

The 2014 Supporting Statement for OMB 0596-NEW
DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER: FOREST PRODUCTS
FOR TRADITIONAL AND CULTURAL PURPOSES
(Proposed Rule)

Please Note: Upon publication of the Final Rule, the burden associated with package will be merged into OMB control number 0596-0085, and the title of that information collection will be changed from *Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt* to *Forest Products Removal Permits and Contracts*.

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, Statutes, and Regulations

- The Food, Conservation, and Energy Act of 2008, § 8105 (Public Law 110-246, 122 Stat. 1651)
- 25 U.S.C. Chapter 32A, § 3055 and § 3056
- 36 CFR 223

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651)[hereinafter the “2008 Farm Bill”], section 8105 provides that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian tribes (Indian tribes) trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. Section 8105 has also been codified in 25 U.S.C. Chapter 32A – *Cultural and Heritage Cooperation Authority*, section 3055 *Forest Products for Traditional and Cultural Purposes*.

Pending rulemaking, the Forest Service issued policy via an Interim Directive (ID) providing short-term direction for tribal requests for forest products for traditional and cultural purposes. (The ID has been reissued as ID 2409.18-2013-3.) RIN 0596-AD00 proposes the following actions: “Requests for trees, portions of trees, or forest products...be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made: 1) directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or 2) by providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.” Additionally, “Requests for trees, portions of trees, and forest products under this section must be directed to the appropriate Forest Service District Ranger(s)’ Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose...”

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Federally recognized Indian tribes seeking products under the 2008 Farm Bill authority must make a request for free use.

Regulations at 36 CFR 223.5 - 223.11 set forth conditions under which free use of forest products may be obtained by individuals or organizations. Additionally, as noted above, section 8105 of the 2008 Farm Bill and 25 USC 32a, § 3055 sets forth conditions under which free use of trees, portions of trees, or forest products may be granted to federally-recognized Indian tribes.

Information is required to determine if the requester meets the criteria under which free use of forest products authorized by the appropriate regulations and to ensure compliance with the regulations and terms of the authorized instrument. This information allows Agency compliance personnel to identify authorized persons in the field.

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.)

As noted above, under this proposed Rule, the Tribe/Tribal Official will be required to make their free-use request in writing. Should the Indian tribe wish proof of possession, as may be required in some States, they may be issued a free-use permit, form FS-2400-8, currently approved under the OMB control number 0596-0085. The employee issuing the permit discusses terms and conditions with the permittee prior to any harvesting of forest products.

The permittee will have record keeping responsibility for about half of the permits issued. This record keeping requires the permittee to complete blocks on the form that list the quantity of the forest products harvested and date of harvest. This record keeping enables Forest Service compliance personnel to ensure that the forest products harvested are accounted for. Permits that are for only one or two loads of firewood, a few Christmas trees, a few bushels of pine cones, or other small quantities of forest products may not require record keeping.

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.

This information will be collected from federally recognized Indian tribes wishing to remove forest products from National Forest System lands for traditional or cultural purposes.

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

The collected information will be required to determine if the requester meets the criteria for free-use of forest products as authorized by regulations, and

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to ensure that the permittee complies with regulations and terms of the permit. This information also will allow Agency compliance personnel to identify permittees in the field.

Identification information will be used to verify names and addresses, and to record the Tribes obtaining forest products.

Law enforcement and other personnel conducting field compliance checks will use the information to identify permittees, ensure that the person harvesting a forest product has a permit during the forest product collection, and to ensure that the forest product collection is being performed in the area described on the permit.

Form **FS-2400-8** *Forest Products Free Use Permit*, allows free use of forest products in accordance with regulations in 36 CFR 223.5 - 223.11. Free use permits are generally limited to \$200 in value. However, under Section 8105 requests by federally recognized Indian tribes, there is no monetary limit to the use of this form.

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?

As noted above, under the 2008 Farm Bill, “requests for trees, portions of trees, or forest products... [would] be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made: 1) directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or 2) by providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.” Note: A formal resolution is simply an additional option federally recognized Indian tribes may use to provide their request “in writing”. The federally recognized Indian tribe may submit their request in any format of their choosing.

e. How frequently will the information be collected?

The information is collected once for each permit requested.

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

The information may be shared with Forest Service Law Enforcement Officials, as needed and for official use only, for compliance and enforcement purposes.

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

This is a new collection.

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

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the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Under the 2008 Farm Bill, The Tribe/Tribal Official would make their free-use request in writing and provide the information to a Federal employee in any form or format of their choosing. This request may be delivered by any means at the choice of the respondent, including submission by email.

Forest Service personnel enter the information from the Forest Service forms into the computerized Timber Information Manager (TIM) system. The information is stored electronically in the TIM system and can be retrieved and entered automatically by the Forest Service into subsequent permits obtained by the applicant.

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.

As the information is for a specific permit for a specific purpose, during a specific time period, the information is not available elsewhere.

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

Only the minimum information necessary to comply with Federal laws and regulations is collected from respondents.

The Forest Service's use of the Timber Information Manager (TIM) system minimizes the burden on respondents by pre-populating the forms with the applicant's name, address, and identification number.

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.

The Agency would be unable to fulfill requests from federally recognized Indian tribes, under section 8105 of the 2008 Farm Bill which has been codified at 25 U.S.C. Chapter 32A, § 3055; for those Tribes that wish to have proof of possession, as may be required in some States, through issuance of a FS-2400-8 free use permit.

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;**

Under certain circumstances respondents will be required to record the details of their harvest on the permit each day at the time and location of harvest, which may be in fewer than 30 days after receipt of the permit.

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Form FS-2400-8 requires the "Permittee...complete the Product Quantity Removal Record in ink prior to transporting products..." for harvests other than those that are for only one or two loads of firewood, a few Christmas trees, a few bushels of pine cones, or other small quantities of forest products that may not require record keeping.

- **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 other special circumstances. The Agency is able to certify compliance with 5 CFR 1320.

- 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 60 day notice requesting public comment is embedded within the publication of the proposed Rule Identification Number (RIN) 0596-AD00.

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

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same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Government to government consultation occurred for a 120 day period during 2010. All comments received were incorporated into this proposed Rule, along with the Agency's response.

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

There are no payments or gifts to respondents.

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

Form FS-2400-8 does not contain any assurance that the information submitted is kept confidential. However, 25 U.S.C. Chapter 32a, Section 3056 (Prohibition on disclosure) directs the Secretary to not disclose "under section 552 of title 5 (commonly known as the "Freedom of Information Act"), information relating to...human remains or cultural items reburied on National Forest System land under section 3053 of this title; or...resources, cultural items, uses, or activities that...have a traditional and cultural purpose; and...are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service..."

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.

DESCRIPTION OF COLLECTION ACTIVITY	FORM NUMBER	ANNUAL NUMBER OF RESPONDENTS	NUMBER OF RESPONSES ANNUALLY PER RESPONDENT	TOTAL ANNUAL RESPONSES	ESTIMATED HOURS PER RESPONSE	TOTAL ANNUAL BURDEN HOURS
Request for Free Use	none	566	1.5	849	0.1667	141.5
Permit for Free Use	FS-2400-8	566	1.5	849	0.0833	70.7
Record Keeping	FS-2400-8	283	1.5	425	.0667	28.4

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Total						240.6
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The number of respondents and number of responses per respondent is estimated as follows:

Federally recognized Indian tribes - Using professional judgment, we estimate that the 566 federally recognized Tribes will each respond on average 1.5 times per year.

The estimated time per response is estimated as follows:

We estimate the time to prepare the written request to be 10 minutes using professional judgment.

For form FS-2400-8, use of the TIM database allows respondent contact information to pre-populate the form, decreasing the response time for repeat respondents. The estimated response time is an average of the new and repeat user response times, based on experience and professional judgment.

Record Keeping:

Based on experience and professional judgment, we estimate that approximately half of the permits issued will have record keeping requirements. The estimated record keeping time is based on consultations of other users of this form.

The Cost to respondents is estimates as follows:

The cost to the respondents is estimated by taking the total burden hours of 240.6 and multiplying by estimate cost per hour of \$22.01, for a total cost to respondents of \$5,296.

The estimated Average Income per Hour is based on May 2012 National Occupational Employment and Wage Estimates United States, All Occupations \$22.01 mean hourly wage http://www.bls.gov/oes/current/oes_nat.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.**

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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.

Table 2: Annualized Cost to the Government

FORM	ESTIMATED NUMBER OF HOURS	ESTIMATED COST/HOU R	TOTAL COST
FS-2400-8	99	\$23.00	\$ 2,277
Print Forms	---	---	\$ 85
Total		---	\$2,362

The estimated number of hours is based on the average time it takes for a Federal employee to complete a permit form and then explain conditions to the permittee.

Permit Cost/Hour: The Forest Officer issuing a permit is estimated to be a GS-7/5 who earns approximately \$22.92, rounded to \$23.

Hourly wage taken from Office of Personnel Management Pay Tables, found at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/>.

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.

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.

The Agency is requesting to continue to not display the OMB approval expiration date. This date has in the past been confused with the date the permit or contract terminates, resulting in law enforcement issues.

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

The Agency is able to certify that this collection of information complies with 5 CFR 1320.