in that a mentally impaired individual, on the one hand, must be mentally capable of filing an application and submitting the necessary evidence in support of his or her claim but, on the other hand, must be mentally disabled in order to qualify for benefits. Many mentally impaired individuals are capable of filing an application for benefits, raising issues with respect to their impairments, and submitting evidence in support of their claim. This does not preclude a finding a disabled on the basis of a mental impairment. In other instances, a mentally impaired person may have a representative, e.g., a family member or guardian, who will act on his or her behalf by filing an application and providing the necessary information in support of the claim. Lastly, should a mentally impaired individual file an application on his or her own behalf, but appear to require assistance in prosecuting his or her claim, operating procedures provide for rendering special assistance to that individual.

The proposed regulations will not result in fair and consistent disability decisions. One commenter asked if there are guarantees that implementation of the proposed amendments will result in fair and consistent decisions. It is expected that publication of the proposed amendments will result in a higher degree of consistency and equity of medical-vocational adjudication throughout the country at all adjudicative levels. This expectation stems from the Social Security Administration's extensive experience with the disability program and with the policy concepts set out in the proposed amendments. However, careful monitoring of the proposed amendments will ensure that any unforeseen undesirable effects are identified and corrected.

Another commenter questioned whether lack of uniformity in the adjudication of social security disability claims may be partly due to "prolonged case processing;" and whether uniformity resulting from the proposed amendments will assure correctness of decisions. It is possible that a

claimant's medical condition may worsen during the time that he or she is pursuing his or her claim. The change in medical condition may result in a finding of disabled at the next level of appeal. This does not mean the prior finding of not disabled was incorrect nor is it indicative of a lack of adjudicative consistency. Lack of uniformity or lack of adjudicative consistency as used in this preamble relates to decisions of disabled and not disabled which are based on essentially the same degree of impairment and similar vocational factors, regardless of the level of adjudication or where the application has been filed—not to differing decisions because of different factual circumstances. The proposed amendments are intended to improve adjudicative consistency by promoting decisions at all adjudicative levels that are consistent with the Social Security Act and Congressional intent thus helping to improve the uniformity of decisions throughout the country.

The proposed regulations "shift" the burden of proof from the Secretary to the claimant where the issue is "ability to do work other than past work". Several commenters questioned whether the proposed regulations shift the burden of proof from the Secretary to the claimant where the issue is ability to do other than relevant past work. Three of these commenters indicated that it is particularly disadvantageous to a claimant for the Secretary to take administrative notice of ranges of work a claimant can do rather than be required to identify specific jobs. One additional commenter stated that numbers of jobs within ranges of work should be omitted to allow matching of specific jobs to a particular individual.

Where a claimant has established inability to perform relevant past work, the burden shifts to the Secretary to establish that other work exists in the national economy that the claimant can do. The Secretary fulfills this burden by providing definitive documentation in support of his decision that an individual has the capacity for work that represents reasonable and realistic vocational opportunities for that individual. The Secretary is responsible to establish that such work exists for an individual who can do only what the claimant can do in the region where he or she lives or in several regions of the country (referred to as the national economy test). This is true under both the existing regulations and the proposed amendments.

The major recognized authorities for labor market statistics and job information are the U.S. Department of Labor and the U.S. Department of Commerce, both of which prepare comprehensive information published in the "County Business Patterns," "Occupational Outlook Handbook"

and the "Dictionary of Occupational Titles." These publications supplemented by other materials provide information that can be translated into kinds and ranges of work in the economy. By utilizing this information and, as required, the services of vocational experts and work evaluation centers, the Secretary satisfies the requirements of law that he provide proof of reasonable job opportunities for the individual.

The proposed regulations will disadvantage disability claimants who do not know their age or understate it. One writer suggested that applicants who do not know their age and underestimate it will be disadvantaged by the proposed amendments. Existing regulations (20 CFR 404.703 and 416.801) provide that an applicant shall file supporting evidence showing the date of his or her birth if his or her age is a condition of eligibility for benefits or is otherwise relevant to the payment of benefits. In disability claims in which vocational factors must be considered, age is a factor for consideration. It is not anticipated that the incidence of material age discrepancies would increase with the proposed amendments. However, should it be necessary to resolve a material age discrepancy in a particular case, the means of doing so exist both in existing regulations and operating instructions.

The proposed regulations are inconsistent with title XVI of the Social Security Act. One writer suggested that the legislative history of title XVI may indicate a more liberal treatment for title XVI claimants which the proposed regulations do not encompass. Another questioned how the definition of disability under both titles II and XVI would be affected by the proposed regulations. Congressional direction provided that the basic definition of disability under title II would apply under title XVI. This definition provides a " * * * reasonable, objective, and fair (test) of disability * * * which (is) appropriate * * * " (Report of the Committee on Ways and Means on House of Representatives 1, May 26, 1971, p. 147.) The Senate report stated that the definition of disability which is used in the disability insurance program " * * * would be generally applicable to disabled * * * people under the new supplemental income program." (Report of the Committee on Finance, United State Senate, to accompany House of Representatives 1, September 26, 1972, p. 384.) Consequently, the title XVI statutory language defining disability is identical to the basic definition of disability described in the title II statutory language. It is not within the purview of the Secretary to promulgate regulations which would provide a different interpretation, i.e., more liberal treat-

ment for title XVI claimants than for title II claimants; or which would alter the statutory definition of disability. Accordingly, the proposed regulations will have no effect on the statutory definition of disability.

Another commenter suggested that a title XVI claimant's ability to obtain a job specifically be judged as a part of the basis for determining whether the individual is disabled. In elaborating on the statutory definition of disability, Sections 223(d)(2)(A) and 1614(a)(2)(B) of the Social Security Act specifically state that "an individual shall be determined to be under a disability only if he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether a specific job vacancy exists for him, or whether he would be hired if he applied for work" (emphasis added). Thus, the consideration of an individual's ability to obtain a job is specifically precluded by the Act.

The proposed regulations do not reflect the standards established by the courts. One writer suggested that case law be incorporated into the regulations and that standards set by courts be applied to the initial and reconsideration adjudicative phases. All court decisions are reviewed for program implications and to determine whether an appeal is in order. The Social Security Administration is bound by law to follow standards which are enunciated by the Supreme Court. However, in some instances, a lower court, by its interpretation of the Social Security Act and regulations, sets standards which are recognized as sound principles and adopted as program policy. An example of this is *Kerner v. Fleming*, 283 F.2d 916 (2nd Cir. 1960), which enunciated the standard of determining "what an applicant can do and what employment opportunities there are for someone who can do only what the applicant can do". In those situations where a court advances standards which are considered to be incompatible with the Act, the Social Security Administration may recommend an appeal.

The proposed regulations are not clear as to how they will apply to a person who is physically limited to less than a full range of sedentary work. One person asked whether a person who is physically limited to less than a full range of sedentary work activity will be deemed disabled. The capacity to do no more than a full range of sedentary work represents a fairly restrictive range of work capability; less than such capability generally means that the impairment(s) is so severe that a finding of disabled is warranted on medical grounds alone because the

impairment(s) is listed in the Listing of Impairments immediately following 20 CFR 404.1539 and 416.985, or is medically the equivalent of a listed impairment. Accordingly, a very careful assessment of severity should be made on a purely medical basis before vocational factors are considered. Even in those exceptional situations where such a claimant is not found disabled on medical grounds alone and vocational factors must be considered, a finding of disabled would generally be expected following assessment of the individual's functional capacity.

The proposed regulations will affect disability claims already adjudicated. Another writer questioned how cases already adjudicated would be affected by the proposed regulations. Upon implementation, the proposed regulations would, of course, apply at all levels of adjudication. However, since the proposed regulations are representative of long-standing policy guides, it is not intended that disability claimants or persons already on the rolls would be adversely affected by their implementation. Persons on the rolls will be subject to a continuing disability investigation only on the same bases as they are at present, i.e., where there is reported or expected improvement in the beneficiary's medical condition or the individual is working and such work may represent a capacity to engage in substantial gainful activity.

The proposed regulations will disadvantage unskilled workers applying for disability benefits. One commenter stated that by using a national availability criteria, particularly at the unskilled job level, many potential disabled individuals would be excluded from disability benefits because of the "glut of unskilled jobs on the market." It would not be reasonable to discount unskilled work from consideration, since large numbers of disability applicants have performed only unskilled work throughout their working lives. These individuals would not qualify for work involving skills; thus, if the capability for unskilled work were not considered, the disability definition would be altered to an occupational definition (i.e., the inability to do past work) for many applicants, particularly those who are unskilled. This would have far-reaching program ramifications and, moreover, would be inconsistent with the legal definition of disability in the Social Security Act which provides that if an individual is unable to do previous work, consideration must be given to whether he can do any other kind of substantial gainful work (italic added) which exists in the national economy. Skills would, in many instances, enhance an applicant's work capability. Where an applicant possesses skills, such skills are, of course, taken into consideration.

The proposed regulations violate the Administrative Procedure Act. One

commenter indicated that the proposed amendments are representative of existing guidelines which have been used only at the initial and reconsideration levels, and that claimants who have been found not disabled at the reconsideration level and failed to appeal have been subjected to a more stringent standard in violation of the Federal Administrative Procedure Act. This commenter further suggested that the requirements of the Federal Administrative Procedure Act would be satisfied if the Social Security Administration would provide a hearing for each claimant who has been denied benefits at the reconsideration level and did not appeal. This commenter has assumed that two entirely separate and distinct tests of disability are used depending upon the level at which the claim is being considered, and that a more stringent test of disability is employed at the initial and reconsideration levels. Another writer stated that use of the charts in proposed Appendix 2 would be appropriate at the lower levels of adjudication where rigid categories would promote more efficient adjudication of cases, but that less rigid criteria should be used at the hearing level.

The Social Security Act does not provide for different standards of disability at different adjudicative levels, and the same definition of disability has been used at all levels. Existing medical-vocational evaluation policy as embodied in the proposed amendments is reflective of the Social Security Act and is not different from the policies intended for use at all other levels of adjudication, even though as previously stated, some of the policies may not have been available in specific form beyond the initial and reconsideration levels. The policies being promulgated in these regulations may generally be found in operating instructions used at the initial and reconsideration levels, but these instructions were not binding upon administrative law judges at the hearing level or upon the Appeals Council, because they were not issued as regulations or rulings. One of the major purposes of the proposed amendments is to help improve the consistency and equity of disability decisions at all levels of adjudication in all parts of the nation, but the proposed amendments in no way abridge the Social Security Act which has always been determinative of adjudicative standards.

The proposed regulations do not provide sufficient guidance for documenting or assessing residual functional capacity. Four commenters expressed concern about the lack of uniformity of residual functional capacity assessments and indicated that it is imperative that guidelines for documenting and assessing residual functional capacity be made a part of the regula-

tions. Each disability decision involving vocational factors requires an assessment of residual functional capacity with respect to those specific physical or mental capacities that are in doubt by reason of the individual's allegations or evidence submitted on his or her behalf. Where such doubt does not exist with respect to particular physical or mental capacities, there is no reason to believe that those capacities are diminished. Residual functional capacity assessment may be based solely on medical evidence where such evidence included sufficient findings, e.g., signs, symptoms, and laboratory findings, to support judgments about the individual's capacity for work-related physical capacities, mental demands, and sensory requirements. Where the medical findings, in and of themselves, are not supportive of an adequate assessment of residual functional capacity, such additional factors as the claimant's description of his or her impairment, recorded observations of the claimant, and any other evidence of record may be considered in conjunction with the medical findings. Assessments that describe an individual's ability to sustain work-related activities in terms of an ordinary work day on a continuous day-to-day basis can be matched to the physical and mental demands of jobs, and may be supportive of conclusions that such an individual can perform his or her previous work or other work that exists in the national economy. Conversely, where an assessment establishes that the individual does not have the capacity for work-related functions associated with his previous work or other work that exists in the national economy, or establishes that he or she has the capacity for such functions only on an erratic or irregular basis, such findings are supportive of inability to perform substantial gainful work. The assessment of residual functional capacity is a highly individualized process and must take into account all relevant factors involving a particular claimant. The proposed amendments clarify the considerations in assessing residual functional capacity.

In the proposed regulations the 15-year period, which is used in determining the relevance of an individual's past work, does not have any logical basis. One writer noted that the period of fifteen years which is considered in determining the relevance of an individual's past work shows no reference nor identifiable rationale. The 15-year period is predicated on the assumption that in our economic system, a gradual transition occurs in the job functions of most jobs so that by the time fifteen years have elapsed, the change is such that it is no longer realistic to assume that skills and abilities acquired in a job performed more than fifteen years ago continue to be rel-

evant. This period is designated essentially as a safeguard in the interest of the claimant to insure that current vocational relevance is not imputed to remote work experience which could not reasonably be expected to enhance an individual's vocational outlook at the present time.

The proposed regulations are inaccurate in using grade levels as a measure of education. One writer stated that whether a particular individual's education has provided him or her with skills can only be determined by actually measuring his or her performance and is only roughly indicated by the grade level the individual has completed, and that this rough indicator will often be inaccurate. Adjudicative weight is ascribed to formal education only to the extent that such education contributes to the individual's ability to meet the vocational requirements of jobs; e.g., reasoning ability, communications skills or language competence, arithmetical ability. Lack of formal education is not necessarily proof that the individual is uneducated or lacks such capacities; and, conversely, the significance of an individual's educational background may be materially affected by the time lapse between the completion of his or her formal education and the onset of physical or mental impairment(s) and by what the individual has done with his or her education in a work context. Thus the judgment must be an individualized one and pertain to the facts presented about the claimant being evaluated. Grade level is only determinative in absence of evidence to the contrary.

Contrary to the proposed regulations, there is usually insufficient evidence in the record to assess job skills before the hearing level. One commenter stated that below the hearings level there is never enough evidence to decide the degree of job-acquired skills. The Social Security Administration's operating experience has shown that a large number of the individuals who file for social security disability benefits are unskilled, and that the issue of transferability of skills is the decisive factor in only a relatively small number of cases. Further, transferability of skills may not be an issue even in cases involving skilled workers (e.g., an individual not of advanced age who can do medium work and who has a high school education). Where transferability of skills is not at issue, evidence supporting such considerations is unnecessary. In setting out the definitions and rules, the proposed amendments prescribe the evidence required to reach the necessary judgments as to each individual factor at all adjudicative levels while directing the consideration of the factors in proper sequence, thereby aiding the adjudicators in determining when sufficient evidence for a disability decision has

been obtained. The same commenter noted, as has been found in the Social Security Administration's experience, that job titles in themselves are not reliable determinants of skills and that evidence relating to an individual's job duties must be used in reaching such conclusions.

The proposed regulations do not consider motivation for work. Three writers stated that while the regulations require a physician to look at the exertional limitations of an individual, there is no way to consider the individual's motivational level, particularly the impact of a medical problem which can reduce the functional level but not eliminate employability. Motivation is not a factor for consideration in determining whether a claimant is disabled under the provisions of the Social Security Act, nor is the factor of "employability." The individual must be unable to engage in any substantial gainful activity by reason of a medically determinable impairment(s). The physical or mental impairment(s) must be the primary reason for the inability to engage in substantial gainful activity although such other factors as the age, education, and work experience of the individual must also be considered in addition to the functional limitations imposed by the physical or mental impairment(s) in those instances where a decision of disabled or not disabled is not warranted solely on the basis of medical findings. The assessment to determine an individual's functional limitations (and his residual functional capacity) must be based on all relevant evidence which pertains to his or her capacity for work-related physical functions, mental demands, and sensory requirements. This precludes consideration of the individual's motivational level.

The proposed regulations are not clear as to how they will be applied where an individual has limitations in the ability to reach, pull, push, or engage in sustained activity. Several commenters expressed concern that even though a claimant may be able to meet the exertional demands for the performance of a particular range of work, e.g., light, such individual may have limitations with respect to the ability to reach, pull, push, or engage in sustained activity which would restrict the number of jobs within that range that he or she could perform. One commenter suggested that there should be a mechanism for sorting out those jobs which a claimant would not be able to perform because of specific limitations; another indicated that this might be done by considering vocational rehabilitation success rates in retraining people with specified exertional limitations and percentages of hearing and appeals reversal decisions in various categories.

All of these comments suggest that the commenters believe that only the

primary strength requirements (i.e., lifting, carrying, pushing, and pulling) are considered in determining the range of work which a claimant would be capable of performing. Also considered, however, are physical capacities (or specified physical traits) such as climbing, balancing, stooping, bending, kneeling, crouching, fingering, feeling, talking, hearing and seeing. While some of these physical capacities may be more critical than others to the performance of jobs within a particular range of work, the individual must possess physical capacities equal to the strength requirements for the majority of jobs within a particular range of work in order to be so classified. Thus, where an individual has the capacity to meet the strength requirements for a particular range of work, but is unable to perform such activities on a sustained basis, he or she would not be deemed capable of performing work within that range. On the other hand, where the physical capacities normally required for a particular range of work are not appreciably diminished, it would be appropriate to conclude that the individual does have the capacity to perform work within the range being contemplated. It would not, however, be appropriate to assess an individual's anticipated job success based on the job success of other individuals who, though similarly impaired, have been rehabilitated to a work situation. Projecting such expectations on this basis would be contrary to the individualized adjudicative concept. Similarly, the individualized adjudicative approach would preclude comparison with percentages of hearing and appeal reversal decisions.

The proposed regulations will disadvantage persons who improve their skills and education and will be a disincentive to such improvement. A person appearing at a public meeting indicated that an adjudicator must be extremely wary of making a finding of not disabled on the basis that a claimant can perform work for which he or she has recently been trained unless he or she has actually engaged in substantial gainful activity in the new occupation. The commenter observed, on the other hand, that a beneficiary may be found to be no longer disabled and his or her benefits terminated if he or she demonstrated his or her newly acquired skills or abilities in productive work activity. Similarly, another person observed that a beneficiary might abandon plans to pursue an education if faced with the possible loss of benefits because of the attainment of new skills.

As noted, when an applicant for disability benefits is shown to have had vocational training or special education without it being reflected in his work history, care must be taken to as-

certain that the applicant did, in fact, satisfactorily complete the training or education, and the reasons for not making use of it. A handicapped person cannot legitimately be expected to make use of training or education where there are good reasons for not having been able to do so before the onset of his disability.

The same caution is exercised where a beneficiary has successfully completed vocational rehabilitation or training but has not used the skills acquired in productive work. Benefits may not be terminated on the basis that the individual has become a "skilled" worker. In the absence of work activity, a finding that disability ceased would be justified only where the evidence establishes that the individual no longer meets the definition of disability. Thus, in the absence of medical recovery, benefits would be continued until the individual has completed a trial work period and has demonstrated the ability to engage in substantial gainful activity. The recent acquisition of skills, by itself, would not be convincing of regained ability to engage in substantial gainful activity.

The proposed regulations are unrealistic in attributing labor market adaptability to persons between ages 18 and 49, as "so called younger individuals". One writer objected to the use of the term "younger individual" to denote ages 18 through 49, and said that the age level should be 18 through 40. It is recognized that progressive deteriorative changes, which affect the vocational capacity to perform jobs, occur as individuals get older. Since no conclusive data which relate varying specific chronological ages to specific vocational limitations for performing jobs are available, it was necessary to analyze and interpret the available age and employment data to ascertain points where it would be realistic to ascribe vocational limitations based on chronological age. Past experience of the Social Security Administration in determining when age makes a difference in disability determinations has also been considered. The consensus resulting from such data and prior experiences is that employment problems develop at age 45; intensify at age 50; and are significantly evident at age 55. The considerations given to age are appropriately reflected in proposed Appendix 2 but are not to be applied mechanically in borderline situations.

Rule 203.10, in the proposed regulations, discriminates against title II disability claimants in comparison with title XVI disability claimants. One commenter stated that Rule 203.10 of proposed Appendix 2 would place more emphasis on the absence of previous work experience than on medical factors as the primary reason

for inability to engage in substantial gainful activity. (This rule provides for a finding of disabled where the claimant's maximum sustained work capability is limited to medium work as a result of a medically determinable impairment(s), and such person is of advanced age, has a limited (or less) education, and has no previous work experience.) The commenter noted that the capacity to perform medium work activity represents a substantial vocational opportunity regardless of a person's age, education, and previous work experience, or lack thereof. It was also pointed out that a finding of not disabled would be made in a situation where, all other factors being equal, the claimant had a history of unskilled work (Rule 203.11). This, in the commenter's view, would create an inequity in the handling of title II and title XVI claimants.

As stated in the Social Security Act, in existing regulations, and in the proposed regulations, an individual's physical or mental impairment(s) must be the primary reason for the inability to engage in any substantial gainful activity. Rule 203.10 does not change that requirement. Rather, the rule takes into account the absence of any work experience as an adverse vocational factor. While this factor is always recognized as a particular vocational handicap, the ability to compensate is inverse to other characteristics such as age, education, and skill attainment. The proposed rules, therefore, provide for the same treatment, up to a point, of claimants without work experience and those who have performed only unskilled work, all other factors being equal. As a person grows older, however, the ability to compensate diminishes. The claimant without work experience, on reaching advanced age, may have a significantly more adverse vocational outlook than his or her counterpart who has engaged in unskilled work. The latter, contrary to the former, will have developed worker characteristics such as the basic knowledge of a product or service; an ability to relate and communicate to supervisors and coworkers; the work habits of scheduling of time, use of time clocks or other elements of time usage; and other worker habits and abilities to aid in adjusting to a new work situation, even through at the older age level.

A General Accounting Office study found disability determinations made by the various State agencies to be inconsistent. Several persons commented on the findings of a General Accounting Office (GAO) study which indicated that disability claimants are receiving unequal treatment because their claims are being handled in an inconsistent manner by the various State agencies which make disability determinations under an agreement

with the Social Security Administration. GAO attributed this, in part, to the Social Security Administration's failure to provide clear, concise criteria and instructions upon which to render decisions. In line with this criticism, GAO specifically criticized the absence of comprehensive vocational factors evaluation criteria in published form. Although the Social Security Administration took exception to the methodology employed in the study and questioned the validity and accuracy of the study findings, it should nevertheless be stressed that one of the objectives of the proposed regulations is to assure consistency in the disability determination process. This would meet the criticism of the GAO study by providing timely, clear, concise criteria and instructions upon which to render decisions based on medical-vocational factors.

The proposed regulations permit "administrative notice" of unsubstantiated conclusions and disputed findings without allowing for rebuttal of these findings and conclusions. One writer suggested that the conclusive effect of administrative notice will be given to disputable facts. Another stated that noticed facts which are contained in various reference and source materials, (e.g., the "Dictionary of Occupational Titles," "County Business Patterns," "Census Reports") are adjudicative facts and, as such, are subject to rebuttal, though no provision is made for rebuttal in the proposed regulations.

Administrative notice is taken of the various source and reference materials, themselves, on the basis that they are generally recognized in business, industry, and government as representing authoritative sources on jobs throughout the national economy. However, any rule in proposed Appendix 2 which is reflective of facts contained in the administratively noticed reference materials will direct a factual conclusion as to whether an individual is or is not disabled only where all of the findings of fact made with respect to the individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule. The individual findings of fact are subject to rebuttal; and where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a factual conclusion of disabled or not disabled. This principle is discussed in § 200.00(a) of proposed Appendix 2. However, where the findings of fact are determined to coincide with a particular rule, the conclusion established by the rule is not subject to rebuttal. These conclusions rest, in part, on various source and reference materials which are being considered in the rule-

making process and which form part of the factual basis for the proposed rules. The law does not require the Social Security Administration to permit rebuttal of these legislative facts in the determination of individual claims.

The proposed regulations will increase the need for legal representation in order for a claimant to be allowed disability benefits at a hearing. Two persons asked if the proposed regulations place an increased premium on the need for legal representation at a disability hearing. It is difficult to predict what effect publication of the proposed regulations would have on attorney representation. There has been a steady increase in the incidence of attorney representation over the past five years, possibly due in part to the increased value of the disability benefit and the greater accessibility of legal services. This trend may continue regardless of what action is taken on the proposed regulations. Hence, attorney representation may be perceived as becoming more valuable when vocational criteria are available to the public and the legal profession. On the other hand, one of the purposes of the regulations is to make available to the public the guides for adjudicating disability cases that require full consideration of an individual's age, education and work experience.

If the proposed regulations are implemented, denied claimants should be advised that the determination is binding and that legal assistance should be obtained. One writer suggested that where a claimant is found not disabled, the notice should advise that the determination is a binding conclusion and that he or she should seek legal assistance. The commenter also suggested that the Social Security Administration should refer denied claimants to the bar association or legal aid groups, and then proceed at the next adjudicative level only after the claimant has been advised that the previous decision is binding and waives his or her right to legal representation.

Unless an appeal is timely filed, every determination is final and conclusive of individual benefit rights with respect to the application under consideration. The denial notice at each adjudicative level clearly informs the claimant of appeal rights and furnishes instructions as to the procedures to be followed if he or she disagrees with the decision. Although the Social Security Administration assists a claimant to pursue his or her claim, a claimant has the right to be represented by a person of his or her own choice, and if he or she expresses interest in having such representation, the interviewer explains the right to be represented; how to appoint a rep-

resentative; what a representative may do; and fee regulations.

The proposed regulations do not take cognizance of the fact that some individuals, especially younger persons, are temporarily disabled for at least 12 months. One writer stated that the proposed regulation fails to recognize the concept of a "closed or temporary" period of disability and ignores (for example) the entitlement of young wage earners who are well-educated, but who are temporarily severely injured or ill for 12 or more months. On the basis of the example cited, it appears that the writer believes that the proposed regulations would impinge upon the 12-month duration requirement, which is an integral part of the statutory definition of disability, and that a finding of disabled would be precluded in any case where a claimant's impairment(s) is no longer disabling at the time of adjudication or where it can be projected that the impairment(s) will no longer be disabling in the near future. As explained elsewhere in this preamble, the proposed regulation in no way effects the severity and duration requirements of the definition of disability, and it would be beyond the scope of the Secretary's authority to promulgate a regulation which would be inconsistent with the statute. (For a specific discussion of the adjudicative treatment of younger workers, see § 201.00(h) of proposed Appendix 2.)

The proposed regulations should provide that vocational factors will not be evaluated without the claimant's consent and the evaluation should be done by a professional vocational consultant. Two commenters stated that the applicant's consent should be obtained where it is necessary that vocational factors be evaluated to determine disability, and that such evaluation be conducted by trained vocational evaluators or other trained professionals.

Section 223(d)(2)(A) of the Social Security Act requires consideration of an applicant's physical and mental capacity for previous and other work. Assessment of work capacity is based on independent evidence and information—obtained from treating and other examining physicians, hospitals, clinics, and other medical sources as well as the claimant himself. The interpretation of this information is performed by an evaluation team composed of a physician employed by the State Disability Determination Services, and a lay disability adjudicator who is a professional evaluator by reason of specialized training and experience. Both the physician and lay adjudicator are uniquely equipped to translate functional and vocational evidence in terms of demands of jobs in the economy and to assess the individual's remaining capacity for such work. The evaluation of vocational and function-

al evidence is governed by the Social Security Act and regulations. Thus, while information pertinent to an individual's claim may be received from any source, the evaluation of such evidence requires persons who not only possess medical-legal qualifications but are also well versed in the law and regulations. In some cases where vocational qualifications are difficult to measure, claimants are referred to work evaluation centers and professional vocational consultants for an evaluation at Government expense.

The proposed regulations are not based on any scientific studies or pretesting. A question was raised by several commenters as to whether the Social Security Administration has done research and studies regarding the bases for the policies and definitions of terms set out in the proposed regulations. One writer noted that it might be advisable to provide more recent data in support of the adverse vocational presumptions embodied in the proposed regulations, particularly in regard to advanced age. The bases for the policies and definitions in the proposed regulations are the Social Security Act itself, and Congressional intent as expressed over the years. This is fortified by the Social Security Administration's experience in adjudicating hundreds of thousands of disability claims over a period of many years. The definitions are those that have been used for a number of years. Most derive from pre-existing outside sources and research, such as data compiled by the Department of Labor (some of which was specifically arranged for use by the Social Security Administration), which are authoritative and generally accepted, and which are compatible with the social security disability program. The reference sources and materials which are cited in support of the adverse vocational presumptions in regard to advanced age reflect a consistency over the period 1957-1974, which is shown to be continuing.

Likewise, pretesting is considered unnecessary, since pretesting for some limited period of time would not provide as good a test of validity as the Social Security Administration's adjudicatory experience in handling hundreds of thousands of cases over many years from which these rules are derived. Only actual operating experience, court experience and careful monitoring will, in the final analysis, prove the effect of the proposed regulations.

SUMMATION

In essence, the proposed regulations and Appendix 2 identify and define the individual medical-vocational factors which Congress intended to be considered in appropriate cases and illustrate the relative weights to be as-

cribed to each factor in conjunction with all of the other variables in determining an individual's ability or inability to perform substantial gainful activity. Proposed Appendix 2 sets forth these interactions in the form of individual profiles demonstrating the changing adjudicative weights to be accorded each factor in relation to the others. The determination of disabled or not disabled shown in a rule reflects whether or not a severely impaired individual with that particular combination of individual characteristics is able to engage in substantial gainful activity. The determination is predicated on the basis of a medical-vocational determination of capacity for the performance of ranges of work, rather than singular or isolated occupations and, therefore, inherently considers the performance of a significant number of jobs that exist in the national economy.

The publication of Appendix 2 is not intended to direct the adjudication of social security disability claims on the basis of an "average man" approach. Rather, the rules make the process of determining the ability to engage in substantial gainful work more uniform and definitive while preserving the individuality of the determination. While the standards for evaluation included in Appendix 2 are rules whereby each case is evaluated, they do not detract from the requirement that the determination in every case be an individual one. To the contrary, the rules require that individualized findings of fact be made with respect to each individual's age, education, work experience, and physical and mental limitations, and that all factors resulting from those findings of fact coincide with the criteria of a particular rule in order for that rule to direct a factual conclusion of disabled or not disabled in the individual case. Thus, the rules require that each individual's age, education, work experience, and physical and mental limitations personal to him or her, be taken through account of before the rules are applied to the facts in the case. The rules need to be definitive so that the claims of all individuals similarly situated are handled in a consistent manner and to assure that determinations made by one set of adjudicators on the basis of the same facts will be handled the same way by another group of adjudicators, wherever in the country they are located. The necessity for each determination to be an individual one does not eliminate the need for consistency and uniformity in determinations. The way that is achieved administratively is by the regulations and the Appendices (1 and 2).

With respect to those claims not covered within the specific parameters of a rule in Appendix 1 or 2, a determination will have to be made on the basis

of the discussions and definitions in the main body of the regulations, taking appropriate account of the rules in Appendix 2.

The rules stated herein represent a consolidation and elaboration of long-standing medical-vocational evaluation policies, which heretofore have been reflected in fragmented guides not readily available in the same format at all levels of adjudication. The proposed regulations and Appendix 2 take appropriate account of the Social Security Administration's extensive experience to date in administering disability programs. Proposed Appendix 2 will help insure individual consideration of all appropriate factors in each case, while providing meaningful rules for soundness, consistency and equity of disability adjudications.

The proposed amendments, if adopted in full or in part, will not become effective until 90 days after they are published in final form in the *FEDERAL REGISTER*.

The proposed amendments are to be issued under the authority contained in sections 205, 223, 1102, 1614, and 1631, of the Social Security Act, as amended; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; 86 Stat. 1471; 86 Stat. 1475; 42 U.S.C. 405, 423, 1302, 1382c, 1383.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: January 23, 1978.

DON WORTMAN,
Acting Commissioner
of Social Security.

Approved: February 21, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education,
and Welfare.

Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

1. Section 404.1502 is revised to read as follows:

§ 404.1502 Evaluation of disability in general.

The provisions of §§ 404.1502 through 404.1513 apply to cases involving disability insurance benefits (except statutory blindness) under section 223 of the Act, child's insurance benefits based on disability under section 202(d) of the Act, and a period of disability under section 216(i)(1)(A) of the Act. In general, the individual has the burden of proving that he or she is

disabled and of raising every issue with respect to his or her alleged disability. Whether an impairment in a particular case constitutes a disability, is determined from all the pertinent facts of that case. The determination of disability may be based on medical considerations alone, or on medical considerations and vocational factors as follows:

(a) *Disability determinations on the basis of medical considerations alone.* Medical evidence (i.e., signs, symptoms and laboratory findings) alone, can justify a finding that an individual is or is not under a disability, absent evidence to the contrary.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* In those cases where a finding of disabled or not disabled cannot be made based on medical evidence alone, other evidence is required. This other evidence may include information about:

(1) The individual's residual functional capacity;

(2) The individual's age, education, and work experience; and

(3) The kinds of substantial gainful activity (work) which exist in significant numbers in the national economy for someone who can do only what the individual can do.

(c) *Disability determinations in which vocational factors are extremely adverse.* Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments, such an individual may be found to be under a disability.

§§ 404.1503 through 404.1507 [Redesignated as § 404.1514 through 404.1518]

2. Sections 404.1503 through 404.1507 are redesignated as §§ 404.1514 through 404.1518 respectively.

3. New §§ 404.1503 through 404.1513 are added to read as follows:

§ 404.1503 Considerations in the sequential evaluation of disability.

(a) *General.* In the determination of whether or not an impairment in a particular case constitutes a disability as defined in § 404.1501, consideration is given to all the pertinent facts of that case. If the individual is engaging in substantial gainful activity, a determination that he or she is not disabled shall be made. In all other cases, primary consideration is given to the physical or mental impairment(s), which must be severe. The impairment(s) must also meet the duration requirement before disability can be found to exist. However, in de-

termining whether an individual is disabled, a sequential evaluation process shall be followed, whereby current work activity, severity of the impairment(s), and vocational factors are assessed in that order. The following evaluation steps shall be followed in the sequence shown, but when a determination that an individual is or is not disabled can be made at any step, evaluation under a subsequent step shall be unnecessary.

(b) *Is the individual currently engaging in substantial gainful activity?* Where an individual is actually engaging in substantial gainful activity, a finding shall be made that the individual is not under a disability without consideration of either medical or vocational factors.

(c) *Does the individual have any severe impairment?* Where an individual does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, a finding shall be made that he or she does not have a severe impairment and therefore is not under a disability without consideration of the vocational factors.

(d) *Does the individual have any impairment(s) which meets or equals those listed in Appendix I?* Where an individual's impairment(s) meets the duration requirement and is either listed in Appendix I or is determined to be medically the equivalent of a listed impairment, a finding of disability shall be made without consideration of the vocational factors.

(e) *Does the individual have any impairment(s) which prevents past relevant work?* Where a finding of disability or no disability cannot be made based on current work activity or on medical considerations alone, and the individual has a severe impairment(s), his or her residual functional capacity and the physical and mental demands of his or her past relevant work shall be evaluated. If the impairment(s) does not prevent the individual from meeting the physical and mental demands of past relevant work, including arduous unskilled physical labor, disability shall be found not to exist.

(f) *Does the individual's impairment(s) prevent other work?* If an individual cannot perform any past relevant work because of a severe impairment(s), but the individual's remaining physical and mental capacities are consistent with his or her meeting the physical and mental demands of a significant number of jobs (in one or more occupations) in the national economy, and the individual has the vocational capabilities (considering age, education, and past work experience) to make an adjustment to work different from that which he or she has performed in the past, it shall be determined that the individual is

not under a disability. However, if an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering age, education, and past work experience) do not permit the individual to adjust to work different from that which he or she has performed in the past, it shall be determined that the individual is under a disability.

§ 404.1504 Determining whether disability exists—medical and other considerations.

(a) *Medical considerations—(1) Finding individual not disabled.* Medical considerations alone can justify a finding that an individual is not under a disability where the medically determinable impairment is not severe. A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions.

(2) *Finding individual disabled.* Medical considerations alone (including the physiological and psychological manifestations of aging) can justify a finding that an individual is under a disability, absent evidence to the contrary. Medical considerations which justify a finding that an individual is under a disability are those that bring an individual's impairment(s) under the listing in Appendix 1 of this subpart or which justify a determination by the Secretary that the impairment(s) is the medical equivalent of an impairment listed in Appendix 1 of this subpart.

(b) *Additional considerations.* Any medically determinable impairment(s) may justify a finding that an individual is under a disability if the impairment(s) is severe and prevents an individual from engaging in substantial gainful activity. In determining whether impairment(s) not listed in Appendix 1 of this subpart (nor found to be the equivalent of an impairment listed in Appendix 1) meet this test, additional considerations are evaluated. These include determining whether an individual can qualify because he or she has only performed arduous unskilled work for a long period of time or, if not, whether he or she can perform vocationally relevant past work. In those cases in which an individual is found unable to perform vocationally relevant past work, age, education, and work experience must then be considered in addition to the functional limitations imposed by the individual's physical or mental impairment(s).

§ 404.1505 Residual functional capacity.

(a) *General.* Physical or mental impairment(s) may impose functional limitations on an individual's ability to engage in substantial gainful activity. The kind and severity of the

impairment(s) determine the individual's work limitations and residual functional capacity. The manner in which the impairment(s) affects the individual's ability to perform work-related physical and mental activities, and the kind and extent of function the individual retains, are assessed in determining the individual's residual functional capacity. Where multiple impairments are involved, the assessment of residual functional capacity reflects the totality of restrictions resulting from all impairments. Assessments of residual functional capacity may be based solely on medical evidence where such evidence includes sufficient findings (e.g., signs, symptoms and laboratory findings) to permit and support the necessary judgments where relevant, with respect to the individual's physical, mental, and sensory capabilities. Where all reasonably obtainable relevant medical findings alone are not sufficient for an adequate assessment of residual functional capacity, additional factors may be considered. Such additional factors as the individual's description of the impairment, recorded observations of the individual, and any other evidence of record may be considered in conjunction with the medical findings.

(b) *Physical capacities.* Assessment of physical capacities (e.g., strength and exertional capabilities) includes an evaluation of the individual and indicates the individual's maximal residual functional capacity for sustained activity on a regular basis. The assessment also includes the evaluation of the individual's ability to perform significant physical functions such as walking, standing, lifting, carrying, pushing or pulling. The assessment includes the evaluation of other physical traits and sensory characteristics such as reaching, handling, seeing, hearing, and speaking, insofar as limited capacity to perform these functions may also affect the individual's capacity for work for which the individual would otherwise be qualified.

(c) *Mental impairments.* The assessment of impairments because of mental disorders includes a consideration of such factors as the capacity to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and customary work pressures in a routine work setting.

(d) *Non-exertional limitations.* Any medically determinable impairments resulting in non-exertional limitations (such as certain mental, sensory, or skin impairments) must be considered in terms of the limitations resulting from the impairment. When an individual has a non-exertional impairment in addition to an exertional impairment(s), the residual functional capacity must be assessed in terms of

the degree of any additional narrowing of the individual's work-related capabilities.

(e) *When assessment is required.* An assessment of residual functional capacity is required only with respect to those specific physical or mental capacities that are in doubt by reason of the individual's allegations or the evidence adduced. Where such doubt does not exist with respect to particular physical or mental capacities, the individual is considered to have no restrictions with respect to those capacities.

(f) *Relationship of residual functional capacity to ability to do work.* Where the residual functional capacity so determined is sufficient to enable the individual to do his or her previous work (i.e., usual work or other vocationally relevant past work), a determination is made that the individual is not under a disability. Where the residual functional capacity so determined is not sufficient to enable the individual to do his or her previous work, it must be determined what work, if any, the individual can do, taking into consideration the individual's residual functional capacity, age, education, and work experience and whether work that the individual can do exists in significant numbers in the national economy.

§ 404.1506 Age as a vocational factor.

(a) *General.* The term "age" refers to chronological age and the extent to which it affects the individual's capability to engage in work in competition with others. However, the factor of age in itself is not determinative of disability; the residual functional capacity and the education and work experience of the individual must also be considered. An individual who is unemployed because of age cannot be found incapable of engaging in substantial gainful activity when the individual's impairment and other vocational considerations, e.g., education and work experience, would enable the individual to perform a significant number of jobs which exist in the national economy.

(b) *Younger individual.* In the case of a younger individual (under age 50), age in itself is ordinarily not considered to affect significantly the individual's ability to adapt to a new work situation.

(c) *Individual approaching advanced age.* For the individual not of advanced age but who is closely approaching advanced age (age 50-54), the factor of age, in combination with a severe impairment and limited vocational background may substantially affect the individual's adaptability to a significant number of jobs in a competitive work environment.

(d) *Individual of advanced age.* "Advanced" age (age 55 or over) repre-

sents the point where age significantly affects the ability to engage in substantial work. Where a severely impaired individual is of advanced age, such ability may be adversely affected except where the individual has skills that are readily transferable to jobs which exist in significant numbers in the national economy.

§ 404.1507 Education as a vocational factor.

(a) *General.* The term "education" is primarily used in the sense of formal schooling or other training which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability. Lack of formal schooling is not necessarily proof that the individual is uneducated or lacks such capacities. For individuals with past work experience, the kinds of responsibilities assumed when working may indicate the existence of such intellectual capacities although their formal education is limited. Other evidence of such capacities, for individuals with or without past work experience, may consist of daily activities, hobbies, or the results of testing. The significance of an individual's educational background may be materially affected by the time lapse between the completion of the individual's formal education and the onset of physical or mental impairment(s) and by what the individual has done with his or her education in a work context. Formal education that was completed many years prior to onset of impairment or unused skills and knowledge that were a part of such formal education may no longer be useful or meaningful in terms of the individual's ability to work. The term "education" also indicates whether an individual has the ability to communicate in English, since that ability is often acquired or enhanced through educational exposure. In evaluating the educational level of an individual, the following classifications are used:

(b) *Illiteracy.* Illiteracy refers to the inability to read or write. An individual who is able to sign his or her name, but cannot read or write a simple communication (e.g., instructions, inventory lists), is considered illiterate. Generally, and illiterate individual has had little or no formal schooling.

(c) *Marginal education.* Marginal education refers to competence in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs. Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(d) *Limited education.* Limited education refers to competence in reasoning, arithmetic, and language skills

which, although more than that which is generally required to carry out the duties of unskilled work, does not provide the individual with the educational qualifications necessary to perform the majority of more complex job duties involved in semi-skilled or skilled jobs. Absent evidence to the contrary, a seventh grade through the eleventh grade of formal education is considered a limited education.

(e) *High school education and above.* High school education and above refers to competence in reasoning, arithmetic, and language skills acquired through formal schooling at a level of grade twelve or above. Absent evidence to the contrary, these educational capacities qualify an individual for work at a semi-skilled through a skilled level of job complexity.

(f) *Inability to communicate in English.* Ability to communicate in English is often acquired or enhanced through educational exposure, and this may be considered an educational factor. Where there is inability to communicate in English, the dominant language of the national economy, this may be considered a vocational handicap because it often narrows an individual's vocational scope. For example, the inability to communicate in English may preclude an individual from performing jobs which require conversing with peers and supervisors in English, or reading instructions, signs, forms, etc., which are printed in English. However, the inability to communicate in English in no sense implies that an individual lacks formal schooling or intelligence. A person unable to communicate in English has a vocational handicap which must be considered in assessing what work, if any, the individual can do. The particular non-English language in which an individual may be fluent is generally immaterial.

§ 404.1508 Work experience as a vocational factor.

The term "work experience" means skills and abilities acquired through work previously performed by the individual which indicates the type of work the individual may be expected to perform. Work for which the individual has demonstrated a capability is the best indicator of the kind of work that the individual can be expected to do. Such work experience has current vocational relevance where the recency of the work and the skills acquired demonstrate the individual's ability to perform work which exists in the national economy. Work performed 15 years or more prior to the point at which the claim is being considered for adjudication (or when the earnings requirement was last met) is ordinarily not considered vocationally relevant. In our economic system, a gradual transition occurs in the job

functions of most jobs so that by the time 15 years have elapsed, it is no longer realistic to assume that skills and abilities acquired in a job performed more than 15 years ago continue to be relevant. The 15-year guide is essentially intended to insure that current vocational relevance is not imputed to remote work experience which could not reasonably be expected to enhance an individual's vocational prospect as of the point of adjudication. An individual who has no prior work experience or has worked only sporadically or for brief periods of time during the 15-year period may be considered to have no relevant work experience. Any skills acquired through work experience are vocational assets unless they are not transferable to other skilled or semi-skilled work within the individual's current capacities. When acquired skills are not transferable, the individual is considered capable of only unskilled work. However, an individual need not have work experience to qualify for unskilled work which requires little or no judgment in the performance of simple duties which can be learned in a short period of time.

§ 404.1509 Work which exists in the national economy.

(a) *General.* Work is considered to exist in the national economy when it exists in significant numbers either in the region where such individual lives or in several other regions of the country, regardless of whether such work exists in the immediate area in which the individual lives, or whether a specific job vacancy exists for the individual, or whether the individual would be hired if the individual applied for work. A finding that work exists in the national economy is made when there is a significant number of jobs (in one or more occupations) having typical requirements which do not exceed the individual's physical or mental capacities and vocational qualifications. Isolated jobs of a type that exist only in very limited number or in relatively few geographic locations outside of the region where the individual resides are not considered to be "work which exists in the national economy" for purposes of determining whether an individual is under a disability; an individual is not denied benefits on the basis of the existence of such jobs. If such work that the individual can do does not exist in the national economy, disability shall be determined to exist. If such work does exist in the national economy, disability shall be determined not to exist.

(b) *Inability of individual to obtain work.* If an individual's residual functional capacity and vocational capabilities are consistent with the performance of work which exists in the national economy but the individual re-

mains unemployed because the individual is unsuccessful in obtaining such work or because such work does not exist in the individual's local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work the individual could otherwise perform, the individual is considered not to be under a disability as defined in § 404.1501.

(c) *Administrative notice of job data.* In the determination of whether jobs, as classified by their exertional and skill requirements, exist in significant numbers either in the region or the national economy, administrative notice shall be taken of reliable job information available from various governmental and other publications; e.g., "Dictionary of Occupational Titles," published by the Department of Labor; "County Business Patterns," published by the Bureau of the Census; "Census Reports," also published by the Bureau of the Census; occupational analyses prepared for the Social Security Administration by various State employment agencies; and the "Occupational Outlook Handbook," published by the Bureau of Labor Statistics.

§ 404.1510 Exertional requirements.

(a) *General.* For the purpose of determining exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." Such terms have the same meaning as they have in the "Dictionary of Occupational Titles," published by the Department of Labor, and when used in making disability determinations under this subpart are defined as follows:

(b) *Sedentary work.* Sedentary work entails lifting 10 pounds maximum and occasionally lifting or carrying such articles as dockets (e.g., files), ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(c) *Light work.* Light work entails lifting 20 pounds maximum with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls. To be considered capable of performing a

full or wide range of light work, an individual must be capable of performing substantially all of the foregoing activities. The functional capacity to perform light work includes the functional capacity to perform sedentary work.

(d) *Medium work.* Medium work entails lifting 50 pounds maximum with frequent lifting or carrying of objects weighing up to 25 pounds. The functional capacity to perform medium work includes the functional capacity to perform sedentary work and light work as well.

(e) *Heavy work.* Heavy work entails lifting 100 pounds maximum with frequent lifting or carrying of objects weighing up to 50 pounds. The functional capacity to perform heavy work includes the functional capacity to perform work at all of the lesser functional levels.

(f) *Very heavy work.* Very heavy work entails lifting objects in excess of 100 pounds with frequent lifting or carrying of objects weighing 50 pounds or more. The functional capacity to perform very heavy work includes the functional capacity to perform work at all of the lesser functional levels.

§ 404.1511 Skill requirements.

(a) *General.* For purposes of assessing the skills reflected by an individual's work experience, and of determining the existence in the national economy of work the individual is competent to do, occupations are classified as unskilled, semi-skilled, and skilled. When used in making disability determinations under this subpart, these terms are used in the following sense:

(b) *Unskilled work.* Unskilled work denotes work which requires little or no judgment in the performance of simple duties that can be learned on the job in a short period of time. Considerable strength may or may not be required. As an example, where the primary work function of occupations consists of handling, feeding and off-bearing (i.e., placing or removing materials from machines which are automatic or operated by others), or machine tending, and average successful job performance can ordinarily be achieved within 30 days, such occupations are considered unskilled. Other types of jobs requiring little specific vocational preparation and little judgment are likewise unskilled. No acquired work skills can be attributed to individuals who have performed only unskilled work.

(c) *Semi-skilled work.* Semi-skilled work denotes work in which some skills are involved but the more complex work functions are not required. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise detecting irregularities;

ties; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities involving less complex work functions. A job may be classified as semi-skilled where coordination and dexterity are necessary as in the use of the hands or feet for the rapid performance of repetitive tasks.

(d) *Skilled work.* Skilled work requires qualifications in which the independent judgment of the individual determines the machine and manual operations to be performed in obtaining the proper form, quality, or quantity of material to be produced. The individual may be required to lay out work, to estimate quality, suitability and needed quantities of materials, to make precise measurements, to read blueprints or other specifications, and to make necessary computations or mechanical adjustments to control or regulate processes. Other skilled jobs may require dealing with personnel, data, or abstract ideas at a high level of complexity.

(e) *Transferable work skills.* An individual is considered to have transferable skills when the skilled or semi-skilled work functions which he has demonstrated in his or her past work can be applied to meet the requirements of skilled or semi-skilled work functions of other jobs or kinds of work. Transferability depends largely on the similarity of occupationally significant work functions among jobs. Transferability is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; and the same or similar tools and machines are used; and the same are similar raw materials, products, processes, or services are involved. There are degrees of transferability ranging from a close approximation of work functions involving all three factors to only remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary to warrant the inference of transferability. (Also, see Appendix 2, § 201.00(e), (f), and § 202.00(e), (f).)

§ 404.1512 Effect of performance of arduous unskilled physical labor.

Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments and, considering his or her age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability. On the other hand, a different conclusion may be reached where it is found that such individual is working or has worked despite his or her impairment or impairments (except where such

work is sporadic or is medically contraindicated) depending upon all the facts in the case. In addition, an individual who was doing heavy physical work at the time he or she suffered such impairment might not be considered unable to engage in any substantial gainful activity if the evidence shows that he or she has the training or past work experience which qualifies him or her for substantial gainful work in another occupation consistent with his or her impairment, either on a full-time or a reasonable regular part-time basis.

Example. B, a 60-year old miner, with a fourth grade education, after a life-long history of arduous physical labor alleged that he was under a disability because of arthritis of the spine, hips, and knees and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not disclose either through performance or by similarly persuasive evidence that he has skills or capabilities needed to do lighter work which would be readily transferable to another work environment. Under these circumstances, B may be found to be under a disability.

§ 404.1513 Listing of medical-vocational guidelines in Appendix 2.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 sets forth rules reflecting the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 404.1504(a) and (b) or § 404.1512, where an individual is not engaging in substantial gainful activity and is prevented by a medically determinable impairment from performing his or her vocationally relevant past work. The Appendix 2 rules do not encompass all possible variations of factors and, as explained in § 200.00 of Appendix 2, are not applicable in any case where any one of the findings of fact made with respect to the individual's vocational factors and residual functional capacity does not coincide with the corresponding criterion of a rule. In such instances, full consideration must be given to all relevant facts in accordance with the definitions and discussions of each factor in §§ 404.1505-404.1511. However, when the findings of fact made as to all factors coincide with the criteria of a rule, that rule directs a factual conclusion of disabled or not disabled.

Appendix (Listing of Impairments) [Redesignated as Appendix 1]

4. Subpart P of part 404 is further amended by designating the Appendix

(Listing of Impairments), appearing at the end thereof, as Appendix 1, and by adding a new Appendix 2, to read as follows:

APPENDIX 2—MEDICAL—VOCATIONAL
GUIDELINES

Sec.

200.00 Introduction.

201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of § 404.1504 (a) and (b) or § 404.1512, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a factual conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a factual conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in §§ 404.1505-404.1513.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security administration by various State employment agencies. Thus,

when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(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.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a factual conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles of §§ 404.1505-404.1513, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments

resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this subpart, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in §§ 404.1505-404.1513, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work as defined in § 404.1510(b) may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily

ly warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant part work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45-49, age is a less positive factor than for those who are age 18-44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment; even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work;

his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather

than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-45 even if they are illiterate or unable to communicate in English.

TABLE NO. 1.—Residual functional capacity, maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)

Rule	Age	Education	Previous work experience	Decision
201.01.....	Advanced.....	Limited or less.....	Unskilled or none.....	Disabled.
201.02.....	do.....	do.....	Skilled or semiskilled— skills not transferable ¹ .	Do.
201.03.....	do.....	do.....	Skilled or semiskilled— skills transferable ¹ .	Not disabled.
201.04.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Unskilled or none.....	Disabled.
201.05.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Unskilled or none.....	Not disabled.
201.06.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable ¹ .	Disabled.
201.07.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled— skills transferable ¹ .	Not disabled.
201.08.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable ¹ .	Do.
201.09.....	Closely approaching advanced age.	Limited or less.....	Unskilled or none.....	Disabled.
201.10.....	do.....	do.....	Skilled or semiskilled— skills not transferable.	Do.
201.11.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Not disabled.
201.12.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Unskilled or none.....	Disabled.
201.13.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	do.....	Not disabled.
201.14.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable.	Disabled.
201.15.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Not disabled.
201.16.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable ¹ .	Do.
201.17.....	Younger individual age 45-49.	Illiterate or unable to communicate in English.	Unskilled or none.....	Disabled.
201.18.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Not disabled.
201.19.....	do.....	Limited or less.....	Skilled or semiskilled— skills not transferable.	Do.
201.20.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Do.
201.21.....	do.....	High school graduate or more.	Skilled or semiskilled— skills not transferable.	Do.
201.22.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Do.
201.23.....	Younger individual age 18-44.	Illiterate or unable to communicate in English.	Unskilled or none.....	Do. ⁴
201.24.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Do. ⁴
201.25.....	do.....	Limited or less.....	Skilled or semiskilled— skills not transferable.	Do. ⁴

TABLE NO. 1.—Residual functional capacity, maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)—Continued

Rule	Age	Education	Previous work experience	Decision
201.26	do	do	do	Do.*
201.27	do	High school graduate or more.	Unskilled or none	Do.*
201.28	do	do	Skilled or semiskilled—skills not transferable.	Do.*
201.29	do	do	do	Do.*

*See 201.00(f).

*See 201.00(d).

*See 201.00(g).

*See 201.00(h).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work as defined in §404.1510(c) includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60-64), there must be very little, if any, vocational adjustment required in

terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to com-

municate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

TABLE NO. 2.—Residual functional capacity maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.03	do	do	Skilled or semiskilled—skills transferable ¹ .	Not disabled.
202.04	do	High school graduate or more—does not provide for direct entry into skilled work ² .	Unskilled or none	Disabled.
202.05	do	High school graduate or more—provides for direct entry into skilled work ² .	do	Not disabled.
202.06	do	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled—skills not transferable.	Disabled.
202.07	do	do	Skilled or semiskilled—skills transferable ¹ .	Not disabled.
202.08	do	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled—skills not transferable.	Do.
202.09	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	do	Limited or less—At least literate and able to communicate in English.	do	Not disabled.
202.11	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.12	do	do	Skilled or semiskilled—skills transferable.	Do.
202.13	do	High school graduate or more.	Unskilled or none	Do.
202.14	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.15	do	do	Skilled or semiskilled—skills transferable.	Do.
202.16	Younger individual.	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	do	Limited or less—At least literate and able to communicate in English.	do	Do.
202.18	do	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
202.19	do	do	Skilled or semiskilled—skills transferable.	Do.
202.20	do	High school graduate or more.	Unskilled or none	Do.
202.21	do	do	Skilled or semiskilled—skills not transferable.	Do.
202.22	do	do	Skilled or semiskilled—skills transferable.	Do.

*See 202.00(f).

*See 202.00(c).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform medium work as defined in §404.1510(d) includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing nu-

merous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional ca-

capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. (Note that the provisions of §404.1512 must have been given prior consideration.)

(c) However, the absence of any relevant work experience becomes a more significant

adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60-64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3.—Residual functional capacity maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)

Rule	Age	Education	Previous work experience	Decision
203.01.....	Closely approaching retirement age.	Marginal or none.....	Unskilled or none.....	Disabled.
203.02.....	do.....	Limited or less.....	None.....	Do.
203.03.....	do.....	Limited.....	Unskilled.....	Not disabled.
203.04.....	do.....	Limited or less.....	Skilled or semiskilled—skills not transferable.	Do.
203.05.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.06.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
203.07.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.08.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.09.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.10.....	Advanced age.....	Limited or less.....	None.....	Disabled.
203.11.....	do.....	do.....	Unskilled.....	Not disabled.
203.12.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.13.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.14.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
203.15.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.16.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.17.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.18.....	Closely approaching advanced age.	Limited or less.....	Unskilled or none.....	Do.
203.19.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.20.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.21.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
203.22.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.23.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.24.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.25.....	Younger individual.	Limited or less.....	Unskilled or none.....	Do.
203.26.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.27.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.28.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
203.29.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.30.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.31.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s). The residual functional capacity to perform heavy work as defined in §404.1510(e), or very heavy work as defined in §404.1510(f), included the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled." Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

5. Section 416.902 is revised to read as follows:

§416.902 Evaluation of disability in general.

The provisions of §§416.902 through 416.913 apply to cases involving supplemental security income benefits based on disability under §1614 of the Act (except for statutory blindness and children under age 18). In general, the individual has the burden of proving that he or she is disabled and of raising every issue with respect to his or her alleged disability. Whether an impairment in a particular case constitutes a disability is determined from all the pertinent facts of that case. The determination of disability may be based on medical consideration alone, or on medical considerations and vocational factors as follows:

(a) *Disability determinations on the basis of medical considerations alone.* Medical evidence i.e., signs, symptoms and laboratory findings alone, can justify a finding that an individual is or is not under a disability, absent evidence to the contrary.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* In those cases where a finding of disabled or not disabled cannot be made based on medical evidence alone, other evidence is required. This other evidence may include information about:

(1) The individual's residual functional capacity;

(2) The individual's age, education, and work experience; and

(3) The kinds of substantial gainful activity (work) which exist in significant numbers in the national economy for someone who can do only what the individual can do.

(c) *Disability determinations in which vocational factors are extremely*

adverse. Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments, such an individual may be found to be under a disability.

§ 416.903 through 416.907 [Redesignated §§ 416.914 through 416.918]

6. Sections 416.903 through 416.907 are redesignated as sections 416.914 through 416.918 respectively.

7. New §§ 416.903 through 416.913 are added to read as follows:

§ 416.903 Considerations in the sequential evaluation of disability.

(a) *General.* In the determination of whether or not an impairment in a particular case constitutes a disability as defined in § 416.901, consideration is given to all the pertinent facts of that case. If the individual is engaging in substantial gainful activity, a determination that he or she is not disabled shall be made. In all other cases, primary consideration is given to the physical or mental impairment(s), which must be severe. The impairment(s) must also meet the duration requirement before disability can be found to exist. However, in determining whether an individual is disabled, a sequential evaluation process shall be followed, whereby current work activity, severity of the impairment(s), and vocational factors are assessed in that order. The following evaluation steps shall be followed in the sequence shown, but when a determination that an individual is or is not disabled can be made at any step, evaluation under a subsequent step shall be unnecessary.

(b) *Is the individual currently engaging in substantial gainful activity?* Where an individual is actually engaging in substantial gainful activity, a finding shall be made that the individual is not under a disability without

consideration of either medical or vocational factors.

(c) *Does the individual have any severe impairments?* Where an individual does not have any impairment(s) which significantly limits his or her physical or mental capacity to perform basic work-related functions, a finding shall be made that he or she does not have a severe impairment and therefore is not under a disability without consideration of the vocational factors.

(d) *Does the individual have any impairment(s) which meets or equals those listed in Part A of Appendix 1?* Where an individual's impairment(s) meets the duration requirement and is either listed in Part A of Appendix 1 or is determined to be medically the equivalent of a listed impairment, a finding of disability shall be made without consideration of the vocational factors.

(e) *Does the individual have any impairment(s) which prevents past relevant work?* Where a finding of disability or no disability cannot be made based on current work activity or on medical consideration alone, and the individual has a severe impairment(s), his or her residual functional capacity and the physical and mental demands of his or her past relevant work shall be evaluated. If the impairment(s) does not prevent the individual from meeting the physical and mental demands of past relevant work, including arduous unskilled physical labor, disability shall be found not to exist.

(f) *Does the individual's impairment(s) prevent other work?* If an individual cannot perform any past relevant work because of a severe impairment(s), but the individual's remaining physical and mental capacities are consistent with his or her meeting the physical and mental demands of a significant number of jobs (in one or more occupations) in the national economy, and the individual has the vocational capabilities (considering age, education, and past work experience) to make an adjustment to work different from that which he or

she has performed in the past, it shall be determined that the individual is not under a disability. However, if an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering age, education, and past work experience) do not permit the individual to adjust to work different from that which he or she has performed in the past, it shall be determined that the individual is under a disability.

§ 416.904 Determining whether disability exists—medical and other considerations.

(a) *Medical considerations.*—(1) *Finding individual not disabled.* Medical consideration alone can justify a finding that an individual is not under a disability where the medically determinable impairment is not severe. A medically determinable impairment is not severe if it does not significantly limit an individual's physical or mental capacity to perform basic work-related functions.

(2) *Finding individual disabled.* Medical consideration alone (including the physiological and psychological manifestations of aging) can justify a finding that an individual is under a disability, absent evidence to the contrary. Medical considerations which justify a finding that an individual is under a disability are those that bring an individual's impairment(s) under the listing in Part A of Appendix 1 of this subpart or which justify a determination by the Secretary that the impairment(s) is the medical equivalent of an impairment listed in Part A of Appendix 1 of this subpart.

(b) *Additional considerations.* Any medically determinable impairment(s) may justify a finding that an individual is under a disability if the impairment(s) is severe and prevents an individual from engaging in substantial gainful activity. In determining whether impairment(s) not listed in Part A of Appendix 1 of this subpart (nor found to be the equivalent of an impairment listed in Part A of Appendix 1) meet this test, additional

considerations are evaluated. These include determining whether an individual can qualify because he has only performed arduous unskilled work for a long period of time or, if not, whether he or she can perform vocationally relevant work. In those cases in which an individual is found unable to perform vocationally relevant past work, age, education, and work experience must then be considered in addition to the functional limitations imposed by the individual's physical or mental impairment(s).

§ 416.905 Residual functional capacity.

(a) *General.* Physical or mental impairment(s) may impose functional limitations on an individual's ability to engage in substantial gainful activity. The kind and severity of the impairment(s) determine the individual's work limitations and residual functional capacity. The manner in which the impairment(s) affects the individual's ability to perform work-related physical and mental activities, and the kind and extent of function the individual retains, are assessed in determining the individual's residual functional capacity. Where multiple impairments are involved, the assessment of residual functional capacity reflects the totality of restrictions resulting from all impairments. Assessments of residual functional capacity may be based solely on medical evidence where such evidence includes sufficient findings (e.g., signs, symptoms, and laboratory findings) to permit and support the necessary judgments where relevant, with respect to the individual's physical, mental, and sensory capabilities. In establishing disability for purposes of title XVI, the Secretary will assist the individual in meeting that burden by securing and paying for medical evidence needed for a sound determination. Where all reasonably obtainable relevant medical findings alone are not sufficient for an adequate assessment of residual functional capacity, additional factors may be considered. Such additional factors as the individual's description of the impairment, recorded observations of the individual, and any other evidence of record may be considered in conjunction with the medical findings.

(b) *Physical capacities.* Assessment of physical capacities (e.g., strength and exertional capabilities) includes an evaluation of the individual and indicates the individual's maximal residual functional capacity for sustained activity on a regular basis. The assessment also includes the evaluation of the individual's ability to perform significant physical functions such as walking, standing, lifting, carrying, pushing or pulling. The assessment includes the evaluation of other physical traits and sensory characteristics such

as reaching, handling, seeing, hearing, and speaking, insofar as limited capacity to perform these functions may also affect the individual's capacity for work for which the individual would otherwise be qualified.

(c) *Mental impairments.* The assessment of impairments because of mental disorders includes a consideration of such factors as the capacity to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and customary work pressures in a routine work setting.

(d) *Non-exertional limitations.* Any medically determinable impairments resulting in non-exertional limitations (such as certain mental, sensory, or skin impairments) must be considered in terms of the limitations resulting from the impairment. When an individual has a non-exertional impairment in addition to an exertional impairment(s), the residual functional capacity must be assessed in terms of the degree of any additional narrowing of the individual's work-related capabilities.

(e) *When assessment is required.* An assessment of residual functional capacity is required only with respect to those specific physical or mental capacities that are in doubt by reason of the individual's allegations or the evidence adduced. Where such doubt does not exist with respect to particular physical or mental capacities, the individual is considered to have no restrictions with respect to those capacities.

(f) *Relationship of residual functional capacity to ability to do work.* Where the residual functional capacity so determined is sufficient to enable the individual to do his or her previous work (i.e., usual work or other vocationally relevant past work), a determination is made that the individual is not under a disability. Where the residual functional capacity so determined is not sufficient to enable the individual to do his or her previous work, it must be determined what work, if any, the individual can do, taking into consideration the individual's residual functional capacity, age, education, and work experience and whether work that the individual can do exists in significant numbers in the national economy.

§ 416.906 Age as a vocational factor.

(a) *General.* The term "age" refers to chronological age and the extent to which it affects the individual's capability to engage in work in competition with others. However, the factor of age in itself is not determinative of disability; the residual functional capacity and the education and work experience of the individual must also be considered. An individual who is unemployed because of age cannot be

found incapable of engaging in substantial gainful activity when the individual's impairment and other vocational consideration, e.g., education and work experience, would enable the individual to perform a significant number of jobs which exist in the national economy.

(b) *Younger individual.* In the case of a younger individual (under age 50), age in itself is ordinarily not considered to affect significantly the individual's ability to adapt to a new work situation.

(c) *Individual approaching advanced age.* For the individual not of advanced age but who is closely approaching advanced age (age 50-54), the factor of age, in combination with a severe impairment and limited vocational background, may substantially affect the individual's adaptability to a significant number of jobs in a competitive work environment.

(d) *Individual of advanced age.* "Advanced" age (age 55 or over) represents the point where age significantly affects the ability to engage in substantial work. Where a severely impaired individual is of advanced age, such ability may be adversely affected except where the individual has skills that are readily transferable to jobs which exist in significant numbers in the national economy.

§ 416.907 Education as a vocational factor.

(a) *General.* The term "education" is primarily used in the sense of formal schooling or other training, which contributes to the individual's ability to meet vocational requirements, e.g., reasoning ability, communication skills, and arithmetical ability. Lack of formal schooling is not necessarily proof that the individual is uneducated or lacks such capacities. For individuals with past work experience, the kinds of responsibilities assumed when working may indicate the existence of such intellectual capacities although their formal education is limited. Other evidence of such capacities, for individuals with or without past work experience, may consist of daily activities, hobbies, or the results of testing. The significance of an individual's educational background may be materially affected by the time lapse between the completion of the individual's formal education and the onset of physical or mental impairment(s) and by what the individual has done with his or her education in a work context. Formal education that was completed many years prior to onset of impairment or unused skills and knowledge that were a part of such formal education may no longer be useful or meaningful in terms of the individual's ability to work. The term "education" also includes whether an individual has the ability to communicate in English, since that ability is

often acquired or enhanced through educational exposure. In evaluating the educational level of an individual, the following classifications are used:

(b) *Illiteracy.* Illiteracy refers to the inability to read or write. An individual who is able to sign his or her name, but cannot read or write a simple communication (e.g., instructions, inventory lists), is considered illiterate. Generally, an illiterate individual has had little or no formal schooling.

(c) *Marginal education.* Marginal education refers to competence in reasoning, arithmetic, and language skills which are required for the performance of simple, unskilled types of jobs. Absent evidence to the contrary, formal schooling at a grade level of sixth grade or less is considered a marginal education.

(d) *Limited education.* Limited education refers to competence in reasoning, arithmetic, and language skills which, although more than that which is generally required to carry out the duties of unskilled work, does not provide the individual with the educational qualifications necessary to perform the majority of more complex job duties involved in semi-skilled or skilled jobs. Absent evidence to the contrary, a seventh grade through the eleventh grade of formal education is considered a limited education.

(e) *High school education and above.* High school education and above refers to competence in reasoning, arithmetic, and language skills acquired through formal schooling at a level of grade twelve or above. Absent evidence to the contrary, these educational capacities qualify an individual for work at a semi-skilled through a skilled level of job complexity.

(f) *Inability to communicate in English.* Ability to communicate in English is often acquired or enhanced through educational exposure, and this may be considered an educational factor. Where there is inability to communicate in English, the dominant language of the national economy, this may be considered a vocational handicap because it often narrows an individual's vocational scope. For example, the inability to communicate in English may preclude an individual from performing jobs which require conversing with peers and supervisors in English, or reading instructions, signs, forms, etc., which are printed in English. However, the inability to communicate in English in no sense implies that an individual lacks formal schooling or intelligence. A person unable to communicate in English has a vocational handicap which must be considered in assessing what work, if any, the individual can do. The particular non-English language in which an individual may be fluent is generally immaterial.

§ 416.908 Work experience as a vocational factor.

The term "work experience" means skills and abilities acquired through work previously performed by the individual which indicates the type of work the individual may be expected to perform. Work for which the individual has demonstrated a capability is the best indicator of the kind of work that the individual can be expected to do. Such work experience has current vocational relevance where the recency of the work and the skills acquired demonstrate the individual's ability to perform work which exists in the national economy. Work performed 15 years or more prior to the point at which the claim is being considered for adjudication (or when the earnings requirement was last met) is ordinarily not considered vocationally relevant. In our economic system, a gradual transition occurs in the job functions of most jobs so that by the time 15 years have elapsed, it is no longer realistic to assume that skills and abilities acquired in a job performed more than 15 years ago continue to be relevant. The 15-year guide is essentially intended to insure that current vocational relevance is not imputed to remote work experience which could not reasonably be expected to enhance an individual's vocational prospect as of the point of adjudication. An individual who has no prior work experience or has worked only sporadically or for brief periods of time during the 15-year period may be considered to have no relevant work experience. Any skills acquired through work experience are vocational assets unless they are not transferable to other skilled or semi-skilled work within the individual's current capacities. When acquired skills are not transferable, the individual is considered capable of only unskilled work. However, an individual need not have work experience to qualify for unskilled work which requires little or no judgment in the performance of simple duties which can be learned in a short period of time.

§ 416.909 Work which exists in the national economy.

(a) *General.* Work is considered to exist in the national economy when it exists in significant numbers either in the region where such individual lives or in several other regions of the country, regardless of whether such work exists in the immediate area in which the individual lives, or whether a specific job vacancy exists for the individual, or whether the individual would be hired if the individual applied for work. A finding that work exists in the national economy is made when there is a significant number of jobs (in one or more occupations) having typical requirements which do not exceed the

individual's physical or mental capacities and vocational qualifications. Isolated jobs of a type that exist only in very limited number or in relatively few geographic locations outside of the region where the individual resides are not considered to be "work which exists in the national economy" for purposes of determining whether an individual is under a disability; an individual is not denied benefits on the basis of the existence of such jobs. If such work that the individual can do does not exist in the national economy, disability shall be determined to exist. If such work does exist in the national economy, disability shall be determined not to exist.

(b) *Inability of individual to obtain work.* If an individual's residual functional capacity and vocational capabilities are consistent with the performance of work which exists in the national economy but the individual remains unemployed because the individual is unsuccessful in obtaining such work or because such work does not exist in the individual's local area; or because of the hiring practices of employers, technological changes in the industry in which the individual has worked, or cyclical economic conditions; or because there are no job openings for the individual or the individual would not actually be hired to do work the individual could otherwise perform, the individual is considered not to be under a disability as defined in § 416.901.

(c) *Administrative notice of job data.* In the determination of whether jobs as classified by their exertional and skill requirements exist in significant numbers either in the region or the national economy, administrative notice shall be taken of reliable job information available from various governmental and other publications; e.g., "Dictionary of Occupational Titles," published by the Department of Labor; "County Business Patterns," published by the Bureau of the Census; "Census Reports," also published by the Bureau of the Census; occupational analyses prepared for the Social Security Administration by various State employment agencies; and the "Occupational Outlook Handbook," published by the Bureau of Labor Statistics.

§ 416.910 Exertional requirements.

(a) *General.* For the purpose of determining exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." Such terms have the same meaning as they have in the "Dictionary of Occupational Titles," published by the Department of Labor, and when used in making disability determinations under this subpart, are defined as follows:

(b) *Sedentary work.* Sedentary work entails lifting 10 pounds maximum and occasionally lifting or carrying such articles as dockets (e.g., files), ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(c) *Light work.* Light work entails lifting 20 pounds maximum with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time with a degree of pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, and individual must be capable of performing substantially all of the foregoing activities. The functional capacity to perform light work includes activities. The functional capacity to perform light work includes the functional capacity to perform sedentary work.

(d) *Medium work.* Medium work entails lifting 50 pounds maximum with frequent lifting or carrying of objects weighing up to 25 pounds. The functional capacity to perform medium work includes the functional capacity to perform sedentary work and light work as well.

(e) *Heavy work.* Heavy work entails lifting 100 pounds maximum with frequent lifting or carrying of objects weighing up to 50 pounds. The functional capacity to perform heavy work includes the functional capacity to perform work at all of the lesser functional levels.

(f) *Very heavy work.* Very heavy work entails lifting objects in excess of 100 pounds with frequent lifting or carrying of objects weighing 50 pounds or more. The functional capacity to perform very heavy work includes the functional capacity to perform work at all of the lesser functional levels.

§416.911 Skill requirements.

(a) *General.* For purposes of assessing the skills reflected by an individual's work experience, and of determining the existence in the national economy of work the individual is competent to do, occupations are classified as unskilled, semi-skilled, and skilled. When used in making disability determinations under this subpart, these terms are used in the following sense:

(b) *Unskilled work.* Unskilled work denotes work which requires little or no judgment in the performance of simple duties that can be learned on the job in a short period of time. Con-

siderable strength may or may not be required. As an example, where the primary work function of occupations consists of handling, feeding, and off-bearing (i.e., placing or removing materials from machines which are automatic or operated by others), or machine tending, and average successful job performance can ordinarily be achieved within 30 days, such occupations are considered unskilled. Other types of jobs requiring little specific vocational preparation and little judgment are likewise unskilled. No acquired work skills can be attributed to individuals who have performed only unskilled work.

(c) *Semi-skilled work.* Semi-skilled work denotes work in which some skills are involved but the more complex work functions are not required. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise detecting irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities involving less complex work functions. A job may be classified as semi-skilled where coordination and dexterity are necessary as in the use of the hands or feet for the rapid performance of repetitive tasks.

(d) *Skilled work.* Skilled work requires qualifications in which the independent judgment of the individual determines the machine and manual operations to be performed in obtaining the proper form, quality, or quantity of material to be produced. The individual may be required to lay out work, to estimate quality, suitability and needed quantities of materials, to make precise measurements, to read blueprints or other specifications, and to make necessary computations or mechanical adjustments to control or regulate processes. Other skilled jobs may require dealing with personnel, data, or abstract ideas at a high level of complexity.

(e) *Transferable work skills.* An individual is considered to have transferable skills when the skilled or semi-skilled work functions which he has demonstrated in his past work can be applied to meet the requirements of skilled or semi-skilled work functions of other jobs or kinds of work. Transferability depends largely on the similarity of occupationally significant work functions among jobs. Transferability is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; and the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. There are degrees of transferability ranging from a close approximation of work functions involving all three factors to only remote and incidental similarities

among jobs. A complete similarity of all three factors is not necessary to warrant the inference of transferability. (Also see Appendix 2, §201.00 (e), (f), and §202.00 (e), (f).)

§416.912 Effect of performance of arduous unskilled physical labor.

Where an individual with a marginal education and long work experience (e.g., 35 to 40 years or more) limited to the performance of arduous unskilled physical labor is not working and is no longer able to perform such labor because of a significant impairment or impairments and, considering his or her age, education, and vocational background is unable to engage in lighter work, such individual may be found to be under a disability. On the other hand, a different conclusion may be reached where it is found that such individual is working or has worked despite his or her impairment or impairments (except where such work is sporadic or is medically contraindicated) depending upon all the facts in the case. In addition, an individual who was doing heavy physical work at the time he or she suffered such impairment might not be considered unable to engage in any substantial gainful activity if the evidence shows that he or she has the training or past work experience which qualifies him or her for substantial gainful work in another occupation consistent with his or her impairment, either on a full-time or a reasonably regular part-time basis.

Example. B, a 60-year old miner, with a fourth grade education, after a life-long history of arduous physical labor alleged that he was under a disability because of arthritis of the spine, hips, and knees and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not disclose either through performance or by similarly persuasive evidence that he has skills or capabilities needed to do lighter work which would be readily transferable to another work environment. Under these circumstances, B may be found to be under a disability.

§416.913 Listing of medical-vocational guidelines in Appendix 2.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 sets forth rules reflecting the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of §416.904 (a) and (b) or §416.912 where an individual is not engaging in substantial gainful activity and is prevented by medically determinable impairment from performing his or her vocationally relevant past work. The Appendix 2 rules do not encompass all

possible variations of factors and, as explained in §200.00 of Appendix 2, are not applicable in any case where any one of the findings of fact made with respect to the individual's vocational factors and residual functional capacity does not coincide with the corresponding criterion of a rule. In such instances, full consideration must be given to all relevant facts in accordance with the definitions and discussions of each factor in §§416.905-416.911. However, when the findings of fact made as to all factors coincide with the criteria of a rule, that rule directs a factual conclusion of disabled or not disabled.

8. Subpart I of Part 416 is further amended by adding a new Appendix 2, to read as follows:

APPENDIX 2—MEDICAL—VOCATIONAL GUIDELINES

Secs.

200.00 Introduction.

201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which do not fall within the criteria of §416.904 (a) and (b) or §416.912, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and his or her impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating his or her ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a factual conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a factual conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in §§416.905-416.913.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(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.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a factual conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking. The rules are useful in cases involving combinations of impairments. For example, if the strength limitations resulting from an individual's impairment(s) considered with the judgments made as to his or her age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, non-exertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environ-

mental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical features(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles of §§416.905-416.913, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely non-exertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this subpart, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussion of each factor in §§416.905-416.913, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semiskilled, professional, administrative, technical, clerical, and benchmark classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchmark occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work as defined in §416.910(b) may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less), and his or her age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restriction to sedentary work at advanced age (55 and

over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work, and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45-49, age is a less positive factor than for those who are age 18-44. Accordingly, for such individuals (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment; even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Part A of Appendix 1). A permanent injury of the right hand limits the individual to seden-

tary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform bilateral manual dexterity significantly comprises the only range of work for which the individual is otherwise qualified; (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further

narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk or unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-45 even if they are illiterate or unable to communicate in English.

TABLE NO. 1.—Residual functional capacity maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)

Rule	Age	Education	Previous work experience	Decision
201.01.....	Advanced age.....	Limited or less.....	Unskilled or none.....	Disabled.
201.02.....	do.....	do.....	Skilled or semiskilled— skills not transferable ¹ .	Do.
201.03.....	do.....	do.....	Skilled or semiskilled— skills transferable ¹ .	Not disabled.
201.04.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Unskilled or none.....	Disabled.
201.05.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	do.....	Not disabled.
201.06.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable ¹ .	Disabled.
201.07.....	do.....	do ²	Skilled or semiskilled— skills transferable ¹ .	Not disabled.
201.08.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable ¹ .	Do.
201.09.....	Closely approaching advanced age.	Limited or less.....	Unskilled or none.....	Disabled.
201.10.....	do.....	do.....	Skilled or semiskilled— skills not transferable.	Do.
201.11.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Not disabled.
201.12.....	do.....	High school graduate or more—does not provide for entry into skilled work ² .	Unskilled or none.....	Disabled.
201.13.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	do.....	Not disabled.
201.14.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable.	Disabled.
201.15.....	do.....	do ²	Skilled or semiskilled— skills transferable.	Not disabled.
201.16.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled— skills not transferable.	Do.
201.17.....	Younger individual, age 45 to 49.	Illiterate or unable to communicate in English.	Unskilled or none.....	Disabled.
201.18.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Not disabled.
201.19.....	do.....	Limited or less.....	Skilled or semiskilled— skills not transferable.	Do.
201.20.....	do.....	do.....	Skilled or semiskilled— skills not transferable.	Do.
201.21.....	do.....	High school graduate or more.	Skilled or semiskilled— skills not transferable.	Do.
201.22.....	do.....	do.....	Skilled or semiskilled— skills transferable.	Do.

TABLE No. 1.—Residual functional capacity maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)—Continued

Rule	Age	Education	Previous work experience	Decision
201.23.....	Younger individual, age 18 to 44.....	Illiterate or unable to communicate in English.	Unskilled or none.....	Do.*
201.24.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Do.*
201.25.....	do.....	Limited or less.....	Skilled or semiskilled—skills not transferable.	Do.*
201.26.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.*
201.27.....	do.....	High school graduate or more.	Unskilled or none.....	Do.*
201.28.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.*
201.29.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.*

*See 201.00(f). *See 201.00(d). *See 201.00(g). *See 201.00(h).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work as defined in § 416.910(c) includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was complete in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level.

The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level

TABLE No. 2.—Residual functional capacity maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s)

Rule	Age	Education	Previous work experience	Decision
202.01.....	Advanced age.....	Limited or less.....	Unskilled or none.....	Disabled.
202.02.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
202.03.....	do.....	do.....	Skilled or semiskilled—skills transferable ¹ .	Not disabled.
202.04.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Unskilled or none.....	Disabled.
202.05.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	do.....	Not disabled.
202.06.....	do.....	High school graduate or more—does not provide for direct entry into skilled work ² .	Skilled or semiskilled—skills not transferable.	Disabled.
202.07.....	do.....	do.....	Skilled or semiskilled—skills transferable ¹ .	Not disabled.
202.08.....	do.....	High school graduate or more—provides for direct entry into skilled work ² .	Skilled or semiskilled—skills not transferable.	Do.
202.09.....	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none.....	Disabled.
202.10.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Not disabled.
202.11.....	do.....	Limited or less.....	Skilled or semiskilled—skills not transferable.	Do.
202.12.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
202.13.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
202.14.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
202.15.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
202.16.....	Younger individual.	Illiterate or unable to communicate in English.	Unskilled or none.....	Do.
202.17.....	do.....	Limited or less—at least literate and able to communicate in English.	do.....	Do.
202.18.....	do.....	Limited or less.....	Skilled or semiskilled—skills not transferable.	Do.
202.19.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
202.20.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
202.21.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
202.22.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.

¹See 202.00(f) ²See 202.00(c)

attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60-64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work as defined in 416.910(d) includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the

adversity of advanced age (55 and over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. (Note that the provisions of §416.912 must have been given prior consideration.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60-64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3.—*Residual functional capacity maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)*

Rule	Age	Education	Previous work experience	Decision
203.01.....	Closely approaching retirement age.	Marginal or none	Unskilled or none	Disabled.
203.02.....	do.....	Limited or less	None.....	Do.
203.03.....	do.....	Limited	Unskilled	Not disabled.
203.04.....	do.....	Limited or less	Skilled or semiskilled—skills not transferable.	Do.
203.05.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.06.....	do.....	High school graduate or more.	Unskilled or none	Do.
203.07.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.08.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.09.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.10.....	Advanced age.....	Limited or less	None.....	Disabled.
203.11.....	do.....	do.....	Unskilled	Not disabled.
203.12.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.13.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.14.....	do.....	High school graduate or more.	Unskilled or none	Do.
203.15.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.16.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.17.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.18.....	Closely approaching advanced age.	Limited or less	Unskilled or none.....	Do.
203.19.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.20.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.21.....	do.....	High school graduate or more.	Unskilled or none	Do.
203.22.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.23.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.24.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.25.....	Younger individual.	Limited or less	Unskilled or none	Do.

TABLE NO. 3.—Residual functional capacity maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s)—Continued

Rule	Age	Education	Previous work experience	Decision
203.26.....	do.....	do.....	Skilled or semiskilled—skills not transferable.	Do.
203.27.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.28.....	do.....	High school graduate or more.	Unskilled or none.....	Do.
203.29.....	do.....	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.
203.30.....	do.....	do.....	Skilled or semiskilled—skills transferable.	Do.
203.31.....	do.....	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable.	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work as defined in §416.910(e), or very heavy work as defined in §416.910(f) includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus, an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment; and generally is sufficient for a finding of not disabled even though age, education, and skill level or prior work experience may be considered adverse.

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[6560-01]

Food and Drug Administration

[21 CFR Part 193]

[FAP 3H5030/P10; FRL 865-11]

TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Proposed Food Additive Tolerance for Dalapon

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice repropose

that a tolerance be established for residues of the herbicide dalapon in potable water. The proposal was submitted by the U.S. Department of the Interior. This amendment to the regulations would establish a maximum permissible level for residues of dalapon in potable water.

DATE: Comments must be received by April 6, 1978.

ADDRESS COMMENTS TO: Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 202-755-2516.

SUPPLEMENTARY INFORMATION: On July 8, 1977, a notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 35171) announcing that the U.S. Department of the Interior, Bureau of Reclamation, Washington, D.C. 20240, had submitted a petition (FAP 3H5030). This petition proposed that 21 CFR 193 be amended by the establishment of a food additive tolerance for residues of the herbicide dalapon (2,2-dichloropropionic acid) in potable water at 0.2 part per million (ppm) when present therein as a result of the application of dalapon sodium-magnesium salt mixtures to irrigation canal and ditch banks.

No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking. One comment was received from the USDI Bureau of Reclamation, objecting to the unnecessary restrictiveness of the proposed regulation. Under the regulation as proposed, dalapon could not be used on irrigation ditch and canal banks of irrigation projects or systems having no connection with the Bureau of Reclamation's projects. However, the Bureau's water conveyance and distribution facilities serve only 20 percent of

the approximately 50 million irrigated acres in the western United States, the rest being privately served.

Thus, the Agency concludes that the restriction limiting dalapon application to only those programs of the USDI Bureau of Reclamation should be deleted. Since the removal of this restriction could result in increased exposure to dalapon residues than there otherwise might have been, the regulation is being repropose at this time. The scientific data and other information used to support the proposed regulation are included in this document by reference to the previous proposal of July 8, 1977. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.). (A related document establishing tolerances for residues of dalapon on a variety of crops and crop groupings appears elsewhere in today's FEDERAL REGISTER.)

It is also noted that the proposed regulation provided for the use of dalapon to irrigation canal banks as well as irrigation ditch banks. In order to be consistent with the labeling, it is concluded that the use on irrigation canal banks be deleted from the regulation.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, by April 6, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments must bear a notation indicating both the subject and the petition/document control number, "FAP 3H5030/P10". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(e)).)

Dated: February 28, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

It is proposed that Part 193, Subpart A, be amended by adding the new § 193.105 as follows:

§ 193.105 Dalapon.

A tolerance of 0.2 part per million is established for residues of the herbi-