

“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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 7, 1995.
Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
03/09/95	MO	Perryville	Perryville Muni	FDC 5/1332	VOR/DME RNAV or GPS RWY 19, AMDT 2...
03/23/95	TX	Lago Vista	Rusty Allen	FDC 5/1281	VOR/DME or GPS-A AMDT 2...
03/24/95	WY	Gillette	Gillette-Campbell County	FDC 5/1282	ILS RWY 34, AMDT 2...
03/24/95	WY	Gillette	Gillette-Campbell County	FDC 5/1283	NDB RWY 34, ORIG...
03/24/95	WY	Gillette	Gillette-Campbell County	FDC 5/1285	VOR or GPS RWY 16, AMDT 6...
03/30/95	CA	San Francisco	San Francisco Intl	FDC 5/1390	BAY ILS/DME RWY 28L AMDT 1...
03/30/95	FL	Fort Lauderdale	Fort Lauderdale Executive	FDC 5/1349	VOR/DME RNAV or GPS RWY 8, AMDT 3...
03/30/95	KS	Meade	Meade Municipal	FDC 5/1389	NDB RWY 17, AMDT 1...
03/30/95	MN	Hawley	Hawley Muni	FDC 5/1382	VOR/DME or GPS-A ORIG...
03/30/95	NM	Deming	Deming Muni	FDC 5/1386	VOR or GPS RWY 26 AMDT 8A...
03/30/95	NM	Truth or Consequences Muni.	Truth or Consequences	FDC 5/1385	VOR or GPS-A AMDT 9...
03/30/95	WY	Gillette	Gillette-Campbell County	FDC 5/1388	VOR/DME or GPS RWY 34, ORIG...

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960-AD79

Federal Old-Age, Survivors and Disability Insurance; Changes in Evidence Required To Presume a Person Is Dead

AGENCY: Social Security Administration.
ACTION: Final rules.

SUMMARY: These regulations provide that, under title II of the Social Security Act (the Act), a presumption of death arises when the claimant establishes that an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the

individual’s absence in a manner consistent with continued life rather than death.

EFFECTIVE DATE: These rules are effective April 17, 1995.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: Under title II of the Act, a lump sum death payment and monthly survivors’ benefits may be payable based on the earnings of a deceased insured person. In order to ensure that these benefits are not paid based on mere desertion, any inquiry into entitlement begins with an assumption that a person last known to be alive is still living, and that a person’s failure to communicate with a few people and to return to a particular place do not, in themselves, give rise to a presumption of death. To establish eligibility for such benefits, the claimant must establish that the insured person is dead. If proof of death (as described in

§§ 404.720(b) and (c)) is unavailable, we will presume an insured person is dead if certain evidence is presented. Under the present § 404.721(b), such evidence includes signed statements by those in a position to know and other records which show that the person has been absent from his or her residence *for no apparent reason*, and has not been heard from for at least 7 years.

This evidentiary requirement has yielded two very different interpretations. It has long been our policy that the claimant must present the evidence necessary to establish that he or she is entitled to benefits. Accordingly, for us to presume that an insured person is dead, the claimant must establish that the insured person not only has not been heard from for at least 7 years, but also that he or she has been absent from his or her residence for no apparent reason. If the insured person’s absence can be attributed to known domestic or financial difficulties or to some other rational reason for leaving home, death is not presumed. We are not required to establish that the

insured person is still alive to explain the person's absence.

In contrast to our interpretation, a number of United States Courts of Appeals have issued decisions which have presumed the death of a missing person despite the existence of other reasonable explanations for the person's absence. These court decisions have held that a presumption of death arises under our regulations when the claimant shows that a person has been absent from his or her residence and not heard from for 7 years. Once the claimant has made this showing, these decisions state that the Secretary bears the burden of rebutting the presumption of death either by presenting evidence showing that the missing person is alive or by providing an explanation to account for the individual's absence in a manner that is consistent with continued life. As a result of these court decisions, we published Social Security Acquiescence Rulings applicable in the Third, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits which adopt this interpretation of § 404.721.

We published a Notice of Proposed Rulemaking (NPRM) on February 29, 1984, (49 FR 7405-7406), containing proposed revisions of § 404.721 which we hoped would clarify the regulation to avoid the varying interpretations of the regulation made by the courts. Under the previously proposed regulation, we would presume the death of the insured person if signed statements by persons, who were in a position to know, and other evidence showed that all three of the following requirements were met:

(1) The insured person has not had contact of any kind with any relatives, dependents, employers, or friends for at least 7 years.

(2) A diligent search was conducted with the aid of the appropriate authorities reasonably soon after the insured person's disappearance, but the search failed to locate or explain the absence of the insured person.

(3) Circumstances surrounding the insured person's disappearance allow no reasonable explanation of that person's absence other than death.

After much deliberation, we have decided that we will not adopt the rule published in the 1984 NPRM. These final regulations withdraw the NPRM published at 49 FR 7405-7406 on February 29, 1984.

In light of the Social Security Acquiescence Rulings, we are now administering two different standards with respect to presumption of death for entitlement purposes. One standard is based on our historical interpretation of the regulation; the other on the Social

Security Acquiescence Rulings issued for the seven different circuits as the result of appellate court decisions. We have reevaluated our policies and are revising the existing regulation to establish a national policy based on the interpretation set forth by the courts.

Also, we are revising the regulations to include a new section which contains information on evidence which will rebut a presumption of death. Previously, our regulations did not provide guidance on what constitutes evidence to rebut a presumption of death.

These regulations provide that the presumption of death arises when the claimant establishes an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

We are removing reference to establishing no apparent reason for the absence from § 404.721(b). We are providing rules concerning the rebuttal of a presumption of death in § 404.722, a new section to the regulations. This section provides that a presumption of death made based on § 404.721(b) will be rebutted if there is evidence available that the person is still alive or the absence can be explained in a manner consistent with continued life rather than death. We are also making a conforming change to § 404.988 (conditions for reopening) to reflect the change in § 404.721(b).

We will rescind the following Social Security Acquiescence Rulings by publishing a notice in the **Federal Register**: AR 86-6(3); AR 86-7(5); AR 86-8(6); AR 86-9(9); AR 86-10(10); AR-86-11(11); and AR 93-6(8).

These regulations were published in the **Federal Register** (59 FR 37002) as an NPRM on July 20, 1994. Interested parties were given 60 days to submit comments. We received no comments and are adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12866

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

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; and 93.805, Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

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

Dated: February 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts H and J of part 404 of 20 CFR chapter III as follows:

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

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

Authority: Secs. 205(a) and 1102 of the Social Security Act; 42 U.S.C. 405(a) and 1302.

2. Section 404.721 is amended by revising paragraph (b) to read as follows:

§ 404.721 Evidence to presume a person is dead.

* * * * *

(b) Signed statements by those in a position to know and other records which show that the person has been absent from his or her residence and has not been heard from for at least 7 years. If the presumption of death is not rebutted pursuant to § 404.722, we will use as the person's date of death either the date he or she left home, the date ending the 7 year period, or some other date depending upon what the evidence shows is the most likely date of death.

* * * * *

3. New § 404.722 is added to read as follows:

§ 404.722 Rebuttal of a presumption of death.

A presumption of death made based on § 404.721(b) can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance." In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after a woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in California. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

4. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)-(h), and (j), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), (d)-(h), and (j), 421(d), and 1302.

5. Paragraph (c)(4) introductory text and (c)(4)(i) of § 404.988 are revised to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(4) Your claim was denied because you did not prove that a person died, and the death is later established—

(i) By a presumption of death under § 404.721(b); or

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 261 and 302**

[SWH-FRL-5191-5]

RIN 2050-AD59

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is correcting minor errors in the amendments to the regulations which appeared in the **Federal Register** on February 9, 1995 (60 FR 7824).

EFFECTIVE DATES: April 17, 1995.

FOR FURTHER INFORMATION CONTACT: John Austin, (202) 260-4789.

SUPPLEMENTARY INFORMATION: In the February 9, 1995 final rule, EPA designated a number of discarded commercial chemical products, off-specification species, container residues, and spill residues as hazardous wastes. EPA is correcting typographical and omission errors in the listing of these chemicals. EPA also designated a number of substances as hazardous constituents based upon scientific studies which demonstrate that the substance has toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. In the course of EPA's determinations, final action on twelve substances was deferred. The text of the amendments to part 261, appendix VIII inadvertently lists one of the substances for which final action was deferred and also lists in error a hazardous waste designation of U389 for this substance. The substance, bis(dibutylcarbamothio) dioxodimolybdenum sulfurized (Chemical Abstracts Number 68412-26-0), was proposed as U398 not U389. EPA is deleting this inadvertent entry.

The final rule also inadvertently does not include the Appendix A list of the additions to CERCLA Section 302.4 in numerical sequence of their CAS Registry numbers. The Agency is amending Appendix A to § 302.4 to reflect the additions to Section 304.4 that were finalized by the February 9, 1994 notice.

On page 7483, the February 9, 1995 final rule states in error the compliance dates for new facilities to submit a Part B application and for permitted facilities to certify that the facility is in compliance with groundwater and financial responsibility requirements. Under section 3005(e)(3), not later than August 9, 1996, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. For newly regulated land disposal units, permitted facilities must certify that the facility is in compliance

with all applicable 40 CFR 265 groundwater monitoring and financial responsibility requirements no later than August 9, 1996.

Dated: April 5, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Accordingly, the publication on February 9, 1995 of the final regulations, which were the subject of FR Doc. 95-2983, is corrected as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE [CORRECTED]

1. On page 7850, the table for § 261.33(e) is corrected by deleting "*1P198" following the substance entry for "Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino) carbonyl]oxy] phenyl]-, monohydrochloride" in column 3 and designating the entry as Hazardous Waste No. "P198" in column one. The entries in columns one and two for the substance "Mexacarbate" are deleted and replaced by "P128" and "315-8-4" respectively.

2. On page 7851, the Chemical Abstract Number in column one of the table for § 261.33(f) is corrected to read "121-44-8" for the substance N,N-diethylethanamine, and on page 7852, "122-42-9" for Propham, and "121-44-8" for Triethylamine.

Appendix VIII to Part 261—[Corrected]

3. Appendix VIII to Part 261—Hazardous Constituents is corrected by deleting from each column the entries for "Bis(dibutylcarbamothio) dioxodimolybdenum sulfurized" on page 7853, and the Common name "Physostigmine" corresponding to "P188" is revised to read "Physostigmine salicylate" on page 7855.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION [CORRECTED]

4. On page 7859, the last entry to § 302.4 is corrected by revising the Hazardous Waste Code from "K160" to "K161".

5. Section 302.4 is amended by adding the following entries in numerical order of the CAS Registry number to Appendix A to § 302.4 to read as follows.