Dated: February 21, 2013.

Paul F. Thomas,

Director of Inspections and Compliance, U.S. Coast Guard.

[FR Doc. 2013–04866 Filed 3–1–13; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–40, RM–11691; DA 13–160]

Television Broadcasting Services; Seaford, Delaware and Dover, Delaware

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Western Pacific Broadcast, LLC (''Western Pacific''), the permittee of unbuilt station WMDE(TV), Channel 5, Seaford, Delaware, requesting an amendment of the DTV Table of Allotments to delete Channel 5 at Seaford and substitute Channel 5 at Dover, Delaware. Western Pacific further requests modification of WMDE(TV)'s construction permit to specify Dover, Delaware as the station's community license and seeks a waiver of the Commission's freeze on the filing of petitions for rulemaking by televisions stations seeking to change their community of license. Western Pacific asserts that its proposal to reallot Channel 5 to Dover is based on the technical specifications currently authorized for WMDE(TV), and therefore the new allotment will be mutually exclusive with the station's existing allotment. Western Pacific further states that its proposal meets the Commission's allotment priorities by providing Dover with its first local television service, and that Seaford will remain well-served after the reallotment because full-power noncommercial station WDPB(TV), Channel *44, will remain licensed to that community. Therefore, Western Pacific submits that this rulemaking will serve the public interest.

DATES: Comments must be filed on or before April 3, 2013, and reply comments on or before April 18, 2013.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: M. Scott Johnson and Daniel A. Kirkpatrick, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Peter Saharko, *Peter.Saharko@fcc.gov,* Media Bureau, (202) 418–1856.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 13–40, adopted February 12, 2013, and released February 13, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

Federal Communications Commission

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Delaware is amended by removing channel 5 from Seaford and adding channel 5 at Dover.

[FR Doc. 2013–04832 Filed 3–1–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2011–0077; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AY59

Migratory Bird Hunting; Revision of Language for Approval of Nontoxic Shot for Use in Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise our regulations regarding the approval of nontoxic shot types to make the regulations easier to understand. The language governing determination of Expected Environmental Concentrations (EECs) in terrestrial and aquatic ecosystems is altered to make clear the shot size and number of shot to be used in calculating the EECs. We propose to specify the pH levels to be used in calculating the EEC in water. We also propose to move the requirement for in vitro testing to Tier 1, which will allow us to better assess applications and minimize the need for Tier 2 applications. We propose to add language for withdrawal of alloys that have been demonstrated to have detrimental environmental or biological effects, or for which no suitable field-testing device is available. We expect these changes to reduce the time

required for nontoxic shot approvals. Finally, we propose to charge fees to cover our costs in evaluating these applications.

DATES: Electronic comments on this proposal via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on June 3, 2013. Comments submitted by mail must be postmarked no later than June 3, 2013. Comments on the information collection requirements are due no later than April 3, 2013.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0077.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0077; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

Submit comments on the information collection requirements to the Desk Officer for the Department of the Interior at Office of Management and Budget, Office of Information and Regulatory Affairs (OMB–OIRA) at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 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 U.S. Fish and Wildlife Service (FWS) regulates the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, we have sought to identify shot types that are not significant toxicity hazards to migratory birds or other wildlife. Producers of potential nontoxic shot alloys submit them for FWS approval under 50 CFR 20.134 as nontoxic for waterfowl hunting. We propose to revise the regulations to clarify them for applicants and to provide for withdrawal of approval of a shot type that is not readily detectable in the field or has environmental effects or direct toxicological effects on biota.

Changes in the Regulations Governing Nontoxic Shot Approval

We propose to rewrite the regulations at 50 CFR 20.134 in plain language and to change or add some provisions. We seek comment on these proposed regulations, particularly the following proposed changes:

1. Eliminating publication of a *Notice of Application* in the **Federal Register** upon receipt of an application for approval (current paragraph (b)(2)(i)(D)(*3*)). We have found that these notices engender few comments, and the public has a meaningful opportunity to participate later in the approval process.

2. Specifying that an application for approval of a nontoxic alloy must document that a shotshell loaded with shot of the alloy can be readily identified as containing nontoxic shot with a standard field shotshell testing device (proposed paragraph (b)(2)). Wildlife law enforcement officers should be able to use simple, readily available testing devices for nontoxic shotshells. Applicants have consistently provided this information, and this requirement is a negligible addition to their costs.

3. Specifying that an application for approval of a nontoxic shot must include a statement of the relative hardness of the candidate alloy, compared to standard lead shot having a hardness of 1.0. This information will help the public decide about the type of firearm in which the shot type can safely be used (proposed paragraph (e)(4)). Providing this information will not add significantly to the application preparation time or cost.

4. Revising language governing the determination of Expected Environmental Concentrations (EECs) in terrestrial and aquatic ecosystems to make clear the shot size and number of shot to be used in calculating the EECs (proposed paragraph (g)(3)). This information is not in the current regulations. This addition will reduce the application preparation time and cost because applicants have previously had to contact us about this point.

5. Adding specific pH levels to be used in calculating the EEC in water (proposed paragraph (g)(3)(ii)). This information is not in the current regulations. Specifying the pH will reduce the application preparation time and cost because applicants have previously had to contact us about this point.

6. Moving the former Tier 2 solubility testing to Tier 1 (proposed paragraph (h)). This change will allow us to better assess applications and minimize the need for Tier 2 applications. We expect it to reduce the time required for nontoxic shot approvals. This change will add to applicants' initial costs, but will speed up application reviews and will help us to avoid requiring Tier 2 testing for some applications. We estimate that applicants will incur an additional cost of $25,000 to complete the solubility testing.

7. Adding a provision for withdrawal of an approved shot type (proposed paragraph (z)). There is no provision in the current regulations for withdrawal of the approval of a shot type. For example, changes in manufacturing can render a shot type nonmagnetic despite its containing an amount of iron normally sufficient to be detectable in a loaded shotshell with a magnet. These loaded shells are then not identifiable by the method we approved when approving the shot type for use in hunting, and perhaps not by any field-testing method.

Permit Application Processing Fee

We propose to charge a fee sufficient to offset the estimated costs associated with processing and our periodic review of these permits. Revised OMB circular A–25 directs Executive Branch agencies to recover costs, stating that, ''When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).'' Further, Circular A–25 directs that, ''Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.'' Thus, the directive to the Service is to recover the costs for working with applicants and assessing nontoxic shot approval applications.

We have received less than one application per year, on average, for approval of a new nontoxic shot type per year in the last decade. However, each application requires staff review time, preparation of an environmental assessment to comply with the National Environmental Policy Act, consultation with toxicologists about the shot alloy(s), and three **Federal Register** publications, though we propose in this rule to reduce that to one standard proposed rule and a final rule.

Having considered the agency costs and the requirement to recoup those costs, we propose a Tier 1 nontoxic shot application fee of $800. That amount is $53 more than our estimated current review costs reflected in table 1, but is below the Service's costs in the near future. Likewise, we propose an additional $700 fee for evaluation of a Tier 2 application, if one is needed, and $700 more for evaluation of a Tier 3 application, if one is needed (based on current costs of $664 for each of these reviews, as shown in table 1). If the application is approved, then the applicant would incur an additional fee of $20,000 to cover costs for additional administrative review and **Federal Register** publication of the required proposed and final rule.

TABLE 1—CURRENT HOURS AND COSTS FOR PROCESSING A NONTOXIC SHOT APPROVAL APPLICATION

Task	Staff hours	Approximate cost	Review cost
Tier 1			
Review application for completeness	2	[1] $166	$747
Review by U.S. Geological Survey toxicologist	5	415	
Consult with U.S. Geological Survey toxicologist	2	166	
Tier 2			
Review of Tier 2 application	3	249	664
Review of Tier 2 application by USGS toxicologist	5	415	
Tier 3			
Review of Tier 3 application	3	249	664
Review of Tier 3 application by USGS toxicologist	5	415	
Publication Fees (if application is approved)			
Prepare draft environmental assessment and proposed rule	20	1,660	19,575
Proposed rule **Federal Register** charges		[2] 11,000	
Review comments and prepare final environmental assessment and final rule	5	415	
Final rule **Federal Register** charges		[3] 6,500	
Total	.....	21,650	

[1] Staff review costs are based on Washington, D.C. metro area salary and benefits for a GS13/10 biologist ($55.46/hour * 1.5 for benefits, or about $83/hour).
[2] Average publication cost of nontoxic shot proposed rules from 2001 through 2011 was $10,695.
[3] Average publication cost of nontoxic shot final rules from 2001 through 2011 was $6,122.50.

Public Comments

We request comments or suggestions on this proposed rule from any interested parties. You may submit comments and materials concerning this proposed rule by either one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**. Please do not submit comments by both alternatives.

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.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of our previous actions concerning this subject by mail (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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), 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 proposed rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would require additional information in the initial application and increase the application fee. As a result, companies applying for nontoxic shot approval would incur additional costs. These companies include ammunition companies. The U.S. Small Business Administration defines a ''small business'' as one with employment that meets or is below the established size standard, which is 1,000 employees for ''Small Arms Ammunition Manufacturing'' businesses (NAICS 332992). In 2010, the U.S. Census Bureau shows that about 93 percent of the 112 Small Arms Ammunition Manufacturing establishments qualify as small businesses (fewer than 1,000 employees). We receive an average of only about one application per year, so less than one percent of affected small businesses would be impacted.

The proposed rule would have minimal impact on the application process for nontoxic shot. Applicants already submit the additional application information that the regulations will require. Therefore, the information in an application would change minimally.

The proposed rule includes application fees because, as detailed in the preamble, revised OMB circular A–25 directs Executive Branch agencies to establish ''user charges * * * sufficient to recover the full cost to the Federal Government.'' A large portion of the application costs consist of **Federal Register** publication fees ($17,500, as reflected in table 1). Because we are required to publish each approved nontoxic shot application in the **Federal Register**, we are proposing to recoup publication fees from each company that applies for a nontoxic shot approval.

We have examined this proposed rule's potential effects on small entities, and have determined that it will not have a significant economic impact on a substantial number of small entities because less than one percent of small businesses would be impacted. Therefore, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

a. This proposed rule does not have an annual effect on the economy of $100 million or more. It will not change the costs for submission of shot types for approval as nontoxic.

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

c. This proposed 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 proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Regulation of nontoxic shot for migratory bird hunting does not affect small government activities.

b. This proposed rule will not produce a Federal mandate of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The proposed regulation revision will not significantly affect State regulations.

Takings

This proposed rule does not affect private property, and has no takings implications. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This proposed rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts should result because of these proposed changes to the regulation of nontoxic shot approval.

Civil Justice Reform

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

Paperwork Reduction Act

This proposed rule contains a collection of information that we are submitting to the Office of Management and Budget (OMB) for review and approval under Sec. 3507(d) of the Paperwork Reduction Act (PRA). OMB has reviewed and approved the current information collection requirements associated with the approval of nontoxic shot for use in waterfowl hunting and assigned OMB Control Number 1018–0067, which expires May 31, 2015. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

We propose to revise the regulations at 50 CFR 20.134 to add the following new requirements:

- Application must document that a shotshell loaded with shot of the alloy can be readily identified as containing nontoxic shot with a standard field shotshell testing device. Wildlife law enforcement officers should be able to use simple, readily available testing devices for nontoxic shotshells.
- Application must include a statement of the relative hardness of the candidate alloy, compared to standard lead shot having a hardness of 1.0. This information will help the public decide about the type of firearm in which the shot type can be used safely.
- Required shot size and number of shot to be used in calculating the Expected Environmental Concentrations (EECs) in terrestrial and aquatic ecosystems.
- Specific pH levels to be used in calculating the EEC in water.

We expect that the above requirements will add very little to the application preparation time or cost;

therefore, we have not increased the completion time from that currently approved. In addition to the above requirements, we are also proposing to move the former Tier 2 solubility testing to Tier 1. This change will allow us to better assess applications and minimize the need for Tier 2 applications.

We are also proposing fees for different stages of an application sufficient to offset the estimated costs associated with processing the application. See Permit Application Processing Fee, above, for an explanation of this fee. We have increased our estimate of the nonhour burden cost by including the $800 application fee for Tier 1 applications.

Title: Approval Procedures for Nontoxic Shot and Shot Coatings, 50 CFR 20.134.

OMB Control Number: 1018–0067.

Service Form Number: None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Businesses that produce and/or market approved nontoxic shot types or nontoxic shot coatings.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 1.

Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 3,200 hours.

Estimated Total Annual Burden Hours: 3,200.

Estimated Total Nonhour Burden Cost: $25,800 ($800 for application processing fees, plus $25,000 for solubility testing).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email).

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and does not require the preparation of an environmental impact statement or an environmental assessment. The changes we propose are largely to reorganize the regulations and put them into easier-to-understand language. Because the revision of 50 CFR 20.134 is administrative, it will have no environmental effects. It is categorically excluded from further NEPA requirements (43 CFR 46.210(i)).

Environmental Consequences of the Proposed Action

The changes we propose are primarily in the reorganizing and rewriting of the regulations. The environmental impacts of this action are minimal.

Socio-economic. We do not expect the proposed regulations change to have any socio-economic impacts.

Wildlife populations. This proposed regulations change does not significantly alter the approval of nontoxic shot in the United States. This proposed rule will have no effects on wildlife populations.

Endangered and Threatened Species. The proposed regulations change will have no effect on the status of threatened or endangered species.

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), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on federally recognized Indian tribes. This proposed rule will not interfere with Tribes' abilities to manage themselves or their funds or to regulate migratory bird hunting on tribal lands.

Energy Supply, Distribution or Use

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule will not affect energy supplies, distribution, or use, so it does not require a Statement of Energy Effects.

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)). The proposed regulations change would not affect listed species.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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 set forth below.

PART 20—[AMENDED]

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 16 U.S.C. 703–712 and 742 a–j; Pub. L. 106–108.

■ 2. Revise § 20.134, including the section heading, to read as follows:

§ 20.134 Approval of nontoxic shot alloys and coatings.

The U.S. Fish and Wildlife Service conducts a process to approve shot material determined not to impose a significant toxicity danger to migratory birds and other wildlife or their habitats. The regulations in this section set forth the approval process. Upon receipt of an application and supporting data submitted in accordance with this section, the Service will review the application materials together with all other relevant available evidence, including public comment. If the Director concludes that the spent shot material will not present a significant toxicity danger to migratory birds and other wildlife or their habitats, we will add the shot material to the list of approved nontoxic shot materials at 50 CFR 20.21(j).

(a) *Information collection approval.* The Office of Management and Budget approved the information collection requirements contained in this section under 44 U.S.C. 3501 et seq. and assigned OMB Control No. 1018–0067. We collect this information so that we can conduct a methodical and objective review of an alloy you submit as nontoxic for hunting waterfowl. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may submit comments on this information collection to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., Mailstop 2042–PDM, Washington, DC 20240.

(b) *Limitations on nontoxic alloy approval.* We will not approve as nontoxic any alloy or shot coating with a lead content of 1 percent or more.

(1) Before we will approve any alloy or shot coating as nontoxic, a shotshell loaded with the alloy or coated shot must be demonstrated to be identifiable as not being lead in a portable field testing device used by enforcement officers.

(2) The testing device can be regular magnets, rare-earth magnets, or the ''HOT*SHOT'' field-testing device from Stream Systems of Concord, CA. We will consider other field-testing devices that may be readily available to law enforcement officers.

(c) *Application submission and review.* We use a 3-tier strategy for approval of nontoxic alloys and shot coatings. You must submit any application for approval under this section with supporting documentation in accordance with the following procedures and must include at least the supporting materials and information for Tier 1 in the approval system. If your application is not complete, we will return it to you with an explanation of the additional information we need to initiate review of your submission.

(d) *Tier 1 application fee.* The fee for consideration of a Tier 1 application is $800. Submit the fee, payable to the U.S. Fish and Wildlife Service, with your application.

(e) *Tier 1 application.* If you wish to submit an alloy or shot coating for consideration as nontoxic for waterfowl hunting, you must provide statements of use, chemical characterization, production variability, volume of use of the candidate material, and a sample of the shot or shot coating.

(1) Provide a statement of how you propose to use the candidate material in creating waterfowl hunting shotshells.

(2) Provide a description of the chemical composition of the material comprising the shot.

(i) Provide the chemical names, Chemical Abstracts Service numbers (consult the American Chemical Society), and structures of the components of the shot.

(ii) Provide a chemical characterization for organics and organometallics for the core and/or coating, including the empirical formula, melting point, molecular weight, solubility, specific gravity, partition coefficients, hydrolysis half-life, leaching rate in water and in soil, degradation half-life, vapor pressure, stability, and other relevant characteristics for each component.

(iii) Provide data on the composition, weight, and sectional density of the shot material.

(iv) Provide data on the thickness, quantity in milligrams (mg) per shot, and chemical composition of any coating on the shot.

(3) Provide documentation that the shot can be readily identified as nontoxic with a standard field shotshell testing device.

(4) Provide a statement of the relative hardness of the candidate alloy, compared to standard lead shot having a hardness of 1.0.

(5) Provide a statement of the expected variability of shot during production.

(6) Provide an estimate of yearly volume of candidate alloy and/or coated shot expected to be produced for use in hunting migratory birds in the United States.

(7) Provide 5 pounds (approximately 2.18 kilograms (kg)) of the candidate alloy or shot with the proposed coating in size equivalent to U.S. standard size No. 4 of 0.13 inches (approximately 3.3 millimeters (mm)) in diameter.

(i) We or an independent laboratory may analyze the composition of the shot or the shot coating.

(ii) We will reject your application if the composition of the shot or shot coating differs substantially from what you describe in your application.

(f) *Toxicological effects.* You must provide information on the toxicological effects of the shot or any coating on it.

(1) Provide a summary of the acute and chronic toxicity data of the metals or compounds in the shot or the shot coating, ranking the toxicity of each. Use the following criteria to assess the toxicity of the shot or shot coating. These criteria are based on the estimated median lethal dose of the candidate alloy or shot coating. That is, the statistically derived single dose estimate of the candidate material that can be expected to cause death in 50 percent of the animals tested (LD50).

If the LD50 is	the material is considered
no more than 5 mg/kg,	super toxic.
over 5 to 50 mg/kg,	extremely toxic.
over 50 to 500 mg/kg,	very toxic.
over 500 to 5,000 mg/kg,	moderately toxic.
over 5,000 to 15,000 mg/kg,	slightly toxic.
over 15,000 mg/kg,	nontoxic.

(2) Provide a summary of known acute, chronic, and reproductive toxicological data of the chemicals comprising the shot or shot coating with respect to birds, particularly waterfowl. Include LD50 or LC50 (concentrations in water lethal to 50 percent of test populations) data, and sublethal effects, with citations.

(3) Provide a narrative description, with citations to relevant data, predicting the toxic effect in waterfowl of complete erosion and absorption of one shot or coated shot in a 24-hour period. Define the nature of the toxic effect, such as mortality, impaired reproduction, substantial weight loss, disorientation, or other relevant associated clinical observations.

(4) Provide a statement with supporting rationale and citations to relevant data about whether ingestion of the shot or shot coating by fish, amphibians, reptiles, or mammals is cause for concern. If there is a recognized impact on fish, amphibians, reptiles, or mammals, we reserve the right to require additional study of the shot or shot coating.

(g) *Environmental fate and transport.* You must provide information on the

environmental fate and transport, if any, of the shot and any coating on it.

(1) Provide a statement describing any chemical or physical alteration of the shot and shot coating upon firing.

(2) Provide an estimate of the environmental half-life of the organic or organometallic components of the shot and shot coating, and a description of the chemical form of the breakdown products of the component(s).

(3) For each metal or other component of the shot or shot coating, determine the Estimated Environmental Concentration (EEC).

(i) Determine the EEC in a terrestrial ecosystem if 69,000 U.S. standard size No. 4 shot of 0.13 in (3.3 mm) in diameter are completely dissolved in 1 hectare (ha) (107,639 square feet (ft^2)) of soil 5 centimeters (cm) (1.97 in) deep. Assess whether the EEC would exceed the clean soil standards for the Use or Disposal of Sewage Sludge at 40 CFR part 503. Explain how the estimated EEC relates to the toxicity thresholds for plants, invertebrates, fish, and wildlife.

(ii) Determine the EEC in an aquatic ecosystem if 69,000 U.S. standard size No. 4 shot of 0.13 in (3.3 mm) in diameter are completely dissolved in 1 ha, or 107,639 ft^2, of water 1 ft (30.48 cm) deep. Express the calculated concentrations in standard units such as micrograms per liter, for water with pH of 4.0, 7.0, and 9.0. Explain how the estimated EEC compares to the U.S. Environmental Protection Agency (EPA) Water Quality Criteria and toxicity thresholds in plants, invertebrates, fish, and wildlife.

(4) Conduct a risk assessment using the Quotient Method. Calculate the risk of the submitted shot material, the EEC/the Toxicological Level of Concern. For example, compare the EEC in parts per million (p/m) to an effect level such as the LD50 in p/m. Use the following criteria to assess the risk of the components of the shot or shot coating.

If the risk ratio is	then
less than 0.1,	adverse effects are not likely.
0.1 to 10.0,	adverse effects are possible.
greater than 10.0,	adverse effects are likely.

(h) *In vitro evaluation.* You must evaluate the candidate alloy or shot coating in a standardized test under conditions that will assess its erosion and any release of components into a liquid medium in an environment simulating the conditions of a waterfowl gizzard. Compare the erosion characteristics to those of lead shot and steel shot of comparable size.

(1) *Test materials.* You will need appropriate analysis equipment, such as for atomic absorption spectrophotometry or inductively coupled plasma mass spectrometry, a drilled aluminum block to support test tubes, a thermostatically controlled stirring hot plate, small Teflon®-coated magnets, hydrochloric acid of pH 2.0, pepsin, capped test tubes, and U.S. No. 4 lead, steel, and candidate alloy or shot with the proposed coating.

(2) *Test procedures.*

(i) Add hydrochloric acid and pepsin to each capped test tube at a volume and concentration that will erode a single U.S. No. 4 lead shot at the rate of 5 mg per day.

(ii) Place three test tubes, each containing lead shot, steel shot, or the candidate alloy or shot with the proposed coating in an aluminum block on the stirring hot plate. Add a Teflon®-coated magnet to each test tube and set the hot plate at 42 degrees Centigrade and 500 revolutions per minute.

(iii) Determine the erosion of shot or shot with the proposed coating daily for 14 consecutive days by weighing the shot and analyzing the digestion solution with an atomic absorption spectrophotometer.

(iv) Replicate the 14-day procedure five times.

(3) *Test analyses.* Compare erosion rates of the three types of shot by appropriate analysis of variance and regression procedures. The statistical analyses will determine whether the rate of erosion of the shot and/or shot coating is significantly greater or less than that of lead and/or steel shot. This determination is important to any subsequent toxicity testing.

(i) *Tier 1 application review.* Upon receipt of your completed Tier 1 application, we will promptly perform an overview. We will notify you within 30 days of receipt that our thorough review of the application will commence, and we will complete our review within 60 days of the date of publication. We will use half of the LD50/ft^2 in terrestrial and aquatic systems as the level of concern in evaluating your application.

(j) *Approval after Tier 1 testing.* If we determine that the Tier 1 data show that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you and request payment of a $20,000 final review and publication fee (payable to the U.S. Fish and Wildlife Service).

(1) After receipt of payment, we will publish a proposed rule in the **Federal Register** stating that we intend to approve this shot or shot coating as nontoxic and provide the public with the opportunity to comment on our decision. The proposed rule will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 1.

(2) If, after considering public comment on the proposed rule, we conclude that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will approve the shot or coating as nontoxic with publication of a final rule in the **Federal Register** and addition of the shot or coating to the list in § 20.21(j).

(k) *Additional testing.* If we conclude that the Tier 1 data are inconclusive, or if we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will advise you to proceed with some or all of the additional testing described for Tier 2, Tier 3, or both.

(1) We will inform you that we consider the Tier 1 test results to be inconclusive. We will request Tier 2, and possibly Tier 3, testing before we evaluate the shot any further.

(2) If you choose not to do further testing, we will deny approval of the candidate alloy or shot coating.

(l) *Tier 2 application fee.* The fee for consideration of a Tier 2 application is $700. Submit the fee, payable to the U.S. Fish and Wildlife Service, with your application.

(m) *Tier 2 testing.* Your Tier 2 testing procedures must be in compliance with the Good Laboratory Practice Standards (40 CFR part 160) except where they conflict with the requirements in this section or with a provision of an approved plan. We reserve the right for us or an authorized representative to inspect your laboratory facilities. We will not approve the plan and further consideration of the candidate alloy if the laboratory does not meet the Good Laboratory Practice Standards.

(n) *Tier 2 plan review.* We will review the Tier 2 testing plan you submit within 30 days of the day on which we receive it. We may decline to approve the plan, or any part of it, if we deem it deficient in any manner with regard to timing, format, or content. We will inform you regarding what parts, if any, of the submitted testing procedures to disregard and any modifications to incorporate into the Tier 2 testing plan to gain plan approval. After we accept your plan, you may conduct Tier 2 testing.

(o) *Tier 2 in vivo evaluation.* Conduct a 30-day acute toxicity test in mallards

using the following method unless we specify otherwise.

(1) *Test materials.* You will need 30 male and 30 female hand-reared mallards approximately 6 to 8 months old with plumage and body conformation of wild mallards; 60 elevated outdoor pens equipped with feeders and waterers; a laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; commercial duck maintenance mash; and lead, steel, and candidate alloy.

(2) *Test procedures.*

(i) House the mallards individually in pens and give them unrestricted access to food and water.

(ii) After 3 weeks, randomly assign them to 3 groups of 10 males and 10 females per group. Dose each duck with eight pellets of either U.S. No. 4 lead shot (positive control), steel shot (negative control), or the candidate alloy or shot with the proposed coating.

(iii) Fluoroscope each bird at 1 week after dosing to check for shot retention.

(iv) For 30 days, observe the birds daily for signs of intoxication and mortality.

(v) Determine the body weight for each bird at the time of dosing and at days 15 and 30.

(vi) On days 15 and 30, collect blood by venipuncture and determine hematocrit, hemoglobin concentration, and other measures of blood chemistry.

(vii) Euthanize all survivors on day 30. Remove the liver and other appropriate organs from each bird and those from birds that died prior to day 30.

(viii) Analyze the organs for lead and compounds contained in the candidate alloy or shot with the proposed coating.

(ix) Perform a necropsy of all birds to determine any pathological conditions.

(3) *Test analyses.*

(i) Analyze mortality among the specified groups with appropriate statistical procedures, such as chi-square, with $\alpha = 0.05$, and $\beta = 0.8$.

(ii) Analyze physiological data and tissue contaminant data by analysis of variance or other appropriate statistical procedures to include the factors of alloy and sex, with $\alpha = 0.05$ and $\beta = 0.8$.

(iii) Compare euthanized birds and birds that died prior to day 30 whenever sample sizes are adequate for meaningful comparison.

(p) *Daphnia and fish early-life toxicity tests.* Determine the toxicity of the compounds that comprise the shot or shot coating (at conditions maximizing solubility without adversely affecting controls) to selected invertebrates and fish. These methods are subject to the environmental effects test regulations developed under the authority of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), as follows:

(1) The first test, the Daphnia *(Daphnia species)* Acute Toxicity Test, must be conducted in accordance with 40 CFR 797.1300. It provides data on the acute toxicity of chemical substances. The guideline prescribes an acute toxicity test in which Daphnia are exposed to a chemical in static and flow-through systems for assessing the hazard the compound(s) may present to an aquatic environment.

(2) The second test, the Daphnia Chronic Toxicity Test, must be conducted in accordance with 40 CFR 797.1330. It provides data on the chronic toxicity of chemical substances in which Daphnia are exposed to a chemical in a renewal or flow-through system. The data from this test also are used to assess the hazard that the compound(s) may present to an aquatic environment.

(3) The third test, the Fish Early-Life-Stage Toxicity Test, must be conducted in accordance with 40 CFR 797.1600. It assesses the adverse effects of chemical substances to fish in the early stages of their growth and development. Data from this test also are used to determine hazards of the compound(s) in an aquatic environment.

(q) *Evaluation of Tier 2 testing.* If, after Tier 2 testing, you wish to continue the application process, send the Tier 2 testing results and analyses to us. You must ensure that copies of all the raw data and statistical analyses accompany the laboratory reports and final comprehensive report of this test. We will review the data within 60 days of the day on which we receive your Tier 2 application materials.

(r) *Approval after Tier 2 testing.* If we determine that the Tier 2 test data show that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you and request payment of a $20,000 final review and publication fee (payable to the U.S. Fish and Wildlife Service).

(1) After receipt of payment, we will publish a proposed rule in the **Federal Register** stating that we intend to approve this shot or shot coating and provide the public with the opportunity to comment. The proposed rule will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 2.

(2) If, at the end of the comment period, we conclude that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will approve the shot or coating as nontoxic with publication of a final rule in the **Federal Register** and subsequent addition of the shot or coating to the list in § 20.21(j).

(s) *Additional testing.* If we conclude that the Tier 2 data are inconclusive, or if we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, or if public comment on the proposed rule indicates that we should require further testing, we will advise you to proceed with the additional testing described for Tier 3. We will require Tier 3 testing before we evaluate the shot any further. If you choose not to do Tier 3 testing, we will deny approval of the candidate alloy or shot coating.

(t) *Tier 3 application fee.* The fee for consideration of a Tier 3 application is $700. Submit the fee, payable to the U.S. Fish and Wildlife Service, with your application.

(u) *Tier 3 testing.* We will review your Tier 3 testing plan within 30 days of the day on which we receive it. All testing procedures in the plan should be in compliance with the Good Laboratory Practice Standards (40 CFR part 160), except where they conflict with the requirements in this section or with a provision of an approved plan. We, or our authorized representative, may elect to inspect your laboratory facilities and may decline to approve the plan and further consideration of the candidate alloy and/or shot coating if the facility is not in compliance with the Good Laboratory Practice Standards.

(1) We will not approve the plan, or any part of it, if we deem it deficient in any manner with regard to timing, format, or content. We will tell you what parts, if any, of the submitted testing procedure to disregard, and any modifications to incorporate into the Tier 3 plan needed for us to approve it.

(2) After acceptance of the plan, you may conduct the Tier 3 testing. You must ensure that copies of the raw data and the statistical analyses accompany the laboratory reports and final comprehensive report on this test.

(i) *Chronic toxicity test.* This is a long-term toxicity test under depressed temperature conditions using a nutritionally deficient diet. Conduct a chronic exposure test under adverse conditions that complies with the following general guidelines unless we tell you otherwise.

(A) *Test materials.* You will need 36 male and 36 female hand-reared mallards approximately 6 to 8 months old with plumage and body conformation of wild mallards; 72 elevated outdoor pens equipped with

feeders and waterers; a laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; whole kernel corn; and lead, steel, and candidate alloy or shot with the proposed coating.

(B) *Test procedures.*

(*1*) Conduct this test at a location where the mean monthly low temperature during December through March is between 20 and 40 degrees Fahrenheit (−6.6 and 4.4 degrees Centigrade, respectively).

(*2*) Assign individual mallards to elevated outdoor pens during the first week of December and give them an unrestricted diet of whole kernel corn for 2 weeks.

(*3*) Randomly assign birds to five groups—a lead group of four males and four females, and four other groups of eight males and eight females per group.

(*4*) Dose each bird in the lead group (the positive control) with one U.S. No. 4 pellet of lead shot. Dose each bird in one group of eight males and eight females with eight U.S. No. 4 pellets of steel shot (the negative control). Dose each bird in one remaining group of eight males and eight females with one U.S. No. 4 pellet of the candidate alloy or shot with the proposed coating, each bird in one of the remaining two groups of eight males and eight females with four U.S. No. 4 pellets of the candidate alloy or shot with the proposed coating, and each bird in the final group of eight males and eight females with eight U.S. No. 4 pellets of the candidate alloy or shot with the proposed coating.

(*5*) Weigh and fluoroscope the birds weekly.

(*6*) Weigh all recovered shot to measure erosion.

(*7*) Determine blood parameters given in the 30-day acute toxicity test. Provide body weight and blood parameter measurements on samples drawn at 24 hours after dosing, and at the end of days 30 and 60.

(*8*) Remove the liver and other appropriate organs from all birds that die prior to day 60.

(*9*) At the end of 60 days, euthanize all survivors. Remove the liver and other appropriate organs from the euthanized birds. Analyze the organs for lead and other metals in the candidate alloy or shot coating.

(*10*) Necropsy all birds that died prior to day 60 to determine any pathological conditions associated with their deaths.

(C) *Test analyses.*

(*1*) Analyze mortality among the specified groups with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the shot or shot coating must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot.

(*2*) Analyze physiological data and tissue contaminant data by analysis of variance or appropriate statistical procedures to include the factors of alloy, dose, and sex.

(*3*) Compare euthanized birds and birds that died prior to being euthanized whenever sample sizes are adequate for a meaningful comparison.

(ii) *Chronic dosing study.* This moderately long-term study includes an assessment of reproduction. Conduct a chronic exposure reproduction trial within the following general guidelines unless we tell you otherwise.

(A) *Test materials.* You will need 44 male and 44 female hand-reared first-year mallards with plumage and body conformation of wild mallards; pens suitable for quarantine and acclimation and for reasonably holding 5 to 10 ducks each; 44 elevated pens equipped with feeders, waterers, and nest boxes; a laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; whole kernel corn, and commercial duck maintenance and breeder mash; and U.S. No. 4 lead, steel, and candidate alloy or shot with the proposed coating.

(B) *Test procedures.*

(*1*) In December, randomly assign the mallards to 3 groups—a positive control group of 4 males and 4 females that will be tested with lead; a negative control group of 20 males and 20 females that will be tested with steel; and a final group with 20 males and 20 females that will be tested with the candidate alloy or shot with the proposed coating. Hold the ducks in same-sex groups until mid-January. If the test is not conducted in the northern United States or comparable latitudes, the test must be completed in low-temperature units.

(*2*) After a 3-week acclimation period in which the ducks are fed with commercial maintenance mash, provide them an unrestricted diet of corn for 60 days and then pair them, put one pair in each pen, and provide them with commercial breeder mash.

(*3*) After the acclimation period, dose each bird in the lead group with 1 pellet of U.S. No. 4 lead shot, each bird in one of the groups of 20 males and 20 females with 8 pellets of U.S. No. 4 steel shot, and each bird in the remaining group of 20 males and 20 females with 8 pellets of U.S. No. 4 candidate alloy or shot with the proposed coating.

(*4*) Redose each bird with the appropriate shot after 30, 60, and 90 days. Few, if any, of the lead-dosed birds should survive and reproduce.

(*5*) Fluoroscope each bird 1 week after dosing it to check for shot retention.

(*6*) Weigh each bird the day of initial dosing (day 0), at each subsequent dosing, and at death.

(*7*) Collect a blood sample from each bird on the days on which they are dosed and immediately prior to euthanizing them.

(*8*) Check nests daily and collect any eggs laid. Note the date of first egg laid and the mean number of days per egg laid. Conclude monitoring of laying after 21 normal, uncracked eggs are laid or after 150 days.

(*9*) Collect eggs and discard any eggs laid before pairing.

(*10*) Euthanize the adults after they complete laying or after 150 days.

(*11*) Remove the liver and other appropriate organs from each euthanized bird and from each bird that dies prior to being euthanized.

(*12*) Analyze the organs and the eleventh egg for compounds contained in the shot or shot coating.

(*13*) Necropsy all the birds to determine any pathological conditions that affected them.

(*14*) Artificially incubate the normal eggs and calculate the percent shell thickness for each (compared to typical shell thickness), the percent of eggs cracked, the percent fertility (as determined by candling), and the percentage of fertile eggs hatched for each female.

(*15*) Provide ducklings that hatch with starter mash. Euthanize all ducklings at 14 days of age.

(*16*) Determine survival to day 14 and weight of the ducklings at hatching and at being euthanized.

(*17*) Measure duckling blood for hemoglobin concentration and other blood chemistries using blood samples drawn when the ducklings are euthanized.

(C) *Test analyses.* Any mortality, reproductive inhibition, or effects on physiological parameters due to the shot or shot coating must not be significantly greater than those caused by steel shot. If necessary, transform percentage data with an arcsine, square root, or other suitable transformation prior to statistical analyses. Analyze the physiological and reproductive data with one-tailed *t*-tests or other appropriate statistical procedures with $\alpha = 0.05$, and $\beta = 0.8$.

(v) *Evaluation of Tier 3 testing.* Report the results of your Tier 3 testing to us. We will review the data within 60 days of the day on which we receive your Tier 3 application materials. You must ensure that copies of the raw data and the statistical analyses accompany the

laboratory reports and final comprehensive report on this test.

(w) *Approval after Tier 3 testing.* If we determine that the Tier 3 test data show that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you and request payment of a $20,000 final review and publication fee (payable to the U.S. Fish and Wildlife Service).

(1) After receipt of payment, we will publish a proposed rule in the **Federal Register** stating that we intend to approve this shot or shot coating and provide the public with the opportunity to comment. The proposed rule will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 3.

(2) If, at the end of the comment period, we conclude that the shot or shot coating does not pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will approve the shot or coating as nontoxic with publication of a final rule in the **Federal Register** and subsequent addition of the shot or coating to the list in § 20.21(j).

(x) *Additional testing after Tier 3.* If we conclude that the Tier 3 data are inconclusive, or if we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we may ask you to repeat tests we deem inconclusive. If you choose not to repeat the tests, we will deny approval of the candidate alloy or shot coating.

(y) *Denial after Tier 3 testing.* If we conclude that the shot or shot coating may pose a significant toxicity danger to migratory birds, other wildlife, or their habitats, we will notify you that we deny approval of the candidate alloy or shot coating.

(z) *Withdrawal of the approval of an alloy or shot coating.* If we find that an approved alloy or shot coating is not readily detectable in the field or has environmental effects or direct toxicological effects on biota, we may withdraw our approval of the alloy or shot coating. This includes any previously approved alloy or shot coating.

(1) We may consult the Service Law Enforcement Laboratory to determine whether any particular alloy or shot coating is readily detectable in the field by law enforcement officers.

(2) We may consider new evidence that meets the standards of the Information Quality Act (Pub. L. 106–554, 2001) under Office of Management and Budget Guidance (67 FR 8452–8460, February 22, 2002) that shows that an approved alloy or shot coating has significant environmental effects or direct toxicological effects that were not known when we approved the alloy or shot coating.

(3) In either case, we will publish a notice in the **Federal Register** informing manufacturers and the public of our pending withdrawal of the approval of the alloy or shot coating. We will revise the table of approved alloys at § 20.21(j) to reflect the withdrawal of the approval, to be effective on January 1st, after allowing manufacturers 1 full calendar year to prepare for the change.

Dated: February 21, 2013

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–04906 Filed 3–1–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BC58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 9 (Amendment 9) to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 9 would revise the criteria and procedures by which South Atlantic states may request a concurrent closure of the penaeid shrimp (brown, pink, and white shrimp) commercial sector in the exclusive economic zone (EEZ) in order to protect overwintering white shrimp. Amendment 9 would also update the current overfished and overfishing status determination criteria for pink shrimp.

DATES: Written comments must be received on or before May 3, 2013.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2012–0227'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0227'' in the search field and click on ''search''. After you located the notice of availability, click on ''Submit a Comment'' link in that row. This will display the comment Web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10 MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of Amendment 9 may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.* Amendment 9 includes a Regulatory Impact Review and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, or email: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The penaeid shrimp fishery of the South Atlantic is managed under the