

Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AAL AK E5 Sand Point, AK [Revised]**

Sand Point Airport, AK

(Lat. 55°18'54" N., long. 160°31'22" W)

Borland NDB/DME

(Lat. 55°18'56" N., long. 160°31'06" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sand Point Airport and within 3 miles each side of the 172° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 13.9 miles south of the airport and within 5 miles either side of the 318° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport; and that airspace within 5 miles either side of the 324° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport, and that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the Borland NDB/DME.

\* \* \* \* \*

Issued in Anchorage, AK, on February 24, 2006.

**Michael A. Tarr,**

*Manager, Operations Support.*

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

[Docket No. DEA-2771]

RIN 1117-AA98

**Schedules of Controlled Substances: Exempt Anabolic Steroid Products**

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Drug Enforcement Administration (DEA) is designating two pharmaceutical preparations as exempt anabolic steroid products under the Controlled Substances Act. This

action is part of the ongoing implementation of the Anabolic Steroids Control Act of 1990.

**DATES:** This rule is effective March 3, 2006. Written comments must be postmarked, and electronic comments must be sent, on or before April 3, 2006.

**ADDRESSES:** To ensure proper handling of comments, please reference Docket No. DEA-277 on all written and electronic correspondence. Written comments sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be sent electronically to [dea.diversion.policy@usdoj.gov](mailto:dea.diversion.policy@usdoj.gov). Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided at that site. DEA will accept attachments to electronic comments in Microsoft Word, Word Perfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Anabolic Steroids Control Act (ASCA) of 1990 (Title XIX of Pub. L. 101-647) placed anabolic steroids into Schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney General to the Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)), who in turn, re delegated this

authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR part 0, Appendix to Subpart R, section 7(g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of Title 21 of the Code of Federal Regulations. An application which was in conformance with § 1308.33 of Title 21 of the Code of Federal Regulations was received and was forwarded to the Secretary of Health and Human Services for evaluation. The purpose of this rule is to identify two products which the Deputy Assistant Administrator, Office of Diversion Control, finds meet the exempt anabolic steroid product criteria.

**Anabolic Steroid Products Being Added to the List of Products Exempted From Application of the CSA**

DEA received a letter dated January 12, 2004, written to the DEA on behalf of Pharmaceuticals International Inc. (PII), and an application to exempt from control under the CSA two products each containing esterified estrogens and methyltestosterone. In a letter dated April 1, 2004, DEA provided a copy of this application to the Department of Health and Human Services (DHHS) along with a request for evaluation and a recommendation. In a letter dated September 22, 2005, the Assistant Secretary of Health for DHHS recommended that both Essian™ and Essian™ H.S. be exempted from control under the CSA based on their similarity to the products, Estratest® and Estratest® H.S., respectively, both of which have been exempted from control under the CSA.

DEA agrees with DHHS regarding the similarity of these products to products which have already been exempted from the regulatory controls of the Controlled Substances Act. Further, after reviewing several law enforcement databases, DEA has not found evidence of significant abuse or trafficking of these types of products.

The Deputy Assistant Administrator, having reviewed the application, recommendation of the Secretary, and other relevant information, finds that Essian and Essian™ H.S. have no significant potential for abuse. Information on these products is given below.

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Essian™ H.S. ....	Pharmaceutics International Inc. ....	Tablets ..	Esterfied Estrogens .....	0.625mg/Tablet.
Essian™ .....	Pharmaceutics International Inc. ....	Tablets ..	Methyltestosterone .....	1.25mg/Tablet.
			Esterfied Estrogens .....	1.25mg/Tablet.
			Methyltestosterone .....	2.5mg/Tablet.

Therefore, the Deputy Assistant Administrator hereby orders that the above anabolic steroid products be added to the list of products excluded from application of certain controls of the CSA and referenced in 21 CFR 1308.34.

Interested persons are invited to submit their comments to this interim rule. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator shall immediately suspend the effectiveness of this order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

**Regulatory Certifications**

*Regulatory Flexibility Act*

The granting of exemption status relieves persons who handle the exempted products in the course of legitimate business from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

*Executive Order 12866*

The Deputy Assistant Administrator has determined that this is not a “significant rule,” as that term is used in Executive Order 12866. This rule exempts the identified steroid products from the regulatory controls that apply to controlled substances. Therefore, this rule has not been reviewed by the Office of Management and Budget.

*Executive Order 12988*

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

*Executive Order 13132*

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own law. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

*Unfunded Mandates Reform Act of 1995*

This interim rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$115,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This interim rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Administrative Procedure Act*

An agency may find good cause to exempt a rule from certain provisions of

the Administrative Procedure Act (5 U.S.C. 553), including Notice of Proposed Rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). Further, the Administrative Procedure Act permits an agency to make this rule effective upon the date of publication if the rule is “a substantive rule which grants or recognizes an exemption or relieves a restriction” (5 U.S.C. 553(d)(1)). As the rule adds two anabolic steroid products to the list of products exempted from regulatory control under the Controlled Substances Act and provides a benefit to the affected public, DEA finds that this rule meets the criteria set forth in 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(1) for an exception to the usual notice and comment process.

**Part 1308 Schedules of Controlled Substances**

Pursuant to the authority vested in the Attorney General by section 1903 of the Anabolic Steroids Control Act of 1990, delegated to the Administrator of the Drug Enforcement Administration pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control pursuant to 28 CFR part 0, Appendix to subpart R, section 7(g), the Deputy Assistant Administrator hereby orders that the following compounds, mixtures, or preparations containing anabolic steroids be exempted from application of sections 302 through 309 and sections 1002 through 1004 of the Controlled Substances Act (21 U.S.C. 822–829 and 21 U.S.C. 952–954) and 21 CFR 1301.13, 1301.71 through 1301.76 for administrative purposes only and be included in the list of products described in 21 CFR 1308.34.

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	Form	Ingredients	Quantity
Essian™ H.S. ....	Pharmaceutics International Inc. ....	Tablets ..	Esterfied Estrogens .....	0.625mg/Tablet.
Essian™ .....	Pharmaceutics International Inc. ....	Tablets ..	Methyltestosterone .....	1.25mg/Tablet.
			Esterfied Estrogens .....	1.25mg/Tablet.
			Methyltestosterone .....	2.5mg/Tablet.

Dated: February 27, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of  
Diversion Control.*

[FR Doc. 06-2032 Filed 3-2-06; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 219

RIN 0596-AC43

#### National Forest System Land Management Planning

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is revising the transition language contained in the 2005 planning rule (70 FR 1023). This final rule modifies the transition language to allow the Tongass National Forest to revise its land management plan either under the 2005 Rule or the planning regulations in effect before November 9, 2000. The preamble of this rule includes a discussion of the public comments received on the proposed rule published January 4, 2006 (71 FR 307), and the Department's responses to the comments.

**EFFECTIVE DATE:** This rule is effective March 3, 2006.

**FOR FURTHER INFORMATION CONTACT:** Cherie Shelley, Director, Ecosystem Planning, Alaska Region, Forest Service, USDA at (907) 586-8887; or Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA at (202) 205-1019.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 5, 2005, the Department of Agriculture published a final planning rule (70 FR 1023) governing the development of land management plans required by the National Forest Management Act. The 2005 planning regulations provide for a transition period from the previous planning regulations (1982 planning rule) to the new regulations (2005 planning rule). Specifically, § 219.14 of the 2005 planning rule allows plans to be amended under either the 1982 planning rule or the 2005 planning rule during the transition period; however, newly initiated revisions may only use the 2005 planning rule.

On August 5, 2005, the Ninth Circuit Court of Appeals issued a decision in *Natural Resources Defense Council v.*

*U.S. Forest Service*, 421 F.3d 797, that found defects in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. The court's analysis of the 1997 forest plan was made in the context of the 1982 planning regulations. Thus, the agency wishes to have the option of using the 1982 planning regulations during the remand. For this unique situation, this final rule amends 36 CFR 219.14(d)(1) to allow the Tongass National Forest land management plan to be revised using either the 1982 planning rule or the 2005 planning rule.

#### **Summary of Public Comments and the Department's Responses**

The proposed rule was published in the **Federal Register** on January 4, 2006, for a 30-day public comment period (71 FR 307). The Forest Service received eight comments on the proposed rule, one from an individual, one from an Alaska Native tribe, and six from environmental organizations. All comments were considered in reaching a decision on the final rule. All comments received supported the proposed rule and encouraged the Forest Service to use the 1982 planning rule instead of the 2005 planning rule in revising the Tongass Land Management Plan to respond to the decision of the Ninth Circuit. The Department appreciates the support for the proposed rule and the flexibility it will provide. The Forest Service will decide to use either the 1982 or 2005 planning rule in revising the Tongass Land Management Plan, and will take the comments received on the proposed rule into account in making that decision.

#### **Regulatory Certifications**

##### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to Office of Management and Budget review under Executive Order 12866.

#### *Proper Consideration of Small Entities*

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule makes a technical change to the transition language of the 2005 planning rule, to allow the Tongass National Forest to use either the current planning regulations or the regulations in effect before November 9, 2000, for its next land management plan revision. An initial small entities flexibility assessment has been made, which indicates that the final rule will impose no additional requirements on the affected public, which includes small businesses, small not-for-profit organizations, or small units of government. Accordingly, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

#### *No Environmental Impact*

This final rule allows the Tongass National Forest to use either the existing planning regulations or the planning regulations in effect before November 9, 2000, for the next revision of its land management plan to respond to the court's order. As such, the final rule has no direct and immediate effects regarding the occupancy and actual use of the Tongass National Forest. Section 31.12 (2) of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The 2005 planning regulations are a Service-wide program process. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

#### *Energy Effects*

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this final rule allows the Tongass National Forest to use either the regulations currently in