

2012 Supporting Statement for OMB 0596-NEW

Post-Decisional Administrative Review Process

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.**

The Forest Service has had some form of appeals process for almost 100 years. In this case for 36 CFR 251, the Agency, at its own discretion, provides a process by which holders, operators, and solicited applicants may appeal certain written decisions issued by a Responsible Official involving a written instrument authorizing the occupancy or use of National Forest System lands and resources.

This information collection is in support of a proposed rule amending the current 36 CFR 251 Subpart C regulation that would shorten the appeal process, shorten the appeal period, and reduce the cost to the appellant and government of processing the appeal. The proposed rule moves the amended provisions to a new part 214 and removes part 251 subpart C. There are no statutes that require the collection of this information.

- 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 appellant must provide: the appellant's name, mailing address, daytime telephone number, and e-mail address. They must also provide a statement of how the appellant is adversely affected by the decision being appealed; a statement of the relevant facts underlying the decision being appealed; a discussion of issues raised by the decision being appealed; a statement as to whether and how the appellant has attempted to resolve the issues under appeal with the Responsible Official; a statement of the relief sought; the signature of the appellant.

- 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.**

The information (appeal) will be collected (submitted) from individuals who are holders or operators of a valid written authorization or in some cases an applicant for a written authorization to occupy or use NFS lands and resources. The appellant (holder or operator) voluntarily participates if they seek a review of a decision that was made that directly affects their written authorization.

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

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The information is used to review an agency decision on a written authorization against the issues raised by the appellant and determine whether to affirm or reverse the decision.

- 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 (submitted) through the appeal process and may be delivered in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. There are no forms associated with the appeal process.

- e. How frequently will the information be collected?**

There is no regular schedule for this type of information collection. On occasion, the Agency may issue a new authorization or modify an existing authorization. The holder of the written authorization is informed of the modification at which time the holder may choose to appeal the decision.

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

The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

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

This is a new collection. The 251 appeal process was promulgated through rulemaking on January 23, 1989. At that time, it was determined and stated in the proposed rule language that the rule imposes no paperwork burden on the public and therefore an information collection was not done. The agency interpretation and application of the Paperwork Reduction Act has changed over time and since this is the first time subpart C has been revised, the Agency is now meeting the requirements of the Paperwork Reduction Act by promulgating an Information Collection request.

- 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 collected information (appeal) may be submitted in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. By offering multiple options for submitting an appeal, including electronic, the agency's intent is to reduce the burden on the public.

- 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.**

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The information collected in the appeal is specific to holders of written authorizations and limited to the specific appealable decisions outlined in the proposed rule. Therefore, there is no other Information Collection instrument available.

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

Small businesses or other small entities that may hold or obtain special use permits have the opportunity to appeal decisions affecting their permit. The Agency's intent to minimize burden on these entities is the same as for individuals who hold permits, which is to offer multiple methods to submit an appeal, including via electronic means.

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.

There is no statute or law that requires the agency to implement this appeal process. The agency promulgated this regulation in 1989 as a result of a review of the current rule (in place at the time) as required by E.O. 12291 and to respond to the findings of the review; namely, that the agency needs to streamline, simplify, and expedite the appeals process and to eliminate the longstanding confusion of purpose and procedures contained in the current appeal regulation (language from the 1988 proposed rule).

The agency and public have been using this appeal process for 23 years and to discontinue this process now would result in the agency not providing an open and transparent process for a specific National Forest System user group.

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;** Those choosing to file an appeal must do so within 45 days of the date of the decision.
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;** The post-decisional administrative review process has no such requirement.
- **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**

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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 (other) 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.**

On October 11, 2011, a proposed rule and request for comment was published in the Federal Register (76 FR 62694). Included in the notice was a request for comment on the Information Collection associated with the proposed rule. The 60 day comment period closed on December 12, 2011.

A total of 43 responses were received on the proposed rule. No comments were specific to the Information Collection.

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.

This information collection is specific to the Forest Service. The appeal data (information collection) is based in the updating of the current regulation (36 CFR 251, subpart C).

The Office of General Council has reviewed the required information to be collected (paragraph 2a). No other persons outside the agency have been contacted.

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

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should be explained.

There are no circumstances.

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

There is no payment or gift provided to respondents.

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

The appeal record, which includes the appellant's submitted appeal, is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

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.

No information is collected that could be considered sensitive or personal in 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: Information used in appealing a decision.

b) Corresponding form number (if applicable): No form is utilized.

c) Number of respondents: It is difficult to estimate the number of respondents because written authorizations are not amended on a regular basis and the holder of the authorization may or may not choose to appeal (totally voluntary on their part). The Agency informally asked regional appeal coordinators how many 36 CFR 251 appeals the regions received (regional, forest, and district) for the years of 2008, 2009, and 2010. The number of appeals for each year was 2008 - 69; 2009 - 179; 2010 - 226; resulting in a 3 year average of 158 appeals.

d) Number of responses annually per respondent: One response per respondent.

e) Total annual responses (columns c x d): 158

f) Estimated hours per response: 8 hours per response. This is an estimate based on reviewing received appeals.

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g) Total annual burden hours (columns e x f): 1,264

- **Record keeping burden should be addressed separately and should include columns for:** There are no recordkeeping requirements.

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.**

Estimated total annual cost to respondents:

1,264 hours x \$62 per hour wage (for a lawyer) = \$78,368.

Hourly wage is from Bureau of Labor statistics for occupation code 23-1011(lawyer). <http://www.bls.gov/oes/current/oes231011.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.**

Agency labor costs for analyzing, evaluating, summarizing, reviewing, and issuing appeal decision on the collected information (appeal).

The estimated processing times were obtained through discussions with agency appeal coordinators. The daily costs per day were obtained from the OPM salary table for 2011.

http://www.opm.gov/oca/11tables/html/dcb_h.asp.

The daily costs were calculated using the hourly rate times 8 hour day and increased by 33% to capture the cost of agency benefits.

Estimated appeals received annually:	158
One GS-11 x 3 days x \$311 per day	\$933
Two GS-12 x 2.5 days x \$373 per day	\$932
One GS-14 x 3 days x \$524 per day	\$1,572

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One GS-15 x 0.25 days \$617 per day	\$154
Total employee cost per appeal:	\$3,591
Total estimated annual cost to the Federal government: \$3,591 per appeal X 158 annual appeals	\$567,378

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

This is a new information collection. The 251 appeal process was promulgated through rulemaking on January 23, 1989. At that time, it was determined and stated in the proposed rule language that the rule imposes no paperwork burden on the public and therefore an information collection was not done. The agency interpretation and application of the Paperwork Reduction Act has changed over time and since this is the first time subpart C has been revised, the Agency is now meeting the requirements of the Paperwork Reduction Act by promulgating an Information Collection request.

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

The collected information will not be published.

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.

Due to the fact that there are no associated documents or forms with this Information Collection, displaying OMB approval and expiration date is not applicable.

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

There are no exceptions.