

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Jesse Viertel Memorial Airport.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103; 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **ACE MO E5 Boonville, MO**

Boonville, Jesse Viertel Memorial Airport, MO

Lat. 38°56'48' N., long. 92°40'58' W.)

Viertel NDB

Lat. 38°56'58' N., long. 92°41'03' W.)

Hallsville VORTAC

Lat. 39°06'49' N., long. 92°07'42' W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Jesse Viertel Memorial Airport and within 2.5 miles each side of the 013° bearing from the Viertel NDB extending from the 6.9-mile radius of the airport to 7 miles north of the NDB and within 2.4 miles each side of the Hallsville VORTAC 249° radial extending from the 6.9-mile radius of the airport to 19.4 miles southwest of the VORTAC.

\* \* \* \* \*

Issued in Kansas City, MO, on March 22, 2005.

**Rosalyn R. Ward,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–6388 Filed 3–30–05; 8:45 am]

**BILLING CODE 4910–13–M**

## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Part 404**

**[Regulations No. 4]**

**RIN 0960–AG16**

### **Nonpayment of Benefits When the Social Security Administration Receives Notice That an Insured Person Is Deported or Removed From the United States**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** To implement part of the Social Security Protection Act of 2004 (SSPA), we are revising our regulations that prohibit payment of monthly benefits and the lump sum death payment under title II of the Social Security Act (the Act) when SSA receives notice that an insured person is deported or removed from the United States under certain provisions of the Immigration and Nationality Act (INA). **DATES:** These regulations are effective March 31, 2005.

#### **Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### **FOR FURTHER INFORMATION CONTACT:**

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free

number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 412 of the SSPA, Public Law 108–203, enacted on March 2, 2004, modifies the provisions of section 202(n) of the Act. Those provisions prohibit the payment of title II benefits to the insured person on a record (and, in some cases, to dependents or survivors otherwise entitled on that record) when SSA receives notice of the insured person's deportation or removal from the United States under the provisions of the INA. Section 412 was enacted, in part, to conform the Act to amendments to the INA enacted April 1, 1997, under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the Immigration Reform Act), Public Law 104–208. The Immigration Reform Act changed the terminology, section references and function of many provisions of the INA that, in turn, affect section 202(n) of the Act.

The Immigration Reform Act combined into a single removal process the formerly separate legal processes for deporting and excluding aliens from the United States. Under this process, aliens are removed as either deportable or inadmissible. The Immigration Reform Act also changed the legal process applicable to illegal aliens; i.e., those who are present in the United States (regardless of how long) without having been lawfully admitted. Although they may be apprehended in the United States, illegal aliens are no longer charged as deportable or subject to the deportation process as they had been before the Immigration Reform Act. Instead, they are charged as inadmissible and subject to removal under the process applied to aliens who are seeking entry into the United States. With this change, effective April 1, 1997, illegal aliens no longer met the specific conditions for nonpayment of their title II benefits under section 202(n) of the Act which, from the time of enactment in 1954, applied to deported aliens only.

Section 412 of the SSPA amends section 202(n) to coordinate with the amendments to the INA by:

- Replacing the terms "deportation" and "deported," wherever they appear in the text of the statute, with "removal" and "removed," respectively;
- Changing the reference to the INA citation that specifies the grounds for removal of an alien as deportable from section 241(a) to section 237(a);

- Adding to the statute provisions that prohibit payment of title II retirement or disability benefits to insured persons who are removed as inadmissible (under INA section 212(a)(6)(A)) on grounds of entering the United States illegally. (This change effectively maintains the scope and basic intent of section 202(n) of the Act, as originally enacted, by preventing illegal aliens, once considered deportable and now classified as inadmissible under the INA, from avoiding benefit suspension when they are removed from the United States.)

Section 412 includes the following additional changes to section 202(n) of the Act that are not related to the INA amendments:

- Specifies that the Secretary of Homeland Security (or the U.S. Attorney General) will provide the notice of deportation or removal required to apply the nonpayment provisions. (The Attorney General was the sole source of these notices to SSA prior to the creation of the Department of Homeland Security.); and
- Terminates the exception incorporated into section 202(n) of the Act, as originally enacted in 1954, that exempted aliens who were deported on grounds of smuggling other aliens into the United States (under INA section 241(a)(1)(E)) from nonpayment of their title II retirement or disability benefits. This exception ceases to apply to deportations (or removals on grounds of deportability) reported to SSA by the Secretary of Homeland Security or the U.S. Attorney General after March 2, 2004, the date of enactment of the SSPA.

### Explanation of Changes

We are revising the regulations in 20 CFR 404.464 to make them easier for the public to understand and to reflect the changes to section 202(n) of the Act that were enacted under section 412 of the SSPA. This includes:

- Under § 404.464(a), adding to the reference to the Attorney General of the United States a reference to the Secretary of Homeland Security. These are the current sources of deportation and removal notices used to apply the provisions under section 202(n);
- Reorganizing § 404.464(a) to show the specific sections of the INA (prior to and after the 1997 amendments to the INA) under which deportation or removal must have occurred for nonpayment under section 202(n) to apply. These include:

(1) Section 241(a) of the INA in effect prior to April 1, 1997;

(2) Section 237(a) of the INA, as effective beginning April 1, 1997,

applicable to aliens removed as deportable; and

(3) Section 212(a)(6)(A) of the INA, as effective beginning April 1, 1997, applicable to aliens removed as inadmissible on grounds of illegal entry into the United States. We have left intact the reference to section 241(a) of the INA in effect prior to April 1, 1997 (item (1) above) since SSA must continue to apply the deportation provisions of the Act, if warranted, to any future claims filed on the records of number holders who were reported to SSA in the past as having been deported under that section of the immigration law.

- Adding text to §§ 404.464(a)(1)(i)(B) and (a)(1)(ii)(B) to show that aliens who were deported under paragraph (1)(E) of INA section 241(a), in effect prior to April 1, 1997, or removed as deportable under paragraph (1)(E) of section 237(a) of the INA, as amended in 1997, are excepted from the nonpayment provisions only if notice of their deportation or removal was received by SSA from the Secretary of Homeland Security or the Attorney General before March 3, 2004. This is a reference to the amendments effective March 3, 2004 under section 412 of the SSPA that end the exemption granted under the original provisions of section 202(n) to aliens deported (or removed as deportable) on grounds of smuggling other aliens into the United States.

- Amending § 404.464(b) to improve its clarity and more accurately reflect certain language in section 202(n)(1)(B) of the Social Security Act. The relevant statutory language provides that an alien outside the United States during any part of a given month cannot receive a monthly survivor benefit for that month on the record of a deceased insured person in the event that the deceased (if still alive) could not have been paid a retirement or disability benefit for that month because of deportation or removal under section 202(n)(1)(A) of the Social Security Act (as implemented by § 404.464(a)(1)).

- Amending the text in § 404.464(c) pertaining to the lump sum death payment to conform with and refer to the amended provisions under § 404.464(a).

### Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good

cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures because such procedures are unnecessary. Good cause exists because these regulations merely conform our rules to the self-implementing provisions in section 412 of the SSPA. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). These revisions conform our rules to the provision enacted in the SSPA. However, without these changes, our rules will conflict with current law and may mislead the public. Therefore, we find that it is in the interest of the public to make these rules effective upon publication.

### Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

### Regulatory Flexibility Act

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

### Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

### List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

Dated: January 7, 2005.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending subpart E of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

**Subpart E—[Amended]**

■ 1. The authority citation for subpart E of part 404 continues to read as follows:

**Authority:** Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(1), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(1), 423(e), 424a, 425, 902(a)(5), and 1320a–8a) and 48 U.S.C. 1801.

■ 2. Section 404.464 is revised to read as follows:

**§ 404.464 How does deportation or removal from the United States affect the receipt of benefits?**

(a) *Old-age or disability insurance benefits.* (1) You cannot receive an old-age or disability benefit for any month that occurs after the month we receive notice from the Secretary of Homeland Security or the Attorney General of the United States that you were:

(i) Deported under the provisions of section 241(a) of the Immigration and Nationality Act (INA) that were in effect before April 1, 1997, unless your deportation was under:

(A) Paragraph (1)(C) of that section; or  
(B) Paragraph (1)(E) of that section  
and we received notice of your deportation under this paragraph before March 3, 2004;

(ii) Removed as deportable under the provisions of section 237(a) of the INA as in effect beginning April 1, 1997, unless your removal was under:

(A) Paragraph (1)(C) of that section; or  
(B) Paragraph (1)(E) of that section  
and we received notice of your removal under this paragraph before March 3, 2004; or

(iii) Removed as inadmissible under the provisions of section 212(a)(6)(A) of the INA as in effect beginning April 1, 1997.

(2) Benefits that cannot be paid to you because of your deportation or removal under paragraph (a)(1) of this section may again be payable for any month subsequent to your deportation or removal that you are lawfully admitted to the United States for permanent residence. You are considered lawfully admitted for permanent residence as of the month you enter the United States with permission to reside here permanently.

(b) *Dependents or survivors benefits.* If an insured person on whose record you are entitled cannot be paid (or could not have been paid while still alive) an old-age or disability benefit for a month(s) because of his or her deportation or removal under paragraph (a)(1) of this section, you cannot be paid a dependent or survivor benefit on the insured person's record for that month(s) unless:

(1) You are a U.S citizen; or  
(2) You were present in the United States for the entire month. (This means you were not absent from the United States for any period during the month, no matter how short.)

(c) *Lump sum death payment.* A lump sum death payment cannot be paid on the record of a person who died:

(1) In or after the month we receive from the Secretary of Homeland Security or the Attorney General of the United States notice of his or her deportation or removal under the provisions of the INA specified in paragraph (a)(1) of this section (excluding the exceptions under paragraphs (a)(1)(i)(A) and (B) and (ii)(A) and (B) of this section); and  
(2) Before the month in which the deceased person was thereafter lawfully admitted to the United States for permanent residence.

[FR Doc. 05–6400 Filed 3–30–05; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF HOMELAND  
SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD05–05–018]**

**RIN 1625–AA87**

**Security Zone; Cape Fear River, Eagle  
Island, North Carolina State Port  
Authority Terminal, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone at the North Carolina State Port Authority (NCSPA), Wilmington to include the Cape Fear River and Eagle Island. Entry into or movement within the security zone will be prohibited without authorization from the COTP. This action is necessary to safeguard the vessels and the facility from sabotage, subversive acts, or other threats.

**DATES:** This rule is effective from April 1, 2005, until October 1, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–018 and are available for inspection or copying at the Marine Safety Office 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
LCDR Charles A. Roskam II, Chief Port Operations (910) 772–2200 or toll free (877) 229–0770.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. The Coast Guard is promulgating this security zone regulation to protect NCSPA Wilmington and the surrounding vicinity from threats to national security. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice-and-comment rulemaking and advance publication are not required for this regulation.

**Background and Purpose**

Vessels frequenting the North Carolina State Port Authority (NCSPA) Wilmington facility serve as a vital link in the transportation of military munitions, explosives, equipment, and personnel in support of Department of Defense missions at home and abroad. This vital transportation link is potentially at risk to acts of terrorism, sabotage and other criminal acts. Munitions and explosives laden vessels also pose a unique threat to the safety and security of the NCSPA Wilmington, vessel crews, and others in the maritime and surrounding community should the vessels be subject to acts of terrorism or sabotage, or other criminal acts. The ability to control waterside access to vessels laden with munitions and explosives, as well as those used to transport military equipment and personnel, moored at the NCSPA Wilmington is critical to national defense and security, as well as to the safety and security of the NCSPA Wilmington, vessel crews, and others in the maritime and surrounding community. Therefore, the Coast Guard is establishing this security zone to safeguard human life, vessels and facilities from sabotage, terrorist acts or other criminal acts.

**Discussion of Rule**

The security zone is necessary to provide security for, and prevent acts of terrorism against vessels loading or offloading at the NCSPA Wilmington facility during a military operation. It