

has forwarded to the Secretary of Agriculture a draft proposed rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft proposed rule would add certain plant-incorporated protectants based on viral coat protein genes (PVCP-PIPs) to its plant-incorporated protectants exemptions at 40 CFR part 174. Substances that plants produce for protection against pests and the genetic material necessary to produce them are pesticides under FIFRA if humans intend these substances to "prevent, repel or mitigate any pest."

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0642. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Tom McClintock, Hazard Assessment Coordination and Policy Division (7202M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460-0001; telephone number: 202-564-8488; e-mail address: [mcclintock.tom@epa.gov](mailto:mcclintock.tom@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this Action Apply to Me?*

This action is directed to the public in general. It simply announces the submission of a draft proposed rule to the U.S. Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to people or companies involved with agricultural biotechnology that may

develop and market plant-incorporated protectants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

##### **II. What Action is EPA Taking?**

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft proposed rule within 30 days after receiving it, the Administrator shall include the comments of the Secretary and the Administrator's response to those comments in the proposed rule when published in the **Federal Register**. If the Secretary does not comment in writing within 30 days after receiving the draft proposed rule, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period not withstanding the foregoing 60-day time requirement.

##### **III. Do Any Statutory and Executive Order Reviews Apply to this Notification?**

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

##### **List of Subjects in Part 174**

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: October 2, 2006.

**Clifford J. Gabriel**

*Director, Office of Science Coordination and Policy.*

[FR Doc. E6-16751 Filed 10-10-06; 8:45 am]

**BILLING CODE 6560-50-S**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 211**

[Docket No. 2006-24141, Notice No. 1]

RIN 2130-AB77

#### **Rules of Practice: Proposed Direct Final Rulemaking Procedures**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA is proposing direct final rulemaking procedures to expedite the processing of noncontroversial regulatory changes to which no adverse comment is anticipated. Under the proposed procedures, FRA could choose to make routine or otherwise noncontroversial changes in a direct final rule which would become effective a specified number of days after its publication in the **Federal Register**, provided that no written adverse comment, or no request for a public hearing, was received before the rule's scheduled effective date. FRA would not use direct final rulemaking for complex or controversial matters.

**DATES:** Written comments must be received by December 11, 2006. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to November 13, 2006, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES: Comments:** Comments related to Docket No. 2006-24141, may be submitted by any of the following methods:

- *Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information. Please see the Privacy Act heading in the “**SUPPLEMENTARY INFORMATION**” section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

Patricia V. Sun, Trial Attorney, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005 [telephone: (202) 493-6038].

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 30, 2004, the Office of the Secretary of Transportation (OST) published a final rule adopting direct final rulemaking procedures intended to expedite the rulemaking process for noncontroversial rules. The rule published by OST applies only to regulations issued by the Office of the Secretary of Transportation and does not apply to the various operating administrations within DOT. By using direct final rulemaking, OST can reduce the time necessary to develop, review, clear and publish a rule to which no adverse public comment is anticipated by eliminating the need to publish separate proposed and final rules (69 FR 4455). In this notice, FRA proposes to amend its Rules of Practice (49 CFR Part 211) to adopt similar direct final rulemaking procedures to promulgate specified categories of rules it does not expect to be controversial and that are unlikely to result in adverse comments.

Many agencies have adopted direct final rulemaking procedures, including the Nuclear Regulatory Commission, the Food and Drug Administration, the Environmental Protection Agency, and the Department of Agriculture. For example, in 2003, the Department of Energy issued a direct final rule amending its test procedures for measuring the energy consumption of clothes washers (October 31, 2003, 68 FR 62197), and last year, the

Occupational Safety and Health Administration issued a direct final rule to reinstate its original roll-over protective structures standards for the construction and agriculture industries (December 29, 2005, 70 FR 76795).

**The Direct Final Rulemaking Process**

As stated above, the use of direct final rulemaking would allow FRA to eliminate an unnecessary second round of internal review and clearance, as well as public review, for noncontroversial proposed rules. FRA would employ the direct final rulemaking process for a particular rule if, for example, similar rules had been previously proposed and published without receiving adverse comment. FRA believes that direct final rulemaking would be appropriate for noncontroversial rules, including such rules that:

(1) Affect internal procedures of the Federal Railroad Administration, such as filing requirements and rules governing inspection and copying of documents,

(2) are nonsubstantive clarifications or corrections to existing rules;

(3) update existing forms; and

(4) make minor changes in the substantive rules regarding statistics and reporting requirements, such as a lessening of the reporting frequency (for example, from monthly to quarterly) or elimination of a type of data that no longer needs to be collected by FRA.

After determining that a rule would be appropriate for direct final rulemaking, FRA would publish the rule in the final rule section of the **Federal Register**. In each direct final rule document, the “action” would be captioned “direct final rule” and would include language in the summary and preamble informing interested parties of their right to comment and their right to request an oral hearing, if such opportunity is required. The direct final rule notice would advise the public that FRA anticipates no adverse comment to the rule and that the rule would become effective a specified number of days after the date of publication unless FRA received written adverse comment or a request for an oral hearing (if such opportunity is required by statute) within the specified comment period. An “adverse” comment would be one that is critical of the rule, one that suggests that the rule should not be adopted, or one that suggests that a change should be made in the rule. FRA would not consider a comment submitted in support of the rule, or a request for clarification of the rule, to be adverse.

FRA would provide sufficient comment time to allow interested

parties to determine whether they wish or need to submit adverse comments, and would answer any requests for clarification while the comment period was running. If FRA received no written adverse comment or request for oral hearing within the comment period, FRA would publish another notice in the **Federal Register** indicating that no adverse comment had been received and confirming that the rule would become effective on the specified date.

If, however, FRA received the timely submission of an adverse comment or notice of intent to submit adverse comment, FRA would stop the direct final rulemaking process and withdraw the direct final rule by publishing a notice in the final rule section of the **Federal Register**. If FRA decided that the rulemaking remained necessary, FRA would recommence the rulemaking under its standard rulemaking procedures by publishing a notice proposing the rule in the proposed rules section of the **Federal Register**. The proposed rule would provide for a new public comment period.

FRA believes that the additional time and effort required to withdraw the direct final rule and issue a Notice of Proposed Rulemaking would be an incentive for FRA to act conservatively in evaluating whether to use the direct final rulemaking process for a particular rule. As stated above, FRA would not use direct final rulemaking for complex or potentially controversial matters.

**Regulatory Analyses and Notices**

FRA has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department’s Regulatory Policies and Procedures. There are no costs associated with the proposed rule. There would be some cost savings in **Federal Register** publication costs and efficiencies for the public and FRA personnel in eliminating duplicative reviews. FRA certifies that this rule, if adopted, would not have a significant impact on a substantial number of small entities. FRA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

**Paperwork Reduction Act**

The proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**Unfunded Mandates Reform Act of 1995**

FRA has determined that the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply to this rulemaking.

#### List of Subjects in 49 CFR Part 211

Administrative practice and procedure, Rules of practice.

In consideration of the foregoing, FRA proposes to amend 49 CFR part 211 as follows:

#### PART 211—[AMENDED]

1. The authority citation for part 211 would continue to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

2. In part 211, Subpart B—Rulemaking Procedures, would be amended by adding a new § 211.33, Procedures for direct final rulemaking, as follows:

#### § 211.33 Procedures for direct final rulemaking.

(a) Rules that the Administrator judges to be noncontroversial and unlikely to result in adverse public comment may be published in the final rule section of the **Federal Register** as direct final rules. These include noncontroversial rules that:

(1) Affect internal procedures of the Federal Railroad Administration, such as filing requirements and rules governing inspection and copying of documents,

(2) Are nonsubstantive clarifications or corrections to existing rules,

(3) Update existing forms, and

(4) Make minor changes in the substantive rules regarding statistics and reporting requirements.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Federal Railroad Administration within the specified time after the date of publication and that, if no written adverse comment or request for oral hearing (if such opportunity is required by statute) is received, the rule will become effective a specified number of days after the date of publication.

(c) If no adverse comment or request for oral hearing is received by the Federal Railroad Administration within the specified time of publication in the **Federal Register**, the Federal Railroad Administration will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Federal Railroad Administration receives any written adverse comment or request for oral hearing within the specified time of

publication in the **Federal Register**, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and, if the Federal Railroad Administration decides a rulemaking is warranted, a notice of proposed rulemaking will be published in the proposed rule section of the **Federal Register**.

(e) An “adverse” comment for the purpose of this subpart means any comment that the Federal Railroad Administration determines is critical of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule.

Issued in Washington, DC, on September 29, 2006.

**Joseph H. Boardman,**

*Administrator.*

[FR Doc. E6–16825 Filed 10–10–06; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AV01

#### Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Cow Head Tui Chub (*Gila bicolor vaccaceps*) as Endangered

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have determined that the proposed listing of the Cow Head tui chub (*Gila bicolor vaccaceps*) as an endangered species under the Endangered Species Act of 1973, as amended (Act), is not warranted, and we therefore withdraw our March 30, 1998, proposed rule (63 FR 15152–15158). We have made this determination because the threats to the species identified in the March 30, 1998, proposed rule are not significant, and currently available data do not indicate that the threats to the species, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

**ADDRESSES:** Supporting documentation for this action is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 6610 Washburn Way, Klamath Falls, OR 97603.

**FOR FURTHER INFORMATION CONTACT:** Curt Mullis, Field Supervisor, at the above address (telephone, 541–885–8481, or facsimile, 541–885–7837).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Cow Head tui chub, *Gila (Siphateles) bicolor vaccaceps*, is a small fish in the minnow family Cyprinidae. It was first recognized as a distinct subspecies in 1939, and was later named and formally described in 1980 (Bills and Bond 1980, pp. 320–322). Although it was referred to as the Cowhead Lake tui chub in the March 30, 1998, proposed listing (63 FR 15152), we now conform to the accepted geographical spelling of Cow Head as two words and use the shorter name, Cow Head tui chub, for reasons discussed in Reid (2006b, pp. 1–6). It is distinguished from other tui chubs primarily by the number and form of its gill rakers (bony projections in the gills), as well as other characteristics, such as fin and scale counts, and the shape of its fins and head (Bills and Bond 1980, pp. 320–322). Like other tui chubs, its coloration is generally silver, except for a dark lateral stripe and dark speckles scattered on the cheek, operculum (area behind the eye), and lower body.

The known range of the Cow Head tui chub is limited to the Cow Head Basin in extreme northeastern California and northwestern Nevada (Reid 2006a, pp. 15–19). The Cow Head Basin is relatively small (10,400 hectares (ha); 25,700 acres) and drains north into the Warner Basin of Oregon through Cow Head Slough. Historically, the basin contained a shallow, marshy lake when sufficient water was available. Cow Head Lake was altered in the 1930s, following the extended drought of the 1920–30s, to allow drainage of the lake in the spring and to facilitate agricultural uses of the lakebed.

Populations of Cow Head tui chub occupy all principal low gradient streams in the basin (Cow Head Slough and Barrel, West Barrel and Keno creeks) and a relatively large population still exists on the lakebed, where it is restricted to permanent water in drainage channels when the lake is dry (Scopettone and Rissler 2006, pp. 108–109). Stream populations of Cow Head tui chub annually expand throughout most of the low gradient stream habitat in the basin during wet periods and contract as the summer progresses and streams dry up. Connectivity between stream populations of Cow Head tui chub is generally unobstructed during springtime flows, but during summer and fall, all populations are restricted to