

documentation to the appropriate council identified in FAR 1.201–1, in accordance with agency procedures, for possible addition to the list in FAR 25.104.

### 1. Proposed Additions to List

Accordingly, the Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), has requested addition of yeast (active dry and instant active dry) and canned pineapple. The results of DSCP market research are summarized as follows:

a. *Active Dry Yeast and Instant Active Dry Yeasts.* Through contacts with industry, reviews of customer requirements and an analysis of market availability, DSCP has determined that there are no domestic sources for active dry yeast and instant active dry yeast. All production domestically of active dry yeast and instant active dry yeast has ceased with processing shifted to production facilities in Mexico and Canada. Active dry yeast and instant active dry yeast are key ingredients in the baking of fresh bread and yeast-raised products. Contact was made with DSCP's customers, and all have stated that there are no acceptable alternatives to the active dry yeast and instant active dry yeast, items that are fundamental in the preparation of quick breads, white breads, rolls, variety grain breads, specialty breads, and yeast-raised products such as donuts and sweet rolls.

b. *Pineapple, Solid Pack, Canned.* There are no longer any domestic sources for canned pineapple in its various solid pack forms, including rings, chunks, tidbits, and crushed. The last domestic source closed its only plant in June 2007. Domestic canned pineapple has been supplanted by cheaper, imported products. Canned pineapple is used on the menus of the U.S. Military Services and as an ingredient in certain recipes. While it has been used by the military worldwide, it is especially important to customers, such as Navy ships, that need a longer shelf life item because they have limited access to fresh fruits.

### 2. Proposed Revision of List

A previous FAR Case, 2003–007, added to the list at FAR 25.104(a) an article titled “modacrylic fur ruff” (69 FR 34241, June 18, 2004). This addition was based upon a domestic nonavailability determination approved by the Under Secretary of Defense (Acquisition, Technology and Logistics) dated December 11, 2002, for modacrylic fiber. Therefore, this rule proposes to correct the listing to read

“modacrylic fiber” in lieu of “modacrylic fur ruff.”

### 3. Publication of List for Comment

In addition, FAR 25.104(b) requires publication of the list of nonavailable articles for public comment in the **Federal Register** no less frequently than once every five years. The list was last published for comment on May 18, 2004 (69 FR 28104) (FAR Case 2004–024). The Councils are seeking comment on whether some articles on the list should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Specific information with regard to domestic production capacity in relation to U.S. Government and nongovernment demand and the quality of domestically produced items would be most helpful in determining whether articles should remain on or be removed from the list. A sources-sought notice will also be published in FedBizOpps in an effort to increase the awareness of this request.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils do not expect that there are domestic small businesses that can fulfill the Government's requirements for the proposed added items. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2009–013), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 25

Government procurement.

Dated: July 22, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

### PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### 25.104 [Amended]

2. Amend section 25.104 by removing from paragraph (a) “Modacrylic fur ruff” and adding “Modacrylic fiber” in its place, and by adding, in alphabetical order, “Pineapple, canned” and “Yeast, active dry and instant active dry”.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[Docket No. FWS–R9–MB–2009–0003; 91200–1231–9BPP]

RIN 1018–AW46

#### Migratory Bird Hunting; Approval of Tungsten-Iron-Fluoropolymer Shot Alloys as Nontoxic for Hunting Waterfowl and Coots; Availability of Draft Environmental Assessment

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

**ACTION:** Proposed rule; availability of draft environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service propose to approve tungsten-iron-fluoropolymer shot alloys for hunting waterfowl and coots. We published an advance notice of proposed rulemaking for this group of alloys in the **Federal Register** on March 3, 2009, under RIN 1018–AW46 (74 FR 9207). Having completed our review of the application materials, we have concluded that these alloys are very unlikely to adversely affect fish, wildlife, or their habitats.

**DATES:** Send comments on this proposal and/or the associated Draft Environmental Assessment by September 8, 2009.

**ADDRESSES:** *Draft Environmental Assessment:* You may obtain a copy of the draft environmental assessment

online at <http://www.regulations.gov> or by contacting the person listed under

**FOR FURTHER INFORMATION CONTACT.**

*Written Comments:* You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket Number FWS-R9-MB-2009-0003.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AW46; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

We will not accept e-mails or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

George T. Allen, Division of Migratory Bird Management, 703-358-1825.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed lead poisoning in waterfowl in an Environmental Impact Statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other

potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Tundra Composites, LLC, seeks approval of Tungsten-Iron-Fluoropolymer (TIF) shot alloys of 41.5 to 95.2 percent tungsten, 1.5 to 52.0 percent steel, and 3.5 to 8.0 percent fluoropolymer by weight as nontoxic. The tungsten and iron in this shot type have already been approved in other nontoxic shot types. The applicant did a worst-case evaluation of the potential impacts of the fluoropolymer on fish, wildlife, and their habitats.

The data from the applicant indicate that the tungsten-iron-fluoropolymer alloys will be nontoxic when ingested by waterfowl, and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that they raise no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

Many hunters believe that some nontoxic shot types do not compare favorably to lead and that they may damage some shotgun barrels, and a small percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot (Anderson *et al.* 2000), but we believe that compliance will continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important, however, is that the Fish and Wildlife Service is obligated to consider all complete nontoxic shot submissions.

We have reviewed the shot under the criteria in Tier 1 of the revised nontoxic shot approval procedures contained in 50 CFR 20.134 for permanent approval of shot as nontoxic for hunting waterfowl and coots. We propose to amend 50 CFR 20.21 (j) to add TIF shot to the list of the approved types of shot for waterfowl and coot hunting.

**Affected Environment**

*Waterfowl Populations*

In 2008, in the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1-18, 20-50, and 75-77), the total duck population estimate was  $37.3 \pm$  with a

standard error of 0.6 million birds. This was 9% lower than last year's estimate of  $41.2 \pm 0.7$  million birds, but 11% above the 1955-2007 long-term average. Mallard (*Anas platyrhynchos*) abundance was  $7.7 \pm 0.3$  million birds, similar to last year's estimate of  $8.3 \pm 0.3$  million birds and to the long-term average. Blue-winged teal (*A. discors*) estimated abundance was  $6.6 \pm 0.3$  million birds similar to last year's estimate of  $6.7 \pm 0.4$  million birds, and 45% above the long-term average. Estimated abundances of gadwall (*A. strepera*;  $2.7 \pm 0.2$  million) and northern shovelers (*A. clypeata*;  $3.5 \pm 0.2$  million) were lower than those of last year ( $-19\%$  and  $-23\%$ , respectively), but both remained 56% above their long-term averages. Estimated abundance of American wigeon (*A. americana*;  $2.5 \pm 0.2$  million) was similar to the 2007 estimate and the long-term average. Estimated abundances of green-winged teal (*A. crecca*;  $3.0 \pm 0.2$  million) and redheads (*Aythya americana*;  $1.1 \pm 0.1$  million) were similar to last year's, but were each more than 50% above their long-term averages. The redhead and green-winged teal estimates were the highest and the second highest ever for the traditional survey area. The canvasback (*A. valisineria*) estimate of  $0.5 \pm 0.05$  million was down 44% relative to 2007's record high, and 14% below the long-term average. Northern pintails (*Anas acuta*;  $2.6 \pm 0.1$  million) were 22% below last year's estimate and 36% below their long-term average. The estimate for scaup (*Aythya affinis* and *A. marila* combined),  $3.7 \pm 0.2$  million, was similar to that of 2007 and 27% below the long-term average.

*Habitats*

Habitat conditions during the 2008 Waterfowl Breeding Population and Habitat Survey were characterized in many areas by a delayed spring compared to several preceding years. Drought in many parts of the traditional survey area contrasted sharply with record snow and rainfall in the eastern survey area. The total pond estimate for Prairie Canada and the United States combined was  $4.4 \pm 0.2$  million ponds, 37% below last year's estimate of  $7.0 \pm 0.3$  million ponds and 10% lower than the long-term average of  $4.9 \pm 0.03$  million ponds. The 2008 estimate of ponds in Prairie Canada was  $3.1 \pm 0.1$  million. This was a 39% decrease from last year's estimate ( $5.0 \pm 0.3$  million), and 11% below the 1955-2007 average ( $3.4 \pm 0.03$  million). The 2008 pond estimate for the north-central United States ( $1.4 \pm 0.1$  million) was 30% lower than last year's estimate ( $2.0 \pm 0.1$  million) and 11% below the long-term

average (1.5 ± 0.02 million). The projected mallard fall-flight index was 9.2 ± 0.8 million, similar to the 2007 estimate of 10.9 ± 1.0 million birds. The eastern survey area was restratified in 2005 and is now composed of strata 51–72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*B. albeola*), American black duck (*A. rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-

breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) all were similar to their 2007 estimates and long-term averages.

**Characterization of the Shot Type**

Tungsten-Iron-Fluoropolymer shot has a density ranging from 8.0 to 12.5 grams per cubic centimeter (g/cm<sup>3</sup>), and is corrosion resistant and magnetic. Tundra Composites estimates that the volume of TIF shot for use in hunting

migratory birds in the United States will be approximately 330,000 pounds (150,000 kilograms, kg) per year.

The 8.0 g/cm<sup>3</sup> alloy is approximately the same density as steel. The other alloys are increasingly greater in sectional density. The steel in the alloys contains up to 1.3% manganese, 1.2% silicon, and 1.2% carbon by weight. The shot may have a very fine residual coating of mica from production. We expect the environmental and health effects of the mica to be negligible.

TABLE 1—COMPOSITION OF TIF SHOT ALLOYS

Alloy	Density (g/cm <sup>3</sup> )	Percent tungsten	Percent steel *	Percent fluoropolymer
1 .....	8.0	41.5–50.6	41.6–52.0	6.1–8.0
2 .....	9.5	61.0–68.7	24.8–34.0	5.0–6.6
3 .....	11.0	75.2–81.8	12.5–20.5	4.3–5.7
4 .....	12.5	85.9–96.0	1.0–10.3	3.8–5.2

\* The steel contains no more than 0.25% chromium, 0.20% copper, and 0.20% nickel. In the alloys, these percentages are no more than 0.13%, 0.1%, and 0.1%, respectively.

**Environmental Fate of the Tungsten and Iron in TIF Shot**

The tungsten and the iron in these alloys have been approved in other nontoxic shot types (see “Impact of Approval of the Shot Type”), and the submitters asserted that the alloys pose no adverse toxicological risks to waterfowl or other forms of terrestrial or aquatic life. The metals in the alloys are insoluble under normal hot and cold. Neither manufacturing the shot nor firing shotshells containing the shot will alter the metals or the fluoropolymer, or change how they dissolve in the environment.

**Possible Environmental Concentrations for the Manganese and Silicon and Fluoropolymer in TIF Shot in Terrestrial Systems**

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (ha) (50 CFR 20.134). These calculations assume that the shot dissolves promptly and completely after deposition. Because the tungsten and iron have been approved in other nontoxic shot types, we focus on the manganese and silicon in the alloys.

The EEC for the manganese in TIF shot would be approximately 0.11 parts per million. The maximum increase in environmental concentration for manganese in terrestrial settings would be 23.1 micrograms per liter. If the shot were completely dissolved or eroded, the EEC in soil is much less than the 50th percentile of typical background

concentrations for manganese in soils of the United States.

If totally dissolved, the shot would produce a silicon concentration of 0.1082 parts per million (ppm), or 0.07 kg/ha/year. Silicon is not found free in nature, but combines with oxygen and other elements in nature to form silicates (LANL 2003; USGS 2009). Silicates constitute more than 25% of the Earth's crust (USGS 2009). Sand, quartz, rock crystal, amethyst, agate, flint, jasper, and opal are some of the forms in which the oxide appears (LANL 2003). Thus, the silicon from TIF shot would be insignificant.

**Possible Environmental Concentrations for the Manganese, Silicon, and Fluoropolymer in the TIF Shot in Aquatic Systems**

The EEC for water assumes that 69,000 number 4 shot are completely dissolved in 1 ha of water 30.48 centimeters deep. The submitter then calculates the concentration of each metal in the shot if the shot pellets dissolve completely. The analyses assume complete dissolution of the shot type containing the highest proportion of each metal in the range of alloys submitted.

The maximum EEC for manganese is 23.1 ppm. There are no U.S. Environmental Protection Agency (EPA) acute or chronic quality criteria available for manganese for freshwater or saltwater. However, the State of Colorado has acute and chronic freshwater quality criteria for manganese of 2,986 ppm and 1,650 ppm, respectively (assuming a hardness

of 100 mg/L as CaCO<sub>3</sub>). The manganese from TIF shot would lead to a fraction of these concentrations, so we believe that the manganese from TIF shot will not pose a threat to the environment.

The EEC for silicon from TIF shot would be 21.4 ppm. The EPA has set no acute or chronic criteria for silicon in freshwater or saltwater. Furthermore, silicates are commonly present in many soils and sediments.

For the fluoropolymer in the shot, the EEC in aquatic systems would be 273.1 ppm. We believe this value has little meaning, given the insolubility of the fluoropolymer.

**In Vitro Solubility Evaluation of TIF Shot**

When nontoxic shot is ingested by waterfowl, both physical breakup of the shot and dissolution of the metals that comprise the shot may occur in the highly acidic environment of the gizzard. In addition to the standard Tier 1 application information (50 CFR 20.134), Tundra Composites provided the results of an in vitro gizzard simulation test conducted to quantify the release of metals in solution under the prevailing pH conditions of the avian gizzard. The metal concentrations released during the simulation test were, in turn, compared to known levels of metals that cause toxicity in waterfowl. The evaluation followed the methodology of Kimball and Munir (1971) as closely as possible.

The test solution pH averaged 2.01 over the 14-day test period and the average temperature of the digestion solution averaged 41.8 °C. In the test,

the average amount of nickel, copper, and chromium released from 8 TIF shot/day was 0.037 mg, 0.017 mg, and 0.024 mg, respectively.

It is reasonable to expect that if the *in vitro* gizzard simulation test conditions had degraded the fluoropolymer in the TIF shot, fluoride would be present in the digestion solution. However, the fluoropolymer present in TIF shot is extremely resistant to degradation. The formation of hazardous decomposition by-products from the fluoropolymer occurs only at temperatures over 300 °C. A representative fluoropolymer, polytetrafluoroethylene, will endure 260 °C for more than 2 years until failure due to degradation (Imbalzano 1991). The applicant concluded that the fluoride concentrations in the solution were background levels of fluoride in the digestion solution, rather than a decomposition by-product of the fluoropolymer. This conclusion was supported by the variability and lack of a trend in the estimated fluoride concentrations (Day 0 concentrations were greater than Day 14 concentrations). Perfluorooctanoic acid (PFOA) is not used in the manufacture or formulation of the fluoropolymer present in TIF shot because it has been identified as a persistent global contaminant (EPA 2003).

The testing completed by the applicant indicates that TIF shot is highly resistant to degradation, and poses little risk to waterfowl or other biota if ingested in the field. The slow breakdown of the shot only permits metals to be released at concentrations that are substantially below toxic levels of concern in waterfowl. Furthermore, the fluoropolymer present in TIF shot will not degrade if ingested by waterfowl.

### Impacts of Approval of the Shot Type

#### Effects of the Metals

We have previously assessed and approved various alloys containing tungsten, and/or iron as nontoxic for hunting waterfowl (*e.g.* 66 FR 737, January 4, 2001; 68 FR 1388, January 10, 2003; 69 FR 48163, August 9, 2004; 70 FR 49194, August 23, 2005; and 71 FR 4294, January 26, 2006). We have approved alloys of almost 100% of both tungsten and iron. Approval of TIF alloys raises no new concerns about approval of the tungsten or the iron in TIF shot.

#### Manganese

Manganese is an essential nutrient for both plants and animals. In animals, manganese is associated with growth, normal functioning of the central

nervous system, and reproductive function. In plants, manganese is essential for the oxidation-reduction process (EPA 2007). Manganese compounds are important soil constituents, and the 50th percentile of typical background concentrations for manganese range from 400 kg dry weight in eastern U.S. soils to 600 kg dry weight in western U.S. soils.

One number 4 TIF shot contains approximately 0.001 gram of manganese. The geometric mean of avian No Observed Adverse Effect Level (NOAEL) values for reproduction and growth that were identified by the EPA in its derivation of an Ecological Soil Screening Level (Eco-SSL) for manganese was 179 kg of body weight per day (EPA 2007). Based upon the avian NOAEL of 179 milligrams of manganese per kilogram of body weight per day, a 2-kg bird could safely consume about 352 TIF shot per day without suffering from the consumption of the shot. Similarly for mammals, the geometric mean of mammalian NOAEL values for reproduction and growth that were identified by the EPA in its derivation of an Eco-SSL for manganese was 51.5 milligrams of manganese per kilogram of body weight per day (EPA 2007). Based upon the mammalian NOAEL of 51.5 milligrams of manganese per kilogram of body weight per day, a 1-kg mammal could safely consume approximately 50 TIF shot per day without suffering manganese toxicosis.

There are no EPA acute or chronic or freshwater saltwater criteria for manganese. However, Colorado acute and chronic freshwater criteria are 2,986 micrograms per liter and 1,650 micrograms per liter, respectively (assuming a hardness of 100 milligrams per liter as CaCO<sub>3</sub>) (5 CCR 1002–31).

The aquatic EEC for manganese is 23.1 micrograms per liter when we assume complete dissolution of the 69,000 shot in 1 ha of water 30.48 cm deep. Therefore, the manganese from TIF shot should not pose an environmental problem in aquatic environments.

Based upon available NOAEL values, birds and mammals would have to ingest in excess of 50 TIF shot per day before manganese toxicosis could occur. Assuming complete erosion of all shot, the EEC of manganese in soil is much less than the 50th percentile of typical background concentrations for manganese in soils of the United States. The EEC for manganese is well below both the acute and chronic criteria for freshwater from the State of Colorado, assuming complete dissolution of the shot. In sum, the manganese in TIF shot will result in very minimal estimated

exposure concentrations to wetland biota.

#### Nickel

No reproductive or other effects were observed in mallards consuming the equivalent of 102 milligrams of nickel as nickel sulfate each day for 90 days (Eastin and O'Shea 1981). Therefore, the 0.037 milligram of nickel released from 8 TIF shot per day will pose no risk of adverse effects to waterfowl. In addition, metallic nickel likely is absorbed less from the gastrointestinal tract than is the nickel sulfate used in the mallard reproduction study.

#### Copper

The maximum tolerable level of dietary copper during the long-term growth of chickens and turkeys has been reported to be 300 kg (CMTA 1980). At the maximum tolerable level for chronic exposure of 300 kg for poultry, a 1.8-kg chicken consuming 100 g of food per day (Morck and Austic 1981) would consume 30 mg copper per day (16.7 milligrams of copper per kilogram of body weight per day). Since the average amount of copper released from 8 TIF shot per day would be 0.017 mg, a bird would have to ingest in excess of 1000 TIF shot to exceed the maximum tolerable level.

Dietary levels of 10.0 mg chromium(III)/kilogram for 10 weeks depressed survival in young black ducks (Haseltine *et al.* 1985), but no adverse effects were observed in chickens exposed to 100 ppm dietary chromium(VI) in a 32-day study (Rosomer *et al.* 1961). Therefore, the average amount of chromium released from 8 TIF shot/day of 0.024 mg will pose no risk of adverse effects to waterfowl.

#### Effects of Silicon

We found no data for assessing acute or chronic toxicity of the silicon present in TIF shot. EPA has not set acute or chronic criteria for silicon in aquatic systems. However, silicon compounds are so widespread in nature, and we think it highly likely that sediments consumed incidentally by waterfowl contain silicates.

Silicon is not found free in nature, but silicates constitute more than 25% of the Earth's crust (USGS 2009), in sand, quartz, rock crystal, amethyst, agate, flint, jasper, and opal, among other rocks. Granite, hornblende, asbestos, feldspar, clay, and mica are among the numerous silicate minerals.

#### Effects of the Fluoropolymer

No data are available on acute or chronic toxicity of the fluoropolymer

used in the TIF alloys. However, fluorinated organic polymers are very stable and resistant to hydrolysis (Danish Ministry of the Environment 2004). An *in vitro* gizzard simulation test conducted with 8.0 g/cm<sup>3</sup> TIF shot showed that the fluoropolymer used in the alloys will not degrade if ingested by waterfowl. Exposure to stable fluoropolymers does not give rise to increased free fluoride concentration in the blood in humans (Danish Ministry of the Environment 2004).

Based on the information provided by the applicant and our assessment, we have little concern for problems due to organisms ingesting TIF shot or from dissolution of the shot in aquatic settings.

#### Effects of the Approval on Migratory Waterfowl

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types will likely further reduce the use of lead shot. Thus, approving additional nontoxic shot types will likely result in a minor positive long-term impact on waterfowl and wetland habitats.

#### Effects on Endangered and Threatened Species

The impact on endangered and threatened species of approval of the TIF alloys would be very small, but positive. The metals in TIF alloys have been approved in other nontoxic shot types, and we believe that the fluoropolymer is highly unlikely to adversely affect animals that consume the shot or habitats in which the shot might be used. We see no potential effects on threatened or endangered species due to approval of these alloys.

We obtained a biological opinion pursuant to section 7 of the ESA prior to establishing the seasonal hunting regulations. The hunting regulations promulgated as a result of this consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

#### Effects on Ecosystems

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion

of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the TIF alloys will have little impact on the resource.

#### Cumulative Impacts

We foresee no negative cumulative impacts of approval of the TIF alloys for waterfowl hunting. Their approval may help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of approval of TIF shot for waterfowl hunting in the United States should be positive.

#### Summary

Previous assessments of nontoxic shot types indicated that the iron and the tungsten from shot alloys should not harm aquatic or terrestrial systems. The solubility testing of TIF shot indicated that the negligible release of the metals from TIF shot (including the trace amounts of chromium, copper, and nickel released at low pH) will not be a hazard to aquatic systems or to biota. For these reasons, and in accordance with 50 CFR 20.134, we propose to approve TIF shot as nontoxic for hunting waterfowl and coots, and propose to amend 50 CFR 20.21(j) accordingly. Our approval is based on the toxicological report, acute toxicity studies, reproductive/chronic toxicity studies, and other published research. The available information indicates that the TIF alloys should be nontoxic when ingested by waterfowl and that they pose no significant danger to migratory birds, other wildlife, or their habitats.

#### Literature Cited

For a complete list of the literature cited in this proposed rule, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot

guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

#### Required Determinations

##### *Regulatory Planning and Review (E.O. 12866)*

The Office of Management and Budget (OMB) has determined that this rule is not significant under E.O. 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to continue actions they have been able to take under the regulations—actions specifically designed to improve the economic viability of those entities—and, therefore, will not significantly affect them economically. We certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not “significantly or uniquely” affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. It will not be a “significant regulatory action” under the Unfunded Mandates Reform Act.

*Takings*

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

*Federalism*

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the ability of States to manage themselves or their funds.

*Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

*Paperwork Reduction Act*

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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. OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018–0067, which expires April 30, 2012.

*National Environmental Policy Act*

Our Draft Environmental Assessment is part of the administrative record for this proposed regulations change. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.* and Part 516 of the U.S. Department of the Interior Manual (516 DM), approval of TIF alloys will not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

*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), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

*Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements

of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

*Compliance With Endangered Species Act Requirements*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “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” (16 U.S.C. 1536(a)(2)). We have concluded that the regulation change will not affect listed species.

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

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

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I 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:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.21 by revising paragraph (j) to read as follows:

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

\* \* \* \* \*

(j)(1) While possessing loose shot for muzzle loading or shotshells containing other than the following approved shot types.

Approved shot type*	Percent composition by weight	Field testing device**
Bismuth-tin .....	97 bismuth, and 3 tin .....	Hot Shot.®***
Iron (steel) .....	iron and carbon .....	Magnet or Hot Shot.®
Iron-tungsten .....	any proportion of tungsten, and ≥1 iron .....	Magnet or Hot Shot.®
Iron-tungsten-nickel .....	≥1 iron, any proportion of tungsten, and up to 40 nickel .....	Magnet or Hot Shot.®
Tungsten-bronze .....	51.1 tungsten, 44.4 copper, 3.9 tin, and 0.6 iron, or 60 tungsten, 35.1 copper, 3.9 tin, and 1 iron.	Rare Earth Magnet.
Tungsten-iron-copper-nickel .....	40–76 tungsten, 10–37 iron, 9–16 copper, and 5–7 nickel .....	Hot Shot® or Rare Earth Magnet.
Tungsten-matrix .....	95.9 tungsten, 4.1 polymer .....	Hot Shot.®

Approved shot type*	Percent composition by weight	Field testing device**
Tungsten-polymer .....	95.5 tungsten, 4.5 Nylon 6 or 11 .....	Hot Shot.®
Tungsten-tin-iron .....	any proportions of tungsten and tin, and ≥1 iron .....	Magnet or Hot Shot.®
Tungsten-tin-bismuth .....	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth, and 0.8 iron .....	Rare Earth Magnet.
Tungsten-tin-iron-nickel .....	65 tungsten, 21.8 tin, 10.4 iron, and 2.8 nickel .....	Magnet.
Tungsten-iron-polymer .....	41.5–95.2 tungsten, 1.5–52.0 iron, and 3.5–8.0 fluoropolymer .....	Magnet or Hot Shot.®

\* Coatings of copper, nickel, tin, zinc, zinc chloride, and zinc chrome on approved nontoxic shot types also are approved.

\*\* The information in the “Field Testing Device” column is strictly informational, not regulatory.

\*\*\* The “HOT\*SHOT” field testing device is from Stream Systems of Concord, CA.

(2) Each approved shot type must contain less than 1 percent residual lead (see § 20.134).

(3) This shot type restriction applies to the taking of ducks, geese (including brant), swans, coots (*Fulica americana*),

and any other species that make up aggregate bag limits with these migratory game birds during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

Dated: July 30, 2009.

**Will Shafroth,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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