Sunshine Act Meetings

Federal Register
Vol. 56, No. 220
Thursday, November 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-2715.4

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, November 13, 1991, 10:00 a.m., Meeting Open to the Public.

The Following Item is Added to the Agenda:

Status Report on the Presidential Election Campaign Fund (continued from meeting of November 7, 1991)

DATE AND TIME: Tuesday, November 19, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 21, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters

Jack Kemp for President Committee, and the Kemp/Dannemeyer and Victory '88 Joint Fundraising Committees Request for Oral Presentation
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores R. Harris,
Administrative Assistant.
[FR Doc. 91-27561 Filed 11-12-91; 3:09 pm]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 8, 1991.

TIME AND DATE: 10:00 a.m., Wednesday, November 13, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING: The item listed for consideration at this time has been postponed. No date has been rescheduled.

1. *Explosives Technologies International, Inc.*, Docket No. CENT 90-95-M.

It was determined that the above postponement was necessary at this time, and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 91-27483 Filed 11-12-91; 11:43 am]
BILLING CODE 6735-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting: Notice of Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 91-26163.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 17, 1991 at 1:00 p.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Madison Hotel, 15th and "M" Streets, N.W., Drawing Rooms I & II, Washington, D.C. 20005, (202) 862-1600.

CHANGES:

DATE AND TIME: (No Change)

PLACE: (No Change)

AGENDA: In lieu of a hearing, the Audit and Appropriations Committee will hold a meeting during which the public comment solicited previously will be received. In addition to the receipt of public comment on the Fiscal Year 1993 budget mark of the Legal Services Corporation, the Committee will consider other matters as reflected in the agenda presented below.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 16, 1991 Meeting.
3. Consideration of Budget and Expenses Through September 1991.
4. Review of Fiscal Year 1991 Audit Plan and Related Procedures.
5. Consideration of Fiscal Year 1992 Management and Administration Budget.
6. Public Comment on the Fiscal Year 1993 Budget Mark of the Legal Services Corporation.
7. Consideration of Public Comment on the Proposed Fiscal Year 1993 Budget Mark of the Legal Services Corporation.
8. Consideration of an Analysis of Space Needs of the Legal Services Corporation.
9. Consideration of Guidelines Used for Unsolicited Proposals for Corporation Grants.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 863-1839.

Date Issued: November 12, 1991.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 91-27545 Filed 11-12-91; 2:36 p.m.]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

MEETING; NOTICE

TIME AND DATE: A meeting of the Board of Directors will be held on November 18, 1991. The meeting will commence at 9:00 a.m.

PLACE: The Madison Hotel, 15th and "M" Streets, N.W., Drawing Rooms I & II, Washington, D.C. 20005 (202) 862-1600.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors. At the closed session, subject to the aforementioned majority vote, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the corporation is a party, and will consider, in consultation with its counsel, pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. The Board of Directors will also receive and consider a report on current investigations from the Inspector General. Finally, the Board of Directors will consider and vote to approve the minutes of a portion of the closed session of the Board's October 21, 1991 meeting. The closing is authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a), (e), and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the

above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, S.W., Washington, D.C., 20024, in its three reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 15–16, 1991 Meeting.
3. Chairman's and Members' Reports.
4. President's Report.
5. Legislative Report.
6. Inspector General's Report.
7. Consideration of Audit and Appropriations Committee Report.
8. Consideration of Report by Staff on the Status of Applications for Migrant Funding.

CLOSED SESSION:[2]

9. Consideration of Report by Inspector General on Current Investigations and Other Matters.
10. Consideration of Pending Personnel Actions and Personnel-Related Rules and Practices and Consultation with Board's Special Counsel.
11. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
12. Approval of Minutes of a Portion of the Closed Session of the Board of Directors October 21, 1991 Meeting.

OPEN SESSION:

13. Consideration of Operations and Regulations Committee Report.
14. Consideration of Other Business.

CONTRACT PERSON FOR INFORMATION:
Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: November 12, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–27546 Filed 11–12–91; 2:36 pm

BILLING CODE 7050–01–M

[2] It is anticipated that the executive session will conclude at approximately 2:00 p.m. The open session will reconvene immediately thereafter.

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Contract on Investment Practices (presentation by Dr. French).
(2) Claims Examiners' Classifications (presentation by task force).
(3) Computer Aided Software Engineering (CASE) Study.
(4) Fiscal Year 1992 FTE Allocation.
(5) Fiscal Year 1992 Budget.
(6) Special Management Improvement (SMI) Monthly Reporting.
(7) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(8) Regulations—Part 203, Employees Under the Act.
(9) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: November 8, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–27569 Filed 11–12–91; 3:20 pm]

BILLING CODE 7905–01–M

federal register

Thursday
November 14, 1991

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Evaluation of Symptoms, Including Pain; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AB41

Evaluation of Symptoms, Including Pain

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are expanding our disability regulations pertaining to how we evaluate symptoms, including pain. We are including in these regulations additional explanations of the factors we consider for the purpose of establishing the existence of pain or other symptoms and functional limitations resulting from the symptoms in determining disability under titles II and XVI of the Social Security Act (the Act). These expanded regulations incorporate the terms of the statutory standard for evaluating pain and other symptoms contained in section 3 of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460). They also incorporate related statements of policy and interpretation now set forth in Social Security Rulings and program operating instructions.

EFFECTIVE DATE: These rules are effective November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 301-965-1758.

SUPPLEMENTARY INFORMATION: We published proposed rules in a Notice of Proposed Rulemaking in the **Federal Register** on September 14, 1988 (53 FR 35516). These final rules take into consideration and respond to the comments we received from interested individuals and public and private organizations and groups.

Section 223(d)(5) of the Act states that to be considered under a disability, an individual must furnish medical and other evidence of the existence of such disability as we may require. This section did not specifically discuss the evaluation of symptoms, such as pain, until amended by Public Law 98-460. Section 3(a) of Public Law 98-460 codified our policy for the evaluation of pain and other symptoms for determinations of disability made prior to January 1, 1987, by adding language to section 223(d)(5) of the Act that embodied our existing policy, and by amending section 1614(a)(3) of the Act to make the provision applicable to title XVI as well as title II of the Act. Although the statutory standard has expired, the Agency policy that it reflected remained in effect under our prior regulations and our existing operating instructions for determinations made on and after January 1, 1987. We are amending our prior regulations, however, to include a more detailed description of the policy that we follow in evaluating symptoms, such as pain. Because the statutory standard codified earlier Social Security policies for evaluating pain and other symptoms, and because the regulatory amendment expressly adopts and incorporates those same policies, these final rules make no substantive change in our policy.

Sections 221(k) and 1614(a)(3)(G) of the Act require the Secretary to publish regulations setting forth uniform standards for determining disability at all levels of adjudication. To carry out the intent of Congress, as provided in section 3(a) of Public Law 98-460 to define clearly and set forth our policies on the evaluation of pain and other symptoms in determining disability, and to comply with the requirements of sections 221(k) and 1614(a)(3)(G) of the Act, we are expanding 20 CFR 404.1529 and 416.929. The changes to these sections will ensure that claimants, the public, and our adjudicators clearly understand the policy set forth in these sections.

At the same time that section 3(a) of Public Law 98-460 codified our present policy for the evaluation of symptoms, such as pain, section 3(b) of Public Law 98-460 called for the establishment of a Commission on the Evaluation of Pain to conduct a study, in consultation with the National Academy of Sciences, concerning the evaluation of pain in determining disability. A 20-member Commission, consisting of experts in the fields of medicine, law, insurance, and disability program administration, with significant concentration of expertise in the field of clinical pain, was appointed by the Secretary on April 1, 1985. In its report, which the Secretary transmitted to the Congress on September 11, 1986, the Commission made 13 recommendations, including specific recommendations for additional research to obtain more reliable and valid data about pain, to study chronic illness behavior and disability, and to fund projects to develop and compare methods to assess pain early in the disability determination process. This research effort is underway. The Commission also recommended in its report that the temporary statutory standard in section 3(a)(1) of Public Law 98-460 for the evaluation of pain and other symptoms be continued until the research could be completed and for one year thereafter.

The statutory language in section 3(a)(1) stated that "[a]n individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability" but that "* * * there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged * * *." The statute also stated that there must be medical signs and findings which, "* * * when considered with all evidence * * * (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability."

The policy for the evaluation of pain and other symptoms, as expressed in the statutory standard and clearly set forth in these final rules, requires that: (1) For pain or other symptoms to contribute to a finding of disability, an individual must first establish, by medical signs and laboratory findings, the presence of a medically determinable physical or mental impairment which could reasonably be expected to produce the pain or other symptoms alleged; and (2) once such an impairment is established, allegations about the intensity and persistence of pain or other symptoms must be considered in addition to the medical signs and laboratory findings in evaluating the impairment and the extent to which it may affect the individual's capacity for work.

We have added a new paragraph (f) to §§ 404.1525 and 416.925 which explains when an individual's impairment is determined to meet the criteria of an impairment in the Listing of Impairments in part 404. New paragraph (f) explains how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments. It explains that, generally, when a symptom appears as a criterion, it is necessary only that the symptom be present in combination with the other listed criteria to determine that the individual's impairment meets the requirements of the listed impairment. It

is not necessary, unless the listing specifically states otherwise, to determine the intensity, persistence, or limiting effects of the symptom as long as all other findings required by the specific listing are present. The proposed rule gave the listing for ischemic heart disease (Listing 4.04), which includes a requirement of chest pain of cardiac origin, as an example of how, in general, a symptom is considered when it appears as a criterion in a listing. However, 4.00E of the Listing of Impairments requires a detailed description of chest pain when adjudicating under Listing 4.04 to verify that the chest pain is of cardiac origin. In the final rules, we have deleted this example.

The revision of §§ 404.1529 and 416.929 of our regulations provides a more detailed discussion of our policy on the evaluation of pain and other symptoms. In response to comments we received on the proposed regulations, we have made additional clarifying changes in §§ 404.1529 and 416.929 of the final rules.

Paragraph (a) is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that we will consider, in deciding disability, a claimant's symptoms along with the objective medical evidence and other evidence relating to the claimant's condition. The paragraph further explains that objective medical evidence means medical signs and laboratory findings as defined in §§ 404.1528 (b) and (c) and 416.928 (b) and (c). It clarifies that other evidence refers to the kinds of evidence described in §§ 404.1512 (b) (2) through (6); 404.1513 (b) (1), (4), and (5) and (e); 416.912(b) (2) through (6); and 426.913(b) (1), (4), and (5) and (e). We explain that other evidence includes statements or reports by the claimant, his or her treating or examining physician or psychologist, or others concerning the claimant's medical history, daily activities, and other matters relating to the claimant's condition. However, as we explain in paragraph (a), such statements by the individual about his or her pain or other symptoms, standing alone, will not be a basis for a finding of disability. Paragraph (a) also explains that we follow the rules set out in §§ 404.1527 and 416.927 to evaluate treating source and other medical opinions about an individual's pain or other symptoms.

Paragraph (b) explains that pain or other symptoms will not be found to affect an individual's ability to do basic work activities unless the individual first establishes that he or she has a medically determinable physical or mental impairment, as evidenced by medical signs and laboratory findings, to which the allegations or reports of pain or other symptoms can reasonably be related. The paragraph explains that at the initial and reconsideration steps of the administrative review process (except in disability hearings), a medical or psychological consultant participates in making the determination of whether the individual's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms. In the disability hearing process, a medical or psychological consultant may provide an advisory assessment to assist the disability hearing officer in determining whether the individual's impairment(s) could reasonably be expected to produce the alleged symptoms. At the administrative law judge hearing or the Appeals Council level, the administrative law judge or the Appeals Council may ask for and consider the opinion of a medical advisor designated by the Secretary as to whether the established medically determinable impairment(s) could reasonably be expected to produce an alleged symptom. The paragraph also explains that a finding that the established medically determinable impairment could reasonably be expected to produce an alleged symptom, such as pain, is not a finding as to the intensity, persistence, or functional effects of the symptom. Paragraph (b) further explains that we will develop evidence regarding the possibility of a mental impairment to which the individual's symptoms may be related when we have information to suggest that such an impairment might exist and the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the symptoms.

Paragraph (c) explains how we evaluate the intensity and persistence of symptoms, such as pain, once it is established that an individual has a medically determinable physical or mental impairment that could reasonably be expected to produce the pain or other symptoms. It also describes what types of evidence we will consider in our assessment of the degree to which symptoms limit the individual's capacity for work activities. In the final rules, paragraph (c) makes clear that medical opinions will be considered in accordance with the rules in §§ 404.1527 and 416.927.

Paragraph (c) also explains that we consider objective medical evidence, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption, as a useful indicator to assist us in making reasonable conclusions about the effects of pain or other symptoms on the individual's ability to work. We will always attempt to obtain this type of evidence, and when it is obtained, we will consider it in the disability evaluation. For further clarification, and to avoid any misunderstanding, in the final rules the paragraph explains that we will not reject an individual's allegations as to the intensity, persistence, or limiting effects of pain or other symptoms solely because the available objective medical evidence does not substantiate his or her statements.

We will also attempt to obtain statements about how the symptoms affect the claimant from the claimant, his or her treating or examining physician or psychologist, and other persons. Of particular value are statements that address the effect of the alleged pain or other symptoms on a person's work history and activities of daily living, as well as descriptions by the claimant, his or her treating or examining physician or psychologist, and other persons about pain and other symptoms; the precipitating and aggravating factors; and the medication taken or course of treatment which may have been followed. We will consider these statements and descriptions in conjunction with all other evidence of record in assessing any limitations imposed on the individual over and above those limitations which can be demonstrated by the objective medical evidence in the record.

Paragraph (c) explains that we will determine pain or other symptoms to diminish the individual's capacity for basic work activities to the extent that the individual's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence. The medical signs and laboratory findings need not fully substantiate the individual's statements. The paragraph explains that medical opinions are considered in evaluating the limitations or restrictions imposed by symptoms, such as pain. In the final rules, paragraph (c) explains that, in determining the extent to which pain or other symptoms limit an individual's capacity for basic work activities, we will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the individual's statements and any other evidence, including the objective medical evidence.

Paragraph (d) discusses how symptoms are evaluated in the sequential evaluation process. First, an individual who is not engaging in substantial gainful activity must have a medically determinable severe physical or mental impairment(s). Symptoms (for example, pain), signs and laboratory findings are considered in determining whether the impairment or combination of impairment(s) is severe.

Second, once a severe physical or mental impairment(s) is established, it must be determined whether it is the same as one of the impairment(s) in the Listing of Impairments. (See 20 CFR part 404, subpart P, appendix 1.) The Listing of Impairments sets forth criteria for certain conditions which are considered severe enough to prevent a person from doing gainful activity and to be disabling, provided the individual is not performing substantial gainful activity. Symptoms may be criteria for certain listed impairment(s). Generally, if a symptom, such as pain, is a criterion, it need only be present along with the other requisite criteria. It is usually not necessary to determine whether there is functional loss associated with the pain or other symptoms.

Third, if a severe physical or mental impairment(s) does not meet the listed criteria, it is necessary to determine whether the impairment(s) is equivalent to a listed impairment. Symptoms along with medical signs and laboratory findings are considered in making this determination. In the final rule, we have expanded paragraph (d)(3) to explain how we consider medical signs, symptoms, and laboratory findings in making decisions of equivalency.

When we determine whether an individual's impairment(s) is medically equivalent to a listed impairment, as set forth in §§ 404.1526 (a) and (b), 416.926 (a) and (b), and 416.926a(b) (1) and (2), an allegation of pain or other symptoms cannot be substituted for a missing or deficient medical sign or laboratory finding to raise impairment severity to equate medically with a listed impairment. In title XVI cases for children under age 18, however, if we cannot find medical equivalence, we will consider pain and other symptoms under § 416.926a(b)(3) in determining whether the child has an impairment(s) causing functional limitations that are the same as the disabling functional consequences of a listed impairment.

Fourth, when a severe physical or mental impairment(s) does not meet or equal a listed impairment, the individual's remaining functional capacity for work-related activities must be established. We do not apply this step in determining eligibility for title XVI disabled child's benefits. In disabled childs' cases under title XVI, we apply a comparable step, considering how the physical or mental impairment(s) and related symptoms, such as pain, affect the child's ability to engage in age-appropriate activities, and when appropriate, whether he or she can do these things on a sustained, age-appropriate basis. In determining an individual's residual functional capacity, we must evaluate the limitations and restrictions imposed by the individual's impairment(s) and related symptoms. In determining the degree to which such symptoms limit the individual's capacity for work, we must consider his or her allegations and the statements of his or her physician, psychologist, or other persons, together with the medical signs and laboratory findings, to draw a reasonable conclusion as to the individual's remaining capacity for work. If the claim is at the initial or reconsideration level, the program medical or psychological consultant is responsible for this assessment. In the disability hearing process, the disability hearing officer (or when appropriate, the Associate Commissioner for Disability or his or her delegate) makes this assessment after considering any advisory assessment provided by a program medical or psychological consultant. At the administrative law judge and Appeals Council levels, the administrative law judge or Appeals Council, as appropriate, makes this assessment.

We also made changes to §§ 404.1545 and 416.945 to clarify how we evaluate symptoms, such as pain, in assessing residual functional capacity. We modified and expanded paragraphs (a), (b), (c), and (d) of §§ 404.1545 and 416.945. In addition, we added a new paragraph (e) to explain that we consider the total limiting effects of all physical and mental impairment(s) and any related symptoms in determining residual functional capacity.

Also, section 3 of Public Law 98-460 made clear that pain is a symptom of an impairment and not an impairment in itself. To emphasize this, we have added §§ 404.1569a and 416.969a to clarify how we apply the medical-vocational guidelines in appendix 2 of 20 CFR part 404, subpart P, when pain or other symptoms are considerations. Paragraph (a) of §§ 404.1569a and 416.969a explains that an individual's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which may be exertional, nonexertional, or a combination of both. Limitations are exertional if they limit an individual's exertional capabilities, that is, affect his or her ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing and pulling. Sections 404.1567, 404.1569, 416.967 and 416.969 describe how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy, and explain that this classification of jobs is incorporated into the rules in the medical-vocational guidelines.

In paragraph (a) of §§ 404.1569a and 416.969a, we explain that limitations which affect an individual's ability to meet the strength demands of jobs, that is, limitations which affect an individual's ability to sit, stand, walk, lift, carry, push, or pull, are considered exertional. We also explain in paragraph (a) that limitations or restrictions which affect an individual's ability to meet the demands of jobs other than the strength demands, are considered nonexertional. Seeing, hearing, climbing, crawling, crouching, maintaining attention, and understanding instructions are some examples of nonexertional activities.

Paragraphs (b), (c), and (d) of §§ 404.1569a and 416.969a explain how we apply the medical-vocational guidelines in determining disability, depending on whether the limitations or restrictions imposed by an individual's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both. Paragraph (b) explains that the rules in the medical-vocational guidelines directly apply when the impairment(s) and any related symptoms, such as pain, impose only exertional limitations. Paragraph (c) explains that the rules in the medical-vocational guidelines do not direct factual conclusions of disabled or not disabled when the impairment(s) and related symptoms, such as pain, impose only nonexertional limitations and restrictions and that, in such cases, the determination is made under the appropriate sections of the regulations, giving consideration to the rules in the medical-vocational guidelines. Paragraph (d) explains that, when the limitations and restrictions imposed by the impairment(s) and any related symptoms, such as pain, are both

exertional and nonexertional, the rules in the medical-vocational guidelines are used to direct a decision if the exertional limitations, by themselves, permit a finding of disability. If a rule does not direct a finding of disability, both the exertional and nonexertional limitations or restrictions imposed by the impairment(s) and any related symptoms, such as pain, are considered, and the medical-vocational guidelines may be used as a frame of reference to guide our decision.

Sections 404.1501(g) and 416.901(j) have been revised to include a brief description of the provisions in §§ 404.1569a and 416.969a on when we consider a limitation exertional, nonexertional, or a combination of both for purposes of applying the medical-vocational guidelines.

Public Comments

We published proposed rules to expand our disability regulations pertaining to how we evaluate symptoms, including pain, in the **Federal Register** on September 14, 1988 (53 FR 35516). Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period closed November 14, 1988.

We received comments from individuals and organizations, including attorneys, physicians, regional and national medical associations, and State government agencies. We received no comments from disabled persons individually, but we did receive comments from many legal services organizations which represent the interests of disabled individuals. One such organization responded on behalf of an advisory committee composed of disabled citizens and advocates.

Many of the comments we received were favorable. These commenters, including legal advocates, believed that the expanded discussion of the evaluation of symptoms, including pain, would have a positive effect on the understanding and application of our policy. Other commenters did not object to the content of the Notice of Proposed Rulemaking, but disagreed with our view that the proposed regulations did not contain any new policy. Several commenters believed the proposed rules were inconsistent with case law in one or more circuits. Other commenters believed that the proposed regulations relied too heavily on the consideration of objective medical evidence in determining disability. Still other comments reflected a misunderstanding of our policy.

We have carefully considered all of the comments and have adopted many of the recommendations. In response to the comments, we have expanded and clarified some of the explanations and discussions of our policy published in the Notice of Proposed Rulemaking. We believe the final regulations are an improvement over the rules published in the Notice of Proposed Rulemaking and will ensure that the public, as well as our adjudicators, better understand the policy set forth in these final rules.

The following is a discussion of the issues raised in the comments. Many of the written comments, by necessity, had to be condensed, summarized or paraphrased. In doing this, we believe we have expressed everyone's views adequately and responded to the issues raised. For ease of comprehension, the discussion is organized by issue.

Regulatory Expression of Policy Reflected in Section 3(a) of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98–460) and Amplified in Related Statements of Agency Policy and Interpretation

Comment: Some commenters disagreed with our statement that no substantive change in policy is intended by these regulations.

Response: The statement, "no substantive change in policy is intended," is correct and properly reflects our intent. Section 3 of Public Law 98–460 did not represent a change in our policy, but rather incorporated in the statute our existing policy for the evaluation of pain and other symptoms contained in our regulations. These final rules incorporate the terms of the statutory standard for evaluating pain and other symptoms in section 3, and related statements of policy and interpretation set forth in Social Security Rulings and program operating instructions. While we have expanded the regulations to include more detailed explanations of the factors we consider in evaluating pain and other symptoms, no substantive new policy is embodied in the final rules.

Comment: Several commenters believed that the preamble to the regulations was deficient by failing to note and/or discuss various court decisions with respect to our policy on the evaluation of pain. One commenter believed that statements in the Summary and Supplementary Information to the effect that the regulations expressly adopt and incorporate existing policies for the evaluation of pain are a clear indication that the regulations are inconsistent with judicial interpretations of the statute.

Response: In general, we do not believe it is necessary to cite or discuss court actions in the preamble to a regulation. Our policy on the evaluation of pain was expressly included in the statute by section 3 of Public Law 98–460. It is true that many courts have issued decisions concerning the evaluation of pain in disability cases. However, we do not read these decisions to hold that our policy is invalid.

Two-Step Process in Evaluating Symptoms, Such as Pain

Comment: Some commenters believed that the two-step process for the evaluation of pain conflicts with section 3 of Public Law 98–460 and ignores the recommendations of the Commission on the Evaluation of Pain.

Response: The two-step process for the evaluation of pain or other symptoms does not conflict with section 3 of Public Law 98–460 or ignore the recommendations of the Commission on the Evaluation of Pain. Section 3 incorporated into the statute, on a temporary basis, our policy for the evaluation of symptoms, including pain. The Commission on the Evaluation of Pain recommended that the statute be extended. The two-step process, which is described in detail in these final regulations, is consistent with the process set forth in section 3 of Public Law 98–460. In brief, this process requires, first, the presence of a medically determinable impairment which could reasonably be expected to produce the pain or other symptoms, and, second, that when such an impairment is established, allegations about the intensity and persistence of the pain or other symptoms must be considered in evaluating the impairment and its effects on the individual's capacity for work.

Comment: One commenter stated that the description of objective medical evidence in §§ 404.1529(c)(2) and 416.929(c)(2) referred only to the "first prong" of the statutory standard set forth in section 3 of Public Law 98–460. This commenter suggested that to be complete, this section should include specific tests used to establish the existence of individual impairment(s). Two commenters believed that §§ 404.1529(d)(4) and 416.929(d)(4) confused the need for objective medical evidence of an underlying medically determinable impairment with the need for evidence of the intensity, persistence, and functional effects of symptoms, such as pain.

Response: Objective medical evidence, that is, medical signs and laboratory findings, must show the existence of the requisite, underlying

impairment(s), and once the impairment(s) is established, we consider this evidence along with all other evidence in evaluating the intensity, persistence, and functionally limiting effects of an individual's pain or other symptoms. Thus, the description of objective medical evidence in paragraph (c)(2) of §§ 404.1529 and 416.929 is correct. While we do not require objective medical evidence to corroborate statements about the intensity, persistence, and functional effects of pain or other symptoms, we must always attempt to obtain objective medical evidence and will consider such evidence when it is obtained. In the final rules, we have amended paragraph (c) to make clear that once an underlying impairment is established, we will not reject the statements of the individual about the intensity, persistence, or limiting effects of his or her symptoms, such as pain, solely because the available objective medical evidence does not substantiate these statements. In addition, the final rules revise the first sentence of §§ 404.1529(d)(4) and 416.929(d)(4) to explain clearly that the functionally limiting effects of the individual's impairment(s) and related symptoms are considered in determining residual functional capacity. We have also deleted the remaining two sentences of these sections of the proposed rules because the information provided in these two sentences is contained elsewhere in the rules. We believe that these changes to §§ 404.1529(d)(4) and 416.929(d)(4) will permit a clearer understanding of our policy.

Need for a Medically Determinable Impairment

Comment: One commenter suggested that we substitute "medically determinable physical or mental impairment" for "medical impairment" and "medically determinable impairment" wherever the latter terms appear to ensure that adjudicators understand that the impairment may be physical or mental.

Response: We made several changes in the final rules to make it clear that the individual's medically determinable impairment may be physical or mental. We also provided further explanation in the preamble to the final rules.

Comment: One commenter stated that the first sentence of proposed §§ 404.1529(b) and 416.929(b) contravenes the language in section 3 of Public Law 98–460 by precluding the consideration of pain until after a medically determinable impairment is established. Another commenter believed that §§ 404.1529(c)(1) and 416.929(c)(1) violated the language both in section 3 and in the settlement agreement in *Polaski* v. *Heckler* (Eighth Circuit, 1984) by requiring the claimant to first prove the existence of a medically determinable impairment before giving consideration to the intensity or persistence of symptoms.

Response: Sections 404.1508 and 416.908 of our regulations make clear that we consider signs, symptoms, and laboratory findings to establish the existence of a medically determinable impairment. However, an individual's statement of symptoms alone is insufficient to establish that a medically determinable impairment is present. As §§ 404.1529(a) and 416.929(a) in these final rules explain more fully, a medically determinable impairment cannot be established on the basis of symptoms alone. This is consistent with the statutory requirement that an impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. Moreover, our existing regulations on the evaluation of pain and other symptoms provide for the evaluation of the effects of symptoms, including pain, when medical signs or findings show the existence of a medical impairment that could reasonably be expected to produce the pain or other symptoms. This is consistent with the language of section 3 of Public Law 98–460 which codified our policy for evaluating pain and other symptoms. We believe the clarifying changes we have made in §§ 404.1529 and 416.929 will avoid any misunderstanding of how we consider the severity or limiting effects of symptoms once the existence of an underlying medically determinable impairment is established. We believe that the policy set out in these final rules is consistent with the language in section 3 of Public Law 98–460 as well as the terms of the settlement agreement in *Polaski* v. *Heckler* (Eighth Circuit, 1984).

Terms Used in the Regulations

Comment: We received numerous comments questioning what we meant by "reasonable" and expressing concern about the extent to which objective medical evidence is needed to establish and/or confirm the relationship of the individual's symptoms to a medically determinable impairment. One commenter believed that the phrase "may reasonably be accepted as consistent with" appears to require that the claimant must prove a causal relationship between the individual's underlying medically determinable impairment and his or her allegations about pain or other symptoms. Other commenters believed this language is inconsistent with section 3 of Public Law 98–460 and/or case law. Some commenters believed that the language could be interpreted as stating that if the individual's allegations of pain or other symptoms are not corroborated by objective medical evidence, adjudicators can ignore such allegations. Still other comments concerned the extent to which objective medical evidence is required to establish and/or confirm the severity, persistence, or functional effects of pain or other symptoms.

Response: We believe our policy, as expressed in these final rules, is consistent with circuit court rulings with respect to the extent to which objective medical evidence is required to corroborate the existence, severity, persistence, or functional effects of pain or other symptoms. Once adjudicators determine that the individual has an impairment which is reasonably expected to produce some pain, they must consider all of the evidence relevant to the individual's allegations of pain, even if the alleged pain is more severe or persistent than would be expected. We do not require objective medical evidence to establish a direct cause and effect relationship between the individual's medically determinable impairment and the intensity, persistence, or functional effects of his or her symptoms, nor do we disregard the individual's allegations about his or her symptoms simply because the allegations are not fully corroborated by objective medical evidence. However, we agree that the language in the Notice of Proposed Rulemaking could be misconstrued to mean that allegations of pain or other symptoms must be corroborated by objective medical evidence to be considered. Therefore, we have changed §§ 404.1529 (c)(2) and (c)(4) and 416.929 (c)(2) and (c)(4) of the final rules to make clear that, once the existence of the requisite underlying impairment is established, we will always consider statements by the individual about the intensity, persistence, or functional effects of a symptom, such as pain.

Comment: Some commenters were concerned that adjudicators are being required to determine an acceptable or normal level of pain for a particular impairment. Several commenters believed that the proposed regulations improperly place the burden of determining whether the pain or other symptoms are consistent with the objective medical evidence and other

evidence on lay persons rather than on medical professionals. One commenter stated that the decision of whether symptoms, such as pain, are consistent with the objective medical evidence must be based on the opinions of the examining physicians. This commenter recommended that we require statements from treating or consulting physicians to include an opinion as to the degree to which reported symptoms are consistent with the objective medical evidence and other evidence, and the degree to which the alleged symptoms affect the individual's residual functional capacity. The commenter further recommended that consultative examination reports must include a medical assessment of the ability to perform work-related activities. Another commenter suggested that the decision of reasonableness could only be made by a nonexamining physician through review and consideration of the opinions of treating or consulting physicians who had examined the individual.

Response: In evaluating pain, we do not apply a "standard" of acceptable levels of pain. We recognize that individuals with the same impairment may experience different levels of pain. Therefore, we consider all of the available evidence and evaluate each case individually.

Based on medical knowledge and our experience with the disability programs, we know there are many medically determinable impairment(s) for which pain is a reasonable and/or expected result. However, we agree that there are situations in which medical judgment is needed to decide whether an individual's medically determinable impairment could reasonably be expected to produce the pain or other symptoms alleged. We have revised §§ 404.1529(b) and 416.929(b) to explain that at the initial and reconsideration steps in the administrative review process (except in disability hearings), a medical or psychological consultant participates in making this determination; at the disability hearing level, a medical or psychological consultant may provide an advisory assessment to assist the disability hearing officer in making this determination; and at the administrative law judge hearing or Appeals Council level, the administrative law judge or Appeals Council may ask a medical advisor designated by the Secretary for a medical opinion as to whether the alleged symptom, such as pain, could reasonably be expected to be produced by an individual's underlying medically determinable impairment(s) Sections 404.1513, 404.1519n, 416.913, and 416.919n explain that medical reports from treating sources and medical and psychological consultants should contain opinions and observations about an individual's symptoms and the effect of the symptoms on the individual's ability to perform work-related activities. Sections 404.1527 and 416.927 explain how we evaluate medical opinions of treating and consulting sources in determining if the reported intensity and persistence of symptoms are reasonably consistent with the medical signs and laboratory findings. In the final rules, we make clear that medical opinions will always be considered in accordance with the rules in §§ 404.1527 and 416.927. However, at the initial and reconsideration steps in the administrative review process (except in disability hearings) the responsibility for making findings of fact about the medical issues involved in determining the extent to which an individual's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence rests with the program medical or psychological consultant. At the disability hearing, administrative law judge hearing, or Appeals Council level, the disability hearing officer, administrative law judge, or the Appeals Council, as appropriate, will be responsible for making these findings of fact, but they will consider the opinions of program consultants, referred to above, in addition to considering all other evidence in the file, including opinions from treating and examining sources.

Comment: Two commenters wanted a definition of "other evidence." Another commenter wanted assurance that the term "other persons" as used in the preamble pertains to a family member or other significant person.

Response: We have amended §§ 404.1529(a) and 416.929(a) to include a definition of "other evidence." Generally, "other evidence" includes statements or reports from the claimant, reports from treating or examining physicians or psychologists, and statements or reports from other persons about the claimant's medical condition(s) and daily activities. The term "other persons" as used in the preamble and in the final rules pertains to any person other than the individual or his or her treating or examining physician or psychologist.

Comment: One commenter recommended deleting the term "objective medical evidence" because signs are, in part, not objective since they include abnormalities which are not laboratory findings. Alternatively, this commenter suggested that, rather than cross-reference the regulatory definition, we include a definition of signs in §§ 404.1529(a) and 416.929(a) to ensure uniform understanding.

Response: We disagree with this commenter's view that medical signs are not objective because they include abnormalities demonstrated by techniques other than laboratory findings. Medical signs, as defined in §§ 404.1528(b) and 416.928(b), are separate and apart from laboratory findings. Although distinct from laboratory findings, medical signs are objective medical evidence shown by medically acceptable clinical and diagnostic techniques and can be observed by trained professionals. Further, we do not believe it is necessary to repeat the regulatory definition of signs in §§ 404.1528(b) and 416.928(b) to ensure uniform understanding of what we mean by objective medical evidence.

Comment: One commenter stated that §§ 404.1529(c)(2) and 416.929(c)(2) are at variance with the language and spirit of the requirement in section 3 of Public Law 98–460 that the underlying medically determinable impairment be one which could reasonably be expected to produce the alleged pain because they incorrectly tie the degree of pain to the objective medical evidence.

Response: We disagree. Sections 404.1529(b) and 416.929(b) address the issue of whether an individual's established medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms. The decision as to whether the symptom could reasonably be expected to be produced by the impairment does not require a decision as to the reasonableness of the intensity, persistence, or functional effects of the symptom.

Consideration of the Possibility of a Mental Impairment

Comment: Several commenters believed that §§ 404.1529(b) and 416.929(b) do not explain clearly when and how we consider the possibility of a mental impairment. Other commenters wanted the regulations to mandate mental development or review by a psychiatrist or psychologist in all cases in which the objective medical evidence does not substantiate any physical impairment(s) which could account for the alleged pain. Another suggested such a review in all cases in which there are allegations of pain accompanied by

anxiety or depression. In contrast, one commenter was concerned that we were requiring mental development in all cases, regardless of whether there was any reason to believe a mental impairment existed.

Response: We have amended §§ 404.1529(b) and 416.929(b) to explain that we will develop evidence regarding the possibility of a mental impairment as the basis for the allegations of pain or other symptoms when we have reason to believe a mental impairment exists. The presence of mental symptoms, such as anxiety and depression, does not, of itself, indicate the existence of a medically determinable mental impairment. We do not require development of a mental impairment when there is no reason to believe such an impairment exists. Whether or not a mental impairment exists is established in the same way as we decide whether a physical impairment exists. When the existence of a mental impairment is established, it will be evaluated in accordance with §§ 404.1520a and 416.920a of our regulations. In such cases, we will make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review and, where applicable, the assessment of residual functional capacity.

Consideration of Objective Medical Evidence and Other Evidence To Determine Disability

Comment: Several commenters believed that the proposed rules placed too much emphasis on the need for objective medical evidence, or did not make clear that other evidence has to be considered along with objective medical evidence.

Response: We believe that the final rules make clear the importance of considering all of the evidence, including objective medical evidence and other evidence.

Comment: Several commenters believed that the proposed rules place undue emphasis on objective medical evidence as a usually reliable indicator from which we could draw reasonable conclusions about the intensity, persistence and functional effects of symptoms. One commenter noted that many painful conditions do not exhibit muscle spasm, atrophy, etc. Others believed that the proposed rules implied that in the absence of objective medical evidence of muscle spasm, reduced joint motion, etc., adjudicators could question or even disregard an individual's alleged symptoms. Two commenters suggested that we amend the language in §§ 404.1529(c)(2) and 416.929(c)(2) by adding "when available." One commenter suggested that these sections include a statement that subjective evidence can also be a reliable indicator of the intensity of pain. Other commenters suggested that we add a statement that the absence of objective medical evidence of the intensity and persistence of a symptom would not preclude consideration of the alleged symptom.

Response: We fully consider and evaluate all of the evidence in determining disability. Objective medical evidence is considered reliable in that it is verifiable and reproducible. Subjective evidence, by its very nature, lacks these qualities. However, we agree that not all painful conditions will produce muscle spasm, reduced joint motion, or sensory and motor disruption. We also agree that objective medical evidence from which we can draw reasonable conclusions about the intensity, persistence, or functional effects of alleged symptoms may not be available in all cases. In those cases in which such evidence is available, the evidence must be obtained and considered in evaluating an individual's allegations about the intensity and persistence of symptoms. We have amended §§ 404.1529(c)(2) and 416.929(c)(2) to clarify that we will not reject an individual's allegations as to the intensity, persistence, or functional effects of pain or other symptoms solely because the available objective medical evidence does not substantiate these allegations.

Comment: Some commenters recommended amending the language in §§ 404.1529(c)(3) and 416.929(c)(3) to clarify the responsibility of adjudicators at each adjudicative level to obtain the type of evidence described in these sections. Another commenter believed the first sentence of these sections would mislead adjudicators into expecting that allegations of symptoms, such as pain, would be exaggerated in the absence of objective medical evidence of the symptom itself and, therefore, suggested that the sentence be amended by substituting "usually" or "generally" for "sometimes."

Response: We believe the final rules state very clearly the responsibility of adjudicators at all steps in the administrative review process to develop and consider relevant evidence from medical and lay sources, and thus we did not adopt the suggested amendments to §§ 404.1529(c)(3) and 416.929(c)(3). We have no reason to believe that adjudicators will be misled by this language to assume in any such case that an individual is exaggerating his or her symptoms. We believe the sections, as written, are accurate and straightforward and, if anything, they indicate that symptomatology may indicate greater severity of impairment than would be expected solely on the basis of the objective medical evidence.

Comment: One commenter believed that the proposed regulations take pain and other symptoms into consideration only in the context of the Listing of Impairments in Appendix I of 20 CFR Part 404, Subpart P. This commenter interpreted the proposed rule in §§ 404.1525(f) and 416.925(f) as an amendment to the Listing of Impairments and suggested that the presumed amendment is inadequate and in violation of the Social Security Act in that it failed to provide a separate listing for disability primarily or solely due to pain when the pain cannot be proven by clinical or laboratory diagnostic techniques.

Response: While sections of these rules discuss the evaluation of symptoms with respect to the Listing of Impairments, and in terms of the requirements of a listed impairment, these final rules do not amend the Listing of Impairments or any specific listing. Rather, the rules provide additional explanations of the factors which we consider for the purpose of establishing the existence of pain or other symptoms, and functional limitations resulting from such symptoms, in determining disability. We believe these final rules are consistent with the provisions of the Social Security Act.

Comment: One commenter stated that the proposed regulations failed to require adjudicators to make specific findings of fact in cases in which pain is an element in the decision, while another commenter urged us to include a regulatory requirement that decisionmakers at all levels of adjudication address the issue of pain and state explicitly the basis for all findings regarding the nature, extent, and severity of pain.

Response: The commenters suggest that we include in our regulations specific instructions for writing decision rationales in disability cases with allegations of pain or other symptoms. However, we generally do not include in the body of our regulations specific operating procedures of the type recommended in these suggestions. Rather, we set forth these types of procedures in Social Security Rulings or other operating instructions. Moreover, we already require all Agency adjudicators to do as the commenters suggest. Specifically, Social Security Rulings 88–13 and 90–1p, as appropriate, require that "in all cases in which pain

is alleged, the determination or decision rationale is to contain a thorough discussion and analysis of the objective medical evidence and the nonmedical evidence, including the individual's subjective complaints and the adjudicator's personal observations. The rationale is then to provide a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's capacity to work." Social Security Rulings are binding on all components of the Social Security Administration and are to be relied upon as precedents in adjudicating other cases. Therefore, we believe our policy fully addresses the commenters' concerns.

Evaluation of the Extent to Which the Objective Medical Evidence and Other Evidence Corroborates Allegations of Symptoms, Such as Pain

Comment: Many commenters were concerned that the proposed regulations require objective medical evidence of the degree or intensity of pain. They contended that the rules would preclude consideration of evidence other than objective medical evidence or do not make clear that other evidence must also be considered. Some stated that this undue focus on objective medical evidence conflicts with case law, section 3 of Public Law 98–460, related regulations, and Social Security Ruling 88–13.

Response: We do not disregard an individual's allegations about the intensity, persistence, or functional effects of symptoms, such as pain, solely because those allegations are not substantiated by objective medical evidence. The absence of objective medical evidence of reduced joint motion, muscle spasm, etc., is just one factor we consider in evaluating an individual's allegations as to the intensity, persistence, and functional effects of symptoms, such as pain. As we explain in our final rules, objective medical evidence, such as evidence of muscle spasm, reduced joint motion, sensory deficit or motor disruption, is a useful indicator to assist us in making conclusions about the effect of pain on the individual. Rather than precluding consideration of other evidence, paragraph (c)(3) of §§ 404.1529 and 416.929 explains how we consider evidence other than objective medical evidence in evaluating the intensity and persistence of symptoms, such as pain. Paragraph (c)(4) makes clear that we consider all of the evidence, the objective medical evidence and other evidence, to determine the extent to which symptoms, such as pain, affect the individual's capacity to perform basic work activities. To avoid any misunderstanding, we have made changes in §§ 404.1529 (c)(2) and (c)(4) and 416.929 (c)(2) and (c)(4) of the final rules to make clear that we will consider all of the individual's statements about the intensity, persistence, or functional effects of his or her symptoms, such as pain. In addition, we have added language to §§ 404.1529(c)(4) and 416.929(c)(4) to explain that in determining the extent to which pain or other symptoms affect an individual's capacity to perform basic work activities, we evaluate the statements of the individual in relation to the rest of the evidence. We also explain in these sections that we will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the individual's statements and the rest of the evidence, including the individual's medical history, the objective medical evidence, and statements from treating or examining physicians or psychologists or other persons about how the symptoms affect the individual. We believe the final rules are clearly consistent with the statutory standard, the cited ruling and various court decisions.

Comment: One commenter expressed concern that there are situations in which pain is alleged, but that currently there is a lack of medical knowledge, understanding, or appropriate medical procedures to diagnose, evaluate, or treat the pain.

Response: We are aware that there are situations in which medical knowledge, understanding, or appropriate medical procedures with regard to pain are inadequate. While we currently know of no valid and reliable method to measure pain, we are interested in development of such a method, and are currently funding research toward this goal. Further exploration of appropriate documentation of claims in the situation described by this commenter is included in the area of consideration of this research.

Weight to Accord Objective Medical Evidence and Other Evidence

Comment: Several commenters noted that nowhere in the proposed regulations is there an indication of the weight to be accorded to various types of evidence. Some commenters wanted us to include more discussion of the consideration to be given to the statements of the claimant, his or her physicians, psychologists, or others. Other commenters stated that the proposed regulations are inconsistent with case law with respect to the weight to be given to a treating physician's opinion. One commenter recommended that we determine the degree and functional effect of symptoms, such as pain, based on the factors listed in §§ 404.1529(c)(3) and 416.929(c)(3).

Response: We believe the final rules adequately cover the issue of how we weigh all evidence. We consider information, such as the individual's medical history, efforts to work, daily activities, types of treatment received, etc., in addition to objective medical evidence. Sections 404.1527 and 416.927 of our regulations discuss the weight to be given to treating source and other medical opinion evidence about the nature and severity of a person's impairment, including the existence and severity of any related symptoms, such as pain. These sections also set forth rules for considering and evaluating nonexamining source opinion. To avoid any misunderstanding, we have added information in the final rules about how we consider treating physician and other medical opinions in the discussions in §§ 404.1529(a), 404.1529(c)(3), 416.929(a), and 416.929(c)(3) and have included in these sections cross-references to §§ 404.1527 and 416.927, as appropriate. As §§ 404.1527 and 416.927 explain, generally, we will give a treating source's opinion more weight than a similar opinion from a nontreating source. If a treating source's opinion on the issue(s) of the nature and severity of an individual's impairment(s) is well documented by objective medical evidence and is not inconsistent with other substantial evidence in the file, we will give it controlling weight. However, as explained in those sections, we are responsible for the determination or decision as to whether an individual is disabled. Therefore, a statement by a treating physician or other medical source that an individual is "disabled" or "unable to work" due to a symptom, such as pain, does not mean that we will determine that the individual is disabled.

Symptoms as Criteria of Listed Impairments

Comment: One commenter agreed in principle with the proposed §§ 404.1525(f) and 416.925(f), but stated that no listing should require information about the intensity, persistence, or limiting effects of pain so long as all requirements for the listing are met, on the basis that the Social Security Administration recognizes a listed impairment as severe enough to prevent a person from doing any gainful activity.

Response: Each listing in the Listing of Impairments sets forth one or more sets of medical findings. The set of medical findings and the interrelationship of the medical findings, not the individual criteria, establish the level of severity. Information about the intensity, persistence, or limiting effects of a symptom, such as pain, is appropriate in the context of certain listings to establish the required level of severity.

Comment: Two commenters questioned our use in §§ 404.1525(f) and 416.925(f) of the listing for ischemic heart disease (Listing 4.04) as an example of how a symptom is considered when it appears as a criterion. They pointed out that 4.00E of the Listing of Impairments requires a detailed description of chest pain to establish that it is of cardiac origin; hence, in this particular listing it is necessary to describe the pain.

Response: We agree with the commenters. We have, therefore, deleted the example in the final rules. We believe that the rule is clear without an example.

Consideration of Symptoms, Such as Pain, in Determining Whether a Listing Is Equaled

Comment: Several commenters were concerned that under §§ 104.1529(d)(3) and 416.929(d)(3) of the proposed rules the intensity and persistence of a symptom, such as pain, could not be substituted for a missing medical sign or laboratory finding to establish equivalence. Many interpreted this to mean that symptoms, such as pain, could not be considered in determining equivalency. Other commenters interpreted §§ 404.1529(d)(3) and 416.929(d)(3) to mean that pain or other symptoms could not be considered in determining medical equivalency for purposes of determining disability for individuals applying for title II widows' or widowers' benefits or title XVI childhood disability payments. One commenter believed it would disadvantage individuals under age 45.

Response: We consider allegations of pain and other symptoms in determining equivalency. We do so in cases of individuals of any age applying for disability benefits and the cases of individuals applying for title II widows' or widowers' benefits or title XVI childhood disability benefits. It is true that under our longstanding rules for determining medical equivalence, allegations of pain or other symptoms cannot be substituted for a missing or deficient sign or laboratory finding to raise the severity of an impairment(s) to that of a listed impairment. However, this does not mean that we do not consider symptoms when determining equivalence. If the listing we use for comparison includes symptoms among its criteria, we will consider the individual's symptoms when determining medical equivalence.

Furthermore, several significant events, which obviate the commenters' concerns about how we decide disability in title XVI childhood claims and in title II widows' and widowers' disability claims, have occurred since we published the proposed rules.

Specifically, in response to the decision of the United States Supreme Court in *Sullivan* v. *Zebley*, ___ U.S. ___ 110 S.Ct. 885 (1990), we have revised and expanded our rules for determining disability in title XVI childhood disability cases. See 56 FR 5534 (February 11, 1991). These rules establish a concept of "functional equivalence" in title XVI children's cases that includes consideration of the impact of pain and other symptoms on a child's functioning and that permits findings of equivalence based upon this impact. Moreover, the new title XVI rules provide an additional step at which children whose impairment(s) does not meet or equal in severity any listing may be found disabled based on an individualized assessment of their functioning; here, too, the impact of symptoms, including pain, plays a significant role in the determination.

There also has been a change for widows, widowers, and surviving divorced spouses claiming benefits based on disability under title II. Section 5103 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, removed the more restrictive definition of disability formerly in the law for these claimants and extended to them the basic "substantial gainful activity" definition. Hence, when these individuals have severe impairment(s) that do not meet or equal in severity any listing, we will proceed to assess their residual functional capacity and make a determination at the last steps of the sequential evaluation process. As in workers' claims, the impact of symptoms plays a significant role in assessing residual functional capacity.

The result of the foregoing changes with respect to title XVI childhood disability cases and claims for widow's, widower's, and surviving divorced spouse's benefits based on disability is that we no longer use the "meets or equals" step of evaluation as the sole basis for an unfavorable determination or decision for any disability claim under title II or title XVI. The final rules make this clear by providing that if an individual has a medically determinable severe impairment(s) that does not meet or equal a listing, we will go on to consider the functional effects of his or her impairment(s), including the impact on functioning of any related symptoms. Therefore, the fact that we cannot substitute pain or other symptoms for missing signs or laboratory findings when we determine whether there is medical equivalence will not disadvantage any claimant.

For this reason, we also disagree with the commenter who suggested that the medical equivalence policy would disadvantage individuals under age 45. We believe that our medical-vocational rules enable us to identify any individual whose functional limitations are so great as a result of pain or other symptoms that, regardless of age, he or she is unable to engage in any substantial gainful activity.

Comment: Some commenters felt that §§ 404.1529(d)(3) and 416.929(d)(3) of our proposed rules prohibit consideration of certain mental disorders in which pain is a predominant feature in determining whether an individual's impairment equals a listed mental impairment. One commenter recommended that these sections be deleted.

Response: As explained early in the preamble, we have modified §§ 404.1529(d)(3) and 416.929(d)(3) of the final rules. We did not adopt, however, the suggestion to delete these sections. We agree that pain may be a predominant feature of certain mental disorders. In §§ 404.1529(b) and 416.929(b), we explain that when the objective medical evidence does not substantiate any physical impairment capable of producing the pain or other symptoms alleged, we will develop evidence regarding the possibility of a medically determinable mental impairment as the basis for the symptoms when we have reason to believe that a mental impairment exists. If an individual has a medically determinable mental impairment, we follow a special procedure, as explained in §§ 404.1520a and 416.920a.

Comment: One commenter felt that there was no difference between the "meets" and "equals" steps since both required medical signs and laboratory findings.

Response: The Listing of Impairments (the Listing) describes, for each of the major body systems, impairment(s) which are considered severe enough to prevent a person from doing any gainful activity in adults or age-appropriate activities in children. An impairment is determined to meet a listing when the medical signs, symptoms, and laboratory findings are the same as those specifically described in the

Listing. However, the Listing does not include all impairment(s) or all possible sets of medical signs, symptoms, and laboratory findings severe enough to prevent a person from doing any gainful activity. The "equals" step provides a basis for determining disability where an impairment is not specifically listed, but the impairment or combination of impairment(s) is of equal severity.

Exertional and Nonexertional Limitations

Comment: One commenter interpreted §§ 404.1569a and 416.969a to say that we only considered an individual's nonexertional limitations or restrictions in determining whether the individual could do work other than his or her past work. This commenter stated that such a statement of policy is wrong since consideration of all of an individual's limitations or restrictions is also relevant and essential in determining whether the individual can do his or her past work. Another commenter believed that the Social Security Rulings adequately explain exertional and nonexertional limitations and, therefore, further regulatory elaboration is unnecessary. This commenter also believed that these sections are not necessarily related to the evaluation of symptoms and suggested that they be promulgated separately if we deemed the rulings insufficient.

Response: We agree that consideration of all of an individual's limitations and restrictions is relevant and essential in assessing residual functional capacity and in determining whether the individual can do his or her past work. We believe the commenter's interpretation arose from the statement that the distinction between exertional and nonexertional limitations is important only when we are deciding whether an individual can do work other than his or her past work. This statement is confusing and we are deleting it from the final rules. While Social Security Rulings discuss exertional and nonexertional limitations, we believe that regulatory elaboration is appropriate under section 221(k) of the Act which was added by section 10 of Public Law 98–460 and which requires us to publish significant evaluation policies in regulations to ensure uniform standards for determining disability. In compliance with section 221(k), §§ 404.1569a and 416.969a include our long-standing policy on how we evaluate symptom-related limitations and restrictions in the discussion of exertional and nonexertional limitations.

Comment: Two commenters noted that we specifically mentioned pain in paragraph (b) of §§ 404.1569a and 416.969a, but not in paragraph (c) or (d), and felt this was a subtle way to imply that pain only affects exertional abilities, in contrast to court interpretations of section 3 of Public Law 98–460.

Response: We have amended paragraphs (c) and (d) of §§ 404.1569a and 416.969a in the final rules to parallel the language in paragraph (b). In the final rules, we cite pain as an example of a symptom which may impose exertional, nonexertional, or both exertional and nonexertional limitations.

Application of the Medical-Vocational Guidelines in Appendix 2

Comment: Several commenters stated that various courts have held pain to be a nonexertional impairment which precludes the use of the medical-vocational rules (the "grids") in appendix 2 of 20 CFR part 404, subpart P, even as a framework to deny a disability claim. These commenters stated that the courts have held that the presence of pain requires the Secretary to call a vocational expert rather than rely on the rules in appendix 2. One commenter requested clarification as to the weight to be given to the rules in appendix 2 when the rules are not applicable.

Response: As we read the many circuit court decisions that have examined our policy on the evaluation of pain, we believe no court has stated a rule concerning how the medical-vocational guidelines may be used in a particular case that is inconsistent with the policy for application of those guidelines as explained in paragraphs (b), (c), and (d) of §§ 404.1569a and 416.969a of these final rules. Pain is a symptom, the individual's own perception and description of his or her physical or mental impairment. Symptoms, such as pain, are considered in establishing the existence of impairment(s), but are not impairment(s) in and of themselves. As we explain in §§ 404.1569a and 416.969a of these final rules, the application of the medical-vocational guidelines in appendix 2 depends on the nature of the limitations and restrictions imposed by an individual's impairment(s) and related symptoms. When the impairment(s) and related symptoms impose only exertional limitations, i.e., affect only the ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, or pulling), the advice of vocational experts or other specialists may be elicited, when appropriate. When the impairment(s) and related symptoms impose only nonexertional limitations or a combination of exertional and nonexertional limitations, a decision of disability is not directed by a rule in appendix 2, and we may use the services of a vocational expert or other specialist. At the administrative law judge hearing level, the administrative law judge may request the testimony of a vocational expert if the administrative law judge needs assistance to determine a vocational finding of fact. The vocational expert may identify what occupations, if any, an individual can perform and may provide a statement of the incidence of these occupations as individual jobs in the national economy. However, the administrative law judge has the ultimate responsibility for determining disability. As at other levels of adjudication, the administrative law judge must adhere to the principles upon which the rules in appendix 2 are based. If the impairment(s) and related symptoms impose only exertional limitations and the findings of fact meet the criteria of a specific rule in Appendix 2, that rule directs a decision of disabled or not disabled.

Comment: One commenter read §§ 404.1569a and 416.969a as saying that pain is a solely exertional limitation causing adjudicators to apply the medical-vocational guidelines in appendix 2 to direct a decision even when pain affects postural, manipulative, or mental functions.

Response: We have reviewed the language in these sections in light of the comment and do not believe the sections make this statement. Paragraph (a) of §§ 404.1569a and 416.969a explains that how we apply the medical-vocational guidelines in Appendix 2 depends on whether an individual's limitations or restrictions are exertional or nonexertional. The sections very clearly point out that the determination of symptom-related limitations or restrictions of function as exertional, nonexertional, or a combination of exertional and nonexertional, is predicated on the nature of the limitations or restrictions imposed by the symptom, not on the symptom itself. The sections do not state that symptoms, such as pain, cause solely exertional limitations, nor do they state that the rules in Appendix 2 direct a decision regardless of the nature of the limitations caused by the individual's symptoms. Paragraphs (c) and (d) explain how we apply the rules in appendix 2 when an individual's symptom-related limitations or restrictions are nonexertional or a combination of exertional and nonexertional.

The Reports of the Commission on the Evaluation of Pain and the Committee on Pain and Disability of the National Academy of Sciences Institute of Medicine

Comment: One commenter suggested that we incorporate the Minority Opinion reported by the Commission on the Evaluation of Pain in these regulations. A few commenters suggested we adopt the recommendation of a minority of members of the Commission to include a listing for impairment due primarily to pain in the Listing of Impairments.

Response: The majority of Commission members specifically recommended against adoption of a listing for impairment due primarily to pain as did the National Academy of Sciences Institute of Medicine in its 1987 report, Pain and Disability: Clinical, Behavioral, and Public Policy Perspectives. Further, the Commission recommended that the pain policy, as codified in section 3 of Public Law 98–460, be retained pending further research. We agree that this is the appropriate action at this time.

Comment: One commenter questioned why we did not specifically incorporate the findings and recommendations of the Commission on the Evaluation of Pain in the proposed regulations. Another commenter contended that we are ignoring the findings of the Commission.

Response: The Commission on the Evaluation of Pain recommended that our pain policy remain unchanged until further research was concluded and could be acted upon. We have accepted that recommendation in publishing these regulations. These final rules make clear that we do not require objective medical evidence to fully corroborate an individual's statements as to the existence, intensity, or persistence of pain.

Comment: One commenter inquired as to the status of the reactivation/vocational rehabilitation research proposal of the Commission on the Evaluation of Pain.

Response: In response to recommendations of both the Commission on the Evaluation of Pain and the Committee on Pain and Disability of the National Academy of Sciences Institute of Medicine, we initiated a multi-step research program in 1987. The first step has been completed with the design of instruments and methods to enable us to identify and assess claims in which evaluation of pain is a factor and to allow us to obtain data about the nature and extent of pain in our disability claimant population. We awarded a contract in June 1990 to test the reliability and validity of these instruments and to pilot test them.

Comment: One commenter recommended that our regulations incorporate the recommendation of the Commission on the Evaluation of Pain to remand to the State agency any case in which pain is alleged for the first time at the administrative law judge hearing level and the administrative law judge is unable to make a fully favorable decision on the available evidence or to deny the claim on a technical basis.

Response: We did not adopt this recommendation because we believe our current regulations adequately address the issue raised by the commenter. Specifically, §§ 404.941 and 416.1441 provide a procedure for forwarding a case to the State agency for a prehearing review and possible revised determination when additional evidence, such as an allegation of pain, is submitted for the first time at the administrative law judge level.

Comment: One commenter suggested that we adopt the recommendations of the Commission on the Evaluation of Pain to do additional training and to redesign our forms and questionnaires.

Response: In response to the comments and recommendations of the Commission on the Evaluation of Pain, we have been engaged in an extensive training effort for all Federal and State disability examiners and medical and psychological consultants to ensure uniform understanding and application of our policy on the evaluation of pain. In addition, administrative law judges and Appeals Council members participated in a special satellite teletraining broadcast and were provided the same written training materials issued to the State agencies and other Federal personnel. Training on the evaluation of pain is a part of the continuing legal education program sponsored by our Office of Hearings and Appeals. With respect to the Commission's recommendation for redesign of our forms, we routinely review the disability application forms as well as the standard forms used to obtain information from claimants, treating sources, and others. For example, we recently revised the Form SSA–4734–F4 (Residual Functional Capacity Assessment). The new form stresses the importance of a description of an individual's limitations and the need for a discussion of how symptoms, such as pain, were considered in the assessment of residual functional capacity. We are also redesigning the Form SSA–3368–F8 (Disability Report), which is the standard form completed at the time of application, to elicit more complete information early in the case development. Finally, as previously explained, our current research effort is designed, in part, to develop appropriate instruments to obtain data about an individual's pain.

Comment: One commenter noted that the requirement that an individual have a medically determinable impairment which could reasonably be expected to produce the alleged symptoms is inconsistent with the National Academy of Sciences Institute of Medicine Committee on Pain and Disability's recommendation that a primary complaint of significant pain, even in the absence of clinical findings to account for the pain, should trigger a functional assessment.

Response: We have not adopted the Committee on Pain and Disability's recommendation in the final rules. The Committee's recommendation would not be consistent with the statutory requirements for establishing disability. By law, an individual must have a medically determinable impairment, demonstrable by medically acceptable clinical and laboratory findings, to be found disabled.

Use of Pain Specialists and Pain Centers or Clinics

Comment: We received several comments advocating the use of pain specialists or pain centers to provide information about pain. One commenter recommended that independent pain consultants be used to assess a symptom when its alleged intensity is extremely disproportionate to the objective medical evidence. Others believed that statements from pain experts should constitute the basis for a finding of disability in cases in which pain is an issue.

Response: We do not agree that routine referral to independent pain specialists is warranted for all cases in which the alleged pain is much greater than would be expected. Under our existing procedures, reports from pain specialists and/or pain centers are considered as part of the evidence in the disability decisionmaking process. However, the ultimate responsibility for the determination or decision of disability rests with the State agency (or other designee of the Secretary) at the initial and reconsideration levels, with the administrative law judge at the administrative law judge hearing level, or with the Appeals Council at the Appeals Council level. In situations in which the evaluation of pain is essential to the determination of disability, adjudicators at all levels of adjudication may arrange for a consultative

examination by a source described in §§ 404.1519 and 416.919, including a qualified pain specialist or pain center, if such a source is available and meets all the necessary regulatory and State requirements for consultative examiners. Since pain specialists and/or pain centers are not universally available, for practical purposes a pain specialist or pain center consultative examination is generally only requested in those cases where the alleged pain-related limitations or restrictions could affect the determination or decision of disability; i.e., a fully favorable decision is not possible on the basis of the evidence in the case record, additional development of the individual's alleged pain might result in a favorable decision, and the necessary information is not available from other sources.

Comment: One commenter stated that a final determination or decision of disability should not be made until an individual has received a comprehensive evaluation and treatment by a pain specialist or pain center to determine if the individual can be rehabilitated and reactivated into the work force.

Response: This proposal is similar in some ways to the Commission on the Evaluation of Pain's recommendation that we explore the possibility of including, as part of our adjudicative process, a program of reactivation and vocational rehabilitation to assess pain. At present, we have insufficient information about chronic pain and our disability population to determine the value of such a program or to institute the necessary studies to determine the feasibility and cost-effectiveness of incorporating this type of program in our adjudicative process. However, we are currently funding a multi-step research effort. We hope that the results of this research effort will allow us to assess better the Commission's recommendation for inclusion of a reactivation and vocational rehabilitation program as part of our evaluation of disability in certain cases.

Other Comments

Comment: One commenter questioned whether the proposed regulations apply to determinations of entitlement to title II disabled widow's or widower's benefits or title XVI disabled child's benefits.

Response: As we have explained earlier in this preamble, our policy for the evaluation of pain and other symptoms applies to determinations of entitlement to disability benefits under titles II and XVI of the Social Security Act. This includes determinations of entitlement to disabled widow's or widower's benefits under title II of the Act. It also includes determinations of eligibility for benefits in childhood disability cases under title XVI.

For childhood disability cases under title XVI, we consider how the physical or mental impairment(s) and related symptoms affect the child's ability to engage in age-appropriate activities and, when applicable, whether the child can do these activities on a sustained, age-appropriate basis. We assess the impact of the child's impairment(s) on his or her overall ability to function independently, appropriately, and effectively in an age-appropriate manner to decide whether he or she has an impairment(s) that would disable an adult. We have clarified this in § 416.929(d)(4).

As previously noted, section 5103 of Public Law 101–508 extends to claimants for widow's and widower's benefits the same definition of disability applicable to workers who apply for disability benefits. Therefore, the concern of the commenter about whether these regulations apply to widow's and widower's benefits is no longer an issue.

Comment: One commenter noted that fatigue is a frequent complaint with certain impairment(s) and believed that our failure to mention fatigue, specifically, in the regulations would cause adjudicators to tend to ignore allegations of fatigue in decisionmaking.

Response: To avoid any misinterpretation, we have included fatigue, along with pain, shortness of breath, weakness, and nervousness, as an example of a symptom. We have made this change in §§ 404.1529(b) and (d)(1) and 416.929(b) and (d)(1).

Comment: One commenter recommended that we delay implementation of this regulation absent scientifically validated, reliable sets of objective medical evidence to correlate with different levels of pain.

Response: While we agree with the commenter that scientifically validated methods to assess pain and other symptoms are desirable because of the reliability and repeatability of such methods, we cannot agree to delay the publication of these regulations until such methods become available. We believe these regulations are necessary to ensure that all adjudicators, at all adjudicative levels, clearly understand our policy on the evaluation of symptoms, the factors we consider in this evaluation, and the importance of documenting the case record as to the consideration given to symptoms in determining disability. At the same time, we have funded research for the development of instruments to identify and assess individuals with chronic pain and will be funding reliability and validity testing of these instruments. In the future this research may lead to changes in our policy for evaluating pain and other symptoms.

Comment: One commenter suggested that the final sentence of proposed §§ 404.1529(a) and 416.929(a) be rewritten to clarify that symptoms are evaluated to determine how they affect an individual's capacity for work over a sustained period. The commenter suggests that this is necessary because some adjudicators may not recognize that the term "work" means work over a sustained period. Another commenter believed that the last sentence of these sections might be offensive to individuals with chronic pain by implying that we doubt the authenticity of their complaint.

Response: We believe that adjudicators will understand the meaning of "work" as it is used here and elsewhere in this and other sections of our regulations. We do not agree that individuals with chronic pain will take this sentence to mean that we doubt the authenticity of their complaint.

Comment: One commenter suggested we amend §§ 404.1529(c)(2) and 416.929(c)(2) to include reference to medical history.

Response: Sections 404.1529(c)(2) and 416.929(c)(2) specifically address the evaluation of objective medical evidence. Objective medical evidence is limited to medical signs and laboratory findings as defined in §§ 404.1528 (b) and (c) and 416.928 (b) and (c). Medical history is other evidence. We have modified §§ 404.1529(c)(3) and 416.929(c)(3) in the final rules to make clear that medical history is part of the other information which is considered in evaluating the intensity and persistence of an individual's symptoms, such as pain.

Comment: One commenter noted that, in §§ 404.1545(a) and 416.945(a), residual functional capacity is described as an "assessment" rather than a "medical assessment." This commenter stated that this represents a substantial, but unexplained, change in policy which would allow non-medical staff to evaluate residual functional capacity.

Response: The description of residual functional capacity as an "assessment," rather than a "medical assessment," appears in the revised version of §§ 404.1545(a) and 416.945(a) that was promulgated as part of the final regulations pertaining to "Standards for Consultative Examinations and Existing Medical Evidence" which were published in the **Federal Register** on August 1, 1991 at 56 FR 36932. The

responsibility for deciding residual functional capacity is discussed in §§ 404.1546 and 416.946 of our regulations; these sections also were revised as part of the final regulations on "Standards for Consultative Examinations and Existing Medical Evidence."

Comment: One commenter recommended that the example in §§ 404.1545(e) and 416.945(e) be deleted since it implies that complaints of pain alone can reduce residual functional capacity which could lead to incorrect conclusions about the effect of pain on the individual's residual functional capacity. Another commenter recommended that we expand the example to show how symptoms, such as pain, could further reduce an individual's capacity for sustained work activity to less than the full exertional range of sedentary work.

Response: The example is provided solely to demonstrate that individuals with the same disorder may differ in the extent to which they are functionally limited due to differences in symptomatology and to make clear that any functional limitations due to symptoms may reduce an individual's capacity for work activity. The determination is not based solely on the individual's statements, but is made only after consideration of all of the evidence pertaining to an individual's impairment(s) and any related symptoms, i.e., medical and nonmedical evidence, including the information described in §§ 404.1529(c) and 416.929(c) of the final rules. Sections 404.1529(c)(4) and 416.929(c)(4) in the final rules make clear that any inconsistencies in the evidence and any conflicts between the individual's statements and the rest of the evidence, the objective medical evidence and other evidence, will be considered in determining the extent to which an individual's symptoms, such as pain, affect his or her capacity for work. While we did not adopt the commenters' suggestions, we have made changes in §§ 404.1545(e) and 416.945(e) to reflect that the assessment of residual functional capacity is done on an individualized case-by-case basis taking into account all medical and nonmedical evidence of record. In addition, we have added the words, "and related symptoms," to the last sentences of §§ 404.1545(e) and 416.945(e) to clarify that we evaluate the total limiting effects of an individual's impairment(s) and related symptoms. This change also serves to clarify the cross references to §§ 404.1529(c) and 416.929(c) contained in the last sentences of §§ 404.1545(e) and 416.945(e). We also have modified §§ 404.1529(d)(4) and 416.929(d)(4) to clarify that we consider the limiting effects of an individual's impairment(s) and related symptoms, including pain, in determining the individual's residual functional capacity.

Comment: One commenter, noting personal experience with the use of regional thermography, suggested that we consider including this procedure as an acceptable method to ascertain the basis for an individual's pain.

Response: We are not adopting this suggestion. We know of no technique to measure reliably the existence and intensity of an individual's pain. Although, as this commenter noted, regional thermography is used clinically as a simple, painless, and safe indicator of sympathetic function, the value of thermography as a valid and reliable technique for the evaluation of pain is still not widely accepted. When thermographic evidence is part of the medical record, we will consider the results of the thermography in evaluating the severity of an individual's impairment(s) and related symptoms.

Additional Changes

In addition to the revisions discussed above, we revised §§ 404.1529(c)(2) and 416.929(c)(2) to acknowledge that sensory problems and motor problems may occur independently of each other. We did this by changing the language "evidence of reduced joint motion, muscle spasm, and sensory and motor disruption," to read, "evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption."

In addition, we have revised the heading for paragraph (c) of §§ 404.1529 and 416.929 to reflect the content of paragraph (c)(4), which discusses how we determine the extent to which symptoms affect an individual's capacity for work. Also, we have added language to paragraphs (c)(1) and (c)(4) of §§ 404.1529 and 416.929 of the final rules to explain clearly how the provisions of paragraphs (c)(1) through (c)(4) relate to each other.

We also revised §§ 404.1569a (a) and (c) and 416.969a (a) and (c) to delete the word "nonstrength" in the phrase "the nonstrength demands of jobs." In its place we are using the phrase, "the demands of jobs other than the strength demands." We believe this better conveys that any demands of jobs other than the seven strength demands delineated in the Dictionary of Occupational Titles published by the Department of Labor are considered nonexertional activities. Thus, demands of jobs such as climbing, stooping, crawling, seeing, hearing, maintaining attention, etc., are considered to be nonexertional activities.

Regulatory Procedures

Executive Order 12291

These changes will have little or no effect on title II or title XVI benefit payments or administrative costs since no change in current policy is involved. These regulations do not meet any of the criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants and beneficiaries under title II and title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget. All information necessary to make the disability decisions discussed in these regulations is presently collected using forms which have the Office of Management and Budget clearance.

(Catalog of Federal Domestic Program Nos. 93.802, Social Security Disability Insurance; 93.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: August 5, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 3, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

For the reasons set out in the preamble, part 404, subpart P, chapter III

of title 20, Code of Federal Regulations, is amended as set forth below.

20 CFR part 404, subpart P is amended as follows:

1. The authority citation for Subpart P is revised to read as follows:

Subpart P—Determining Disability and Blindness

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Paragraph (g) of § 404.1501 is revised to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(g) Our rules on vocational considerations are found in §§ 404.1560 through 404.1569a. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, describe and tell how to use the Medical-Vocational Guidelines in appendix 2 of this subpart, and explain when, for purposes of applying the guidelines in appendix 2, we consider the limitations or restrictions imposed by your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both.

* * * * *

3. Section 404.1525 is amended by changing "impairments" to "Impairments" in the heading of the section, and by adding paragraph (f) to read as follows:

§ 404.1525 Listing of impairments in appendix 1.

* * * * *

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

4. Section 404.1529 is revised to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, we mean medical signs and laboratory findings as defined in § 404.1528 (b) and (c). By other evidence, we mean the kinds of evidence described in §§ 404.1512(b) (2) through (6) and 404.1513(b) (1), (4), and (5) and (c). These include statements or reports from you, your treating or examining physician or psychologist, and others about your medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how your impairment(s) and any related symptoms affect your ability to work. We will consider all of your statements about your symptoms, such as pain, and any description you, your physician, your psychologist, or other persons may provide about how the symptoms affect your activities of daily living and your ability to work. However, statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are disabled. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. (Section 404.1527 explains how we consider opinions of your treating source and other medical opinions on the existence and severity of your symptoms, such as pain.) We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. At the initial or reconsideration step in the administrative review process (except in disability hearings), a State agency medical or psychological consultant (or other medical or psychological consultant designated by the Secretary) directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. In the disability hearing process, a medical or psychological consultant may provide an advisory assessment to assist a disability hearing officer in determining whether your impairment(s) could reasonably be expected to produce your alleged symptoms. At the administrative law judge hearing or Appeals Council level, the administrative law judge or the Appeals Council may ask for and consider the opinion of a medical advisor concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. The finding that your impairment(s) could reasonably be expected to produce your pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of your symptoms. We will develop evidence regarding the possibility of a medically determinable mental impairment when we have information to suggest that such an impairment exists, and you allege pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of your symptoms, such as pain, and determining the extent to which your symptoms limit your capacity for work*—(1) *General.* When the medical signs or laboratory findings

show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain, we must then evaluate the intensity and persistence of your symptoms so that we can determine how your symptoms limit your capacity for work. In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements from you, your treating or examining physician or psychologist, or other persons about how your symptoms affect you. We also consider the medical opinions of your treating source and other medical opinions as explained in § 404.1527. Paragraphs (c)(2) through (c)(4) of this section explain further how we evaluate the intensity and persistence of your symptoms and how we determine the extent to which your symptoms limit your capacity for work, when the medical signs or laboratory findings show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence of this type is a useful indicator to assist us in making reasonable conclusions about the intensity and persistence of your symptoms and the effect those symptoms, such as pain, may have on your ability to work. We must always attempt to obtain objective medical evidence and, when it is obtained, we will consider it in reaching a conclusion as to whether you are disabled. However, we will not reject your statements about the intensity and persistence of your pain or other symptoms or about the effect your symptoms have on your ability to work solely because the available objective medical evidence does not substantiate your statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information that you, your treating or examining physician or psychologist, or other persons provide about your pain or other symptoms (e.g., what may precipitate or aggravate your symptoms, what medications, treatments or other methods you use to alleviate them, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. Section 404.1527 explains in detail how we consider and weigh treating source and other medical opinions about the nature and severity of your impairment(s) and any related symptoms, such as pain. Factors relevant to your symptoms, such as pain, which we will consider include:

(i) Your daily activities;

(ii) The location, duration, frequency, and intensity of your pain or other symptoms;

(iii) Precipitating and aggravating factors;

(iv) The type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms;

(v) Treatment, other than medication, you receive or have received for relief of your pain or other symptoms;

(vi) Any measures you use or have used to relieve your pain or other symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Other factors concerning your functional limitations and restrictions due to pain or other symptoms.

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

(d) *Consideration of symptoms in the disability determination process.* We follow a set order of steps to determine whether you are disabled. If you are not doing substantial gainful activity, we consider your symptoms, such as pain, to evaluate whether you have a severe physical or mental impairment(s), and at each of the remaining steps in the process. Sections 404.1520 and 404.1520a explain this process in detail. We also consider your symptoms, such as pain, at the appropriate steps in our review when we consider whether your disability continues. Sections 404.1579 and 404.1594 explain the procedure we follow in reviewing whether your disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether your impairment or combination of impairment(s) is severe. (See § 404.1520(c).)

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 404.1525(f) explains how we consider your symptoms when your symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If your impairment is not the same as a listed impairment, we must determine whether your impairment(s) is medically equivalent to a listed impairment. Section 404.1526 explains how we make this determination. Under § 404.1526(b), we will consider equivalence based on medical evidence only. In considering whether your symptoms, signs, and laboratory findings are medically equal

to the symptoms, signs, and laboratory findings of a listed impairment, we will look to see whether your symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, we will not substitute your allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of your impairment(s) to that of a listed impairment. If the symptoms, signs, and laboratory findings of your impairment(s) are equivalent in severity to those of a listed impairment, we will find you disabled. If it does not, we will consider the impact of your symptoms on your residual functional capacity. (See paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity.* If you have a medically determinable severe physical or mental impairment(s), but your impairment(s) does not meet or equal an impairment listed in Appendix 1 of this subpart, we will consider the impact of your impairment(s) and any related symptoms, including pain, on your residual functional capacity. (See § 404.1545.)

5. Section 404.1545 is revised to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even your own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of your medical condition. Observations by your treating or examining physicians or psychologists, your family, neighbors, friends, or other persons, of your limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with your medical records to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569a, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether your disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 404.1594.

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

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

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

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this subpart, we will consider the limiting effects of all your impairment(s), even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of your impairment(s) and any related symptoms, we will consider all of the medical and nonmedical evidence, including the information described in § 404.1529(c).

6. A new § 404.1569a is added to read as follows:

§ 404.1569a Exertional and nonexertional limitations.

(a) *General.* Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 404.1567 and 404.1569 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 404.1520(f) and 404.1594(f)(8) explain that if you can no longer do your past relevant work because of a severe medically determinable impairment(s), we must determine whether your impairment(s), when considered along with your age, education, and work experience, prevents you from doing any

other work which exists in the national economy in order to decide whether you are disabled (§ 404.1520(f)) or continue to be disabled (§ 404.1594(f)(8)). Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in Appendix 2 of this subpart in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

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

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

(i) You have difficulty functioning because you are nervous, anxious, or depressed;

(ii) You have difficulty maintaining attention or concentrating;

(iii) You have difficulty understanding or remembering detailed instructions;

(iv) You have difficulty in seeing or hearing;

(v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or

(vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in appendix 2.

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

Appendix 2—[Amended]

7. Appendix 2 (Medical-Vocational Guidelines) of subpart P is amended by revising paragraph (c) of 200.00 to read as follows:

200.00 *Introduction*

* * * * *

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

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

20 CFR part 416, subpart I is amended as follows:

1. The authority citation for subpart I is revised to read as follows:

Subpart I—Determining Disability and Blindness

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d) (1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Paragraph (j) of § 416.901 is revised to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(j) Our rules on vocational considerations are found in §§ 416.960 through 416.969a. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, describe how the Guidelines in appendix 2 of subpart P of part 404 of this chapter apply to claims under part 416, and explain when, for purposes of applying the guidelines in appendix 2, we consider the limitations or restrictions imposed by your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both.

* * * * *

3. Section 416.925 is amended by changing "impairments" to "Impairments" in the heading of the section, and by adding paragraph (f) to read as follows:

§ 416.925 Listing of impairments in Appendix 1 of Subpart P of Part 404 of this chapter.

* * * * *

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

4. Section 416.929 is revised to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

(a) *General.* In determining whether you are disabled, we consider all your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with the objective medical evidence, and other evidence. By objective medical evidence, we mean medical signs and laboratory findings as defined in § 416.928 (b) and (c). By other evidence, we mean the kinds of evidence described in §§ 416.912(b) (2) through (6) and 416.913 (b) (1), (4), and

(5) and (e). These include statements or reports from you, your treating or examining physician or psychologist, and others about your medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how your impairment(s) and any related symptoms affect your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner). We will consider all of your statements about your symptoms, such as pain, and any description you, your physician, your psychologist, or other persons may provide about how the symptoms affect your activities of daily living and your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner). However, statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of your pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that you are disabled. In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. (Section 416.927 explains how we consider opinions of your treating source and other medical opinions on the existence and severity of your symptoms, such as pain.) We will then determine the extent to which your alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner).

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. At the initial or reconsideration step in the administrative review process (except in disability hearings), a State agency medical or psychological consultant (or other medical or psychological consultant designated by the Secretary) directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. In the disability hearing process, a medical or psychological consultant may provide an advisory assessment to assist a disability hearing officer in determining whether your impairment(s) could 'reasonably be expected to produce your alleged symptoms. At the administrative law judge hearing or Appeals Council level, the administrative law judge or the Appeals Council may ask for and consider the opinion of a medical advisor concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. The finding that your impairment(s) could reasonably be expected to produce your pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of your symptoms. We will develop evidence regarding the possibility of a medically determinable mental impairment when we have information to suggest that such an impairment exists, and you allege pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of your symptoms, such as pain, and determining the extent to which your symptoms limit your capacity for work or for functioning in an age-appropriate manner*—(1) *General.* When the medical signs or laboratory findings show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain, we must then evaluate the intensity and persistence of your symptoms so that we can determine how your symptoms limit your capacity for work. In evaluating the intensity and persistence of your symptoms, we consider all of the available evidence, including your medical history, the medical signs and laboratory findings, and statements from you, your treating or examining physician or psychologist, or other persons about how your symptoms affect you. We also consider the medical opinions of your treating source and other medical opinions as explained in § 416.927. Paragraphs (c)(2) through (c)(4) of this section explain further how we evaluate the intensity and persistence of your symptoms and how we determine the extent to which your symptoms limit your capacity for work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner), when the medical signs or laboratory findings show that you have a medically determinable impairment(s) that could reasonably be expected to produce your symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence of this type is a useful indicator to assist us in making reasonable conclusions about the intensity and persistence of your symptoms and the effect those symptoms, such as pain, may have on your ability to work. We must always attempt to obtain objective medical evidence and, when it is obtained, we will consider it in reaching a conclusion as to whether you are disabled. However, we will not reject your statements about the intensity and persistence of your pain or other symptoms or about the effect your symptoms have on your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner) solely because the available objective medical evidence does not substantiate your statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. The information that you, your treating or examining physician or psychologist, or other persons provide about your pain or other symptoms (e.g., what may precipitate or aggravate your symptoms, what medications, treatments or other

methods you use to alleviate them, and how the symptoms may affect your pattern of daily living) is also an important indicator of the intensity and persistence of your symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. If you are a child, we will also consider all of the evidence presented, including evidence submitted by your treating, examining or consulting physician or psychologist, information from educational agencies and personnel, statements from parents and other relatives, and evidence submitted by social welfare agencies, therapists, and other practitioners. Section 416.927 explains in detail how we consider and weigh treating source and other medical opinions about the nature and severity of your impairment(s) and any related symptoms, such as pain. Factors relevant to your symptoms, such as pain, which we will consider include:

(i) Your daily activities;

(ii) The location, duration, frequency, and intensity of your pain or other symptoms;

(iii) Precipitating and aggravating factors;

(iv) The type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms;

(v) Treatment, other than medication, you receive or have received for relief of your pain or other symptoms;

(vi) Any measures you use or have used to relieve your pain or other symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Other factors concerning your functional limitations and restrictions due to pain or other symptoms.

(4) *How we determine the extent to which symptoms, such as pain, affect your capacity to perform basic work activities (or to function in an age-appropriate manner).* In determining the extent to which your symptoms, such as pain, affect your capacity to perform basic work activities (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner), we consider all of the available evidence described in paragraphs (c)(1) through (c)(3) of this section. We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence, in reaching a conclusion as to whether you are disabled. We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, the medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you. Your symptoms, including pain, will be determined to diminish your capacity for basic work activities (or if you are a child, age-appropriate activities) to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* We follow a set order of steps to determine whether you are disabled. If you are not doing substantial gainful activity, we consider your symptoms, such as pain, to evaluate whether you have a severe physical or mental impairment(s), and at each of the remaining steps in the process. Sections 416.920 and 416.920a (for adults) and 416.924 (for children) explain this process in detail. We also consider your symptoms, such as pain, at the appropriate steps in our review when we consider whether your disability continues. The procedure we follow in reviewing whether your disability continues is explained in § 416.994 (for adults) and § 416.994a (for children).

(1) *Need to establish a severe medically determinable impairment(s).* Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether your impairment or combination of impairment(s) is severe. (See § 416.920(c) for adults and § 416.924(d) for children.)

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 416.925(f) explains how we consider your symptoms when your symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If your impairment is not the same as a listed impairment, we must determine whether your impairment(s) is medically equivalent to a listed impairment. Sections 416.926 and 416.926a explain how we make this determination. Under §§ 416.926(b) and 416.926a(b) (1) and (2), we will consider equivalence based on medical evidence only. In considering whether your symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, we will look to see whether your symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, we will not substitute your allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of your impairment(s) to that of a listed impairment. (If you are a child and we cannot find equivalence based on medical evidence only, we will consider pain and other symptoms under § 416.926a(b)(3) in determining whether you have an impairment(s) that results in overall functional limitations that are the same as the disabling functional consequences of a listed impairment.) Regardless of whether you are an adult or a child, if the symptoms, signs, and laboratory findings of your impairment(s) are equivalent in severity to those of a listed impairment, we will find you disabled. (If you are a child and your impairment(s) is equivalent in severity to a listed impairment under the rules in § 416.926a(b)(3), we also will find you disabled.) If they are not, we will consider the impact of your symptoms on your residual functional capacity if you are an adult or, if you are a child, on your ability to function in an age-appropriate manner. (See paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity or individualized functional assessment.* If you have a medically determinable severe physical or mental impairment(s), but your impairment(s) does not meet or equal an impairment listed in Appendix 1 of subpart P of part 404 of this chapter, we will consider the impact of your impairment(s) and any related symptoms, including pain, on your residual functional capacity, or if you are a child, on your ability to function independently, appropriately, and effectively in an age-appropriate manner. (See §§ 416.945 and 416.924a through 416.924d.)

5. Section 416.945 is revised to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even your own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of your medical condition. Observations by your treating or examining physicians or psychologists, your family, neighbors, friends, or other persons, of your limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with your medical records to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969a, your vocational background is considered along with your residual functional capacity in arriving at a disability determination or decision. In deciding whether your disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 416.994.

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

(c) *Mental abilities.* When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

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

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in appendix 1 of subpart P of part 404 of this chapter, we will consider the limiting effects of all your impairment(s), even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of your impairment(s) and any related symptoms, we will consider all of the medical and nonmedical evidence, including the information described in § 416.929(c).

6. A new § 416.969a is added to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 416.967 and 416.969 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 416.920(f) and 416.994(b)(5)(viii) explain that if you can no longer do your past relevant work because of a severe medically determinable impairment(s), we must determine whether your impairment(s), when considered along with your age, education, and work experience, prevents you from doing any other work which exists in the national economy in order to decide whether you are disabled (§ 416.920(f)) or continue to be disabled (§ 416.994(b)(5)(viii)). Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in appendix 2 of subpart P of part 404 of this chapter in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule

contained in Appendix 2, we will directly apply that rule to decide whether you are disabled.

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

(i) You have difficulty functioning because you are nervous, anxious, or depressed;

(ii) You have difficulty maintaining attention or concentrating;

(iii) You have difficulty understanding or remembering detailed instructions;

(iv) You have difficulty in seeing or hearing;

(v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or

(vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in appendix 2.

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

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