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## II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA provides that the Administrator must provide the Secretary of Agriculture with a copy of any regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include in the final rule when published in the **Federal Register** the comments of the Secretary and the Administrator's response to those comments. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15-day period.

## III. Do Any Regulatory Assessment Requirements Apply to this Notification?

No. This document is not a rule, merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

## IV. Will EPA Submit this Notification to Congress and the Comptroller General?

No. This action is not a rule for purposes of the Congressional Review Act (CRA), 5 U.S.C. 804(3), and will not be submitted to Congress and the Comptroller General. EPA will submit the final rule to Congress and the Comptroller General as required by the CRA.

## List of Subjects in Parts 152 and 156

Environmental protection, Administrative Practice and Procedure, Environmental Protection Agency, Labeling, Occupational Safety and Health, Pesticides and Pests, Reporting and Recordkeeping Requirements

Dated: September 13, 2000

**Joseph Merenda,**

*Acting Director, Office of Pesticide Programs.*  
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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AH67

#### Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000-01 Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) proposes to grant temporary approval of tin shot as nontoxic for hunting waterfowl and coots during the 2000-2001 season. Acute toxicity studies reveal no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tin administered to adult mallards did not adversely affect them or the offspring they produced. Tin shot is produced by the International Tin Research Institute, Ltd. (ITRI) of Uxbridge, Middlesex, England.

**DATES:** Comments on the proposed rule must be received no later than November 24, 2000.

**ADDRESSES:** Comments may be sent to the Chief, Division of Migratory Bird Management (DMBM), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634-ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-712 and 16 U.S.C. 742a-j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

The purpose of this proposed rule is to allow the hunting public to use tin shot for hunting migratory birds.

Accordingly, we are proposing to amend 50 CFR 20.21, which describes illegal hunting methods for migratory birds. Paragraph (j) of § 20.21 pertains to prohibited types of shot. We are proposing to amend § 20.21(j) to allow the use of tin shot (99.9 percent tin with <1 percent residual lead) as nontoxic shot for waterfowl and coot hunting for the 2000-01 hunting season only.

Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel, bismuth-tin, tungsten-iron, and tungsten-polymer shot are approved as nontoxic. On September 5, 2000 (65 FR 53936) we published a final rule that grants permanent approval to tungsten-matrix shot. We previously granted temporary approval for tin shot during the 1999-2000 hunting season (August 19, 1999; 64 FR 45400). Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000). We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.29 g/cm<sup>3</sup>, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment. The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997), results of a 30-day toxicity study (Wildlife International, Ltd. 1998), and results of a 150-day reproductive/chronic toxicity study (Gallagher *et al.* 2000). The toxicological report incorporates known toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration). On August 19, 1999 (64 FR 45400) we published a detailed literature review on toxicity, environmental fate, and known effect of tin on birds, as well as results from ITRI's 30-day toxicity testing of tin shot.

ITRI's chronic toxicity/reproductive study revealed no adverse effects when mallards were dosed with eight No. 4 size tin shot and monitored over a 150-day period (Gallagher *et al.* 2000). At initiation of the test (day 0), and on days 31, 60, and 90, 21 male and 22 female adult mallards were orally dosed with eight No. 4 tin shot. On the same days,

22 male and 22 female adult mallards were dosed with eight No. 4 steel shot (negative control group). An additional 4 male and 4 female mallards were dosed with a single No. 4 lead shot (positive control group). Two lead-dosed birds (1 female, 1 male) died from lead toxicosis on day 10 and 17, respectively, during the study; whereas no mortalities occurred in the other test groups. Biochemical results from blood samples collected during tests revealed no biologically meaningful treatment-related differences between the tin group and the steel shot control group. Low, but measurable levels of tin were found in the testes of males from the steel shot group and in the livers and femurs of both males and females from the tin group. Additionally, low, but measurable, levels of tin were found in the liver and gonads of offspring from the steel group and in gonads of offspring from the tin group. For all treatment groups, mean levels of tin were below the limit of detection in egg yolks and whites. Liver and kidney tissues collected for examination revealed no treatment-related abnormalities.

No significant differences occurred in egg production, fertility, or hatchability of eggs from birds dosed with tin when compared to steel-dosed ducks. No differences occurred in survival or body weight of ducklings from ducks dosed with tin when compared to ducklings from steel-dosed ducks. Blood measurements of ducklings from tin-dosed ducks were similar to measurements from ducklings from steel-dosed ducks. Overall, results of the 150-day study indicated that tin shot repeatedly administered to adult mallards did not adversely affect them, or the offspring they produced.

#### Nontoxic Shot Approval

The nontoxic shot approval process contains a tiered review system and outlines three conditions for approval of shot types. The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests discussed above, we conclude that tin shot does not pose a significant danger to migratory birds or other wildlife.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the new approval process. ITRI has

documented that tin shot meets this requirement.

The third condition for approval involves law enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated our position that a noninvasive field detection device to distinguish lead from other shot types was an important component of the nontoxic shot approval process. At that time, we stated that final approval of bismuth-tin shot would be contingent upon the development and availability of a noninvasive field detection device (60 FR 43315). We incorporated a requirement for a noninvasive field detection device in the revised nontoxic shot approval process published on December 1, 1997 (62 FR 63608); 50 CFR 20.134(b)(6). A field detection method to distinguish tin shot from lead currently is being developed by ITRI. Granting temporary approval for tin shot during the 2000–01 hunting season will facilitate completion of development of such a device. However, we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–01 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

As stated previously, this proposed rule would amend 50 CFR 20.21(j) by temporarily approving tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 hunting season only. It is based on the toxicological report, acute toxicity study, and the reproductive/chronic toxicity study submitted by ITRI. Results of these studies indicate the absence of any deleterious effects of tin shot when ingested by captive-reared mallards. The comment period for the proposed rule has been shortened to 30 days. This time frame will make it possible for tin shot, if temporarily approved, to be available for use by hunters during the 2000–01 hunting season. This will increase the number of nontoxic shot options available to hunters.

#### References

- Anderson, W.L., S.P. Havera, and B.W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi Flyway. *J. Wildl. Manage.* 64:848–857.
- Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Pure tin shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 476–102. Easton, Maryland. 322pp.
- Thomas, V.G. 1997. Application for approval of tin shot as non-toxic for the hunting of migratory birds. 26 pp.

Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

#### NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared a draft Environmental Assessment (EA) for temporary approval of tin shot in August, 2000. The EA is available to the public at the location indicated under the **ADDRESSES** caption.

#### Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall “insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat \* \* \*” We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule proposes to approve an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide one shot type in addition to the existing four that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

#### Executive Order 12866

This proposed rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866.

We invite comments on how to make this proposed rule easier to understand,

including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: [exsec@ios.doi.gov](mailto:exsec@ios.doi.gov)

#### **Paperwork Reduction Act**

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018-0067; expires 08/30/2000; renewal submitted) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information, see 50 CFR 20.134.

#### **Unfunded Mandates Reform**

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

#### **Civil Justice Reform—Executive Order 12988**

We, in promulgating this proposed rule, have determined that these

regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Takings Implication Assessment**

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

#### **List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 20, subchapter B, chapter 1 of Title

50 of the Code of Federal Regulations as follows:

#### **PART 20—[AMENDED]**

1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) to read as follows:

#### **§ 20.21 What hunting methods are illegal?**

\* \* \* \* \*

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (55 parts tungsten: 45 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, [including brant] and swans), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and further provided that:

(1) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 2000–2001 hunting season only.

(2) [Reserved]

Dated: September 13, 2000

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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