

## Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Illinois River Basin has caused portions of the Illinois River to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

## Background and Purpose

The Illinois River from the mouth, mile 0.0, to mile 187.3, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

## Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823 for current information.

## Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

## Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

## Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Vessels, Waterways.

## Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A temporary section 165.T02-042 is added, to read as follows:

#### § 165.T02-042 Safety Zone: Illinois River.

(a) *Location.* The Illinois River between mile 0.0 and 187.3 is established as a safety zone.

(b) *Effective Dates.* This section is effective on May 25, 1995 and will terminate on June 24, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: May 25 1995.

**S.P. Cooper,**

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

[FR Doc. 95-14558 Filed 6-13-95; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AH04

### Disease Subject to Presumptive Service Connection (Radiation Risk Activity)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends Department of Veterans Affairs (VA) adjudication regulations concerning diseases presumed to be the result of exposure to ionizing radiation. This amendment is necessary to implement Public Law 103-446, the Veterans' Benefits Improvements Act, which provides that the term "radiation risk activity" includes the onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States and by other governments. The intended effect of this amendment is to extend the presumption of service connection for radiogenic disabilities to those veterans exposed to radiation during active military service due to onsite participation in atmospheric nuclear tests conducted by nations other than the United States.

**EFFECTIVE DATE:** This amendment is effective November 2, 1994, the date of enactment of Public Law 103-446.

**FOR FURTHER INFORMATION CONTACT:** Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** The Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100-321, which was enacted May 20, 1988, established a presumption of service connection for specific radiogenic diseases arising in veterans who had been present at the occupation of Hiroshima or Nagasaki, who had potentially been exposed to ionizing radiation as prisoners of war in Japan during World War II, or who had participated onsite in a test involving the atmospheric detonation of a nuclear device.

On June 21, 1989, VA published regulations at 38 CFR 3.309 to implement the provisions of Pub. L. 100-321. The introductory language of the statute had indicated that it was to apply to veterans "who participated in atmospheric or underwater nuclear tests as part of the United States nuclear weapons testing program." In formulating the regulations, therefore, VA defined radiation risk activity as including onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States. The effect of that rulemaking was to exclude those veterans exposed to ionizing radiation during atmospheric nuclear testing by governments other than the United States from the presumption of service connection.

The Secretary determined that this rule should be revised to allow consideration of service connection on the same presumptive basis for these veterans as for veterans exposed to ionizing radiation due to atmospheric nuclear detonations conducted as a part of the U.S. testing program. Accordingly, on September 8, 1994, VA published a proposal in the **Federal Register** (59 FR 46379-46380) to amend its adjudication regulations at 38 CFR 3.309(d)(3) to extend the presumption that specified diseases are the result of in-service exposure to ionizing radiation to veterans who were present at atmospheric nuclear tests conducted by any government allied with the United States during World War II. Interested persons were invited to submit written comments, suggestions or objections on or before November 7, 1994.

On November 2, 1994, the President signed Pub. L. 103-446, the Veterans' Benefits Improvements Act. Section 501(a) of that law clarified Congressional intent on this issue by amending 38 U.S.C. 1112(c)(3)(B) to define the term "radiation-risk activity" to include onsite participation in a test involving the atmospheric detonation of a nuclear device "without regard to whether the nation conducting the test was the United States or another nation."

We received two comments in response to the proposed rule published September 8, 1994. Both comments suggested that the amendment should apply to any nuclear tests to which military personnel were assigned and that the phrases "any government allied with the United States during World War II" and "atmospheric nuclear tests conducted by allied governments" are therefore too restrictive.

We not only agree, but the suggestion is consistent with section 501 of Public Law 103-446, the Veterans' Benefits

Improvements Act of 1994. We have revised the regulation accordingly.

One comment expressed concern that literal interpretation of the phrase "onsite participation" could disqualify those veterans involved in aerial sampling, ground support and decontamination activities and suggested we expand the term "atmospheric nuclear test" to include "test activities" without requiring that the veteran had literally been present at the test site itself.

The term "onsite participation" is a statutory term (See 38 U.S.C. 1112 (c)(3)(B)(i)) that VA has interpreted to mean presence at a test site, performance of official military duties in direct support of the nuclear test during the operational period of the test itself, and duties performed during the six-month period following a test in connection with test-related projects, including decontamination activities. (See 38 CFR 3.309(d)(3)(iii)) This definition clearly precludes the possibility that veterans engaged in aerial sampling, ground support or decontamination activities would be ineligible for consideration under this regulation. In our judgment, that definition of the term "onsite participation" is sufficiently broad to assure inclusion of all veterans engaged in test activities including support, clean up, decontamination and follow-up duties, and no change in the current language of the regulation is warranted.

One comment stated that dosimeter records are not available for all tests and suggested that we revise the regulation to include an alternate method for reconstructing radiation exposure.

The statute and this implementing regulation establish the presumption that specific radiogenic diseases arising in veterans who participated in specific radiation risk activities are service-connected regardless of the amount of radiation to which the veteran was exposed. For this reason, inclusion of dose reconstruction methods in this regulation would be both unnecessary and inappropriate.

One comment recommended that we add language to the regulation setting out evidentiary requirements for establishing a veteran's participation in a test, to include review of military orders, unit history and the veteran's affidavit supported by adequate lay testimony.

Neither 38 U.S.C. 1112(c) nor 38 CFR 3.309(d) set forth specific evidentiary requirements for establishing a veteran's presence at Hiroshima, Nagasaki or an atmospheric nuclear test. Eligibility for VA benefits is determined based on the preponderance of evidence. Any

evidence that the veteran offers, whether it is documentary, testimonial or in some other form, is included in the record and considered (See 38 CFR 3.103(d)) and a veteran's statement is clearly evidence which VA must consider along with service records and all other evidence of record. In addition, by regulation VA must resolve reasonable doubt as to service origin or any other point in favor of the claimant. (See 38 CFR 3.102.) In our judgment, these provisions adequately address the concerns expressed in the comment and there is therefore no need to add language to this regulation setting forth specific evidentiary requirements.

VA appreciates both comments received in response to the proposed regulatory amendment, which is now adopted with changes as noted above. The effective date of the amendment is November 2, 1994, the date Public Law 103-446 was enacted.

The Secretary certifies that this final 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 amendment will directly affect VA beneficiaries but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109 and 64.110.

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read 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.

**§ 3.309 Disease subject to presumptive service connection. [Amended]**

2. In § 3.309, paragraph (d)(3)(ii)(A) is amended by removing the words "by the United States".

3. In § 3.309, paragraph (d)(3)(v) is amended by removing the word "The" at the beginning of the sentence, and adding in its place the words "For tests conducted by the United States, the".

4. The authority citation following § 3.309(d)(3)(vii)(D) is revised to read as follows:

**Authority:** 38 U.S.C. 1110, 1112, 1131.

[FR Doc. 95-14480 Filed 6-13-95; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-300384A; FRL-4955-6]

RIN 2070-AB78

**Oleyl Alcohol; Tolerance Exemption**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document exempts oleyl alcohol (CAS Reg. No. 143-28-2) from the requirement of a tolerance when used as a cosolvent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Henkel Corp., Emery Group, requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** This regulation becomes effective June 14, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [OPP-300384A], may 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 should be identified by the document control number and 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 copy of objections and hearing requests to: Rm. 1132, CM #2,

1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. 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 in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300384A]. 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. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8375; e-mail: acierto.amelia@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 12, 1995 (60 FR 18557), EPA issued a proposed rule that gave notice that Henkel Corp., Emery Group, 4900 Este Ave., Cincinnati, OH 45232-1491, had submitted pesticide petition (PP) 4E4335 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for oleyl alcohol when used as an inert ingredient (cosolvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents;

and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300384A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of