

The Supporting Statement for OMB 0596-0141

Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Laws, Regulations, and Statutes

- Small Business Act (15 U.S.C. 631)
- 16 USC 1600 (note), National Forest Management Act of 1976
- Public Law 104-208, 1997 Omnibus Appropriation Act (31 USC 3512)
- 5 USC 552, Administrative Procedures
- 13 CFR 121, Small Business Size Regulations
- 36 CFR 223, Sale and Disposal of National Forest System Timber
- 36 CFR 223.118, Appeal Process for Small Business Timber Sale Set-Aside

The Forest Service adopted the Small Business Timber Sale Set-Aside Program in 1990 (55 FR 30485). The Agency administers the program in cooperation with the Small Business Administration (SBA) under the authorities of the Small Business Act (15 U.S.C. 631), which establishes Federal policy regarding assistance provided to small businesses; the National Forest Management Act of 1976; the Administrative Procedures Act (5 USC 552), and SBA regulations found at 13 CFR, part 121. The design of the program ensures that small business timber purchasers have the opportunity to purchase a fair proportion of National Forest system timber offered for sale.

Under the program, the Forest Service must recompute the shares of timber sales to be set aside for qualifying small businesses every five years based on the actual volume of saw timber purchased by small businesses. Recomputation of shares must occur if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchaser(s) discontinue operations.

In 1992, the Forest Service adopted new administrative appeal procedures (36 CFR part 215), which excluded the Small Business Timber Sale Set-Aside Program. Prior to adoption of 36 CFR part 215, the Agency had accepted appeals of recomputation decisions under 36 CFR part 217; and therefore decided to establish procedures for providing notice to affected purchasers, offering an opportunity to comment on the recomputation of shares.

The Conference Report accompanying the 1997 Omnibus Appropriation Act

(Public Law 104-208) found the Forest Service decision to eliminate an administrative appeals opportunity for the Small Business Timber Sale Set-Aside Program "unacceptable" and directed the Forest Service to reinstate an appeals process before December 31, 1996. The Conference Report required that the Agency establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-Aside (SBA) shares, structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. It also provided that, as in the past, decisions related to the designation of the sales to be set aside are not open for appeal. The Agency determined that an informal rule was necessary to establish the appeals process in title 36 CFR 223.118. A final rule for the appeal process was published in the Federal Register on January 5, 1999 (64 FR 411). Office of Management and Budget determined that the rule was non-significant.

Title 36 CFR 223 covers the regulations for sale and disposal of National Forest System timber. Title 36 CFR part 223.118 (Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares) sets forth the appeal process for small business timber sale set-aside program share recomputation decisions.

The Forest Service provides qualifying timber sale purchasers 30 days for predecisional review and comment on draft decisions to reallocate shares, including the data used in making the proposed recomputation decision. This opportunity is via a Federal Register notice and is consistent with other Forest Service major policy decisions associated with other programs.

Within 15 days after the close of the 30-day predecisional review period, an Agency official makes a decision on the shares to be set aside for small businesses and gives written notice of the decision to all parties on the national forest timber sale bidders list for the affected area. The written notice provides the date by which an appeal must be filed and how to obtain information on appeal procedures.

The appellant must file a notice of appeal with the appropriate Forest Service official within 20 days of the date of the notice of decision. Only those timber sale purchasers, or their representatives, affected by small business share timber sale set-aside recomputation decisions, who have submitted predecisional comments, may appeal recomputation decisions. One level of appeal is provided.

Additional information provided to clarify appeal issues or facts must be based upon information previously documented in the file or appeal. Any information provided because of the Appeal Deciding Officer's request for more information must be made available to all parties, that is, to the Responsible Official, the appellant and interested parties who have submitted comments on the appeal. All parties will have five days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended five additional days.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

a. What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)

The information collected consists of a notice of appeal, which must include:

- The appellant's name, mailing address, and day-time telephone number;
- The title and date of the decision being appealed;
- The name of the responsible Forest Service official;
- A brief description and date of the decision being appealed;
- A statement of how the appellant is adversely affected by the decision being appealed;
- A statement of facts in dispute regarding the issue(s) raised by the appeal;
- Specific references to law, regulation, or policy that the appellant believes have been violated (if any) and the basis for such an allegation;
- A statement as to whether and how the appellant has tried to resolve the appeal issues with the appropriate Forest Service official, including evidence of submission of written comments at the predecisional stage; and
- A statement of the relief the appellant seeks.

To clarify issues raised in an appeal, the Forest Service Appeal Deciding Officer may request additional information and respondents (or interested parties) may be invited to discuss data relevant to the appeal with Forest Service officials. Information provided to clarify appeal issues or facts must be based upon information previously documented in the file or appeal.

b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.

Only timber sale purchasers on the bidders list for the affected areas who have submitted predecisional comments on the draft decision may appeal. The appeal rule does not permit interested parties other than the purchasers or those representing them to submit views for consideration in the appeal process. Only purchasers directly affected by the recomputation of the small business share of the local timber sale program may participate.

To clarify issues raised in an appeal, the Forest Service Appeal Deciding Officer may request additional information from other Forest Service officials, the appellant, or an interested party who has submitted comments on the appeal. At the discretion of the Appeal Deciding Officer, an appellant or interested party may be invited to discuss data relevant to the appeal.

c. What will this information be used for - provide ALL uses?

The collected information is reviewed by Forest Service officials who use the

information to render decisions on appeals related to recomputations of timber sale share to be set aside for small business timber purchasers.

Any information provided because of the Appeal Deciding Officer's request for more information must be made available to all parties, that is, to the Responsible Official, the appellant and interested parties who have submitted comments on the appeal. All parties will have five days after the Appeal Deciding Officer receives the additional information to review and comment on the information, and the appeal decision period will be extended five additional days.

The information collected becomes part of the appeal record. The appeal record consists of the written decision being appealed, any predecisional comments received, any written comments submitted by interested parties, any other supporting data used to make the decision, the notice of appeal, and, if prepared, a responsible statement by the Forest Service Responsible Official which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record to the FS Appeal Deciding Officer within seven days of the date the notice of appeal is received. A copy of the appeal record is sent to the appellant at the same time

d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the information? If so, what are they?

The information (appeal) is collected in writing. The collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. It is possible in most locations for the information to be sent via e-mail and attached documents.

e. How frequently will the information be collected?

On average, two responses are received annually per respondent, though there is no prescribed frequency for collecting information. The information is voluntary based on the timber sale purchaser's decision to appeal a decision.

f. Will the information be shared with any other organizations inside or outside USDA or the government?

The information is not shared with any organizations inside or outside the USDA or the Federal government. The appellant receives a copy of the appeal decision.

g. If this is an ongoing collection, how have the collection requirements changed over time?

The collection requirements have not changed; this is a renewal of existing procedures identified in 36 CFR 223 and particularly 36 CFR 223.118.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. It is possible in most locations for the information to be sent via e-mail and attached documents.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information submitted by the timber purchasers is specific to decisions related to timber sale share allocations and thus the information is specific to that decision and not duplicated elsewhere.

5. If the collection of information impacts small businesses or other small entities¹, describe any methods used to minimize burden.

Only information specific to the interest of the small business timber purchaser is collected. If the timber sale purchaser decided to appeal a decision related to recomputations of shares, it is required that the appeal be filed with only one office.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the Forest Service did not collect the information, the appeal could not be processed and the appeal opportunity would be foregone. Therefore, neither the appeal regulation requirements nor the direction from Congress requiring an appeal opportunity for the Small Business Timber Sale Set-Aside Program would be met.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not**

been reviewed and approved by OMB;

- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

The Federal Register notice soliciting comments on the information collection was published in the Federal Register on March 15, 2011 on pages 13974-5. (Federal Register, Volume 76, No 50). One comment was received in response to the Federal Register Notice as follows:

- Jean Public (3/15/2011; 06:13 pm)
 - o Contact information provided: INFO PEWTRUSTS.ORG
usacitizen1@live.com
 - o Stated there should not be an appeal process allowed at any time.
 - o Requested the program be "shut down".
 - o Response: The Forest Service (FS), under an Agreement with the Small Business Administration (SBA), has a program of providing timber set aside sales in order to provide a historic supply of sawlogs to small business sawmills. Per the Conference Report accompanying the 1997 Omnibus Appropriation Act (Public Law 104-208), Congress directed the FS to reinstate an appeals process for recomputation of shares under the Small Business Timber Sale Set-Aside Program. FS notes the request to "shut down" the program, but there is no legal basis for complying with this request and the FS has no intention of doing so. In addition, any FS policy or manual changes to the set-aside program require prior public review, via Federal Register notice.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting

format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Three (3) persons outside the Agency were consulted to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping responsibilities, disclosure, or reporting format (if any), and the data elements to be recorded, disclosed, or reported. These individuals are representative of respondents (i.e. appellants or interested parties).

- Mr. Bill Higgins
Resource Manager,
Idaho Forest Group, LLC
171 Hwy 95 N
Grangeville, ID 83530
(208) 983-4746
 - o He felt the SBA appeal process is reasonable.
 - o He felt the estimate of 4 hours to prepare an appeal is reasonable.
 - o Additional comments:
 - Although the 4 hours to prepare an appeal is reasonable, he pointed out that the entire appeals process takes longer than 4 hours when counting in his time conducting research, deliberation, and attending various meetings (prior to, during and even after preparing the actual appeal response).
 - He also would appreciate consideration of revising the process to include a pre-notice, such that, prior to any share being established, a public notice is made that describes the upcoming recomputation process and allows for public comment/discussion with the national forest(s) within their market area(s). He felt that would give industry a better opportunity to discuss industry and market changes with the national forests. He felt that once the forest(s) had prepared the calculated share documentation, the forests were strongly reluctant to consider changing the proposed share(s) or recomputation procedure(s) (i.e. such as considering a special recomputation in place of the five-year recomputation).
 - He also felt the handbook procedures should be updated to better reflect the changes occurring to industry, particularly in the west (consolidating into fewer larger mills) i.e. the changes in market dynamics.

- Mr. Bill Dryden
 - Executive Director
 - Public Timber Purchasers Group
 - 2889 North Mountain Road
 - Boise, ID 83702
 - Phone: 208-867-8670
 - o Mr. Dryden was asked whether or not he feels the SBA appeal process is reasonable. In response, he suggested changing the 20 day (from notice of decision) appeal filing requirement (from notice of decision per 36 CFR 223.118(3)) to 20 working days from the notice of the decision date. He said it doesn't always happen, but he has experienced 5-7 day delays in receiving his US Mail which he says reduces his appeal response time by 25-30%.
 - o Mr. Dryden was asked whether or not he feels the 4 hour estimate to prepare an appeal response is reasonable. He responded, that the writing of the appeal itself usually takes 4-6 hours; one hour per page with 4-6 pages being a typical response. However, he stated that the entire process from when the notice of decision is received through submission of the actual appeal takes him longer (10-12 hours spread over time). Because Public Timber Purchasers Group is a Trade Association, he has to develop a draft appeal response and share it with the association members, which takes additional time. His 10-12 hour process typically includes receipt of the notice of decision; requesting further data, if needed, from the Forest Service; preparing a draft response which he shares with his association members; editing/finalizing the response based, as needed based on members' input; and final submission to the Forest Service.
 - o Additional Comments: - None shared.

- Mr. Michael J. Besonen, RF
 - West District Forester
 - Glatfelter Beyond Paper
 - Woodlands Department
 - PO Box 2500
 - Chillicothe, OH 45601
 - 740-772-3681
 - o Regarding the reasonableness of the SBA appeal process, he felt the two national forests in the market area need to do a better job of notifying their purchasers, as his Kentucky office received the predecisional notice but he (located in Ohio) did not. He has since contacted the forests and added his name/address to the list as well.
 - o He felt the 4 hours to prepare an appeal was adequate, as his appeal took about one hour.
 - o He had no further comments related to the SBA appeal process itself.

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.

No payment or gift will be given to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information collected is available to other interested parties. The information collected does not include confidential financial data or similar confidential data.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
 - a) **Description of the collection activity**
 - b) **Corresponding form number (if applicable)**
 - c) **Number of respondents**
 - d) **Number of responses annually per respondent,**
 - e) **Total annual responses (columns c x d)**
 - f) **Estimated hours per response**
 - g) **Total annual burden hours (columns e x f)**

Table 1: Estimated annual burden hours

| (a) Description of the Collection Activity | (b) Form Number | (c) Number of Respondents | (d) Number of responses annually per Respondent | (e) Total annual responses (c x d) | (f) Estimate of Burden Hours per response | (g) Total Annual Burden Hours (e x f) |
|--|-----------------------|---------------------------------|---|--|---|---|
| Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares | N/A | 40 | 2 | 80 | 4 | 320 |
| Totals | N/A | 40 | 2 | 80 | 4 | 320 |

- **Record keeping burden should be addressed separately and should include columns for:**
 - a) **Description of record keeping activity:** None
 - b) **Number of record keepers:** None
 - c) **Annual hours per record keeper:** None
 - d) **Total annual record keeping hours (columns b x c):** Zero
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

Table 2: Estimated annualized cost to respondents

| (a) Description of the Collection Activity | (b) Estimated Total Annual Burden on Respondents (Hours) | (c)* Estimated Average Income per Hour | (d) Estimated Cost to Respondents |
|--|---|---|--------------------------------------|
| Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares | 320 | \$33.13 | \$10,601.60 |
| Totals | 320 | --- | \$10,601.60 |

* Based on median hourly wages from Department of Labor, Bureau of Labor Statistics for 2009. Specifically, May 2009 National Industry-Specific Occupational Employment and Wage Estimates NAICS 113000-Forestry and Logging; 2009 Soc. Code # 11-0000 for Management Occupations (http://www.bls.gov/oes/current/naics3_113000.htm).

- 13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.**

There are no capital operation and maintenance costs.

- 14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

The response to this question covers the actual costs the agency will incur as a result of implementing the information collection. The estimate should cover the entire life cycle of the collection and include costs, if applicable, for:

- **Employee labor and materials for developing, printing, storing forms**
- **Employee labor and materials for developing computer systems, screens, or reports to support the collection**

- **Employee travel costs**
- **Cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information**
- **Employee labor and materials for collecting the information**
- **Employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information**

Table 3: Annualized Cost to the Federal government for one response

| ACTION ITEM | PERSONNEL | GS LEVEL | HOURLY RATE* | HOURS | SALARY |
|--|------------------|----------|--------------|-------|----------|
| Preparing, mailing, and handling comments and appeals received; Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares. | Clerical | 5 | 24.05 | 2 | \$48.10 |
| Review, analysis, and decision-making per each appeal received – Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares. | Management/Staff | 12 | 52.86 | 6 | \$317.16 |
| Total | --- | --- | --- | --- | \$365.26 |

*Taken from: <http://www.opm.gov/oaca/11tables/indexGS.asp>. Cost to Government based on locality pay for Washington DC/Baltimore/Northern Virginia for 2011, all GS grades calculated at step 5 (and multiplied by 1.3).

\$365.26 per response X 80 responses = \$29,220.80

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

There are no program changes or adjustments, except for salaries adjusted to reflect latest available pay rates.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

There are no plans for publication of the collected information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

No collection instruments are associated with this information collection request.

18. Explain each exception to the certification statement identified in item 19, "Certification Requirement for Paperwork Reduction Act."

None