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GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-277622

August 20,1997

The Honorable Frank H. Murkowski
Chairman, Committee on Energy and
Natural Resources
United States Senate

Subject: Bureau of Land Management and Forest Service: Information on the Time Spent on Major and Significant Rules

Dear Mr. Chairman:

As requested, we are providing you with information on the time spent by the Department of the Interior's Bureau of Land Management (BLM) and the U.S. Department of Agriculture's Forest Service developing rules as provided by the Administrative Procedure Act, as amended. Specifically, we are responding to the following questions:

- From October 1988 through April 1997, how many rules did the Forest Service and BLM initiate or complete and how many were considered major or significant as defined by Executive Orders 12291 and 12866, respectively?

- How much time did BLM and the Forest Service spend on those rules identified as major or significant?

- What factors contributed to the amount of time spent on the major and significant rules?

You asked similar questions about the Council on Environmental Quality. However, because the Council has not issued a rule since April 1986, your office agreed that we would not include information about the Council in this report.

BACKGROUND

The Administrative Procedure Act, as amended, sets out, among other things, the basic requirements that federal agencies must follow for rulemaking. The act defines a rule as the whole or part of an agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law. Generally, the act requires agencies to publish in the Federal Register a notice that includes (1) a statement of the time, place, and nature of the rulemaking; (2) the authority under which the rule is published; and (3) either the terms or substance of the proposed rule or a description of the subjects or issues involved. The act also requires agencies to provide the public an opportunity to comment in writing on proposed rules. In carrying out the rulemaking process, agencies publish in the Federal Register one or more of the following:

- An Advance Notice of Proposed Rulemaking stating that the agency is considering a regulatory action and asks for public comment on the issues and options discussed. The agency issues an advance notice when it believes that it needs to gather more information before proceeding to a Notice of Proposed Rulemaking.

- A Notice of Proposed Rulemaking that describes and solicits public comments on a proposed regulatory action.

- An Interim Final Rule that is used where prior notice and opportunity to comment are considered impractical, unnecessary, or contrary to public interest. Generally, BLM and the Forest Service will provide the public an opportunity to comment on an Interim Final Rule and, after comment, publish a final rule.

- A Final Rule that includes a statement that the rule will take effect in 30 days. According to BLM and Forest Service officials, the Administrative Procedure Act exempts land management agencies from giving prior notice before a final rule takes effect. They also said that it is the policy of both Departments to allow the public an opportunity to comment prior to the adoption of a final rule.

Executive Order 12291, February 17, 1981, defined a major rule as one that would have (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local governments, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on

the ability of U.S.-based enterprises to compete in domestic or export markets. Under Executive Order 12291, the Office of Management and Budget (OMB) reviewed all rules generated by agencies before they were published in the Federal Register.

Executive Order 12866, September 30, 1993, supersedes Executive Order 12291 and defines a significant regulatory action as one that (1) may have an annual effect on the economy of $100 million or more or adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments; (2) creates a serious inconsistency or interferes with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs; or (4) raises novel legal or policy issues. Executive Order 12866 focuses OMB's review only on the most important rules that have the greatest impact on the public. Agencies recommend and OMB decides which rules are significant on the basis of their economic, social, or legal importance. OMB reviews only those rules determined to be significant.

RULES UNDERTAKEN OR COMPLETED

Between October 1988 and April 1997, BLM initiated or completed 168 rules; the Forest Service initiated or completed 93.[1] BLM had 7 rules and the Forest Service had 10 rules that met the definitions of major or significant. All seven of BLM's rules were significant. According to officials within BLM's Regulatory Affairs Group, the agency has not had any major rules since October 1988. Of the Forest Service's 10 rules, 1 was designated as major; the remaining 9 were designated as significant.

LENGTH OF TIME SPENT ON MAJOR OR SIGNIFICANT RULES

We found that BLM spent from more than 2 years to almost 6 years for the four significant rules that it completed and more than 9 years for one rule that it subsequently withdrew. As of July 31, 1997, BLM had been working on one significant rule for almost 4 years and on another for almost 9 years. Table 1 provides information on the time spent by BLM on the seven significant rules.

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[1]The number of rules for BLM includes oil and gas orders because the agency regards them as equivalent to rules. The number of rules for the Forest Service excludes policies, directives, and announcements of periodically required reviews of rules.

Table 1: Time Spent by BLM on Significant Rules Since October 1988

Title of rule[a]	Date started	Status/date	Elapsed time[b]
Sales of Forest Products	April 1987	Withdrawn; 10/1/96	9 years 6 months
Grazing Administration	May 1993	Implemented; 8/21/95	2 years 3 months
Rights-of-Way for Communication Uses	May 1993	Implemented; 12/13/95	2 years 7 months
Logical Mining Units	November 1993	Ongoing	3 years 8 months[c]
Waiver, Suspension, or Reduction of Rental, Royalty, or Minimum Royalty	December 1993	Implemented; 3/11/96	2 years 3 months
Coal Management	October 1988	Ongoing	8 years 9 months[c]
Mining Claims Under the General Mining Laws	July 1991	Implemented; 3/3/97	5 years 8 months

[a]Enclosure I provides the complete title and regulatory identification number for these rules.

[b]The time spent is an approximation since BLM does not maintain information showing when staff started to work on the rules. Therefore, we had to rely on staff recollections or information in BLM's files to derive a start date.

[c]Time spent as of July 31, 1997.

The Forest Service spent from more than 2 years to 5 years for the three significant rules that it completed and 8 months to almost 9 years for the three rules that it subsequently withdrew. As of July 31, 1997, the Forest Service had been working on three significant rules for more than 6 to almost 10 years. Table 2 provides information on the time spent by the Forest Service on the 10 rules.

Table 2: Time Spent by the Forest Service on Major or Significant Rules Since October 1988

Title of rule[a]	Date started	Status/date	Elapsed time[b]
Management of Grazing Use Within Rangeland Ecosystems	December 1987	Withdrawn; 10/1/96	8 years 10 months
Grazing Fees: Eastern and Southern Regions	December 1987	Implemented; 3/1/90	2 years 3 months
National Forest Prohibitions	October 1987	Ongoing	9 years 9 months[c]
Land Uses and Prohibitions; Noncommercial Group Uses	May 1992	Implemented; 9/30/95	3 years 4 months
National Forest System Land and Resource Management Planning	March 1989	Ongoing	8 years 4 months[c]
Cancellation of Timber Sale Contracts	June 1989	Ongoing	8 years 2 months[c]
Federal Timber Export and Substitution Restrictions	August 1990	Implemented; 9/8/95[d]	5 years
State and Private Forestry Assistance Stewardship Incentive Program	April 1991	Ongoing	6 years 3 months[c]
Range Management, Grazing Fees	December 1987	Withdrawn; 2/3/95	7 years 2 months
Range Management Grazing Fees in the West; Qualification Criteria	July 1994	Withdrawn; 2/3/95	8 months

[a]Enclosure I provides the complete title and regulatory identification number of these rules.

[b]The time spent is an approximation since the Forest Service does not maintain information showing when staff started to work on the rules. Therefore, we had to rely on staff recollections or information in the Forest Service's files to derive a start date.

[c]Time spent as of July 31, 1997.

[d]In fiscal years 1996 and 1997, the Congress imposed a moratorium on the agency's implementing this rule.

FACTORS CONTRIBUTING TO THE TIME SPENT ON MAJOR OR SIGNIFICANT RULES

On the basis of our discussions with the principal authors as well as other agency officials, some of the reasons for the time spent on the rules shown in tables 1 and 2 include

- pending legislation–for example, BLM delayed moving forward on a mining claims rule and the Forest Service delayed moving forward on a grazing rule while the Congress considered new legislation in these areas;

- congressional actions in fiscal years 1996 and 1997 that imposed a moratorium on both agencies moving forward with regulations related to the export of federal timber;

- presidential moratoriums in January and April 1992 that lasted until August 28, 1992, and a January 1993 postponement of regulations until the sub-Cabinet-level official or agency head had been confirmed by the Senate; for BLM, the postponement lasted until May 18, 1993, and for the Forest Service, until May 12, 1993;

- the lack of full-time agency staff with subject matter expertise to work on rules; according to both BLM and Forest Service officials, staff work on rules along with carrying out their other responsibilities.

In addition, BLM regulatory affairs officials said that low staff levels and competing priorities affected the time spent on rules. For the entire Bush administration and the first 2 years of the Clinton administration, BLM had only two regulatory specialists, one of whom spent almost 2 years working on range reform while the other specialist handled all other activities, including congressionally directed rules that did not qualify as major or significant. Forest Service regulatory personnel in the Directives and Regulations Branch said that the downsizing of the Forest Service staff had resulted in the loss of the agency's most experienced staff and that the agency had difficulty in replacing the lost expertise for rules already in progress. They also noted that the Forest Service had to redirect its regulatory resources to respond to the Regulatory Reform Phase II Initiative of the National Performance Review, which delayed some rules under development.

Enclosure I provides information on the reasons for the time spent by BLM and the Forest Service on the major or significant rules proposed since October 1988.

AGENCY COMMENTS

We provided a draft of this report to the Departments of Agriculture and the Interior for review and comment. We met with officials of the agencies, including BLM's Deputy Director and the Forest Service's Branch Chief, Directives and Regulations Branch. The agencies agreed with the information presented but offered the following comments.

According to BLM, it did not work each day on the rules shown in table 1. BLM noted that a certain level of uncertainty exists with any rule, staff do not necessarily begin to work on a rule on a specific date, and staff may work on more than one rule concurrently. Although we recognize that the time shown in table 1 reflects total calendar time, BLM has no mechanism by which we could determine the actual time spent on the rules we reviewed. Lacking such information, we could report only total calendar time. BLM also noted that it must consider and assess various factors at each step in the process. If the proposed rule is determined to have an adverse effect, then BLM rethinks the rule and how to proceed with it. BLM noted that increasing the number of staff involved with developing rules would not necessarily expedite the process. Rather, it was an issue of staff effectively utilizing their time and making difficult choices between all work priorities. According to BLM, speed is not necessarily a good measure when discussing rules. BLM believes that the checks and balances and slowness of the process is an asset (i.e., public involvement and comment is a vital aspect of the process and takes time). BLM acknowledged that it should strive to improve the rulemaking process by focusing attention on priority rules and dropping low priority rules. We agree these are actions that BLM could take to facilitate the issuance of rules. At the time of our review, however, BLM had not done so.

The Forest Service noted that the time shown in table 2 reflects total calendar time for each rule and does not reflect the time that Forest Service staff actually worked on the rule while juggling other priorities and responsibilities. Although we recognize that the time shown in table 2 reflects total calendar time, the Forest Service has no mechanism by which we could determine the actual time spent on the rules we reviewed. Lacking such information, we could report only total calendar time. The Forest Service also noted that since October 1988 it has published five proposed policies that OMB designated as significant under Executive Order 12866. As a result of the significant designation, the Forest Service had to conduct a rigorous cost and benefit analysis related to the policies, which affected the time spent by agency staff on preparing and issuing rules. We recognize that some Forest Service policies

were designated significant; however, the policies were outside the scope of this review.

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We obtained information on all rules that had been initiated or completed by BLM and the Forest Service since October 1988 from the semiannual Unified Agenda of Federal Regulations published by the General Service Administration's (GSA) Regulatory Information Service Center for the Office of Information and Regulatory Affairs within OMB. As shown in the unified agenda, BLM had worked on 210 rules and the Forest Service on 126 rules. We provided a list of these rules to the agencies and asked BLM to eliminate duplicates and the Forest Service to eliminate policies and directives. BLM identified 42 duplicate rules and the Forest Service identified 30 policies and directives. In addition, we identified three Forest Service rules that were announcements of periodically required reviews.

We asked GSA to provide us with information on the rules that OMB had reviewed between October 1988 and September 30, 1993, and the rules that the agencies recommended and OMB identified as significant after September 30, 1993. Because OMB reviewed all rules before September 30, 1993, and neither GSA's nor OMB's tracking systems delineated whether the rule was considered major under Executive Order 12291, we asked BLM and the Forest Service to identify the major rules. In addition, we relied on the agencies and/or information in the unified agenda to determine whether a rule met the definition of significant under Executive Order 12866.

To determine dates and time spent for key steps in the rulemaking process and the factors that contributed to the time spent, we obtained information from GSA's tracking system, agency officials, and files maintained either by the principal author or regulation group within the agencies. Because neither the Forest Service nor BLM maintain information showing when agency staff started to work on rules, we relied on the recollection of agency officials or documentation that indicated when staff took some action related to the rules. Therefore, the time spent by the agencies on the rules that we examined may be longer than we were able to determine. In addition, if the agencies' documents indicated a date that was earlier than the officials' recollections, we used the documented date. We performed our work from May 1997 through August 1997 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after the date of this letter. At that time, we will send copies of the report to the Secretaries of Agriculture and the Interior; appropriate congressional committees; and other interested parties. We will also make copies available to others upon request.

If you or your staff have any questions about this report, please call me at (206) 287-4810. Major contributors to this report are Richard Iager, Alan Kasdan, Mary Ann Kruslicky, and Carolyn McGowan.

Sincerely yours,

James K. Meissner
Associate Director, Energy,
Resources, and Science Issues

Enclosure

INFORMATION ON MAJOR AND SIGNIFICANT RULES INITIATED BY BLM AND THE FOREST SERVICE SINCE OCTOBER 1988

Since October 1988, the Bureau of Land Management (BLM) initiated 168 rules and the Forest Service initiated 93 rules. Of the totals, the Office of Management and Budget designated 17 as major or significant (7 for BLM and 10 for the Forest Service). The sections following provide information on the 17 major or significant rules.

BUREAU OF LAND MANAGEMENT

The seven significant BLM rules are described below.

Sales of Forest Products; General, Preparation for Sale (RIN-1004-AB34)

Purpose: This rule would prohibit the export of unprocessed timber from western federal timber lands and direct or indirect substitution for such timber.

Timing: BLM officials could not determine when the agency began to work on this rule. However, the rule first appeared in the Unified Agenda on April 27, 1987. BLM drafted several Notices of Proposed Rulemaking but did not publish them. In the Omnibus Consolidated Recessions and Appropriations Act of 1996, the Congress imposed a moratorium on this rule. As a result, BLM withdrew the proposed rule on October 1, 1996–9-1/2 years after BLM began working on it. In the Department of Interior and Related Agencies Appropriations Act of 1997 of the Omnibus Consolidated Appropriations Act of 1997, the Congress continued the moratorium until October 1, 1997.

Reasons for the time taken: Several factors contributed to the time spent on this rule. According to BLM officials, the agency and the then Deputy Assistant Secretary for Land and Minerals Management had differing views on the form and content of the rule. In 1990, the Congress enacted the Forest Resources Conservation and Shortage Relief Act that, according to BLM officials, paralleled this rule. An internal memo by the principal author of the rule noted that a revised draft of the proposed rule was prepared in 1990 and languished through internal departmental review until early 1995 (5 years). Sometime in the late summer of 1995, Boise Cascade filed a lawsuit claiming that BLM and the Forest Service did not promulgate rules and regulations in compliance with the Forest Resources Conservation and Shortage Relief Act. According to BLM's Acting Group Manager, Regulatory Affairs, the Department of the Interior settled the suit in 1996. The Acting Manager said that the lawsuit impacted the time that BLM spent on this rule during the last several months of the process.

Grazing Administration Exclusive of Alaska (RIN-1004-AB89)

Purpose: This rule amended many of the provisions for the management of public rangelands, provided for nonmonetary settlement for unauthorized grazing use determined by BLM to have resulted from circumstances beyond the control of the permittee or lessee, provided for public participation in the management of public rangelands, and provided for the development of standards and guidelines to be met in the administration of livestock grazing. The rule also amended many of the provisions for the formulation, structure, and roles of advisory committees.

Timing: The Secretary of the Interior announced this initiative at an all employees meeting in about May 1993. BLM published an Advance Notice of Proposed Rulemaking on August 13, 1993, a Notice of Proposed Rulemaking on March 25, 1994, and a Final Rule on February 22, 1995. The final rule took effect on August 21, 1995, but one provision on a grazing surcharge for sublessees was delayed until the spring of 1996. Through August 1995, about 2 years and 3 months had elapsed since BLM began working on this rule.

Reasons for the time taken: According to officials, this rule was the highest regulatory priority during the time BLM developed it. BLM and the Department of the Interior devoted substantial staff and management time and effort to its preparation. For example, from November 1993 through February 1994, the Secretary of the Interior met 20 times with affected parties in the west. On June 8, 1994, BLM and the Forest Service held 48 simultaneous hearings around the west, plus one at BLM's Eastern States Office at which more than 1,900 people testified. BLM received about 12,600 letters commenting on the Advance Notice of Proposed Rulemaking and more than 20,000 letters commenting on a draft environmental impact statement, published on May 13, 1994, and the proposed rule.

Rights-of-Way, Rental Schedule for Communication Uses (RIN-1004-AC12)

Purpose: This rule established a schedule for fair market rental for communication uses of rights-of-way under the Federal Land Policy and Management Act. The schedule will help reduce administrative costs related to appraisals, protests, and appeals.

Timing: BLM began working on this rule in the late spring of 1993 and published a Notice of Proposed Rulemaking in the Federal Register on July 12, 1994. BLM published the final rule on November 13, 1995; the rule took effect on December 13, 1995--about 2 years and 7 months after BLM began working on this rule.

Reasons for the time taken: The principal author of this rule could not identify specific reasons for the time spent on this rule. In his view, the rule moved through the process fairly efficiently.

Logical Mining Units: General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence: Administration of LMU Operations (RIN-1004-AC15)

Purpose: This rule would amend the regulations dealing with coal logical mining units (LMUs) by improving procedures for review of applications and administering operations. The rule would place a greater emphasis on stewardship of federal coal resources and would ensure that coal resources are developed in a legal, efficient, economical, and orderly manner within the concept of ecosystem management. BLM initiated this rule in response to a GAO report.[1]

Timing: BLM began working on this rule in the fall of 1993. BLM published an Advance Notice of Proposed Rulemaking on December 10, 1993, and a Notice of Proposed Rulemaking on December 28, 1994. BLM withdrew the rule on August 26, 1996, when the agency combined it with another rule (RIN-1004-AC37) discussed below. BLM withdrew the general coal management rule (RIN-1104-AC37) on February 14, 1997, and reinstituted the separate LMU rule as RIN-1004-AD12. BLM expects to publish a final rule by the end of August 1997. As of July 31, 1997, about 3 years and 8 months had elapsed since BLM began working on this rule.

Reasons for the time taken: According to BLM officials, the combination of this rule with and separation from the broader more complex coal management rule contributed to the time that the agency spent developing it. Because the rule dealt with the same Code of Federal Regulations sections as the general coal management rule, BLM decided to combine the rules to respond to the reinventing government effort to simplify and reduce the number of federal rules. In addition, BLM rewrote the rule in "plain English" to comply with the Reinventing Government Initiative.

Waiver, Suspension, or Reduction of Rental, Royalty, or Minimum Royalty (RIN-1004-AC26)

Purpose: This rule encourages the continued operation of wells that produce heavy oil by providing reduced royalty rates.

Timing: BLM started working on this rule in December 1993 and published a Notice of Proposed Rulemaking in the Federal Register on April 10, 1995. BLM published the final rule on February 8, 1996; the rule took effect on March 11, 1996–about 2 years and 3 months after BLM began working on this rule.

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[1]Mineral Resources: Federal Coal-Leasing Program Needs Strengthening (GAO/RCED-94-10, Sept. 16, 1994).

Reasons for the time taken: With the exception of minor delays because of a BLM and Department of the Interior reorganization, the principal author could not identify any specific issues that impacted the time spent on this rule. In his view, the initiative moved through the rulemaking process at a fairly efficient pace.

Coal Management (RIN-1004-AC37)

Purpose: This rule would amend the exploration and mining operations regulations, as well as other operations-related regulations, to streamline them and to reflect current policy and standard industry operating practices relating to federal coal.

Timing: BLM officials could not estimate when the agency began to work on this rule. BLM listed the rule in the October 1988 Unified Agenda as Coal Exploration and Mining Operations Rules (RIN-1004-AB44) and published a Notice of Proposed Rulemaking on July 12, 1991. BLM withdrew the rule on June 30, 1993. BLM listed the rule in the November 1995 Unified Agenda as Coal Management (RIN-1004-AC37) and withdrew it on February 14, 1997. BLM now shows this rule as Coal Management (RIN-1004-AD11) and published an Advance Notice of Proposed Rulemaking on April 9, 1997. At the public's request, BLM extended the comment period to July 21, 1997. As of July 31, 1997, about 8 years and 9 months had elapsed since BLM began working on this rule.

Reasons for the time taken: BLM officials with whom we met could not provide specific reasons for the time spent on this rule They noted that BLM had briefed Department of the Interior officials on the status of the rule in August 1992. As discussed above, BLM withdrew the rule in June 1993. However, in August 1996, BLM decided to combine this rule with the Logical Mining Units rule (RIN 1004-AC15) discussed above. As BLM revised the rule for publication in late 1996, the industry obtained an unofficial copy and asked BLM to seek additional public comments due to changes in the industry since comments were sought in 1991. BLM withdrew the final rule on February 14, 1997. BLM separated the Logical Mining Units sections from this general rule and published an Advanced Notice of Proposed Rulemaking on April 9, 1997, for the remaining general coal management regulations (RIN-1004-AD11).

Mining Claims Under the General Mining Laws (Bonding) (RIN-1004-AC40)

Purpose: This rule requires the submission of financial guarantees for reclamation of all mining operations greater than casual use, creates additional financial instruments for this purpose, and requires operators with a record of noncompliance to file plans of operation.

Timing: BLM officials could not estimate when the agency began to work on this rule. However, on July 11, 1991, BLM published a Notice of Proposed Rulemaking in the

Federal Register. BLM published a final rule on February 28, 1997; the rule took effect on March 31, 1997–5 years and 8 months after the notice was published.

Reasons for the time taken: BLM officials with whom we met said that the agency initially worked concurrently on this rule and another rule that addressed the use and occupancy of mining claims. BLM subsequently decided to focus first on the use and occupancy rule, which preceded this rule by 7 or 8 months. They also noted that in 1993 and 1994, the Congress was considering legislative changes to the mining law, and BLM officials exercised caution with advancing this rule in anticipation of possible new legislation. Subsequent to the effective date of this rule, on May 12, 1997, the Northwest Mining Association filed a lawsuit alleging that BLM violated both the Administrative Procedure Act by not allowing the public an opportunity to comment since 1991 and the Regulatory Flexibility Act by incorrectly defining a small entity.

FOREST SERVICE

Between October 1, 1988, and April 30, 1997, the Forest Service initiated one major and nine significant rules. Each rule is described below.

Management of Grazing Use Within Rangeland Ecosystems (RIN-0596-AA35)

Purpose: This rule would streamline management of National Forest System rangelands by revising the provisions for livestock grazing, improving program efficiency, and clarifying regulatory language as well as addressing such subjects as ecosystem management, fees for processing charges, and national goals and objectives.

Timing: The Forest Service began working on this rule about December 1987. Subsequent to a March 1987 conference on rangeland management, the Forest Service reexamined its rangeland management policies and procedures and began to develop this rule. The Forest Service published a proposed rule in the Federal Register on April 28, 1994. The Forest Service withdrew the rule from the Unified Agenda on October 1, 1996–almost 9 years after starting to develop it.

Reasons for the time taken: Between 1988 and 1993, the Forest Service was developing this rule and addressing various internal agency and other concerns with the proposed rangeland management changes. In mid 1993, the Forest Service and BLM began a coordinated effort to revise and ensure consistency of their range management rules. According to Forest Service officials, the coordinated approach made sense, but it resulted in a broader and more substantial effort that became highly controversial in such areas as grazing fees and the rights of operators and made it more difficult for the Forest Service to proceed with a final rule. The officials noted that the agencies prepared and issued for comment a draft environmental impact statement, and BLM published a final

rule for grazing management on February 22, 1995, absent fees and several other provisions, but delayed the effective date of the rule until August 21, 1995. About the same time, the Congress had started to consider legislation on range management issues. Anticipating that new legislation could impact this effort, the Forest Service withdrew the rule from the Unified Agenda on October 1, 1996.

Grazing Fees: Eastern and Southern Regions (RIN-0596-AA55)

Purpose: Because the Forest Service used different grazing fee systems in its Eastern and Southern Regions, the agency sought comments on two alternatives. The first would have continued the two different fee systems; the second would have implemented a uniform market driven fee system in both regions.

Timing: The Forest Service began working on this rule on or before December 1, 1987. While preparing a congressionally requested report on grazing fees in western states, the Forest Service realized that it also needed to revise the grazing fee system in the eastern and southern states. According to an official, the Forest Service had paid little attention to such fees in the recent past. The Forest Service published a Notice of Proposed Rulemaking in the Federal Register on February 10, 1989, and a final rule on January 26, 1990. This rule took effect on March 1, 1990–2 years and 3 months after the Forest Service began working on it.

Reasons for the time taken: A Forest Service official with whom we met said that this rule moved through the process at a reasonable pace. The official did not identify any particular events that affected the time spent on this rule.

National Forest Prohibitions (RIN-0596-AA75)

Purpose: The Forest Service's regulations (36 CFR 261, subpart A) set out acts prohibited on National Forest System lands. These prohibitions derive from either statutes governing national forest programs or other regulations. Subpart B of the regulations authorize Regional Foresters, Forest Supervisors, or Research Station Directors to close National Forest System lands under their jurisdiction to certain uses or to restrict some uses of such lands.

Timing: The Forest Service began working on this rule sometime before October 1987 and issued a Notice of Proposed Rulemaking on February 16, 1994. Because of the high level of public interest in this rule, the Forest Service decided to issue a second proposed rule for comment, eliminating revisions relating to law enforcement support activities that the agency will undertake as a separate action. As of July 1997, about 9 years and 9 months had elapsed since the Forest Service began to work on this rule, and the agency

had not issued the second Notice of Proposed Rulemaking. Officials could not estimate when the agency would do so.

Reasons for the time taken: According to Forest Service officials, this rule entailed working with multiple staffs in such activities as recreation, timber, roads, fire, and wildlife as well as extensive coordination with U.S. magistrates and U.S. attorneys to obtain ideas and recommendations for the rule. The agency not only wanted to change specific aspects of its regulations but also wanted to ensure consistency in the wording used. The Forest Service received about 50,000 comments as a result of the February 1994 Notice of Proposed Rulemaking not only from the public but also from within the agency. Since that time, the Forest Service has been reexamining what it wants to accomplish with this rule and whether it should strive for the consistency envisioned by the first notice. The Forest Service does not plan to go forward with the prohibitions rule until it has completed a separate rule on law enforcement support activities (RIN-0596-AB61). Although AB61 has been determined to not meet the criteria for significance under Executive Order 12866, Forest Service officials said that the proposed rule on prohibitions will likely be designated significant because of the high level of public interest shown in the original proposal.

In the October 1988 Unified Agenda of Federal Regulations, the Forest Service showed that it planned to propose two rules: (1) 36 CFR Law Enforcement Support Activities (RIN-0596-AA65) and (2) 36 CFR 261 Prohibitions (RIN-0596-AA75). However, on February 6, 1990, the Forest Service combined both proposed rules, entitled 36 CFR 261 Prohibitions (RIN-0596-AA75). The rules remained combined until April 1996 when the agency asked the Chief, Forest Service, to separate the law enforcement support activities. The Forest Service proposed this action, noting that most of the controversy and public comments over the proposed rule dealt with the Part 261 Prohibitions and that the law enforcement support activities (Part 262) received little public attention. The Forest Service also said that separating the two rules would allow the agency to implement regulatory reform as directed by the National Performance Review by moving ahead with the Part 262 rule. In the November 1996 Unified Agenda, the Forest Service notes that the rule no longer includes the Part 262 proposed revisions, which were listed separately as Law Enforcement Support Activities (RIN-0596-AB61). The agency expects to publish a proposed rule on the support activities in October 1997.

Land Uses and Prohibitions; Noncommercial Group Uses (RIN-0596-AA80)

Purpose: In 1988, a federal district court ruled that the Forest Service's regulations discriminated against groups that wish to gather on national forests to exercise their first amendment rights to free speech. This rule would remove ambiguities regarding first amendment rights of assembly and free speech in national forests.

Timing: The Forest Service began working on this rule on or about May 11, 1992. The agency published a proposed rule in the Federal Register on May 6, 1993, and the final rule on August 30, 1995. The rule took effect on September 30, 1995–3 years and 4 months after the Forest Service began working on it.

Reasons for the time taken: The need for this rulemaking dates back to September 1982, when the Fifth Circuit Court of Appeals ruled that the Forest Service's regulations did not govern certain activities, specifically private group use of national forests. As a result of the 1982 ruling, in June 1984 the Secretary of Agriculture promulgated revised rules. However, in May 1986, the Federal District Court for the District of Arizona held that the 1984 rules were unconstitutional. In an effort to respond to the court's finding, the Secretary issued an interim rule in May 1988 to amend the regulations but in June 1988, the Federal District Court for the Eastern District of Texas ruled the interim rule invalid. Between the June 1988 court ruling and the summer of 1992, action on the rule languished. After the Forest Service sent a proposed rule to the Office of Management and Budget for its review, the U.S. Department of Agriculture's (USDA) Office of General Counsel determined that the rule was not legally sufficient. Because of the Constitutional issues involved in the rule, the Forest Service requested USDA's Office of General Counsel to draft the proposed and final rule.

National Forest System Land and Resource Management Planning (RIN-0596-AB20)

Purpose: This rule would revise the regulations governing forest land and resource management planning to reflect agency experience in preparing initial forest plans as required by the National Forest Management Act. The rule would, among other things, articulate and clarify the forest planning and decisionmaking process and propose ways to streamline plan amendments and revisions.

Timing: The Forest Service began working on this rule around March 1989. On February 15, 1991, the Forest Service published an Advance Notice of Proposed Rulemaking and on April 13, 1995, a Notice of Proposed Rulemaking in the Federal Register for public comment. An agency official estimates that the Forest Service will not finalize this rule until June 1999 at the earliest. As of July 31, 1997, about 8 years and 4 months had elapsed since the Forest Service began working on this rule.

Reasons for the time taken: This rule is based on the results and recommendations of a June 1990 critique of the Forest Service's land management planning process. Between the 1991 and 1993 notices, the administration imposed a moratorium on federal agencies' rulemaking activities and the administration changed. In January 1996, the Forest Service sent a draft final rule to USDA for its review and approval. Subsequently, the Forest Service changed a portion of the rule. Also, later that year, the Chief retired. On June 21, 1996, USDA's Office of Budget and Program Analysis sent the draft final rule to other

offices in the Department for their review. In January 1997, USDA returned the proposed rule to the Directives and Regulations Branch pending a decision on whether to go forward with the rule. Subsequently, USDA decided to draft a new proposed rule. USDA is considering chartering a committee of scientists to advise the agency in developing a new proposal.

Disposal of National Forest Timber; Cancellation of Timber Sale Contracts (RIN-0596-AB21)

Purpose: Current regulations do not adequately protect the government's financial interests if the Forest Service must cancel timber sale contracts to protect threatened and endangered species. This rule would remove an unworkable compensation-of-damages formula and establish a termination for environmental protection clause in timber sale contracts, a standard in most federal procurement contracts.

Timing: The Forest Service began working on this rule about June 1989 and issued a Notice of Proposed Rulemaking on August 31, 1990, and again on December 30, 1996. Agency officials estimate that the Forest Service will issue a final rule no later than October 1998. The Branch Chief, Directives and Regulations, noted that the Forest Service is optimistic that it can publish the rule much sooner than October 1998. As of July 31, 1997, 8 years and 2 months had elapsed since the Forest Service began working on this rule.

Reasons for the time taken: We previously reported that the Forest Service had published proposed regulations in August 1990 but did not issue a final rule because it subsequently identified additional changes that should have been included and because litigation was occurring at that time.[2] In 1992, the Forest Service again instituted an effort to incorporate two of its contract provisions--one to protect the habitat of endangered species and the other to specify the settlement that will be provided when the agency cancels a timber sale contract to protect threatened or endangered species--into its regulations. Attorneys from USDA's Office of General Counsel and the Deputy Director, Timber Management, noted that changing environmental circumstances, the tremendous increase in the number of lawsuits, and the decisions resulting from the numerous lawsuits have resulted in proposed cancellation regulations that differ significantly from the Forest Service's original proposal in 1990.

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[2]Timber Management: Opportunities to Limit Future Liability for Suspended or Canceled Timber Sale Contracts (GAO/RCED-97-14, Oct. 31, 1996).

Federal Timber Export and Substitution Restrictions (Comprehensive Revision) (RIN-0596-AB22)

Purpose: This rule was mandated by the Forest Resources Conservation and Shortage Relief Act of August 20, 1990, and would restrict the (1) export of unprocessed timber from federal lands and (2) direct or indirect purchase of federal logs to be used in substitution for the export of unprocessed timber originating from private lands.

Timing: Agency documentation indicates that the Forest Service was working on this rule on August 30, 1990. The final rule took effect a little more than 5 years later–on September 8, 1995.

Reasons for the time taken: The Forest Service published (1) an interim rule on November 20, 1990, to comply with some statutory requirements that took effect before the final rule could be issued; (2) a proposed comprehensive rule on January 29, 1991, to fully implement the act; (3) a proposed rule of limited scope on January 29, 1991; (4) a final rule on April 5, 1991, delegating the Secretary of Agriculture's authority to make the final decision on sourcing area applications; (5) a final rule on May 14, 1991, amending the Department's rules of practice governing formal adjudicatory proceedings under various statutes, including log export and substitution disputes arising from the act; (6) a final rule on April 2, 1992, to delegate the Secretary's authority to adjudicate sourcing area applications; (7) a final rule on February 24, 1994, to establish procedures for adjudicating and reviewing sourcing areas; and (8) a final, comprehensive rule on September 8, 1995.

On October 13, 1995, the Secretary of Agriculture suspended part of the final rule for 120 days to provide for a more orderly and planned implementation by the forest products industry and the Forest Service. The suspension took effect on October 17, 1995. During the suspension, existing regulations provided some export control, such as the requirement to mark (double-end brand and paint) national forest logs and an agreement that the first purchaser of national forest logs will process them domestically. Subsequently, in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, the Congress imposed a moratorium on the implementation of this rule. In the Department of Interior and Related Agencies Appropriations Act of 1997 of the Omnibus Consolidated Appropriations Act of 1997, the Congress continued the moratorium until October 1, 1997.

State and Private Forestry Assistance Stewardship Incentive Program (RIN-0596-AB32)

Purpose: This rule established interim procedures for administering the Stewardship Incentive Program, which is intended to encourage private landowners, through cost-share

assistance, to manage their forest lands for economic, environmental, and social benefits.

Timing: The Forest Service began working on this rule about April 1991 and published an interim final rule in the Federal Register on December 4, 1991. In March 1994, the agency began drafting the final rule and in November 1996 sent it to USDA for its review. In February 1997, USDA requested the Forest Service to rewrite the benefit and cost analysis, which the agency is doing. Forest Service officials expect to issue the final rule in the fall of 1997. As of July 31, 1997, 6 years and 3 months had elapsed since the Forest Service began to work on this rule.

Reasons for the time taken: Forest Service officials with whom we met cited two major reasons for the time spent on this rule. First, the Office of Management and Budget designated the final rule as significant. Because the interim final rule was not designated as significant, the Forest Service had to undertake and complete various analytical requirements, such as a rigorous cost and benefit analysis. Second, the Forest Service lacked the resources to provide prompt review and revision of the rule.

36 CFR 222 Range Management, Subpart C Grazing Fees (RIN-0596-AB42)

Purpose: This rule sought to address public concerns about the level of fees charged for livestock grazing on National Forest System lands in the Western United States. The Forest Service joined with BLM to establish new grazing fees; the agencies had expected to issue the final rules simultaneously.

Timing: The Forest Service began working on this rule around December 1, 1987. The rule had been part of Management of Grazing Use Within Rangeland Ecosystems (RIN-0596-AA35) (discussed earlier). The Forest Service published an Advanced Notice of Proposed Rulemaking on August 13, 1994, and withdrew it on February 3, 1995–about 7 years and 2 months after it began working on it.

Reasons for the time taken: The Forest Service deferred action on this rule, anticipating that legislation being considered by the Congress would impact this rulemaking effort.

Range Management Grazing Fees in the West; Qualification Criteria (RIN-0596-AB50)

Purpose: This rule would have provided eligibility criteria for granting a 30-percent reduction in grazing fees for permittees who met the criteria.

Timing: The Forest Service began working on this rule about the end of July 1994 and withdrew it on February 3, 1995–8 months later.

Reasons for the time taken: When the Forest Service issued the Advanced Notice of Proposed Rulemaking for 36 CFR 222 Range Management, Subpart C Grazing Fees (RIN-0596-AB42) (discussed earlier), it stated that it would issue qualification criteria as a separate action. The agency took this approach believing that it would take longer to finalize the criteria than the fees. When the Forest Service withdrew RIN-0596-AB42 pending future congressional action, a need did not exist to proceed with this rule.

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