

that it is appropriate to amend § 54.724(a) in this respect to conform to the rule that applies to Commission-level appeals. At the same time, we recognize the need of applicants under the schools and libraries program to have certainty over the status of their funding requests, and we remain committed to timely resolution of all appeals before us.

7. We believe this procedural amendment will clarify our administrative processes and prevent confusion regarding the procedural status of requests for review of Administrator decisions that are pending before the Bureau. Accordingly, as set forth, we amend § 54.724(a) of the Commission's rules to clarify that a decision of the Administrator will not be deemed approved upon the running of the 90-day time period for taking action on requests for review that are pending before the Bureau.

#### Ordering Clauses

8. The authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, is adopted.

9. Part 54 of the Commission's Rules 47 CFR part 54, is revised as set forth.

10. This action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, because it affects only rules of agency procedure or practice.

11. Because this action involves an internal procedural matter, it is further ordered that the rule change set forth is May 30, 2000.

#### List of Subjects in 47 CFR Part 54

Universal service.  
Federal Communications Commission.

Magalie Roman Salas,  
Secretary.

#### Rule Changes

Part 54 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.724 by revising paragraph (a) to read as follows:

#### § 54.724 Time periods for Commission approval of Administrator decisions.

(a) The Common Carrier Bureau shall, within ninety (90) days, take action in response to a request for review of an

Administrator decision that is properly before it. The Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also, at any time, extend the time period for taking action on a request for review of an Administrator decision pending before the Common Carrier Bureau.

\* \* \* \* \*

[FR Doc. 00-13401 Filed 5-26-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 991210333-0089-02; I.D. 111099C]

RIN 0648-AN37

#### Dolphin-Safe Tuna Labeling; Official Mark

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to designate an official mark that can be used to label tuna products as being "dolphin-safe." The Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The intent of this rule is to establish and designate that mark.

**DATES:** Effective June 29, 2000.

**ADDRESSES:** A full color version of the official mark is available at the NMFS Southwest Region website at <http://swr.ucsd.edu/dsl.htm> or by contacting J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020, fax (562) 980-4027.

#### SUPPLEMENTARY INFORMATION:

##### Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The

IDCPA and the official mark provisions of the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

#### Official Mark

As discussed in the proposed rule to implement the IDCPA (December 22, 1999; 64 FR 71722), the Secretary of Commerce considered the designation of a commonly used "dolphin-safe" logo as the official mark, but instead decided to develop a unique logo as the official mark.

The DPCIA establishes "dolphin-safe" standards applicable to tuna products labeled with either the official mark or an alternative mark (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards, which are not a part of this rule-making, appear at 50 CFR 216.91 through 216.94. The standards are the subject of ongoing litigation. This final rule codifies the official mark at 50 CFR 216.96.

#### Proposed Rule

On December 22, 1999, NMFS published proposed regulations to designate an official mark that can be used to label tuna products as being dolphin-safe (64 FR 71722). Public comments on the proposed rule were accepted through January 5, 2000. In addition to publishing the proposed rule in the **Federal Register**, NMFS sent via fax and mail the notice to industry representatives, environmental groups, the Department of State, the Inter-American Tropical Tuna Commission (IATTC), the U.S. Commissioners to the IATTC, the Secretary of the Treasury, the U.S. Customs Service, the Marine Mammal Commission, and the Federal Trade Commission. NMFS also issued a press release summarizing the major issues contained in the proposed rule. Information in the press release was sent to several national newspapers and published on e-mail discussion groups and NMFS websites.

#### Responses to Comments

NMFS received 43 letters of comment in response to the proposed rule. Comments were received from environmental organizations and members of the public.

Numerous comments received were beyond the scope of the proposed rule to designate an official mark. These comments included concerns about subjects other than the official mark itself, such as: the dolphin-safe labeling standards, the initial finding required by the IDCPA on whether chase and encirclement of dolphins by the tuna purse seine fishery is having an adverse impact on depleted dolphin stocks in the eastern tropical Pacific Ocean (ETP) (notice published at 64 FR 24590), World Trade Organization influence and decisions related to U.S. embargoes against tuna harvested by purse seine in the ETP, enforcement of the Tuna Tracking and Verification Program, observer safety and objectivity, foreign trade interests and influence on the United States legislative process, the effects of purse seine fishing methods on dolphin stocks, mixed well storage of caught tuna onboard purse seine vessels, and decisions and procedures of the IATTC. The scope of the proposed rule is limited to the design elements of an official mark such as the graphics, color, appearance, and shape. The following is a summary of the comments NMFS received and NMFS responses.

*Comment 1:* Several commenters indicated that the short 14-day comment period and the publishing of the rule near the holidays did not provide adequate time for public comment.

*Response:* NMFS disagrees. The short comment period was adequate given the limited scope of the proposed rule.

*Comment 2:* Several commenters indicated that by designating an official mark NMFS would be intentionally defrauding the public about the effects of chase and encirclement on dolphins and unnecessarily confusing consumers with regard to the dolphin-safe status of labeled tuna.

*Response:* NMFS disagrees. The commenters appear to disagree with the standards for designating tuna products as being dolphin-safe. The standards are not the subject of this rule-making. The subject of this rule-making is an appropriate mark that can be used to show that a product is in compliance with the standards.

*Comment 3:* To avoid fraudulent representations, one commenter indicated "dolphin-safe" should not be used on the official mark without additional clarifying language such as "Dolphin Safe as Defined by Congressional Committee."

*Response:* NMFS disagrees. The official mark may only be used to label tuna products that meet the "dolphin-safe" standards set forth in the DCPIA and its implementing regulations. The words "Dolphin Safe" are defined in the

DCPIA (16 U.S.C. 1385(d)). A reference to Congressional committees is inappropriate since the law was enacted by the entire Congress and signed by the President.

*Comment 4:* One commenter indicated that use of the official mark would be damaging to alternative tracking and certification programs.

*Response:* NMFS disagrees. Use of the official mark is discretionary and not mandated (16 U.S.C. 1385 (d)(3)(2)). Tuna products labeled as being dolphin-safe by any mark must meet the dolphin-safe labeling standards (16 U.S.C. 1385(d)) and the standards of the Tuna Tracking and Verification Program (16 U.S.C. 1385 (d)(3)(c)(ii)), this does not preclude the use of alternative marks or alternative tracking and certification programs.

*Comment 5:* One environmental organization asserted that the proposed official mark would detract, or undermine, their trademarked "Flipper Seal of Approval" by misleading the consumer about the "true" definition of dolphin-safe tuna.

*Response:* NMFS disagrees. The commenter appears to disagree with the standards for designating tuna products as being dolphin-safe. The standards are not the subject of this rule-making. The subject of this rule-making is an appropriate mark that can be used to show that a product is in compliance with the standards.

The design and layout of the official mark and the Flipper Seal of Approval are very different and do not resemble each other. The official mark contains the words "U.S. Department of Commerce" in red letters, along with a blue-colored dolphin profile facing the upper left, and a tricolor (light blue, blue, and a dark blue) banner along the bottom of the mark that overlaps the dolphin's fluke. In contrast, the Flipper Seal of Approval depicts a partly submerged dolphin that is smiling and waving, with the word "Flipper" written across the top in bright yellow letters and the words "Seal of Approval" along the bottom of the mark. The unique official mark is easily distinguishable and could not mislead consumers into believing that it was the Flipper Seal of Approval.

*Comment 6:* Several commenters felt that the development and designation of the official mark is a waste of taxpayer money and contrary to the will of United States consumers.

*Response:* The DPCIA (16 U.S.C. 1385) requires the Secretary of Commerce to develop an official mark that may be used to label tuna products as "dolphin-safe." The Secretary is obligated to implement this mandate.

*Comment 7:* One commenter expressed concern that the designation of an official mark would limit the right of tuna companies to use an alternative dolphin-safe marks.

*Response:* The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals.

After considering the comments received, there are no changes to the regulatory text from the proposed rule.

## Classification

### *Executive Order 12866*

This final rule has been determined to not be significant for purposes of E.O. 12866.

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. NMFS received one comment regarding this certification. The commenter indicated that a Regulatory Flexibility Analysis should be completed before designating the official mark because of potential impacts and costs to small businesses to educate the consumer about the official mark. Because the IDCPA does not mandate the use of the official mark, and use of the official mark is discretionary, there are no compliance costs associated with use of the official mark. This comment did not cause NMFS to change its determination regarding the certification. As a result, no regulatory flexibility analysis was prepared.

### List of Subjects in 50 CFR Part 216

Dolphin-safe, Exports, Fish, Imports, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 22, 2000.

**Andrew A. Rosenberg,**  
*Deputy Assistant Administrator for Fisheries,*  
*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

## **PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.96 is added to read as follows:

**§ 216.96 Official mark for “Dolphin-safe” tuna products.**

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet

the “dolphin-safe” standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§ 216.91 through 216.94:

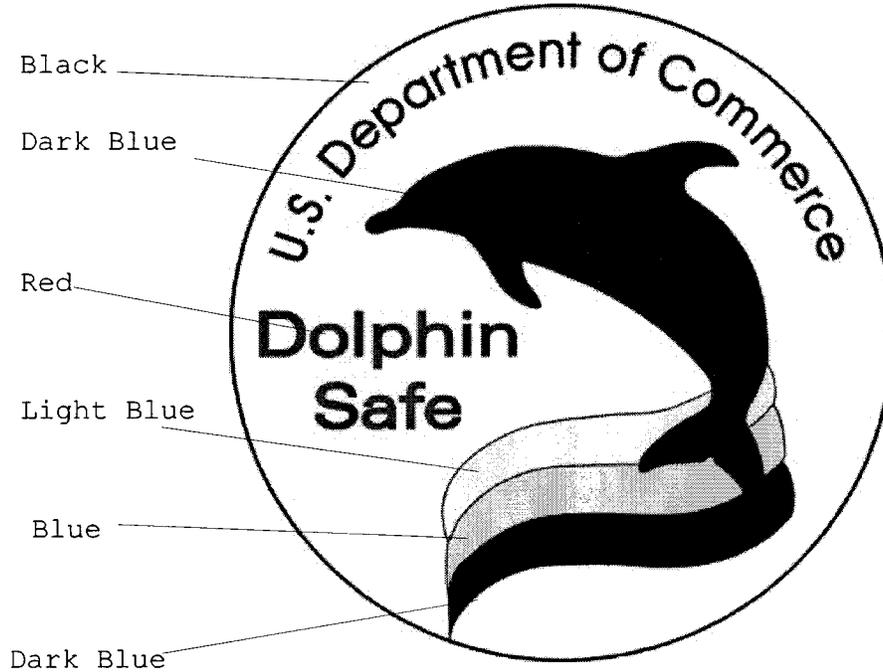


Figure 1.

(b) *Location and size of the official mark.* The official mark on labels must allow the consumer to identify the

official mark and be similar in design and scale to figure 1. A full color

version of the official mark is available at <http://swr.ucsd.edu/dsl.htm>.

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