

Dated: March 7, 1980.

David Crosland,
Acting Commissioner, Immigration and
Naturalization.

[FR Doc. 80-7887 Filed 3-13-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors and Disability Insurance Benefits; Wage Credits for Veterans and Members of the Uniformed Services

AGENCY: Social Security Administration,
HEW.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate the rules in Subpart N of 20 CFR Part 404 to make them clearer and easier for the public to use. Generally, Subpart N contains the rules on wage credits for veterans and members of the uniformed services. We provide wage credits under the old-age, survivors, and disability insurance programs to World War II and post-World War II veterans of active military or naval service of the United States, to certain veterans who served in the armed forces of allied countries during World War II, and to members of the uniformed services who served on active duty after 1956. In addition, this subpart contains the rules under which certain deceased World War II veterans are considered (deemed) fully insured. This results in the veterans' survivors having the same benefit rights as if the veterans were actually fully insured when they died. We have clarified our current rules and provided definitions but made no basic changes in those rules; we have also removed outdated and rarely used provisions.

EFFECTIVE DATE: These regulations are effective on March 14, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Vera Schlosser, 4-H-10, West High-Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301-594-7332.

SUPPLEMENTARY INFORMATION: We have recodified this subpart as part of HEW's "Operation Common Sense," a Department-wide effort to review, simplify, and reduce HEW's rules. We published our proposed recodification of Subpart N as a Notice of Proposed Rulemaking in the Federal Register on September 28, 1979 (44 FR 55899) with a 60-day comment period. No comments

were received. In the final regulations, we are making only minor editorial and typographical changes in the proposed rules.

General

The final regulations make many changes in the way we state these rules, but they make few changes in the substance of the prior regulations. The regulations explain that we provide noncontributory wage credits to individuals who served in the active military or naval service of the United States during the World War II or post-World War II period. We also provide noncontributory wage credits to certain individuals who served in the active military or naval service of allied countries during World War II. In addition, individuals get wage credits for serving on active duty or active duty for training in the uniformed services of the United States beginning in 1957, when services as members of the uniformed services were first covered for social security purposes on a contributory basis.

Reorganizing Sections

We changed the title of this subpart to more accurately reflect the content and we reorganized the sections so that the sequence is more logical. We added subtitles to highlight important rules and to make them easier to find. We also arranged the rules in outline form for the convenience of the user.

Definitions

We added a new section (§ 404.1302) to define terms that are used in this subpart. We also added definitions to certain sections where they specifically apply.

Wage Credits for World War II Veterans and Veterans of Post-World War II Service

A wage credit is the (deemed) amount of dollars we add for each month or part of a month the veteran was in the active military or naval service of the United States during the World War II or post-World War II period (§ 404.1340). These wage credits are added after an application for monthly benefits or a lump-sum death payment is filed. We use these wage credits when they result in entitlement to a monthly benefit, a higher monthly benefit amount, or a lump-sum death payment. They are also used to establish a period of disability. The wage credits are used instead of the actual amounts earned by the veteran while in the active military or naval service because those earnings were not covered for social security purposes. For purposes of these regulations the

"World War II period" is the period September 16, 1940, through July 24, 1947; and the "post-World War II period" is the period July 25, 1947, through December 31, 1956.

We discuss in §§ 404.1310-404.1313 who may qualify as a World War II veteran, how we determine whether the 90-day active service requirement for a World War II veteran is met, what we consider to be World War II active military or naval service, and what we do not consider to be World War II active military or naval service. In §§ 404.1320-404.1323 we discuss similar rules that apply to post-World War II veterans.

There are circumstances when wage credits cannot be granted to World War II or post-World War II veterans. The limits on granting wage credits and the exceptions to the limits are described in §§ 404.1342 and 404.1343.

Wage Credits for Members of the Uniformed Services

We have added provisions explaining that individuals also get wage credits for serving on active duty or active duty for training in the uniformed services of the United States beginning in 1957. We refer to these individuals as members of the uniformed services. We discuss in § 404.1330 who may qualify as a member of a uniformed service.

Service of members of the uniformed services is covered for social security purposes. These individuals get wage credits for each calendar quarter in 1957 through 1977 or for each calendar year beginning in 1978 for active duty or active duty for training in addition to the wages they were paid as a member of a uniformed service. The amount of wage credits they get is based on the wages they are paid for their service. The rules are described in § 404.1341.

We added the rules on members of the uniformed services to this subpart because wage credits for them are in several respects similar to those given World War II veterans and veterans of post-World War II service. There are, however, some differences. For instance, World War II and post-World War II veterans receive wage credits based on the length of active military or naval service, type of separation from active military or naval service, and in some cases whether the veterans are receiving other Federal benefits based on their active military or naval service. However, members of the uniformed services receive wage credits regardless of length of service, type of separation, or receipt of other Federal benefits based on their service as members of the uniformed services.

Deemed Insured Status for World War II Veterans

Section 404.1350 explains that certain deceased World War II veterans are considered (deemed) fully insured. This section also explains how we compute benefits for their survivors. In § 404.1351 we describe when deemed insured status does not apply.

Effect of Other Benefits on Payment of Social Security Benefits and Payments

When social security benefits are based on deemed insured status (§ 404.1350) for a World War II veteran and the veteran's survivor is also eligible for compensation or a pension from the Veterans Administration (VA), this may result in an erroneous social security payment. Similarly, when social security benefits are based on wage credits for a World War II or post-World War II veteran, and the veteran or his or her survivor is eligible for another Federal benefit (other than from the VA), this may result in an erroneous social security payment. Sections 404.1360 and 404.1361 describe how we determine when an erroneous payment is made and §§ 404.1362 and 404.1363 describe how we determine the amount of erroneous payments.

Evidence of Active Service and Membership in a Uniformed Service

Section 404.1370 describes the types of evidence we request when an individual files an application for monthly benefits or a lump-sum death payment based on active military or naval service during the World War II or post-World War II period. Section 404.1371 describes the kinds of evidence we accept to show entitlement to wage credits for membership in a uniformed service during the years 1957 through 1967.

Provisions Deleted or Extensively Modified

1. The terms "World War II veteran" and "veteran of post-World War II service" do not include an individual who died while in the active military or naval service and whose death was inflicted as punishment for a military or naval offense under the laws of the United States or an allied country. We have removed this seldom used provision from the regulations, but the rule will be used in any case where it applies.

2. The limits on granting wage credits to World War II and post-World War II veterans do not apply if using them reduces the veteran's primary insurance amount (§ 404.203(a)) by 50 cents or less. We have removed this rarely applicable

provision from the regulations, but the rule will be used when appropriate.

3. We have removed the rules explaining that a parent of a deceased veteran filing for parent's insurance benefits has 2 years from the date of the veteran's death to file evidence of support from the veteran because these rules are contained in Subpart G of Part 404.

4. Individuals who were on active service with the commissioned corps of the United States Public Health Service during the post-World War II period are considered post-World War II veterans regardless of whether they were on detail to a service department. Also, individuals who were on active service in the commissioned corps of the United States Coast and Geodetic Survey during the post-World War II period are considered post-World War II veterans regardless of whether they were on detail to a service department. To avoid confusion, these provisions have been revised to state that individuals who were on active service with the commissioned corps of the United States Public Health Service or the United States Coast and Geodetic Survey during the post-World War II period are considered post-World War II veterans.

Adoption of Final Rules

As previously stated, we published this subpart as a Notice of Proposed Rulemaking in the *Federal Register* on September 28, 1979 (44 FR 55899) with a 60-day comment period. We received no public comments and in the final regulations we are making only editorial and typographical changes. Accordingly, these regulations are adopted as set forth below.

(Catalog of Federal Domestic Assistance program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors' Insurance.)

Dated: January 30, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: March 6, 1980.

Nathan J. Stark,

Acting Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended by revising Subpart N to read as follows:

Subpart N—Wage Credits for Veterans and Members of the Uniformed Services

General

Sec.

404.1301 Introduction.

404.1302 Definitions.

World War II Veterans

- 404.1310 Who is a World War II veteran.
- 404.1311 Ninety-day active service requirement for World War II veterans.
- 404.1312 World War II service included.
- 404.1313 World War II service excluded.

Post-World War II Veterans

- 404.1320 Who is a post-World War II veteran.
- 404.1321 Ninety-day active service requirement for post-World War II veterans.
- 404.1322 Post-World War II service included.
- 404.1323 Post-World War II service excluded.

Separation from Active Service

- 404.1325 Separation from active service under conditions other than dishonorable.

Members of the Uniformed Services

- 404.1330 Who is a member of a uniformed service.

Amounts of Wage Credits and Limits on Their Use

- 404.1340 Wage credits for World War II and post-World War II veterans.
- 404.1341 Wage credits for a member of a uniformed service.
- 404.1342 Limits on granting World War II and post-World War II wage credits.
- 404.1343 When the limits on granting World War II and post-World War II wage credits do not apply.

Deemed Insured Status for World War II Veterans

- 404.1350 Deemed insured status.
- 404.1351 When deemed insured status does not apply.
- 404.1352 Benefits and payments based on deemed insured status.

Effect of Other Benefits on Payment of Social Security Benefits and Payments

- 404.1360 Veterans Administration pension or compensation payable.
- 404.1361 Federal benefit payable other than by Veterans Administration.
- 404.1362 Treatment of social security benefits or payments where Veterans Administration pension or compensation payable.
- 404.1363 Treatment of social security benefits or payments where Federal benefit payable other than by Veterans Administration.

Evidence of Active Service and Membership in Uniformed Service

- 404.1370 Evidence of active service and separation from active service.
- 404.1371 Evidence of membership in a uniformed service during the years 1957 through 1967.

Authority: Secs. 205, 210, 217, 229, and 1102 of the Social Security Act, as amended, 53 Stat. 1368, as amended, 64 Stat. 494, 64 Stat. 512, as amended, 81 Stat. 833 as amended, 49 Stat. 647 as amended; 42 U.S.C. 405, 410, 417, 429, and 1302.

General

§ 404.1301 Introduction.

(a) The Social Security Act (Act), under section 217, provides for noncontributory wage credits to veterans who served in the active military or naval service of the United States from September 16, 1940, through December 31, 1956. These individuals are considered World War II or post-World War II veterans. The Act also provides for noncontributory wage credits to certain individuals who served in the active military or naval service of an allied country during World War II. These individuals are considered World War II veterans. In addition, certain individuals get wage credits, under section 229 of the Act, for service as members of the uniformed services on active duty or active duty for training beginning in 1957 when that service was first covered for social security purposes on a contributory basis. These individuals are considered members of the uniformed services.

(b) World War II or post-World War II veterans receive wage credits based on the length of active military or naval service, type of separation from service and, in some cases, whether the veteran is receiving another Federal benefit. However, a member of a uniformed service receives wage credits regardless of length of service, type of separation, or receipt of another Federal benefit.

(c) The Social Security Administration (SSA) uses these wage credits, along with any covered wages or self-employment income of the veteran or member of a uniformed service, to determine entitlement to, and the amount of, benefits and the lump-sum death payment that may be paid to them, their dependents or survivors under the old-age, survivors', and disability insurance programs. These wage credits can also be used by the veteran or member of the uniformed service to meet the insured status and quarters of coverage requirements for a period of disability.

(d) This subpart tells how veterans or members of the uniformed services obtain wage credits, what evidence of service SSA requires, how SSA uses the wage credits, and how the wage credits are affected by payment of other benefits.

(e) This subpart explains that certain World War II veterans who die are considered (deemed) fully insured. This gives those veterans' survivors the same benefit rights as if the veterans were actually fully insured when they died.

(f) The rules are organized in the following manner:

(1) Sections 404.1310-404.1313 contain the rules on World War II veterans. We discuss who may qualify as a World War II veteran, how we determine whether the 90-day active service requirement for a World War II veteran is met, what we consider to be World War II active military or naval service, and what we do not consider to be World War II active military or naval service.

(2) Sections 404.1320-404.1323 contain the rules on post-World War II veterans. We discuss who may qualify as a post-World War II veteran, how we determine whether the 90-day active service requirement for a post-World War II veteran is met, what we consider to be post-World War II active military or naval service, and what we do not consider to be post-World War II active military or naval service.

(3) In § 404.1325 we discuss what is a "separation under conditions other than dishonorable." The law requires that a World War II or post-World War II veteran's separation from active military or naval service be other than dishonorable for the veteran to get wage credits.

(4) Section 404.1330 contains the rules on members of the uniformed services. We discuss who may qualify as a member of a uniformed service.

(5) In §§ 404.1340-404.1343, we discuss the amount of wage credits for veterans and members of the uniformed services, situations which may limit the use of wage credits for World War II and post-World War II veterans, and situations in which the limits do not apply.

(6) Sections 404.1350-404.1352 contain the rules on deemed insured status for World War II veterans. We discuss when deemed insured status applies, the amount of wage credits used for deemed insured World War II veterans, how the wage credits affect survivors' social security benefits, and when deemed insured status does not apply.

(7) Sections 404.1360-404.1363 contain the rules on the effect of other benefits on the payment of social security benefits and lump-sum death payments based on wage credits for veterans. We discuss what happens when we learn of a determination that a Veterans Administration pension or compensation is payable or that a Federal benefit is payable before or after we determine entitlement to a monthly benefit or lump-sum death payment based on the death of the veteran.

(8) Sections 404.1370 and 404.1371 contain the rules on what we accept as evidence of a World War II and post-World War II veteran's active military or naval service, including date and type

of separation, and what we accept as evidence of entitlement to wage credits for membership in a uniformed service during the years 1957 through 1967.

§ 404.1302 Definitions.

As used in this subpart—

"Act" means the Social Security Act, as amended.

"Active duty" means periods of time an individual is on full-time duty in the active military or naval service after 1956 and includes active duty for training after 1956.

"Active service" means periods of time prior to 1957 an individual was on full-time duty in the active military or naval service. It does not include totaling periods of active duty for training purposes before 1957 which are less than 90 days.

"Allied country" means a country at war on September 16, 1940, with a country with which the United States was at war during the World War II period. Each of the following countries is considered an allied country: Australia, Belgium, Canada, Czechoslovakia, Denmark, France, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Union of South Africa, and the United Kingdom.

"Domiciled in the United States" means an individual has a true, fixed, and permanent home in the United States to which the individual intends to return whenever he or she is absent.

"Federal benefit" means a benefit which is payable by another Federal agency (other than the Veterans Administration) or an instrumentality owned entirely by the United States under any law of the United States or under a program or pension system set up by the agency or instrumentality.

"Post-World War II period" means the time period July 25, 1947, through December 31, 1956.

"Reserve component" means Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, National Guard of the United States or Air National Guard of the United States.

"Resided in the United States" means an individual had a place where he or she lived, whether permanently or temporarily, in the United States and was bodily present in that place.

"Survivor" means you are a parent, widow, divorced wife, widower, or child of a deceased veteran or member of a uniformed service.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"Veteran" means an individual who served in the active military or naval service of the United States and was discharged or released from that service under conditions other than dishonorable. For a more detailed definition of the World War II veteran and a post-World War II veteran, see §§ 404.1310 and 404.1320.

"Wage credit" means a dollar amount we add to the earnings record of a veteran of the World War II or the post-World War II period. It is also a dollar amount we add to the earnings record of a member of a uniformed service who was on active duty after 1956. The amount is set out in the Act and is added for each month, calendar quarter, or calendar year of service as required by law.

"We", "us", or "our" means the Social Security Administration.

"World War II period" means the time period September 16, 1940, through July 24, 1947.

"You" or "your" means a veteran, a veteran's survivor or a member of a uniformed service applying for or entitled to a social security benefit or a lump-sum death payment.

World War II Veterans

§ 404.1310 Who is a World War II veteran.

You are a World War II veteran if you were in the active service of the United States during the World War II period and, if no longer in active service, you were separated from that service under conditions other than dishonorable after at least 90 days of active service. The 90-day active service requirement is discussed in § 404.1311.

§ 404.1311 Ninety-day active service requirement for World War II veterans.

(a) The 90 days of active service required for World War II veterans do not have to be consecutive if the 90 days were in the World War II period. The 90-day requirement cannot be met by totaling the periods of active duty for training purposes which were less than 90 days.

(b) If, however, all of the 90 days of active service required for World War II veterans were not in the World War II period, the 90 days must (only in those circumstances) be consecutive if the 90 days began before September 16, 1940, and ended on or after that date, or began before July 25, 1947, and ended on or after that date.

(c) The 90 days of active service is not required if the World War II veteran died in service or was separated from service under conditions other than dishonorable because of a disability or injury which began or worsened while performing service duties.

§ 404.1312 World War II service included.

Your service was in the active service of the United States during the World War II period if you were in the—

(a) Army, Navy, Marine Corps, or Coast Guard, or any part of them;

(b) Commissioned corps of the United States Public Health Service and were—

(1) On active commissioned service during the period beginning September 16, 1940, through July 28, 1945, and the active service was done while on detail to the Army, Navy, Marine Corps, or Coast Guard; or

(2) On active commissioned service during the period beginning July 29, 1945, through July 24, 1947, regardless of whether on detail to the Army, Navy, Marine Corps, or Coast Guard;

(c) Commissioned corps of the United States Coast and Geodetic Survey and were—

(1) During the World War II period—

(i) Transferred to active service with the Army, Navy, Marine Corps, or Coast Guard; or

(ii) Assigned to active service on military projects in areas determined by the Secretary of Defense to be areas of immediate military hazard; or

(2) On active service in the Philippine Islands on December 7, 1941; or

(3) On active service during the period beginning July 29, 1945, through July 24, 1947;

(d) Philippine Scouts and performed active service during the World War II period under the direct supervision of recognized military authority;

(e) Active service of an allied country during the World War II period and—

(1) Had entered into that active service before December 9, 1941;

(2) Were a citizen of the United States throughout that period of active service or lost your United States citizenship solely because of your entrance into that service;

(3) Had resided in the United States for a total of four years during the five-year period ending on the day you entered that active service; and

(4) Were domiciled in the United States on that day; or

(f) Women's Army Auxiliary Corps, during the period May 14, 1942, through September 29, 1943, and performed active service with the Army, Navy, Marine Corps, or Coast Guard after September 29, 1943.

§ 404.1313 World War II service excluded.

Your service was not in the active service of the United States during the World War II period if, for example, you were in the—

(a) Women's Army Auxiliary Corps, except as described in § 404.1312(f);

(b) Coast Guard Auxiliary;

(c) Coast Guard Reserve (Temporary) unless you served on active full-time service with military pay and allowances;

(d) Civil Air Patrol; or

(e) Civilian Auxiliary to the Military Police.

Post-World War II Veterans

§ 404.1320 Who is a post-World War II veteran.

You are a post-World War II veteran if you were in the active service of the United States during the post-World War II period and, if no longer in active service, you were separated from the service under conditions other than dishonorable after at least 90 days of active service. The 90-day active service requirement is discussed in § 404.1321.

§ 404.1321 Ninety-day active service requirement for post-World War II veterans.

(a) The 90 days of active service required for post-World War II veterans do not have to be consecutive if the 90 days were in the post-World War II period. The 90-day requirement cannot be met by totaling the periods of active duty for training purposes before 1957 which were less than 90 days.

(b) If, however, all of the 90 days of active service required for post-World War II veterans were not in the post-World War II period, the 90 days must (only in those circumstances) be consecutive if the 90 days began before July 25, 1947, and ended on or after that date, or began before January 1, 1957, and ended on or after that date.

(c) The 90 days of active service is not required if the post-World War II veteran died in service or was separated from service under conditions other than dishonorable because of a disability or injury which began or worsened while performing service duties.

§ 404.1322 Post-World War II service included.

Your service was in the active service of the United States during the post-World War II period if you were in the—

(a) Air Force, Army, Navy, Marine Corps, Coast Guard, or any part of them;

(b) Commissioned corps of the United States Public Health Service and were on active service during that period;

(c) Commissioned corps of the United States Coast and Geodetic Survey and were on active service during that period; or

(d) Philippine Scouts and performed active service during the post-World War II period under the direct supervision of recognized military authority.

§ 404.1323 Post-World War II service excluded.

Your service was not in the active service of the United States during the post-World War II period if, for example, you were in the—

- (a) Coast Guard Auxiliary;
- (b) Coast Guard Reserve (Temporary) unless you served on active full-time service with military pay and allowances;
- (c) Civil Air Patrol; or
- (d) Civilian Auxiliary to the Military Police.

Separation from Active Service**§ 404.1325 Separation from active service under conditions other than dishonorable.**

Separation from active service under conditions other than dishonorable means any discharge or release from the active service except—

- (a) A discharge or release for desertion, absence without leave, or fraudulent entry;
- (b) A dishonorable or bad conduct discharge issued by a general court martial of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or by the active service of an allied country during the World War II period;
- (c) A dishonorable discharge issued by the United States Public Health Service or the United States Coast and Geodetic Survey;
- (d) A resignation by an officer for the good of the service;
- (e) A discharge or release because the individual was a conscientious objector; or
- (f) A discharge or release because the individual was convicted by a civil court for treason, sabotage, espionage, murder, rape, arson, burglary, robbery, kidnaping assault with intent to kill, assault with a deadly weapon, or because of an attempt to commit any of these crimes.

Members of the Uniformed Services**§ 404.1330 Who is a member of a uniformed service.**

A member of a uniformed service is an individual who served on active duty after 1956. You are a member of a uniformed service if you—

- (a) Are appointed, enlisted, or inducted into—
 - (1) The Air Force, Army, Navy, Coast Guard, or Marine Corps; or
 - (2) A reserve component of the uniformed services in paragraph (a)(1) of this section (except the Coast Guard Reserve as a temporary member);
- (b) Served in the Army or Air Force under call or conscription;
- (c) Are a commissioned officer of the National Oceanic and Atmospheric

Administration or its predecessors, the Environmental Science Services Administration and the Coast and Geodetic Survey;

- (d) Are a commissioned officer of the Regular or Reserve Corps of the Public Health Service;
- (e) Are a retired member of any of the above services;
- (f) Are a member of the Fleet Reserve or Fleet Marine Corps Reserve;
- (g) Are a cadet at the United States Military Academy, Air Force Academy, or Coast Guard Academy, or a midshipman at the United States Naval Academy; or
- (h) Are a member of the Reserve Officers Training Corps of the Army, Navy or Air Force, when ordered to annual training duty for at least 14 days and while performing official travel to and from that duty.

Amounts of Wage Credits and Limits on Their Use**§ 404.1340 Wage credits for World War II and post-World War II veterans.**

In determining your entitlement to, and the amount of, your monthly benefit or lump-sum death payment based on your active service during the World War II period or the post-World War II period, and for establishing a period of disability as discussed in §§ 404.132 and 404.133, we add the (deemed) amount of \$160 for each month during a part of which you were in the active service as described in § 404.1312 or § 404.1322. For example, if you were in active service from October 11, 1942, through August 10, 1943, we add the (deemed) amount of \$160 for October 1942 and August 1943 as well as November 1942 through July 1943. The amount of wage credits that are added in a calendar year cannot cause the total amount credited to your earnings record to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

§ 404.1341 Wage credits for a member of a uniformed service.

(a) *General.* In determining your entitlement to, and the amount of your monthly benefit or a lump-sum death payment based on your wages while on active duty as a member of a uniformed service after 1956 and for establishing a period of disability as discussed in § 404.132, we add wage credits to the wages paid you as a member of that service. The amount of the wage credits and applicable time periods and the limits on the amount of the wage credits are discussed in paragraphs (b) and (c) of this section.

(b) *Amount of wage credits.* The amount of wage credits added is—

(1) \$100 for each \$300 in wages paid to you for your service in each calendar year after 1977; and

(2) \$300 for each calendar quarter in 1957 through 1977, regardless of the amount of wages actually paid you during that quarter for your service.

(c) *Limits on wage credits.* The amount of the wage credits we add cannot exceed \$1,200 for any calendar year. Also, the total of the wage credits added to wages paid you as a member of a uniformed service for that year cannot cause the total amount credited to your earnings record to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

§ 404.1342 Limits on granting World War II and post-World War II wage credits.

(a) You get wage credits for World War II or post-World War II active service only if the use of the wage credits results in entitlement to a monthly benefit, a higher monthly benefit, or a lump-sum death payment.

(b) You may get wage credits for active service in July 1947 for either the World War II period or the post-World War II period but not for both. If your active service is before and on or after July 25, 1947, we add the \$160 wage credit to the period which is most advantageous to you.

(c) You do not get wage credits for the World War II period if another Federal benefit (other than one payable by the Veterans Administration) is determined by a Federal agency or an instrumentality owned entirely by the United States to be payable to you, even though the Federal benefit is not actually paid or is paid and then terminated, based in part on your active service during the World War II period except as explained in § 404.1343.

(d) You do not get wage credits for the post-World War II period if another Federal benefit (other than one payable by the Veterans Administration) is determined by a Federal agency or an instrumentality owned entirely by the United States to be payable to you, even though the Federal benefit is not actually paid or is paid and then terminated, based in part on your active service during the post-World War II period except as explained in § 404.1343.

§ 404.1343 When the limits on granting World War II and post-World War II wage credits do not apply.

The limits on granting wage credits described in § 404.1342 (c) and (d) do not apply—

(a) If the wage credits are used solely to meet the insured status and quarters of coverage requirements for a period of

disability as described in §§ 404.132 and 404.133;

(b) If you are the widow or child of a veteran of the World War II period or post-World War II period and you are entitled under the Civil Service Retirement Act of 1930 to a survivor's annuity based on the veteran's active service and—

(1) You give up your right to receive the survivor's annuity;

(2) A benefit under the Civil Service Retirement Act of 1930 based on the veteran's active service was not payable to the veteran; and

(3) Another Federal benefit is not payable to the veteran or his or her survivors except as described in paragraph (c) of this section; or

(c) For the years 1951 through 1956, if another Federal benefit is payable by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, or the Public Health Service based on post-World War II active service but only if the veteran was also paid wages as a member of a uniformed service after 1956.

Deemed Insured Status for World II Veterans

§ 404.1350 Deemed insured status.

(a) *When deemed insured status applies.* If you are the survivor of a World War II veteran, we consider the veteran to have died fully insured as discussed in § 404.111 and we include wage credits in determining your monthly benefit or lump-sum death payment if—

(1) The veteran was separated from active service of the United States before July 27, 1951; and

(2) The veteran died within 3 years after separation from active service and before July 27, 1954.

(b) *Amount of credit given for deemed insured World War II veterans.*

(1) When we compute a survivor's benefit or lump-sum death payment, we give credit for—

(i) \$200 (for increment year purposes) for each calendar year in which the veteran had at least 30 days of active service beginning September 16, 1940, through 1950; and

(ii) An average monthly wage of \$160.

(2) If the World War II veteran was fully or currently insured without the wage credits, we add increment years (years after 1936 and prior to 1951 in which the veteran had at least \$200 in creditable earnings) to the increment years based on the veteran's wages.

§ 404.1351 When deemed insured status does not apply.

As a survivor of a World War II veteran, you cannot get a monthly

benefit or lump-sum death payment based on the veteran's deemed insured status as explained in § 404.1350 if—

(a) Your monthly benefit or lump-sum death payment is larger without using the wage credits;

(b) The Veterans Administration has determined that a pension or compensation is payable to you based on the veteran's death;

(c) The veteran died while in the active service of the United States;

(d) The veteran was first separated from active service after July 26, 1951;

(e) The veteran died after July 26, 1954; or

(f) The veteran's only service during the World War II period was by enlistment in the Philippine Scouts as authorized by the Armed Forces Voluntary Recruitment Act of 1945 (Pub. L. 190 of the 79th Congress).

§ 404.1352 Benefits and payments based on deemed insured status.

(a) *Our determination.* We determine your monthly benefit or lump-sum death payment under the deemed insured status provisions in §§ 404.1350 and 404.1351 regardless of whether the Veterans Administration has determined that any pension or compensation is payable to you.

(b) *Certification for payment.* If we determine that you can be paid a monthly benefit or lump-sum death payment, we certify these benefits for payment. However, the amount of your monthly benefit or lump-sum death payment may be changed if we are informed by the Veterans Administration that a pension or compensation is payable because of the veteran's death as explained in § 404.1360.

(c) *Payments not considered as pension or compensation.* We do not consider as pension or compensation—

(1) National Service Life Insurance payments;

(2) United States Government Life Insurance payments; or

(3) Burial allowance payments made by the Veterans Administration.

Effect of Other Benefits on Payment of Social Security Benefits and Payments

§ 404.1360 Veterans Administration pension or compensation payable.

(a) *Before we determine and certify payment.* If we are informed by the Veterans Administration that a pension or compensation is payable to you before we determine and certify payment of benefits based on deemed insured status, we compute your monthly benefit or lump-sum death payment based on the death of the

World War II veteran without using the wage credits discussed in § 404.1350.

(b) *After we determine and certify payment.* If we are informed by the Veterans Administration that a pension or compensation is payable to you after we determine and certify payment of benefits based on deemed insured status, we—

(1) Stop payment of your benefits or recompute the amount of any further benefits that can be paid to you; and

(2) Determine whether you were erroneously paid and the amount of any erroneous payment.

§ 404.1361 Federal benefit payable other than by Veterans Administration.

(a) *Before we determine and certify payment.* If we are informed by another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service before we determine and certify your monthly benefit or lump-sum death payment, we compute your monthly benefit or lump-sum death payment without using the wage credits discussed in § 404.1340.

(b) *After we determine and certify payment.* If we are informed by another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service after we determine and certify payment, we—

(1) Stop payment of your benefits or recompute the amount of any further benefits that can be paid to you; and

(2) Determine whether you were erroneously paid and the amount of any erroneous payment.

§ 404.1362 Treatment of social security benefits or payments where Veterans Administration pension or compensation payable.

(a) *Before we receive notice from the Veterans Administration.* If we certify your monthly benefit or a lump-sum death payment as determined under the deemed insured status provisions in § 404.1350 before we receive notice from the Veterans Administration that a pension or compensation is payable to you, our payments to you are erroneous only to the extent that they exceed the amount of the accrued pension or compensation payable.

(b) *After we receive notice from the Veterans Administration.* If we certify your monthly benefit or lump-sum death payment as determined under the

deemed insured status provisions in § 404.1350 after we receive notice from the Veterans Administration that a pension or compensation is payable to you, our payments to you are erroneous whether or not they exceed the amount of the accrued pension or compensation payable.

§ 404.1363 Treatment of social security benefits or payments where Federal benefit payable other than by Veterans Administration.

If we certify your monthly benefit or lump-sum death payment based on World War II or post-World War II wage credits after we receive notice from another Federal agency or instrumentality of the United States (other than the Veterans Administration) that a Federal benefit is payable to you by that agency or instrumentality based on the veteran's World War II or post-World War II active service, our payments to you are erroneous to the extent the payments are based on the World War II or post-World War II wage credits. The payments are erroneous beginning with the first month you are eligible for the Federal benefit.

Evidence of Active Service and Membership in a Uniformed Service

§ 404.1370 Evidence of active service and separation from active service.

(a) *General.* When you file an application for a monthly benefit or lump-sum death payment based on the active service of a World War II or post-World War II veteran, you must submit evidence of—

(1) Your entitlement as required by Subpart H of this part or other evidence that may be expressly required;

(2) The veteran's period in active service of the United States; and

(3) The veteran's type of separation from active service of the United States.

(b) *Evidence we accept.* We accept as proof of a veteran's active service and separation from active service—

(1) An original certificate of discharge, or an original certificate of service, from the appropriate military service, from the United States Public Health Service, or from the United States Coast and Geodetic Survey;

(2) A certified copy of the original certificate of discharge or service made by the State, county, city agency or department in which the original certificate is recorded;

(3) A certification from the appropriate military service, United States Public Health Service, or United States Coast and Geodetic Survey showing the veteran's period of active service and type of separation;

(4) A certification from a local selective service board showing the veteran's period of active service and type of separation; or

(5) Other evidence that proves the veteran's period of active service and type of separation.

§ 404.1371 Evidence of membership in a uniformed service during the years 1957 through 1967.

(a) *General.* When you file an application for a monthly benefit or lump-sum death payment based on the services of a member of a uniformed service during the years 1957 through 1967, you should submit evidence identifying the member's uniformed service and showing the period(s) he or she was on active duty during those years.

(b) *Evidence we accept.* The evidence we will accept includes any official correspondence showing the member's status as an active service member during the appropriate period, a certification of service by the uniformed service, official earnings statements, copies of the member's Form W-2, and military orders, for the appropriate period.

[FR Doc. 80-7912 Filed 3-13-80; 8:45 am]
BILLING CODE 4110-07-M

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N-0013]

Sulfuric Acid and Ammonium, Calcium, Potassium, and Sodium Sulfates; Affirmation of Grasp Status

Correction

In FR Doc. 80-2037, published at page 6084, on Friday, January 25, 1980, on page 6086, in the first column, in the sixth line of § 184.1143(a), "Sulfuric acid and with ammonium" should be corrected to read "sulfuric acid with ammonium".

BILLING CODE 1505-01-M

21 CFR Part 186

[Docket No. 76G-0108]

Indirect Food Substances Affirmed as Generally Recognized as Safe; Sodium Chlorite

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that sodium chlorite is generally recognized as safe (GRAS) for use as a slimicide in

the manufacture of paper and paperboard that contact food. This action, based on an industry petition requesting such affirmation, lists the substance in the regulations as an indirect food substance affirmed as GRAS.

EFFECTIVE DATE: March 14, 1980.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In accordance with the procedures described in § 170.35 (21 CFR 170.35), Olin Chemicals, 120 Long Ridge Rd., Stamford, CT 06904 submitted a petition (GRASP 3G0013) requesting affirmation that sodium chlorite used as a slimicide in the manufacture of paper and paperboard that contact food is generally recognized as safe (GRAS). A notice of filing of the petition was published in the *Federal Register* of April 16, 1976 (41 FR 16194), and interested persons were given an opportunity to review the petition and to submit comments to the Hearing Clerk, Food and Drug Administration. No comments were received in response to this notice.

Sodium chlorite exists as slightly hygroscopic white crystals or flakes. It is manufactured by passing chlorine dioxide into a solution of sodium hydroxide and hydrogen peroxide.

Sodium chlorite has been used as a bleach in the manufacture of paper for more than 40 years, and it has been used as a paper mill slimicide since 1960. The petitioner has proposed that this ingredient be used as a slimicide in the manufacture of paper and paperboard intended for food contact. Information supplied by the petitioner indicates that, at a concentration of 125 parts per million, sodium chlorite kills at least 80 percent of the microorganisms specified in the American Society for Testing and Materials (ASTM) standard method for determining the efficacy of slimicides for the paper industry (Annual Book of ASTM Standards, Part 46 E599-77, E600-77, American Society for Testing and Materials, Philadelphia, PA 19103 (1977)). It is estimated that a maximum of about 8 parts per billion of sodium chlorite could migrate to food from packaging manufactured with 250 parts per million of the slimicide. At this low level of migration, neither sodium chlorite nor its degradation products would present any significant hazard if consumed in food.

After a comprehensive review of all data regarding the use of sodium

chlorite as a slimicide, the agency found that:

1. Sodium chlorite was not eligible for GRAS status as a paper mill slimicide based on its common use in the United States before January 1, 1958.

2. Sodium chlorite is GRAS based on the submission of sufficient safety and functionality data supporting the use requested.

3. This substance is safe for the indirect food use requested.

4. This substance performs the functional effect claimed by the petitioner.

Accordingly, the agency concludes, in accordance with § 186.1(b)(2) (21 CFR 186.1(b)(2)), that the use and level of use of sodium chlorite as set forth in the petition is GRAS.

In the past, FDA routinely adopted food grade specifications for indirect substances that it affirmed as GRAS in Part 186 (21 CFR Part 186). Recently, however, the agency has reconsidered the necessity of imposing food grade specifications on indirect GRAS substances. The agency has concluded that, as a general rule, food grade specifications are not necessary to assure the safety of an indirect GRAS substance, provided the substance is of a purity suitable for its intended use in accordance with § 170.30(h)(1) (21 CFR 170.30(h)(1)). This conclusion is based on the fact that indirect uses generally result in extremely low levels of consumer exposure to the additive and correspondingly low levels of exposure to any impurities that may be present. If food grade specifications are found necessary in a particular case to assure the safety of an indirect GRAS ingredient, the agency will include them in the regulation. The agency intends to publish a proposal in the near future to amend its procedural regulations in Part 186 to reflect this new policy regarding specifications for indirect GRAS substances.

In the case of sodium chlorite, the FDA concludes that specifications are not necessary. Therefore, the regulation governing the use of sodium chlorite as an indirect GRAS ingredient does not include food grade specifications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 186 is amended by adding new § 186.1750 to read as follows:

§ 186.1750 Sodium chlorite.

(a) Sodium chlorite (NaClO₂, CAS Reg. No. 7758-19-2) exists as slightly

hygroscopic white crystals or flakes. It is manufactured by passing chlorine dioxide into a solution of sodium hydroxide and hydrogen peroxide.

(b) The ingredient is used at levels from 125 to 250 parts per million as a slimicide in the manufacture of paper and paperboard that contact food.

Effective date. This order shall be effective March 14, 1980.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: March 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-7706 Filed 3-13-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 5, 312

Redelegations of Authority From the Commissioner of Food and Drugs; Investigational New Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations for delegations of authority relating to termination of exemptions for investigational new drugs (IND) for human use. The Associate Director for New Drug Evaluation, Bureau of Drugs, is being delegated authority to terminate an IND if a sponsor fails to submit an annual progress report. This action is being taken so that this procedural type of termination can be processed more efficiently. For purposes of clarity, the document also revises the delegation to indicate specifically that the authority delegated includes authority to make initial findings that may lead to termination. To make provisions consistent with other sections involving delegated functions, § 312.1(d) (21 CFR 312.1(d)) is amended by substituting "the Commissioner" for the existing reference to Bureau of Drugs officials.

EFFECTIVE DATE: March 14, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Under this delegation of authority the Associate Director for New Drug Evaluation, Bureau of Drugs, will be authorized to terminate an IND (investigational new drug exemption) when the sponsor has filed to respond to a request to submit the required annual

progress report. In addition, the delegation to Bureau officials to notify sponsors and invite correction is being clarified to state that it includes as well the authority to make initial findings that may lead to termination.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him or her as "acting," or unless exercise of the authority is not legally permissible.

In addition, for purposes of consistency, § 312.1(d) (21 CFR 312.1(d)) is revised by substituting "the Commissioner" for the present reference to officials of the Bureau of Drugs who have been delegated authority to make the findings set forth in that section and to notify sponsors and invite correction. This revision makes the language consistent with that of other provisions concerning delegated authority. The delegations set forth in § 5.71 (21 CFR 5.71) set forth specifically those officials of the Bureau of Drugs who may make the findings set forth in § 312.1(d), notify sponsors of these findings, and invite correction.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 5 and 312 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. In Part 5, by revising § 5.71, to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings or in animals.

(a) The Director and Deputy Director of the Bureau of Drugs are authorized to perform all the functions of the Commissioner of Food and Drugs on the termination of exemptions for new drugs for investigational use in human beings under § 312.1 and in animals under § 312.9 of this chapter, except those for biological products (unless the product is also a radioactive drug), and products under the jurisdiction of the Bureau of Biologics in § 312.1(j) of this chapter for which authority has been delegated in paragraph (b) of this section.

(1) The Associate Director for New Drug Evaluation of the Bureau of Drugs is authorized to terminate exemptions for new drugs for investigational use when sponsors fail to submit an annual