

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A157

Retroactive Payments Due to a Liberalizing Law or VA Issue

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation regarding retroactive payments of compensation, pension and dependency and indemnity compensation due to a liberalizing law or VA issue. The change is necessary to bring the regulation into conformance with a U.S. Court of Veterans Appeals' decision.

EFFECTIVE DATE: This amendment is effective June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7252.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 5110(a) and 38 CFR 3.400, awards of compensation, pension and dependency and indemnity compensation benefits are generally effective on the date VA receives the claim or the date entitlement arose, whichever is later. However, 38 U.S.C. 5110(g) provides an exception: Where benefits are awarded or increased based on a change in law or an administrative issue, benefits are awarded based on facts found but not earlier than the effective date of the law or issue and not more than one year prior to the earlier of the date of application or administrative determination of entitlement. The purpose of section 5110(g) was to provide a one-year grace period, such as that allowed after service discharge or death, for potential beneficiaries who would otherwise be penalized by not filing promptly.

The implementing regulation for section 5110(g) is 38 CFR 3.114. Section 3.114(a) states that the effective date of an award or increase made pursuant to a liberalizing law or VA issue will be made in accordance with facts found but not earlier than the effective date of the law or administrative issue. It goes on to state that, in order for a claimant to be eligible for a retroactive award, the evidence must show that he or she met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or issue and that the

eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

In *McCay v. Brown*, 9 Vet. App. 183 (1996), the U.S. Court of Veterans Appeals (the Court) noted that both section 5110(g) and § 3.114(a) are silent as to a liberalizing law or issue with a retroactive effective date. The Court stated that the requirement that the claimant must have met all eligibility criteria on the effective date of the law or issue fulfills the intent of section 5110(g) when the liberalizing law is prospective. However, the Court held that, where the liberalizing law has a retroactive effective date, it is not a permissible construction of section 5110(g) and would result in unequal treatment of claimants. This document amends § 3.114(a) to make it clear that that requirement applies only when liberalizing laws or issues take effect on or after the date of enactment or issuance.

The effective date of this amendment is June 12, 1996, the date of the Court's decision in *McCay v. Brown*, 9 Vet. App. 183 (1996).

Since this amendment merely implements a Court decision, the Secretary finds under 5 U.S.C. 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612.) Even so, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. These amendments are not substantive and do not affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 12, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.114(a) the second sentence is amended by removing "In order" and adding, in its place, "Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant".

[FR Doc. 97-9445 Filed 4-10-97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-A129

Vocational Rehabilitation; Miscellaneous Changes

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs vocational rehabilitation regulations. Changes are made to reflect current organizational structure; to decentralize decisionmaking; to update authority citations; to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on a work-study contract; and to clarify provisions.

DATES: This final rule is effective April 11, 1997. However, the restatement of statute contained in this final rule will be applied retroactively from the effective date of the statutory provision.

FOR FURTHER INFORMATION CONTACT: Jeff Goetz, Chief of Operations, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 273-7425.

SUPPLEMENTARY INFORMATION: This final rule consists of delegations of authority and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

As noted in the **SUMMARY** portion of this document, a change is made to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on

a work-study contract. Formerly, that limit was 40 percent of the total amount payable under the contract. Now the limit is the lesser of 40 percent of the total amount payable under the contract or 50 times the applicable minimum wage in effect on the date the contract is signed. This amendment to the regulations, set forth in 38 CFR 21.272(e), will be applied from October 29, 1992, the effective date of the statutory change (Pub. L. 102-568).

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule merely consists of delegations of authority and nonsubstantive changes. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 64.116)

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 26, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A, is revised to read as follows:

Authority: 38 U.S.C. 501(a), 3100-3121, unless otherwise noted.

2. Section 21.21 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.21 Election of benefits under education programs administered by the Department of Veterans Affairs.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3695(b))

3. Section 21.30 is amended by revising the authority citation to read as follows:

§ 21.30 Claims.

* * * * *

(Authority: 38 U.S.C. 501(a), 3102, 3117, 5101(a))

4. Section 21.31 is amended by revising the authority citation to read as follows:

§ 21.31 Informal claim.

* * * * *

(Authority: 38 U.S.C. 501(a), 5101(a), 5103(a))

5. Section 21.32 is amended by revising the authority citation for paragraph (c) to read as follows:

§ 21.32 Time limit.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 5101, 5113)

6. In § 21.35, paragraphs (k)(1) and (k)(2) are amended by removing "Education Service" and adding, in its place, "Counseling Division"; and paragraph (k)(2) is amended by removing "Vocational Rehabilitation Specialist"; and adding, in its place, "vocational rehabilitation specialist"; and paragraph (k)(7) is added and the authority citations for paragraphs (a) and (h) are revised, to read as follows:

§ 21.35 Definitions.

(a) * * *

(Authority: 38 U.S.C. 3101(1), 3102)

* * * * *

(h) * * *

(Authority: 38 U.S.C. 3101(8))

* * * * *

(k) * * *

(7) *Vocational rehabilitation counselor.* Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Counseling Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

7. Section 21.41 is amended by revising the authority citation to read as follows:

§ 21.41 Basic period of eligibility.

* * * * *

(Authority: 38 U.S.C. 3103)

8. Section 21.42 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.42 Basic period of eligibility deferred.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3103(b)(2))

* * * * *

9. Section 21.50 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 523, 3106(a), (d), 3116)

* * * * *

10. In § 21.57, paragraph (c)(1) is amended by removing "of an" and adding, in its place, "or an" and by adding an authority citation to read as follows:

§ 21.57 Extended evaluation.

* * * * *

(c) * * *

(1) * * *

(Authority: 38 U.S.C. 3106(d))

* * * * *

11. Section 21.72 is amended by revising the authority citations for paragraphs (a) and (c) to read as follows:

§ 21.72 Rehabilitation to the point of employability.

(a) * * *

(Authority: 38 U.S.C. 3101(5), 3104)

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3695(b))

* * * * *

12. In § 21.74, paragraph (c)(2) is amended by adding "(VR&C)" before "Officer"; paragraph (c)(3) is amended by removing "Director, Vocational Rehabilitation and Education Service" and adding, in its place, "VR&C Officer"; and the authority citation for paragraph (a) is revised and an authority citation for paragraph (b) is added, to read as follows:

§ 21.74 Extended evaluation.

(a) * * *

(Authority: 38 U.S.C. 3105(a), 3106(a))

(b) * * *

(Authority: 38 U.S.C. 3105(a))

* * * * *

13. Section 21.80 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.80 Requirement for a rehabilitation plan.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 523, 7722(c))

14. Section 21.86 is amended by revising the authority citations for paragraphs (a) and (b) to read as follows:

§ 21.86 Individualized extended evaluation plan.

(a) * * *

(Authority: 38 U.S.C. 3106(a), 3107(a))

(b) * * *

(Authority: 38 U.S.C. 3106(a), 3107(a))

15. Section 21.90 is amended by revising the section heading and the authority citation for paragraph (a) to read as follows:

§ 21.90 Individualized independent living plan.

(a) * * *

(Authority: 38 U.S.C. 3109, 3120)

* * * * *

16. Section 21.94 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.94 Changing the plan.

(a) * * *

(Authority: 38 U.S.C. 3107(b))

* * * * *

§ 21.98 [Amended]

17. In § 21.98, the heading of paragraph (c) is amended by removing "Vocational Rehabilitation and Education Service" and adding, in its place, "Director, Vocational Rehabilitation and Counseling Service"; and paragraph (c) in the first sentence and paragraph (d) are amended by removing "Vocational Rehabilitation and Education Service" and adding, in its place, "VR&C" and by removing "Vocational Rehabilitation and Counseling" and adding, in its place, "VR&C".

18. In § 21.100, paragraph (a) introductory text is amended by removing "VR&E (Vocational Rehabilitation and Education)" and adding, in its place, "Vocational Rehabilitation and Counseling (VR&C)"; paragraph (d)(1) is amended by removing "Education" and adding, in its place, "Counseling"; paragraphs (d)(1), (d)(2) introductory text, and (d)(3)(ii) are amended by removing "VR&E" and adding, in its place, "VR&C"; paragraph (d)(4) is amended by removing "VR&E" and adding, in its place, "a counseling psychologist in the VR&C Division"; and the authority citations for paragraphs (b), (d), and (e) are revised to read as follows:

§ 21.100 Counseling.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3104(a)(2))

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3118(c))

(e) * * *

(Authority: 38 U.S.C. 101(20))

19. Section 21.120 is amended by revising the authority citation for paragraph (c) to read as follows:

§ 21.120 Educational and vocational training services.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3104(a)(7), 3115(a))

20. Section 21.122 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.122 School course.

(a) * * *

(Authority: 38 U.S.C. 501(a), 3104)

* * * * *

21. Section 21.123 is amended by removing the authority citation for paragraph (a) and by revising the authority citation at the end of the section to read as follows:

§ 21.123 On-job course.

* * * * *

(Authority: 38 U.S.C. 501(a), 3104)

22. Section 21.134 is amended by revising the authority citation to read as follows:

§ 21.134 Limitation on flight training.

* * * * *

(Authority: 38 U.S.C. 3680A(b))

23. Section 21.140 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.140 Evaluation and improvement of rehabilitation potential.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3104(a)(1), (6), (9), (10), (15))

24. Section 21.148 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.148 Tutorial assistance.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3108(f))

§ 21.155 [Amended]

25. In § 21.155, paragraph (d)(1) is amended by removing "VHS&RA (Veterans Health Services and Research Administration)" and adding, in its place, "Veterans Health Administration (VHA)"; and paragraph (d)(2) is amended by removing "VHS&RA" and adding, in its place, "VHA".

26. Section 21.160 is amended by revising the authority citations for paragraphs (a), (c), (d), and (e) to read as follows:

§ 21.160 Independent living services.

(a) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(d) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(e) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3115, 3120)

27. In § 21.162, paragraph (b)(1) is amended by adding "and" at the end of the paragraph; paragraph (b)(2) is amended by removing "homes:" and adding, in its place, "homes."; paragraphs (b)(3) and (b)(4) are removed; and paragraph (a)(4), the authority citation for paragraph (a), paragraph (b) heading and introductory text, and the authority citation for paragraph (b) are revised to read as follows:

§ 21.162 Participation in a program of independent living services.

* * * * *

(a) * * *

(4) The VR&C Officer concurs in the IILP.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(b) *Considerations for the VR&C Officer.* The VR&C Officer will consider the following factors in administering programs providing independent living services:

* * * * *

(Authority: 38 U.S.C. 3120(c))

28. Section 21.180 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 21.180 Case status system.

* * * * *

(c) *Case manager.* * * * When securing medical care, treatment, and other related services, the VR&C case manager will coordinate with Veterans Health Administration (VHA) staff members who have case management responsibility for the veteran.

* * * * *

§ 21.222 [Amended]

29. In § 21.222, paragraph (c)(3) is amended by removing "VR&E" and adding, in its place, "VR&C".

30. Section 21.252 is amended by revising paragraph (a)(2)(iii) and the authority citation for paragraph (a) to read as follows:

§ 21.252 Job development and placement services.

(a) * * *

(2) * * *

(iii) The State Employment Services and the Veterans' Employment and Training Service of the United States Department of Labor;

* * * * *

(Authority: 38 U.S.C. 3117(a)(2))

* * * * *

31. In § 21.254, paragraph (c) introductory text is amended by removing "met;" and adding, in its place, "met."; and the authority citation for paragraph (b) is revised to read as follows:

§ 21.254 Supportive services.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3104(a), 3108(f))

* * * * *

32. In § 21.256, paragraph (d) is amended by removing "Director, VR&E Service," and adding, in its place, "VR&C Officer"; and by revising the authority citation following paragraph (e) to read as follows:

§ 21.256 Incentives for employers.

* * * * *

(Authority: 38 U.S.C. 3108(f), 3116(b))

* * * * *

33. In § 21.260, the section heading is revised and the authority citations for paragraphs (a) and (b) are revised to read as follows:

§ 21.260 Subsistence allowance.

(a) * * *

(Authority: 38 U.S.C. 3108(a) and (f))

(b) * * *

(Authority: 38 U.S.C. 3108)

* * * * *

34. Section 21.264 is amended by revising the section heading and the authority citations for paragraphs (a), (b), (c), and (d) to read as follows:

§ 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate.

(a) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(b) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(c) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(d) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

35. Section 21.268 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.268 Employment adjustment allowance.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3108(f))

* * * * *

36. In § 21.272, paragraph (e), the authority citations for paragraphs (a), (b), and (f), and the authority citation following paragraph (d) are revised to read as follows:

§ 21.272 Veteran-student services.

(a) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(b) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3108(f), 3485)

* * * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract (but not more than an amount equal to 50 times the applicable hourly minimum wage).

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(f) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

* * * * *

37. Section 21.276 is amended by revising the authority citation for paragraph (g) to read as follows:

§ 21.276 Incarcerated veterans.

* * * * *

(g) * * *

(Authority: 38 U.S.C. 3108(f), 3680(a))

* * * * *

38. In § 21.292, paragraph (d) is amended by removing "VR&E" and adding, in its place, "VR&C"; and paragraph (e) is revised to read as follows:

§ 21.292 Course approvals.

* * * * *

(e) *Course disapproved.* The VR&C Officer may approve for 38 U.S.C. chapter 31 use courses that one of the agencies in paragraph (c) of this section has disapproved.

(Authority: 38 U.S.C. 3115)

39. In § 21.294, paragraph (c) is amended by removing "VHS&RA" and adding, in its place, "VHA"; and paragraphs (b)(2)(i), (b)(3)(i), and (b)(3)(ii) and the authority citations for paragraphs (b) and (c) are revised to read as follows:

§ 21.294 Selecting the training or rehabilitation facility.

* * * * *

(b) * * *

(2) * * *

(i) Veterans Health Administration (VHA) facilities that provide independent living services;

* * * * *

(3) * * *

(i) Are not available through public or nonprofit agencies or VHA; or

(ii) Cannot be obtained cost-effectively from public or nonprofit agencies or VHA.

* * * * *

(Authority: 38 U.S.C. 3115, 3120)

(c) * * *

(Authority: 38 U.S.C. 3115)

* * * * *

40. Section 21.320 is amended by revising the authority citation following paragraph (b) and the authority citation for paragraph (d) to read as follows:

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

* * * * *

(Authority: 38 U.S.C. 3108 (a) and (f))

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3108 (a) and (f))

41. Section 21.324 is amended by revising the authority citation for paragraph (i) to read as follows:

§ 21.324 Reduction or termination dates of subsistence allowance.

* * * * *

(i) * * *

(Authority: 38 U.S.C. 3680(a))

* * * * *

42. Section 21.330 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.330 Apportionment.

(a) * * *

(Authority: 38 U.S.C. 5307(c))

* * * * *

43. Section 21.334 is amended by revising the section heading and the authority citations for paragraphs (b), (c), and (d) to read as follows:

§ 21.334 Election of payment at the chapter 30 rate.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3108(f))

(c) * * *

(Authority: 38 U.S.C. 3108(f))

(d) * * *

(Authority: 38 U.S.C. 3108(f))

* * * * *

44. Section 21.342 is amended by revising the authority citation to read as follows:

§ 21.342 Leave accounting policy.

* * * * *

(Authority: 38 U.S.C. 3110)

45. Section 21.344 is amended by revising the authority citation to read as follows:

§ 21.344 Facility offering training or rehabilitation services.

* * * * *

(Authority: 38 U.S.C. 3110)

46. Section 21.390 is amended by revising paragraph (c) to read as follows:

§ 21.390 Rehabilitation research and special projects.

* * * * *

(c) *Research by Vocational Rehabilitation and Counseling (VR&C) staff members.* VA will encourage research by VR&C staff members. This research will address problems affecting service delivery, initiation and continuation in rehabilitation programs, and other areas directly affecting the quality of VR&C services to veterans.

(Authority: 38 U.S.C. 3119(a))

* * * * *

47. Section 21.410 is revised to read as follows:

§ 21.410 Delegation of authority.

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Counseling staff members.

(Authority: 38 U.S.C. 512(a))

48. In § 21.430, paragraph (c) is amended by revising the heading and introductory text; and the authority citation is revised to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) *Vocational Rehabilitation and Counseling (VR&C) Officer's review of program costs.* The VR&C Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds \$25,000. The VR&C Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&C Officer approves the program costs. The services subject to this review are:

* * * * *

(Authority: 38 U.S.C. 3115(b)(4))

[FR Doc. 97-9022 Filed 4-10-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300474; FRL-5600-5]

RIN 2070-AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the pesticide propiconazole in or on the raw agricultural commodities almonds and cranberries in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propiconazole on almonds in California and cranberries in Wisconsin. This regulation establishes maximum permissible levels for residues of propiconazole in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation becomes effective April 11, 1997. Objections and requests for hearings must be received by EPA on or before June 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300474], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300474], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Such copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and

hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300474]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-6418, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the pesticide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole) in or on almond nutmeats at 0.1 part per million (ppm), in or on almond hulls at 2.5 ppm, and in or on cranberries at 1.0 ppm.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL-5572-9).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other