IV. EPA Evaluation

EPA has evaluated the submitted ordinance and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Specifically, the ordinance is enforceable and there is evidence of sufficient personnel, funding, and authority under State law for Maricopa County to carry out the program. Finally, this ordinance is more stringent than the existing SIP-approved trip reduction program in both applicability (50 employee threshold versus 100 employee threshold in the SIP-approved rule) and in the overall trip and VMT reduction goals. As a result, this ordinance, if approved into the SIP, will strenghten the SIP and not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. CAA section 110(l). Therefore, EPA is proposing to approve MCESD's Ordinance P–7, Maricopa County Trip Reduction Ordinance (May 26, 1994) under section 110(k)(3) of the CAA as meeting the requirements of section 110 (a) and (l).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32185 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50629; FRL–5752–9]

RIN 2070–AB27

Proposed Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke significant new use rules (SNURs) for 12 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Written comments must be received by EPA by January 8, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–50629 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made

at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, EPA issued a SNUR establishing significant new uses for the substances listed in Unit II. of this preamble, OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50589, April 17, 1991 (56 FR 15784); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50613, October 4, 1993 (58 FR 51706); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4). Because of additional data EPA has received for these substances, EPA is hereby proposing to revoke the SNURs.

I. Rationale for Revocation of the Rules

During EPA's review of the PMNs submitted under section 5(a)(1)(A) of TSCA for the chemical substances subject to this revocation, EPA concluded that promulgation of SNURs under section 5(a)(2) was warranted based on the fact that activities not described in the section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated defining such activities as ''significant new uses.''

Based on new data, EPA has revoked, or will revoke the section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities not described in the section 5(e) consent orders or the PMN may result in significant changes in human or environmental exposure nor constitutes ''significant new uses.'' The proposed revocation of SNURs for these substances is consistent with this finding. When this revocation becomes final, notice of intent to manufacture, import, or process these substances for a significant new use will no longer be required. In addition, export notification under section 12(b) of TSCA will no longer be required on the basis of these substances being subject to SNURs.

II. Proposed Revocations and Background

EPA is proposing to revoke the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E for the following chemical substances. In this unit, EPA provides a description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), the date of the revocation of the section 5(e) consent order (where applicable), a summary of the reason for revoking the rule, **Federal Register** reference, docket number, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substances is contained in the rulemaking record referenced below in Unit III. of this preamble.

PMN Number P–87–90

Chemical name: (generic) Methylenebistrisubstituted aniline-.
CAS number: Not available.
Revocation of section 5(e) consent order: September 11, 1997.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33305).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: 90-Day Dietary Study in Rats: Based on toxic effects in the liver and lungs to both males and females, the lowest observed adverse effect level (LOAEL) was 300 parts per million (ppm) (23.4 milligrams/kilograms/day (mg/kg/day) and 28.2 mg/kg/day) and the no observed adverse effect level (NOAEL) was 100 ppm (7.6 mg/kg/day and 8.5 mg/kg/day) respectively. There were no effects noted in the target areas of the eyes and the reproductive organs of the males or females. In addition, three mutagenicity studies, a mouse micronucleus assay, a bacterial mutation assay, and a chromosomal aberration study were conducted. The results demonstrated that the PMN substance is not a gene or chromosome mutagen and confirmed previous negative results in Salmonella typhimurium and *in vitro* in human lymphocytes.
CFR citation: 40 CFR 721.700 (Formerly 40 CFR 721.1395).

PMN Number P–91–55

Chemical name: (generic) Alkylcarbamic acid, alkynyl ester.
CAS number: Not available.
Revocation of section 5(e) consent order: March 11, 1997.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44064).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The following test data for structurally analogous material was submitted under the terms of the 5(e) consent order. The data showed the 96-hour LC_{50} for fish was 85.0 milligrams/liter (mg/L) and the 48-hour LC_{50} for daphnids was 60.0 mg/L.
CFR citation: 40 CFR 721.2840.

PMN Number P–84–527

Chemical name: (generic) Unsaturated amino ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR

29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2860 (Formerly 40 CFR 721.980).

PMN Number P–84–537

Chemical name: (generic) Unsaturated amino alkyl ester salt.
CAS number: Not available.
Federal Register *publication date and reference:* August 15, 1990 (55 FR 33304).
Docket number: OPPTS–50582.
Basis for revocation: Based on the Agency's analysis of the test data submitted under a voluntary testing program for acrylates, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Two long-term dermal bioassays on triethylene glycol diacrylate and triethylene glycol dimethacrylate demonstrated no evidence of carcinogenicity under the test conditions. Refer to Proposed Revocation of SNURs for Certain Acrylate Substances published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1), for further background information on these test results.
CFR citation: 40 CFR 721.2880 (Formerly 40 CFR 721.983).

PMN Number P–90–549

Chemical name: (generic) Benzoate ester.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance is not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day based on behavioral changes, liver effects, and blood effects. An oral developmental toxicity study in rats demonstrated a NOAEL of 300 mg/kg/day for both maternal and developmental toxicity. At 1,000 mg/kg/day there was both maternal body weight loss and a decrease in fetal weight in addition to reductions in the incidence of fetal ossification.
CFR citation: 40 CFR 721.2940 (Formerly 40 CFR 721.570).

PMN Numbers P–88–1303, P–88–2177, and P–90–212

Chemical name: Ethane, 1,1-dichloro-1-fluoro-.
CAS number: 1717–00–6.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15791).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Rat Inhalation Carcinogenicity Study: The only significant effects noted were a statistically significant increased incidence of benign testicular interstitial cell tumors in male rats in the mid and high dose ranges (5,000 ppm and 15,000–20,000 ppm). The high dose was ⅓ of the 4-hour LC_{50}. Two Generation Inhalation Reproductive Study: The substance demonstrated reproductive and developmental toxicity at 20,000 ppm. Adult systemic toxicity was evident at 8,000 ppm and 20,000 ppm. The LOAEL was 8,000 ppm and the NOAEL was 2,000 ppm. A Neurobehavioral and Neuropathological Effects Study in Rats: The only effect noted was a significant reduction in brain weight in females exposed to the highest concentration (rats were dosed at 15,000 ppm for 16 weeks and 2 days and observed for effects until week 21 of the study).
CFR citation: 40 CFR 721.3200 (Formerly 40 CFR 721.1007).

PMN Number P–89–776

Chemical name: (generic) Substituted benzenesulfonic acid, alkali metal salt.
CAS number: Not available.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15790).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The substance was not a chromosome mutagen *in vivo* in the mouse micronucleus assay. The no observed effect level (NOEL) for the 90-day oral study in rats is 50 mg/kg/day based on increased liver weights and clinical chemistry changes indicative of hepatotoxicity at 316 mg/kg/day and higher.
CFR citation: 40 CFR 721.4640 (Formerly 40 CFR 721.566).

PMN Number P–86–1662

Chemical name: (generic) Halogenated phosphate ester.
CAS number: Not available.
Revocation of section 5(e) consent order: December 7, 1995.
Federal Register *publication date and reference:* October 4, 1993 (58 FR 51707).
Docket number: OPPTS–50613.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: An oral 28-day repeated dose neurotoxicity study in hens: An NOAEL of 1,000 mg/kg/day was established based on a decrease of brain neurotoxic esterase in the spinal cord and a NOEL of 500 mg/kg/day was established based on no effects observed at this dose level (the next lower dose tested).
CFR citation: 40 CFR 721.5990.

PMN Number P–91–831

Chemical name: Propane, 1,1,1,2,3,3,3-heptafluoro-.
CAS number: 431–89–0.
Federal Register *publication date and reference:* September 23, 1992 (57 FR 44071).
Docket number: OPPTS–50601.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: Inhalation Developmental Toxicity Studies in Rats and Rabbits: No effects were noted at

100,000 ppm (the maximum dose tested) in rats or rabbits. No effects were noted in the rangefinding studies at 200,000 ppm. 90-day Inhalation Study in Rats: No effects noted at 78,167 ppm. Cardiac Sensitization Inhalation Study in dogs: The substance is a cardiac sensitizer at 14 percent concentration (140,000 ppm) in air. The NOAEL is estimated at 9.7 percent concentration in air based on no adverse effects noted at 9 percent concentration in air and distinctly irregular heartbeats noted at 10.5 percent concentration in air.
CFR citation: 40 CFR 721.8125.

PMN Number P–90–583

Chemical name: (generic) Reaction product of alkylphenol, tetraalkyl titanate and tin complex.
CAS number: Not available.
Revocation of section 5(e) consent order: May 31, 1995.
Federal Register *publication date and reference:* April 17, 1991 (56 FR 15793).
Docket number: OPPTS–50589.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: The acute oral LC_{50} is greater than 2,000 mg/kg/day. The mouse micronucleus assay and the ames assay were negative. The 28-day repeated dose oral study in rats demonstrated a NOAEL of 150 mg/kg/day and a LOAEL of 1,000 mg/kg/day.
CFR citation: 40 CFR 721.9260 (Formerly 40 CFR 721.2085).

PMN Number P–89–844

Chemical name: 1,3,5-Triazine-2,4,6-triamine, hydrobromide.
CAS number: 29305–12–2.
Revocation of section 5(e) consent order: January 17, 1996.
Federal Register *publication date and reference:* September 28, 1990 (55 FR 39905).
Docket number: OPPTS–50585.
Basis for revocation: Based on the Agency's analysis of potential exposures and the test data submitted pursuant to the section 5(e) consent order, EPA no longer finds that activities described as ''significant new uses'' in the SNUR may result in significant changes in human exposure. Accordingly, EPA has determined that further regulation under section 5(a)(2) is not warranted at this time.
Toxicity results: A 1-generation oral (dietary) reproductive study in rats demonstrated a NOAEL of 1,600 ppm. At 4,000 ppm there was reduced maternal food consumption during lactation, reduced paternal body weight (bwt), and reduced offspring survival and bwt.
CFR citation: 40 CFR 721.9780 (Formerly 40 CFR 721.2188).

PMN Number P–94–1009

Chemical name: (generic) Trifunctional aliphatic blocked urethane cross-linker.
CAS number: Not available.
Federal Register *publication date and reference:* March 1, 1995 (60 FR 11045).
Docket number: OPPTS–50620.
Basis for revocation: Pursuant to 40 CFR 720.75(e), the submitter withdrew the PMN. Therefore, a new PMN is required before anyone may commence manufacture or import. Since the PMN requirement is applicable to the substance, a SNUR is unwarranted at this time and EPA is revoking the SNUR.
CFR citation: 40 CFR 721.9962.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50629 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50629. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

IV. Regulatory Assessment Requirements

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'' (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this proposed rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing §§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 97–32180 Filed 12–8–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist the Red Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the red wolf (*Canis rufus*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that delisting this species may be warranted.

DATES: The finding announced in this notice was made on August 28, 1997.

ADDRESSES: Information, comments, or questions regarding this petition may be submitted to the Red Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: V. Gary Henry (704/258–3939, Ext. 226) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the petition is found to present the required information, the Service is also required to promptly commence a review of the status of the species.

The Service has made a finding on a petition to delist the red wolf (*Canis rufus*). The petition, dated August 5, 1995, was submitted by Mr. Rob Gordon, Executive Director, National Wilderness Institute, and was received by the Service on August 15, 1995.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will continue to process the backlog of rulemakings during fiscal year 1997 following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (tier 1), second highest priority (tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions. The processing of this petition falls under tier 3. At this time, the Southeast Region has no pending tier 1 actions and pending tier 2 actions are near completion. Additionally, the guidance states that ''effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3'' (61 FR 64480). The Service announced an extension on October 23, 1997 (62 FR 55268), of the guidance for fiscal year 1997. The 1997 guidance will remain in effect until final guidance for fiscal year 1998 is published in the **Federal Register**.

The petition presents the contention that the red wolf is a gray wolf (*Canis lupus*)/coyote (*C. latrans*) hybrid and references six literature citations to support the discussion of wolf/coyote hybridization. One of these citations includes four separate papers. The petition also cites two references regarding the reason for delisting other species. The petitioner concluded that those delistings were due to errors in the original data and contends that delisting the red wolf is also valid because of original data error. The petitioner also contends that since the red wolf is a cross between two species that are secure and plentiful, the red wolf is not the best available repository of genetic material of an endangered species that could be recovered through back-breeding.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and has consulted with experts on wolves and molecular genetics. On the basis of the best scientific and commercial information available, the Service finds that the petition does not present substantial information indicating that delisting this species may be warranted. The following three points summarize the reasons for this finding:

1. Neither the submitted data nor other available data provides conclusive evidence for the contention that the red wolf is a wolf/coyote hybrid.

The petition included attached literature references. These references consisted of a July 1995 *Scientific American* article by Robert K. Wayne and John L. Gittleman and the list of further reading references in that same article. The petition states that substantial new evidence in the form of peer-reviewed scientific papers demonstrates the hybrid origin of the red wolf, and references the research of Wayne and Gittleman as the basis, thus indirectly focusing on the Wayne and Gittleman article. This article is not a peer-reviewed paper and only the senior author has published original research regarding the red wolf. The Service has reviewed the references, along with other data, to determine their content, significance, and relevance to the petitioned action. The Service views the data presented in the petition as (1) a selective misrepresentation of the information contained in the cited references and (2) a misrepresentation of the available scientific and commercial data.

An earlier petition to delist the red wolf as a hybrid based on the mitochondrial DNA (mtDNA) results of Wayne and Jenks (1991) was found not to present substantial information to indicate that delisting was warranted (57 FR 1246; 1992). Much of the supporting evidence for that conclusion is repeated in the finding for this petition. However, the primary focus in this finding is the results and interpretations regarding the nuclear DNA results of Roy *et al.* (1996); Roy *et al.* (1994); and Roy *et al.* (1994).