

acquisition process for the interagency acquisition process are described in paragraphs (b) and (c) of this section.

(b) Program officials are responsible for:

(1) Determining requirements, drafting a scope of work, and arranging with another Federal agency to perform the required task(s);

(2) Reviewing the other agency's response to DOE's request to determine programmatic acceptability; and,

(3) Preparing the authorizing documents which shall include a procurement request accompanied by copies of applicable correspondence between DOE and the other agency, scope of work, pricing data, funds approvals and any special provisions that must be included in the interagency acquisition, such as security considerations, technical data, or travel restrictions.

(c) Contracting officers shall be responsible for:

(1) Reviewing the proposed interagency acquisition request for conformance with FAR 17.5 and this subpart, and any memorandums of understanding that may exist with the servicing agency;

(2) Coordinating the method of financing an interagency agreement with the Field Chief Financial Officer, when a method other than reimbursement is contemplated; and,

(3) Obtaining legal and patent counsel concurrence whenever there is a question as to compliance with applicable laws and patent or technical data policy.

4. Section 917.504 is revised to read as follows:

917.504 Ordering Procedures.

(b) The DOE Form 1270.1, Interagency Agreement Face Page, shall be used for interagency acquisitions including appropriate elements of the model agreement illustrated at DOE Order 1270.1 (most recent version).

5. Section 917.505-70 is amended by revising paragraphs (a) and (b) to read as follows:

917.505-70 Methods of financing employed by DOE.

(a) OMB Circular A-34, Instructions on Budget Execution, requires agencies to obtain an advance of funds when performing work for anyone other than another Federal agency. In the case of another Federal agency, work can be performed on a reimbursable basis. Advances, in the interim, are charged to an account established for reimbursements from other Federal agencies. Consequently, except as specified in paragraph (b) of this

section, DOE prefers to finance work done by servicing agencies by reimbursement on the basis of current billings for work completed.

(b) DOE will provide cash advances only in those instances in which no other means exist to obtain the services. While, the Economy Act, 31 U.S.C. 1536, provides authority for making cash payments in advance to other Federal agencies for work performed under authority of the Economy Act, it is DOE's policy to not make cash advances except when required by law or the provisions of an interagency agreement. Agencies with revolving funds or Department of the Treasury approved consolidated working funds are examples of instances when cash advances may be required. Transfer appropriations may also be used to fund work performed by other Federal agencies. Payment by means other than reimbursement will not be undertaken without the approval of the Office of Chief Financial Officer, Headquarters.

[FR Doc 93-15752 Filed 7-8-93; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket HM-200; Notice No. 93-17]
RIN 2137-AB37

Hazardous Materials in Intrastate Commerce

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This action is necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate the safe transportation of hazardous materials in intrastate commerce. The intended effect of this notice is to raise the level of safety in the transportation of hazardous materials throughout the nation.

DATES: Comments must be received on or before October 13, 1993.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit, Research and Special Programs

Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-200). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-5046; FAX (202) 366-3753. Public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, (202) 366-4401, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, RSPA, or Jackie Smith, (202) 366-4488, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Transportation Uniform Safety Act of 1990

On November 16, 1990, the President signed into law the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615. The HMTUSA amended Section 105 of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, to require the Secretary to regulate hazardous materials transportation in intrastate commerce.

ANPRM

On June 29, 1987, in the Federal Register under Docket HM-200 (Notice No. 27-6, 52 FR 24195), RSPA published an advance notice of proposed rulemaking (ANPRM) which requested comments on extending the application of the HMR to all intrastate transportation in commerce as a means of promoting national uniformity and transportation safety. At the present time, the HMR generally do not apply to highway transportation by intrastate carriers, with the exception of registration requirements and transportation of marine pollutants and oil, hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks (see 49 CFR 107.601 and 171.1(a) and (b)). The HMR apply to all hazardous materials transported in commerce by rail car, aircraft, or vessel. The ANPRM invited comments on the need for, and possible consequences of, DOT

extending the application of its hazardous materials regulations to all interstate transportation of hazardous materials in commerce. The need for such regulations was highlighted in a July 1986 report by the Office of Technology Assessment (OTA) entitled "Transportation of Hazardous Materials."

State/Federal Relationship

Historically, the HMR have focused primarily on transportation of hazardous materials by interstate carriers. Over time, however, the HMR have been extended to intrastate transportation of hazardous substances, hazardous wastes, and flammable cryogenic liquids, marine pollutants, oils and registration. RSPA has encouraged States to adopt the HMR through the RSPA-sponsored Cooperative Hazardous Materials Enforcement Development Program and previously, the State Hazardous Materials Enforcement Development Program. In addition, FHWA requires States to adopt and enforce the Federal Motor Carrier Safety Regulations, 49 CFR parts 390-397, and the highway-related portions of the HMR (or compatible State rules and regulations) to qualify for grants under FHWA's Motor Carrier Safety Assistance Program (MCSAP).

For highway transportation, all States have adopted hazardous materials regulations, most of them similar to the HMR. However, certain States deviated from the HMR, particularly regarding intrastate highway shipments. Some States, for example, "grandfathered" non-DOT specification cargo tanks, exempted farmers, or required special prenotification or routing of hazardous materials shipments.

Even if every State adopted the HMR without change, it would be difficult for many of them to maintain consistency with the HMR and revise their statutes and regulations concurrently with the Federal regulations. Many State constitutions preclude open-ended incorporation by reference of the HMR.

A publication of the National Governors' Association entitled "Hazardous Materials Transportation Regulatory and Enforcement Programs, A Governor's Guide" discusses this issue and the need for uniform regulations and enforcement

* * * it is not the specific requirements of any one State that make compliance difficult, but rather the cumulative impact of many individual State requirements * * * For example, Massachusetts has rules in effect which could cause carriers in compliance with fire extinguisher and placarding requirements in the Federal system and in

neighboring States to inadvertently violate Massachusetts law upon crossing the State line. In other instances, State constitutional restraints dictate how States adopt the Federal regulations. California, like many other States, is permitted to adopt the Federal hazardous materials regulations by reference. Therefore, when portions of the regulations that were adopted are amended, the amendments may become State law without further legislative action. * * * In New Mexico, the State constitution prohibits adoption of the Federal regulations by reference. Instead, there must be specific enabling legislation for any regulations the State adopts. In addition, the language of the enabling legislation must be specific enough to ensure the State is not "legislating by regulation". Thus, the entire body of Federal regulations has to be not only identified, but also described in the State statute. Once adopted, the process for amending the regulations varies with each State. * * * Utah need only issue a transportation commission resolution adopting the amended regulations. California, Illinois, and New Jersey must initiate a rulemaking proceeding, and each State sets different timetables for updating the regulations

Comments to the ANPRM

Commenters to the ANPRM were asked to address the potential impacts on certain populations which might occur if the HMR were applied to all hazardous materials transportation in intrastate commerce. Specific groups urged to comment were businesses (especially small businesses engaged in local distribution), farmers hauling fertilizer (other than hazardous substances in reportable quantities) for application on their lands, and consumers. In addition, commenters were asked to respond to the following questions.

1. Should RSPA extend application of the HMR to all intrastate transportation of hazardous materials?

2. Should RSPA consider exceptions to the application of the HMR to the intrastate transportation of hazardous materials by highway?

3. If RSPA decides to apply the HMR to the intrastate transportation of hazardous materials by highway, what time frame should be allowed for compliance with the new requirements? Should different time frames be allowed for different requirements (e.g., communications vs. packaging, bulk packaging vs. non-bulk)? If so, what should these time frames be?

4. Section 103(5) of the HMTA includes, within the definition of "State", the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam. Should any special consideration be given to the implementation of the HMR requirements in these or other jurisdictions if this proposal is adopted?

(The HMTUSA amended the HMTA to also include within the definition of "State" the Commonwealth of the Northern Mariana Islands.)

Forty-four commenters responded to Notice No. 87-6. The majority of commenters were in favor of the proposal. Commenters in favor include nine States or organizations representing States, 23 shippers, carriers, and shipper/carrier organizations, one utility, and one union. Few were opposed. One organization took no position. Arguments in support of the proposal included uniformity, safety, and the advantage of having to consult only one source to stay current with regulations. Arguments in opposition to the proposal included lack of safety enhancement, no clear established need, adverse impact on small business, excessive cost, and States' rights. Some commenters recommended that the regulations, if extended to intrastate carriers, not apply to farmers, small businesses, private carriers, and cargo tanks. Several commenters suggested that cargo tanks be grandfathered or exempted from the regulations in States that regulate and inspect the design, fabrication and/or manufacture of cargo tanks and regularly inspect cargo tanks in service. California stated it had grandfathered from 1,500 to 2,000 non-DOT specification cargo tanks used to transport flammable and combustible liquids after approving their design. The cargo tanks are subject to mandatory annual inspection and certification. Minnesota said it has a similar provision for tank motor vehicles.

Of 18 commenters who addressed implementation time frames, half recommended a phased-in approach. Generally, these commenters recommended that requirements concerning classification and communications (labeling, marking, and shipping papers) be implemented first. Recommended time frames for this phase ranged from 60 days to three years. One commenter suggested that personnel training and compliance requirements be phased-in next, within a three-to-five-year period. Some commenters recommended that equipment specifications involving bulk packaging be implemented last, within one to ten years.

Few commenters addressed the question whether any special consideration should be given to the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam. Generally, those who did address the question thought that no special consideration should be given. A commenter did write that a review of

the existing levels of enforcement in the remote areas should be undertaken and that perhaps a special education program should be implemented prior to extension of the regulations to these areas."

II. Proposed Rule

Based on the HMTUSA mandate and the comments received to the ANPRM, RSPA proposes to extend, in two steps, the applicability of the HMR to cover all highway transportation of hazardous materials in intrastate commerce. First, RSPA proposes to require all intrastate shippers and carriers to comply with the HMR. Except for bulk packagings, compliance would be required one year after publication of the final rule. RSPA invites comments on the one-year transition period.

Second, except for hazardous substances, hazardous wastes, flammable cryogenic liquids, marine pollutants, and oils (which are currently subject to the HMR when transported in intrastate commerce), RSPA proposes a three-year transition period for certain bulk packagings. This proposed transition period would apply to non-DOT specification bulk packagings used for transportation of hazardous materials in intrastate commerce only.

Third, these packagings are used exclusively by intrastate carriers, and are specifically authorized, prior to October 1, 1993, by the State in which they are operated. The transition period is proposed in response to several comments indicating that several States have construction requirements for particular bulk packagings, used in intrastate commerce of hazardous materials, different from those required by the HMR. RSPA proposes a three-year transition period to provide sufficient time to bring these bulk packagings into conformance with the HMR. (This delay would have no effect on § 173.315(a) (note 17), (k), and (m) pertaining to the use of cargo tanks in intrastate commerce.) Comments are solicited regarding the proposed three-year transition period.

As mandated by HMTUSA, RSPA proposes to extend the applicability of the HMR to highway transportation by "intrastate" carriers in the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands concurrently with the extension of the HMR to that transportation in State Forty-eight states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, and Guam receive Motor Carrier Safety Assistance Program

(MCSAP) funds annually from FHWA contingent upon the adoption and enforcement of the HMR. In fiscal year 1991, these funds totaled over \$44 million. In addition, during fiscal year 1993, grants totaling over \$12.8 million will be made available to the States, the District of Columbia and the other five jurisdictions for emergency response planning and training programs involving hazardous materials. Although no comments to the ANPRM opposed extension of the HMR to these other jurisdictions, RSPA invites comments on whether there is a need to defer the extension beyond the one-year proposed transition date for this rule.

Paragraph 171.1(a) would be revised to clarify the applicability of the HMR to all intrastate transportation of hazardous materials. In addition, it would address the Department's authority regarding the transportation of hazardous materials even though the hazardous material is not present. Paragraph 171.1(b) would be unchanged. Paragraph 171.1(c) would be redesignated as paragraph 171.2(h) for clarification, and a new paragraph 171.1(c) would be added to provide for a three-year transition period exclusively for a non-conforming bulk packaging in a State where: (1) its use is specifically authorized by statute or regulation of that State and was specifically and continuously authorized on or before October 1, 1993; (2) the packaging complies with all requirements of the State; and (3) each shipment is offered in conformance with all other applicable requirements of this subchapter.

The HMTA, as amended by HMTUSA, requires the Secretary to regulate hazardous materials transportation in intrastate commerce. The HMTA does not provide an exception for farmers and small businesses. Based on the mandate of the HMTA, this NPRM proposes to extend the HMR to cover all hazardous materials transportation in intrastate commerce to promote national uniformity and transportation safety. RSPA encourages comments from farmers and small businesses on whether the two transition periods proposed provide adequate time for compliance.

III. Federal Preemption Under the HMTA

The HMTA now more specifically delineates the relationship of Federal and non-Federal requirements governing the transportation of hazardous materials and the administrative and judicial processes which are to be used in the event of a

conflict between Federal and non-Federal requirements. These provisions, which are described below, were published by RSPA in regulations implementing the HMTUSA [56 FR 8616, Feb. 28, 1991; 56 FR 15510, Apr. 17, 1991]

First, with certain exceptions, any requirement of a State, political subdivision, or Indian tribe concerning the following "covered subjects" is preempted if the non-Federal requirement is not "substantively the same" as any provision of the HMTA or any Federal regulation issued under the HMTA. The covered subjects are:

1. The designation, description, and classification of hazardous materials.
2. The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
3. The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
4. The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
5. The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials, 49 App. U.S.C. 1804(a)(4) (A) and (B).

RSPA has completed a rulemaking to define "substantively the same" as meaning that the non-Federal requirement conforms in every significant respect to the Federal regulation. Editorial and other similar *de minimis* changes are permitted [57 FR 20424, May 13, 1992].

Second, the HMTA provides, with certain exceptions, that after the last day of the two-year period beginning on the date of the issuance of Federal standards for highway routing, no State or Indian tribe may establish, maintain, or enforce:

1. Any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or
2. Any limitation or requirement with respect to such routing, unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards, 49 App. U.S.C. 1804(b)(4).

The HMTA now requires issuance of Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing highway

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routes. These highway routing standards were proposed August 13, 1992, by the Federal Highway Administration (FHWA) in Docket MC-92-6 [57 FR 39522].

Third, the HMTA provides that, with certain exceptions, any requirement of a State, political subdivision, or Indian tribe is preempted if:

1. Compliance with both the State, political subdivision, or Indian tribe requirement and any requirement of the HMTA or of a regulation issued under the HMTA is not possible, or

2. The State, political subdivision, or Indian tribe requirement, as applied or enforced, creates an obstacle to the accomplishment and execution of the HMTA or the regulations issued under the HMTA.

Congress, thus, has included the "dual compliance" (or "impossibility") and "obstacle" tests for preemption in the HMTA. These tests previously had been included in RSPA's regulations and applied in RSPA's advisory inconsistency rulings.

Fourth, the HMTA provides that any person, including a State, political subdivision, or Indian tribe directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Secretary of Transportation for a determination of whether that requirement is preempted by the HMTA. Unlike the advisory inconsistency rulings previously issued by RSPA, the new preemption determinations are legally binding and subject to judicial review, 49 App. U.S.C. 1811(c).

Fifth, the HMTA provides the Secretary with discretionary authority to waive preemption if two specific tests are met, 49 App. U.S.C. 1811(d).

Sixth, the HMTA allows a party to a preemption or waiver of preemption determination proceeding to seek judicial review in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, 49 App. U.S.C. 1811(e).

If adopted as final, this rule would preempt State, local, or Indian tribe hazardous materials transportation requirements in accordance with the standards discussed above.

IV. Administrative Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

The effect of this rule, as proposed, does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under the regulatory procedures of the

Department of Transportation (44 FR 11034) because of the significant public and congressional interest. This proposed rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act 942 FR 4321 et seq.). A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). This proposed rule would extend the application of the Hazardous Materials Regulations to all intrastate transportation of hazardous materials. RSPA is proposing to implement the HMTA at the minimum level required by the statute.

The Hazardous Materials Transportation Act (HMTA) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if: (1) Compliance with both the non-Federal and the Federal requirement is not possible, (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. If adopted as final, this rule would preempt any State, local, or Indian tribe hazardous materials transportation requirements in accordance with the HMTA. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Impact on Small Entities

This proposal would have minimal impact on shippers and carriers, some of whom may be small business entities. Based on limited information concerning the size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

There are no new information collection requirements contained in this rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action

listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818, 49 CFR part 1.

§§ 171.1 and 171.2 [Amended]

2. Section 171.1(c) would be redesignated as § 171.2(h).

3. In § 171.1, paragraph (a) would be revised, and a new paragraph (c) would be added to read as follows.

§ 171.1 Purpose and scope.

(a) This subchapter prescribes requirements of the Department of Transportation governing—

(1) Offering for and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, vessel (except as delegated at § 1.46(t) of this title), and motor vehicle (except as provided in paragraph (c) of this section).

(2) Manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold for use in any transportation specified in this paragraph (a).

(3) Representation that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel.

(b) * * *

(c) Except for the offering or transportation of a hazardous substance, a hazardous waste, or a flammable cryogenic liquid in a portable tank or cargo tank, the requirements of subparts D through H of part 173 of this subchapter as they pertain to bulk packagings, and the requirements of part 180 of this subchapter do not apply to the transportation of hazardous materials by an intrastate carrier by motor vehicle in a non-specification bulk packaging until October 1, 1996, if.

(1) The packaging is used exclusively in a State where its use for the material

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ng transported was specifically authorized by statute or regulation of that State, and was specifically and continuously authorized on or before October 1, 1993;

(2) The packaging complies with all requirements of the State; and

(3) Each shipment is offered in conformance with all other applicable requirements of this subchapter.

Issued in Washington, DC, on July 1, 1993 under authority delegated in 49 CFR part 108, appendix A.

Alan I. Roberts, Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-16107 Filed 7-8-93, 8:45 am]

BILLING CODE 4910-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Not Substantial Petition Finding on the North Cascades Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Endangered Species Act of 1973, as amended (Act), requires the Service to evaluate petitions and determine whether or not substantial information has been presented indicating that the requested action may be warranted. On April 28, 1993, the U.S. Fish and Wildlife Service (Service) agreed to reevaluate its negative 90-day finding on the petition to list the North Cascades population of the lynx, in light of the anticipated receipt of new information. The Service has completed its reevaluation and finds that the petition does not present substantial information indicating that the requested action may be warranted. The North Cascades lynx is not a listable entity, because it is not a distinct population segment. This finding supersedes the earlier 90-day finding dated February 4, 1992.

DATES: The finding announced in this petition was approved on July 1, 1993. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Fish and Wildlife Service, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501-2192. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Frederick, at the above address (206/753-9440).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1991, the U.S. Fish and Wildlife Service (Service) received a petition from the National Audubon Society, The Humane Society of the United States, Defenders of Wildlife, Greater Ecosystem Alliance, Friends of the Loomis Forest, Methow Valley Forest Watch, Save Chelan Alliance, Lower Columbia Basin Audubon Society, Tonasket Forest Watch, Pilchuck Audubon Society, North Cascades Audubon Society, and Sierra Club Cascade Chapter (collectively "petitioners") to list the North American lynx (Felis lynx canadensis) of the North Cascades ecosystem of Washington as an endangered species under the emergency provisions of the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. On October 6, 1992, the Service announced its finding that the petition had not presented substantial information indicating that the requested action was warranted in the Federal Register (57 FR 46007). On April 28, 1992, a settlement agreement was reached whereby the Service agreed to reevaluate its 90-day finding on the petition, in light of new information that was to be submitted by the petitioners.

The new information consisted of the draft "Status of the North American Lynx in Washington," prepared by the Washington Department of Wildlife (WDW 1993), 1992 landsat photograph (Radarsat International 1992), and written comments provided by the Greater Ecosystem Alliance in regard to the draft status review.

The Service has reconsidered the plaintiffs' petition and finds that the petition and other recent information provided by the petitioner does not present substantial information that the requested action may be warranted. In cases where a petitioner only requests listing of a species throughout a portion of its range, the Service must first determine whether or not the population petitioned represents a "distinct population segment" listable under the Act.

"Distinct population segments" listed as endangered or threatened species typically consist of: (1) Populations that are reproductively isolated from other members of the species, or (2) the entire coterminous United States population of a species. Reproductive isolation is

usually the result of a complete (or nearly so) geographic barrier; the dispersal of just a few individuals per generation would suffice to maintain a mixed gene pool.

The North American lynx inhabits coniferous forests and wet bogs from Newfoundland and Labrador on the east to Alaska and British Columbia on the west, and from the arctic treeline to as far south as Colorado in the northern United States (WDW 1993). Therefore, the North Cascades population of the lynx does not constitute the entire coterminous United States population of the species.

In addition, the Service fails to find substantial information indicating that lynx in the North Cascades of Washington is isolated from other parts of its range in British Columbia. Lynx typically undergo long-distance dispersal during and after a decline in the hare populations (Adams 1963, Mech 1973, 1980, Ward 1985, Ward and Krebs 1985, as cited in WDW 1993). During a low in the hare cycle, lynx will move greater distances in search of food (Brand et al 1976, Alaska Dept. Fish and Game 1977, as cited in WDW 1993). Lynx in Washington have been documented to move several hundred miles into British Columbia (WDW 1993).

Examination of the landsat photograph covering a large portion of the North Cascades ecosystem shows no evidence of a geographical barrier along the international border between the United States and Canada. Clearcut areas may prevent lynx from dispersing into other areas for a short period of time, but they do not constitute long-term barriers. Within 10 to 20 years following harvest, most clearcut areas likely provide regrowth allowing cover for dispersal (Engbring, USFWS, pers. comm., 1993). Much of the area depicted in the landsat photograph is within the Pasayten Wilderness and is not subject to logging. Within approximately 20 miles of the border, the landsat photograph depicts only a minor amount of logging. The area is likely suitable for lynx. Approximately 25 to 40 miles north of the border, a series of clearcuts suggests that there may be a partial barrier to dispersal at that latitude. This barrier, however, is not complete, and no evidence has been presented that would suggest lynx do not occasionally traverse and disperse across this area.

In summary, the Service finds that substantial information is not available to demonstrate that the lynx population in the North Cascades ecosystem of Washington constitutes a distinct population segment. Therefore,

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