

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 4, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.120 is amended by adding paragraphs (c)(67)(i)(D) and (c)(94)(i)(D) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *
(67) * * *
(i) * * *

(D) Rules 312 and 314, adopted on July 13, 1998.

* * * * *

(94) * * *
(i) * * *

(D) Rule 316, adopted on April 21, 1999.

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[FR Doc. 01-117 Filed 1-3-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6925-1]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Indiana final authorization of revisions to their hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on July 26, 2000 at 65 FR 45955 and provided for public comment. The public comment period ended on August 25, 2000. We received one comment, addressed below. No

further opportunity for comment will be provided. EPA has determined that Indiana's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will become effective on January 4, 2001.

ADDRESSES: You can view and copy Indiana's application from 9 am to 4 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Lynn West (317) 232-3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM-7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7450.

SUPPLEMENTARY INFORMATION: On July 26, 2000, U.S. EPA published an immediate final rule granting Indiana authorization for changes to its Resource Conservation and Recovery Act program, listed in section E of that notice, which was subject to public comment. Subsequently we received one adverse comment, and therefore published a withdrawal of the immediate final rule on October 23, 2000. After reviewing the adverse comment, we hereby determine that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by

RCRA. Therefore, we grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before EPA authorizes the State for these requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until EPA authorizes the State for these requirements and prohibitions.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements. Indiana has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations EPA is authorizing by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On July 26, 2000 (65 FR 45955) EPA published a proposed rule. In that rule we proposed granting authorization of changes to Indiana's hazardous waste program and opened our decision to public comment. The Agency received one comment that stated that granting additional regulatory powers to the State of Indiana could not be supported. The comment criticized Indiana's handling of Clean Water Act and Clean Air Act matters, however. It did not cite any specific RCRA issues, or establish a basis for withholding authorization of a RCRA revision. U.S. EPA annually reviews the RCRA program at which

time it may convey any deficiencies to the State agency and make suggestions for improvement. U.S. EPA found Indiana's RCRA program to be satisfactory.

E. What Has Indiana Previously Been Authorized For?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective

December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); and September 1, 1999, effective November 30, 1999 (64 FR 47692).

F. What Changes Are We Authorizing With Today's Action?

On February 24, 2000, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Indiana final authorization for the following program changes:

Description of Federal requirement	Federal Register date and page (and/or RCRA statutory authority)	Analogous State authority
Sharing of Information with the Agency for Toxic Substances and Disease Registry Checklist SI. HSWA Codification Rule; Delisting Checklist 17B as amended Checklist 17B.1.	November 8, 1984, SWDA 3019(b)	IC 5-14-3; Effective April 15, 1987.
Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards Checklist 112.	July 15, 1985, 50 FR 28702; June 27, 1989, 54 FR 27114. September 10, 1992, 57 FR 41566	329 IAC 3.1-5-3; Effective April 18, 1998.
Recycled Used Oil Management Standards; Technical Amendments and Corrections I Checklist 122 as amended checklist 122.1.	May 3, 1993, 58 FR 26420; June 17, 1993, 58 FR 33341.	329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-6-1; 3.1-6-2(4); 3.1-11-1; 13-1-1; 13-1-2; 13-2; 13-3-1; 13-3-2; 13-3-3; 13-4-1; 13-4-2; 13-4-3; 13-4-4; 13-4-5; 13-5-1; 13-5-2; 13-5-3; 13-6-1; 13-6-2; 13-6-3; 13-6-4; 13-6-5; 13-6-6; 13-6-7; 13-6-8; 13-7-1; 13-7-2; 13-7-3; 13-7-4; 13-7-5; 13-7-6; 13-7-7; 13-7-8; 13-7-9; 13-7-10; 13-8-1; 13-8-2; 13-8-3; 13-8-4; 13-8-5; 13-8-6; 13-8-7; 13-8-8; 13-9-1; 13-9-2; 13-9-3; 13-9-4; 13-9-5; 13-9-6; 13-10-1; 13-10-2; 13-10-3; Effective March 5, 1997.
Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Technical Amendments and Corrections II) Checklist 130.	March 4, 1994, 59 FR 10550	329 IAC 13-1-1; 13-1-2; 13-2; 13-3-1; 13-4-1; 13-6-2; 13-6-5; 13-6-7; 13-7-4; 13-8-4; Effective March 5, 1997.
RCRA Expanded Public Participation Checklist 148	December 11, 1995, 60 FR 63417 ..	329 IAC 3.1-13-1; 3.1-13-2(8), (9); 3.1-13-18; 3.1-13-19; 3.1-13-20; Effective February 8, 1997.
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Final Rule Checklist 151 as amended.	April 8, 1996, 61 FR 15566	329 IAC 3.1-12-1; 3.1-12-2 (1 through 9) Effective February 8, 1997.
Checklist 151.1 as amended	April 8, 1996, 61 FR 15660	Effective February 8, 1997.
Checklist 151.2 as amended	April 30, 1996, 61 FR 19117	Effective April 18, 1998.
Checklist 151.3 as amended	June 28, 1996, 61 FR 33680	Effective November 30, 1997.
Checklist 151.4 as amended	July 10, 1996, 61 FR 36419	Effective November 30, 1997.
Checklist 151.5 as amended	August 26, 1996, 61 FR 43924	Effective April 18, 1998.
Checklist 151.6	February 19, 1997, 62 FR 7502	Effective April 18, 1998.
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers; Final Rule Checklist 154 as amended.	November 25, 1996, 61 FR 59931 ..	329 IAC 3.1-1-7; 3.1-6-1; 3.1-6-2(4); 3.1-7-1; 3.1-9-1; 3.1-10-1; 3.1-10-2 (1 through 4); 3.1-13-1; 3.1-13-2(8), (9); Effective April 18, 1998.
Checklist 154.1 as amended	December 6, 1994, 59 FR 62896.	
Checklist 154.2 as amended	May 19, 1995, 60 FR 26828.	
Checklist 154.3	September 29, 1995, 60 FR 50426.	
Checklist 154.4	November 13, 1995, 60 FR 56952.	
Checklist 154.5	February 9, 1996, 61 FR 4903.	
Checklist 154.6	June 5, 1996; 61 FR 28508.	

Description of Federal requirement	Federal Register date and page (and/or RCRA statutory authority)	Analogous State authority
Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transportation of Hazardous Waste on Rights-of-Ways on Contiguous Properties Checklist 156.	February 12, 1997, 62 FR 6622	329 IAC 3.1-4-1; 3.1-4-1(b); 3.1-6-1; 3.1-6-2(1), (2); 3.1-7-7; 3.1-7-2(1); 3.1-7-3; 3.1-8-1; 3.1-8-2(1); 3.1-9-1; 3.1-9-2(1), (2); 3.1-10-1; 3.1-10-2(1), (2), (3), (4); 3.1-11-1; 3.1-13-1; 3.1-13-2(1), (2), (3), (4); 3.1-13-3 through 3.1-13-17; Effective April 18, 1998.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions Checklist 157.	May 12, 1997, 62 FR 25998	329 IAC 3.1-6-1; 3.1-6-2(1), (2), (13), (14); 3.1-12-1; 3.1-12-2 (1 through 5), (8), (10); Effective April 18, 1998.

G. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be either more stringent or broader in scope than the Federal requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. What Is Codification and Is EPA Codifying Indiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. The authorized Indiana RCRA program was incorporated by reference into 40 CFR part 272 on August 23, 1989, effective October 23, 1989 (54 FR 34988).

We reserve the amendment of 40 CFR part 272, subpart P for this authorization of Indiana's program changes until a later date.

J. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist

under the Indiana program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Indiana's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Indiana in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required

under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Indiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01-35 Filed 1-3-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-137, RM-7494, FCC 00-409]

FM Broadcasting Services; Saltville, VA and Jefferson, NC.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In MM Docket No. 91-137, the Commission denied an application for review filed by Smith Communications, licensee of Station WZJS(FM), Channel 264A, Banner Elk, North Carolina, of the Memorandum Opinion and Order, 61 FR 20,490, published May 7, 1996. The Commission denied review because it found no reason to depart from staff's reasoning set forth in the Memorandum Opinion and Order. It found that the staff had fully considered and rejected each of Smith's contentions that irregular terrain would prevent full signal coverage by the proposed upgraded Jefferson, North Carolina

station. Additionally, since the release of the Memorandum Opinion and Order, a construction permit had been granted for an actual transmitter site at a location different from the theoretical one used previously. The Commission reexamined the expanded coverage area from that site and found the coverage to be adequate and of similar size to that predicted using the theoretical site. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180.

SUPPLEMENTAL INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket 91-137, adopted November 17, 2000, and released November 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01-127 Filed 1-3-01; 8:45 am]

BILLING CODE 6717-01-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AH64

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We amend 50 CFR 20.21(j) to approve shot formulated of 50% tungsten, 35% nickel, and 15% iron as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-nickel-iron (TNI) shot, and we believe that it is not a significant threat to wildlife or their habitats and that further testing of the shot is not necessary. In addition, approval of TNI shot may induce more waterfowl hunters to switch away from illegal use of lead shot, reducing lead risks to species and habitats.

DATES: This rule takes effect on January 4, 2001.

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: Jon Andrew, Chief, or Dr. George T. Allen, Division of Migratory Bird Management, 703-358-1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-712 and 16 U.S.C. 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 does not pose a significant toxicity hazard to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000). 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, and tungsten-matrix shot are permanently approved as nontoxic. We have approved tin shot for the 2000-2001 hunting season (65 FR 76886). The purpose of this rule is to approve the use of TNI shot in the tested formulation (50% tungsten, 35% nickel, and 15% iron by weight) for waterfowl and coot hunting. On October 30, 2000 (65 FR 64650) we proposed to amend 50 CFR 20.21 (j), to include TNI shot on the list of approved nontoxic shot types.

On April 9, 1999 (64 FR 17308), we announced receipt of an application from Standard Resources Corporation (Standard) of Cherry Hill, New Jersey for nontoxic approval of HEVI-METAL shot in the 50% tungsten, 35% nickel, 15% iron formulation. The density of the shot in that formulation is 11.0 grams/cm³. The manufacturer believes that the shot does not need a coating because it is sufficiently noncorrosive under neutral pH. It is not chemically or physically altered by firing from a shotgun.