

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: May 9, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: September 26, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–273 Filed 1–9–03; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

#### RIN 1018–AI33

### Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots

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

**ACTION:** Final rule.

**SUMMARY:** We approve shot formulated of 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-iron-nickel-tin (TINT) shot, and we believe that it does not present a significant toxicity threat to wildlife or their habitats and that further testing of the shot is not necessary. Approval of this shot provides another nontoxic option for hunters.

**DATES:** This rule takes effect on January 10, 2003.

**ADDRESSES:** Copies of the Environmental Assessment are available from the Chief of the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610.

**FOR FURTHER INFORMATION CONTACT:** Bob Blohm, Acting Chief, or John J. Kreilich, Jr., Division of Migratory Bird Management, 703–358–1714.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703B–712 and 16 U.S.C. 742 a–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.

Since the mid-1970s, we have sought to identify shot that is not significantly toxic to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000), and we believe that it will continue to increase with the approval and availability of other nontoxic shot types. Currently, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot are approved as nontoxic.

The purpose of this rule is to approve the use of TINT shot in the tested formulation (65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin by weight) for waterfowl and coot hunting. This rule amends 50 CFR 20.21(j), which describes prohibited types of shot for waterfowl and coot hunting, to allow the use of this shot.

#### Background

On October 12, 2001, we received an application (Tier 1) under 50 CFR 20.134 from ENVIRON-Metal, Inc. for approval of HEVI-SHOT™ brand of Soft Shot in a 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin formulation. The application included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. In accordance with our regulation, on May 10, 2002, we published in the **Federal Register** a proposed rule indicating our intention to approve TINT shot. We have reviewed the Tier 1 application, the supporting data, and the public comment, and the Director, U.S. Fish and Wildlife Service, has concluded that this shot does not impose a significant danger to migratory birds and other wildlife or their habitats.

In addition, since the 2000–2001 hunting season is completed, tin (99.9 percent tin with 1 percent residual lead) shot is no longer authorized for use and therefore the reference to it in 50 CFR 20.21(j) is deleted.

#### Toxicity Information

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth and can cause diarrhea, coma, and death in mammals (Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. A dietary

concentration of 94 parts-per-million (ppm) did not reduce weight gain in growing rats (Wei *et al.* 1987). Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet had detrimental effects on day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981a). EPT (1999) concluded that 250 ppm in the diet would produce no observable adverse effects. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TINT shot to fish, mammals, or birds.

Nickel is a dietary requirement of mammals, with necessary consumption set at 50 to 80 parts per billion for the rat and chick (Nielsen and Sandstead 1974). Though it is necessary for some enzymes, nickel can compete with calcium, magnesium, and zinc for binding sites on many enzymes. Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 ppm for 3 to 4 months (Phatak and Patwardhan 1950). Rats fed 1,000 ppm nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 ppm fed to young rats caused weight loss in 13 days (Schneegg and Kirchgessner 1976).

Soluble nickel salts are toxic to mammals, with an oral LD<sub>50</sub> (lethal dose) of 136 mg/kg in mice, and 350 mg/kg in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 ppm for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1950).

In chicks from hatching to 4 weeks of age, 300 ppm nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects. However, concentrations of 500 ppm or more