

2016 Supporting Statement - 0596-0233
Disposal of National Forest System Timber:
Forest Products for Traditional and Cultural Purposes
(Final Rule)

Terms of Clearance

Please Note: Upon OMB approval, we are requesting to merge the Burden associated with Rule Identification Number 0596-AD00, OMB no. 0596-0233 *Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes*, into OMB no. 0596-0085 *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

- 16 U.S.C. 477
- 16 U.S.C. 492
- 16 U.S.C. 551
- 16 U.S.C. 607 and 607a
- 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 223.5-223.11
- 36 CFR 261.6

The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651)[hereinafter the “2008 Farm Bill”], section 8105 authorizes 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 (NFS) 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 (FS) issued policy via an Interim Directive (ID) providing short-term direction for tribal requests for free use of forest products for traditional and cultural purposes (The ID has been reissued as ID 2409.18-2013-3). RIN 0596- AD00 *Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes* proposes the following actions: “Requests for trees, portions of trees, or forest products...be submitted to the local FS 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 FS 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...” Federally recognized Indian Tribes seeking products under the 2008 Farm Bill authority must make a request for free use. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests.

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, section 8105 of the 2008 Farm Bill and 25 U.S.C. 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. 16 U.S.C. 607 provides that a defense against trespass is that the forest products be removed under the regulations. These statutes and the regulations apply to 16 U.S.C. 477, 492, and 607a. Regulations at 36 CFR 261.6 require persons to obtain permits to remove special forest products from NFS lands.

Information is required to determine if the requester meets the criteria under which free use of forest products is 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.)

We first collect written requests from Tribal Officials for Tribal Free Use of trees, portions of trees, or forest products submitted to the local FS District Ranger’s Office(s). Once received, a permit FS-2400-8 is issued.

FS-2400-8 Forest Products Free Use Permit, (OMB no. 0596-0085):

The FS employee issuing the permit collects the forest product(s) requested, vehicle information, and the name and identification information of the requestor. Under the Proposed Rule (79 FR 44327) for the 2008 Farm Bill (Section 8105) authority, the Tribe/Tribal Official makes their free-use request in writing. Should the Indian Tribe wish proof of possession, as may be required in some States, they could be issued a free-use permit (FS-2400-8). The employee issuing the permit discusses terms and conditions with the permittee prior to any harvesting of forest products.

The permittee has 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 FS compliance personnel to ensure that the forest products harvested are accounted for. Those 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; including permits issued under the 2008 Farm Bill authority. This is estimated to be approximately half of the permits issued in a fiscal year.

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 is collected from federally recognized Indian Tribes wishing to remove forest products from NFS lands, under the authority of section 8105 of the 2008 Farm Bill.

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

The collected information is required to determine if the requester meets the criteria for free-use of forest products as authorized by regulations, and to ensure that the permittee complies with regulations and terms of the permit. This information allows Agency compliance personnel to identify permittees in the field.

Identification information is used to verify names and addresses, and to record the Indian Tribes obtaining free use of forest products under the authority of section 8105 of the 2008 Farm Bill.

Law enforcement and other personnel conducting field compliance checks use the information to identify permittees, ensure that the person harvesting a forest product has a permit during the forest product collection, and 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, and under the authority in section 8105 of the 2008 Farm Bill. Free use permits are generally limited to \$200 in value. However, for requests made by federally recognized Indian Tribes under the 2008 Farm Bill authority, 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 FS 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.

The Agency employee working at a unit office enters the Tribe’s request information into a computer for processing and printing, or enters the information manually on a paper copy of a permit.

e. How frequently will the information be collected?

The information is collected once for each permit requested. On average, we expect respondents to file 1.5 responses per year.

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

The information may be shared with FS 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. After OMB approval of this final rule submission, the FS is requesting adding the collection requirements of Rule Identification Number 0596-AD00 (OMB: 0596-0233) for federally recognized Indian Tribes wishing to request free use under the authority of section 8105 of the 2008 Farm Bill authority to OMB control number 0596-0085 using a change 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.

As noted, the Tribe/Tribal Official makes their free-use request, in writing, to a Federal employee. This request may be made by any means at the choice of the respondent, including submission by email.

FS personnel enter the information from the FS 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 FS 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 all respondents.

The FS'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.

Without the collection of this information, 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 are 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.

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. 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.**

The 60-day Federal Register Notice requesting public comment was incorporated into the Proposed Rule published in 79 Federal Register 44327-44332, on July 31, 2014. No comments were received.

Additionally, a 30-day public comment period was incorporated into the Final Rule published in 81 Federal Register 65891- 65897, on September 26, 2016. No comments were received.

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.

The following individuals were contacted to provide their views.

Mr. Carl Hunt, Bemidji, MN

Mr. Hunt stated:

- The amount of time he spent providing the required information and obtaining a forest products permit was acceptable.
- The information requested to obtain a forest products permit was reasonable.
- The amount of time required in completing the product removal record portion of the permit was reasonable (4 minutes).

Mr. Hunt had a question about what trees he could cut and he was referred to the local FS office where he purchased the permit.

Mr. David Evenhouse, Marcell, MN

Mr. Evenhouse stated:

- The estimated 5 minutes to provide the required information and obtain a Forest Products Permit was acceptable.
- The information requested when obtaining a forest products permit is reasonable.
- The amount of time (4 minutes) needed to complete the product removal record appears to be reasonable, although as he hasn't completed this task yet.

He felt the permitting process was just fine and went well.

Mrs. Donald Dewitt, Blackduck, MN

Mrs. Dewitt stated:

- She and her husband spent an acceptable amount of time providing the required information and obtaining a Forest Products Permit; the five minutes was acceptable.
- She felt the information requested to obtain a permit was reasonable.
- The amount of time needed to complete the product removal record portion of the permit was acceptable.
- She said the FS personnel involved in issuing her a permit were very friendly and helpful.

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. The collected information is retained and stored according to applicable Agency regulations; for the FS such regulations can be found in FS Handbook 6209.11, 42-2000 Series.

Additionally, reference 25 U.S.C. Chapter 32a, Section 3056 *Prohibition on disclosure* which 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 NFS 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 FS ..."

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.

Please refer to supplemental document 0596-0233 *Burden-costs Spreadsheet* for burden and cost estimates.

The number of respondents is estimated as follows:

Federally recognized Indian Tribes - We estimate that the 566 federally recognized Tribes will each respond on average 1.5 times per year.

The number of responses per respondent is estimated as follows:

The information is collected once for each permit requested. On average, based on experience and professional judgment, respondents file 1.5 responses per year.

The estimated time per response is estimated as follows:

For all forms, 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 consultations of permittees.

Record Keeping:

Based on experience and professional judgment, we estimate that approximately half of all permits and contracts issued have record keeping requirements. The estimated record keeping time is based on consultations of permittees.

The Cost to respondents is estimates as follows:

Applicants for FS-2400-8 permits are usually individuals in rural areas seeking small quantities of forest products for personal use or federally recognized Indian Tribes seeking forest products under the authority of section 8105 of the 2008 Farm Bill. Estimated Average Income per Hour based on May 2015 National Occupational Employment and Wage Estimates United States, All Occupations \$23.23 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. 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 1: Annualized Cost to the Government

FORM	ESTIMATED NUMBER OF HOURS	ESTIMATED COST/HOUR	TOTAL COST
FS-2400-8	142	\$19.00	\$ 2,698
Print Forms	---	---	\$ 70
Computer O&M	---	---	\$ 783
Total		---	\$3,551

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

Permit Cost/Hour: The Forest Officer issuing a permit is estimated to be a GS-7/5 who earns approximately \$19.01, rounded to \$19.

Hourly wage taken from Office of Personnel Management Pay Tables, found at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/GS_h.pdf.

- 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 collection. There is no change between the proposed rule submission and this final rule in the estimated 2,123 annual responses, and 241 hours of burden.

- 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 expiration date for OMB approval. This date has in the past created confusion for those issued a permit or purchasing under a contract. The expiration date for OMB approval has been confused with the date the permit 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.