

2021 SUPPORTING STATEMENT for OMB 0596-0225 **Timber Sale Contract Operations and Administration**

Please Note: With this submission, the title of this collection is changed from *Contract Operations and Administration* to *Timber Sale Contract Operations and Administration*.

In the context of this supporting statement the terms Purchaser and Contractor may be used interchangeably to describe an individual, private sector business, or government entity that has been awarded and currently holds one or more contracts for the sale and disposal of National Forest System timber or other forest products.

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 National Forest Management Act (16 U.S.C. §472a);
- Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*);
- Executive Order 11246, as amended by EO 11375 and EO 12086;
- 36 CFR 223.30-223.60;
- 36 CFR 223.110-223.118;
- Forest Resources Conservation and Shortage Relief Act of 1990, section 620d Monitoring and Enforcement, as amended in 1997 by Public Law 105-83 and current through Public Law 110-450, approved December 12, 2008.
- 2 CFR 180 - OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)
- 2 CFR 417 - Non-procurement Debarment and Suspension, supplements 2 CFR 180 as the (USDA) policies and procedures for non-procurement debarment and suspension specific to USDA and the Forest Service.
- 40 CFR 112
- Agricultural Act of 2014, Title VIII Forestry.

The information collection in this request is necessary to implement the above statutes, regulations, and policies designed to administer contracts for the sale and disposal of National Forest System timber and other forest products.

Forest Service contracts for the sale and disposal of National Forest System timber and other forest products are bilateral contracts in which both contracting parties must fulfill obligations reciprocally. By their nature, bilateral contracts require both parties to routinely share information and enter into agreements pertaining to performance. Recognizing the importance of documented communication between both parties, the contracts include a clause titled *Notices* that states: *Notices by either party as to action taken or to be taken by the other respecting this contract shall be made in writing to the other party's*

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designated representative.

Information collected pursuant to contract administration is required by laws, regulations, and Forest Service timber sale policies. Each contract specifies the information the contractor will be required to provide, including the timing and frequency of the information collection. Additionally, these contracts are subject to the Contract Disputes Act of 1976. Written documentation of plans, inspections, requests for action by the other party, agreements, modifications, acceptances of work, and virtually everything else pertaining to performance is collected and is essential to resolving disputes.

- 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 terms of each contract and external factors such as market conditions, weather, and court orders dictate what information must be collected and when it will be collected. Please refer to supplemental document entitled *0596-0225_2014_Burden-CostSpreadsheet* for a list and description of potential information collections. These are being referred to as potential information collections because the actual collection of information varies between contracts for reasons described in this supporting statement. The list of potential information collections includes everything from simply obtaining a signature on a contract inspection form prepared by the Forest Service to a contractor providing a Spill Prevention Control and Countermeasures Plan certified by a registered professional engineer.

Most collected information involves routine exchanges occurring in the normal course of business (e.g. agreeing to the location of a skid trail documented in an inspection report prepared by the Forest Service and signed by the contractor). New court decisions, changes in market conditions, weather, and timber designated for removal can all affect information collections.

The contracts are designed to be flexible and accommodate a wide range of potentially changing conditions and circumstances through notices and mutual agreements. This flexibility relies on the exchange of information and written agreements between the contracting parties. Most of the information collected from the contractors has financial and/or contract performance implications. Consequently, the information must be collected in a manner that documents the source and date when the information was provided. The process of administratively resolving disputes arising under a contract is heavily dependent upon the written record. An incomplete written record can lead to costly litigation.

The type and amount of information collected varies depending on the size, complexity, and length of each contract. Contracts include numerous references to things that must be agreed to after the contracts are awarded. Most agreements must be custom crafted to address a set of conditions that are often unique to a specific place and time. For example, agreeing on the

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location of a temporary crossing of a stream can be affected by the size of the stream; season of the year; whether the stream is habituated by fish and if so what species; how the crossing will be used; the equipment the contractor has to construct the crossing and rehabilitate it after it is no longer needed; etc. Another agreement might make a minor change to the boundary of an area designated for harvesting due to the discovery of a new nest tree for some sensitive species of wildlife. Simple agreements are generally documented on a sale inspection report filled out by the Forest Service and signed by the contractor.

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 is collected from individuals, private sector businesses, government entities and non-profit organizations that have either:

- Already been awarded a Timber Sale contract
- May be awarded a Timber Sale contract in the future.

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

The information is needed by the Agency for a variety of uses associated with contracts for the sale and disposal of National Forest System timber and other forest products including:

- (1) Planning and scheduling contract administration workloads
- (2) Planning and scheduling the delivery of government furnished materials needed by contractors
- (3) Assuring safety of public in vicinity of contract work,
- (4) Identifying contractor resources that may be used in emergency firefighting situations,
- (5) Determining contractor eligibility for additional contract time,
- (6) Monitoring compliance with domestic processing requirements,
- (7) Monitoring compliance with Small Business Administration requirements,
- (8) Processing agreements and modifications,
- (9) Inspecting and accepting work, and
- (10) Determining fair market value of National Forest System timber.

Each collection of information is unique to an individual contract and an individual requirement under that contract. Please refer to supplemental document entitled *0596-0225_2014_Burden-CostSpreadsheet* for a list and description of all the potential information collections, and the contractual basis for them.

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

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information? If so, what are they?

The various information collections are obtained in a variety of ways depending on the type of information that is being collected and how it will be used. One thing in common is that virtually all of the information collections must be verifiable as to the source and time due to the legally binding nature of the information under the terms of the contract. Examples include:

- (1) The Forest Service prepares an inspection report documenting the inspection each time a contract is inspected. The reports are typically hand written in the field on standardized forms each Forest Service Region has adopted. The reports may also document agreements pursuant to the contract such as where a temporary road will be constructed. The forms include a blank for the contractor or contractor's representative to sign acknowledging receipt of the report and acceptance of any agreements contained within the report. The only information collected from the contractor is a signature and this is often done in the field at the time of the inspection. Alternatively, inspection reports may be mailed to the contractor who is asked to sign the report and then mail, scan and email, or fax it back to the Forest Service. This process assures that the contractor has had an opportunity to affirm agreements and review what the Forest Service is observing and take action to correct minor problems before they become large problems subject to breach of contract.
- (2) Tree measurement contracts require contractors to request release of a payment unit and for Forest Service to provide written authorization to the contractor to begin operations. The request to release a payment unit initiates a bill to the contractor. On many contracts the date the request is made can affect the price of the timber being released. Forest Service accounting and sale administration procedures mandate that before issuing this bill there is a written request from the contractor in a format that verifies the source and time of the request. This can be anything from a hand written note prepared in the field by an authorized representative of the contractor and handed to the Forest Service Representative to a FAX, email, or letter traceable to the contractor.
- (3) Contracts can be modified for a wide variety of reasons. Modifying the terms of a contract generally has financial implications to each party. Contract modifications require the original signatures of both parties and are executed on hard copy forms FS-2400-9 and FS-2400-10.
- (4) To guarantee payment for timber, contractors are required to pay cash in advance of cutting or may furnish a payment bond which assures payment will be made after the timber is cut. Contractors are required to complete form FS-6500-12 when a payment bond is used on a single contract, or form FS-6500-12a when the payment bond will cover two or more contracts. These are hard copy forms that require original signatures of the purchaser and surety.

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- (5) The timber sale contracts require contractors to provide plans addressing various aspects of their operations. The information required for individual plans varies depending on the size, length and complexity of each contract and how the contractors choose to submit the required information. Please refer to supplemental document entitled *0596-0225 2014Burden-costSpreadsheet* for a list and description of all of the items that may be included in a plan. Contractors may submit separate plans addressing different contract requirements or include multiple requirements into a single plan. For example, a traffic control plan (B/BT6.33) may be submitted as separate plan or incorporated into an Operating Schedule (B/BT6.31). To assist individuals and small business contractors many Regions and contracting officers have developed templates to help contractors in preparing their plans. These templates are optional and contractors are free to provide the information in a format of their choosing, such as in a letter or using their own company form.
- (6) Form FS-2400-59 (0596-0114) was used to collect information required under the Forest Resources Conservation and Shortage Relief Act of 1990. The Act was amended in 1997 requiring new rule making which has not been completed but is not expected to affect the type of information previously collected on the FS-2400-59 form. The form is referenced here even though it is not currently in use but with the intent that once a final rule is approved, the collection will be merged into this collection. This is a hard copy form that requires signature of the purchaser.
- (7) Timber sale contracts contain remedies including liquidated damages in event the contract has to be modified or cancelled as the result of environmental litigation. When environmental litigation is filed after a sale has been advertised but prior to award the Forest Service generally delays award until the litigation is resolved. For a variety of reasons some contractors request award prior to the litigation being resolved and in exchange agree to forgo liquidated damages. To document these quid pro quo agreements the Forest Service has developed form FS-2400-0076, *Pre-Award Waiver, Release, and Limitation of Liability Agreement*. This is a hard copy form that requires signature of the purchaser.

Clarification of information provided may occasionally require answering questions face-to-face, over the phone, or by Internet. Information collected for agreements made in the field is generally by verbal communications documented by the Forest Service and then signed by the contractor.

e. How frequently will the information be collected?

There is no schedule for collecting this information. Information is collected on a case by case basis depending on the nature of the contract, and a host of variable conditions unique to each contract and the environment in which the work or sale is being conducted.

Please refer to supplemental document entitled *0596-0225 2014Burden-*

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costSpreadsheet for a list and description of the potential information collections covered under this request, including an estimate of the estimated annual responses per respondent.

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

Although the information is generally not shared, some of the information collected is used to monitor compliance with programs and regulations established by the Small Business Administration and the Department of Labor. The information may be shared with those organizations upon request.

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

With this submission, four new forms have been developed for the optional use and convenience of the respondents to assist them in organizing the information that is already approved for collection. The addition of these new forms has had no effect on the burden estimates:

FS-2400-0076 *Pre-Award Waiver, Release, and Limitation of Liability Agreement*

FS-2400-0077 *General Plan of Operation*

FS-2400-0078 *Annual Operating Schedule*

FS-2400-0079 *Specified Road Schedule of Proposed Progress*

Forms FS-2400-0077, FS-2400-0078 and FS-2400-0079 will be available for optional use by timber sale purchasers. These forms were developed to assist small purchasers in submitting all of the information that the contract requires be included in these plans and schedules.

The FS-2400-76 form was developed for limited use when the apparent high bidder of a sale that is the subject of litigation requests to have the sale awarded prior to the litigation being resolved.

The following four currently approved forms have been revised with non-substantive changes that did not affect the types or amount of information collected:

FS-2400-0010 *Agreement Extend and Modify Timber Sale or Integrated Resource Timber Contract*: The changes to this form included changing the title to include Integrated Resource Timber Contracts and reformatting the form to comply with new standards for Forest Service Forms.

FS-2400-0011 *Waiver of Time Limit*: The form was reformatted to comply with new standards for Forest Service forms and to accommodate the use of a single form for either a timber sale or an integrated resource timber contracts.

FS-2400-0012 *Third Party Agreement*: The form was reformatted to comply with new standards for Forest Service forms and to accommodate the use of a single form for either a timber sale or an integrated resource timber contracts. Terminology was changed to clarify which party is the transferor

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and which party is the transferee.

FS-2400-0016 *Request for Cooperative Work*: The form was reformatted to comply with new standards for Forest Service forms and to accommodate the use of a single form for either a timber sale or an integrated resource timber contracts.

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.

Information will be collected using a variety of methods including hard copies hand delivered, hard copies sent via USPS, or commercial delivery service (UPS, Fed-Ex, etc.), facsimile, email, and in some cases verbal communication.

All forms may be completed and stored electronically.

Most permissions and agreements are initiated by a request from the contractor and may be sent electronically via email.

The method of collection depends on the type of information that is being collected and how it will be used. For example, a formal modification of a contract requires original signatures on hard copies while a contractor has the discretion to submit a request for the release of a payment unit using any written method including email. In an effort to reduce burden, with this submission, several electronic versions of forms have been redesigned to accommodate the use of a single form for differing types of agreements, as described in question 2g above.

Please refer to the tab labeled *Appendix B* in supplemental document entitled *0596-0225_2014_BurdenCostSpreadsheet* which indicates if electronic submission is acceptable.

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.

Each item of data collected is unique to each contract and therefore not duplicative, with two exceptions:

- Contractors holding multiple contracts can prepare a single Spill Prevention Control and Counter Measures Plan for all of its contracts
- Prior to initiating operations during the fire precautionary period, contractors may prepare and submit a single Fire Prevention and Control Plan for more than one contract.

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

Contracting Officers and other members of the Forest Service sale administration team routinely help small contractors to understand the terms of their contract and assist them in providing information required by the contract. For example, prior to initiating operations contractors must complete an annual Operating Schedule. Depending on the size and complexity of the contract this could

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include a Traffic Control Plan, a Fire Prevention and Control Plan, a Route of Haul Map, a material delivery schedule, and a plan of operation for road construction. Forest Service personnel will often meet with small contractors to review these requirements and help them compile and submit the necessary information.

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.

Forest Service contracts for the sale and disposal of National Forest System timber and other forest products are bilateral contracts in which both contracting parties are bound to fulfill obligations reciprocally towards each other. By their nature bilateral contracts require both parties to routinely share information and enter into agreements pertaining to performance. Each contract specifies the information the contractor will be required to provide, including the timing and frequency of the information collection. Agreements are typically custom crafted to address a unique set of conditions and variables which does not permit standardizing a form for agreements.

Additionally, these contracts are subject to the Contract Disputes Act of 1976 which requires contractors to submit claims in writing to the contracting officer. Written documentation of plans, inspections, requests for actions, agreements, modifications, acceptances of work, and virtually anything else pertaining to performance is essential to administratively resolving disputes. The inability to collect information required under the terms of a contract could result in delays, disputes, claims, litigation and/or defaults.

Without this information the Agency would not be able to comply with and to implement the various statutes, regulations, and policies designed to ensure that National Forest System timber is sold in accordance with the law.

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;**

Most of the information collections do not occur more often than quarterly, but, when operations are in progress on a contract, there is a need for a steady exchange of information between the contractor and the Forest Service. For example, the contract requires the contractor to locate landings, skid trails, and temporary roads for approval by the Forest Service. On most contracts it is not feasible or desirable for the contractor to locate these items for the entire contract area before requesting Forest Service approval. The standard practice is to locate and request approval of landings, skid trails, and temporary roads on a harvest unit by harvest unit basis as operations progress. Depending on the size of the contract, size of individual harvest units, and the contractor's rate of progress this could occur on a monthly, weekly, or even a daily basis. The frequency of the agreements is essentially controlled by the contractor who requests approvals on an as-needed basis. This is also the case for most of the situations where the contract requires the contractor to request certain actions by the Forest Service or for both parties to reach agreement on certain actions. The frequency of the requests and agreements is dictated by the contractor.

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Inspection reports and load receipts may be collected on a relatively high frequency. Each time the Forest Service inspects a contract, an inspection report is prepared by the Forest Service. The frequencies of inspections are generally at least weekly but may be as often as daily depending on factors including operating conditions and the contractor's rate of progress. The Forest Service documents each inspection in a report typically prepared during the inspection. These reports often document agreements and acceptance of work and are signed by both parties as a way of executing the agreements and/or the contractor acknowledging receipt of the report.

All contracts where the volume for payment purposes is determined after felling (scaled) and all contracts in the contiguous US west of the 100th meridian including those where the volume is determined prior to felling (tree measurement) require the contractor to attach a Forest Service load receipt to each load of logs before it leaves the contract area. Load receipts must be completed by the contractor prior to affixing them to a load. This includes adding the date and time the truck was loaded, the destination where the truck will unload, the name of the truck driver and may include other accountability information required on the Regional load receipt. The receipt is then folded in half and attached to the load in a manner where the information entered on the receipt is not readily visible. After the load reaches its final destination the receipt is removed and returned to the Forest Service. The information entered on load receipts by contractors is used exclusively by the Forest Service. The use of load receipts is an essential component in FS timber theft prevention efforts and in the Western United States helps monitor compliance with domestic processing requirements pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 as amended.

Some small contractors may generate one load of logs every 1-2 weeks while some large contractors are capable of generating 25+ loads of logs per week.

Load receipts are accountable property. Used load receipts are deposited in Forest Service collection boxes or sent back to the Forest Service by the contractor. Unused load receipts are returned to the Forest Service at the end of seasonal operations and at the end of the contract.

- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

Due to the nature of contracts and agreements, respondents typically provide response in fewer than 30 days. Load receipts must be completed and attached to loads of forest products prior to leaving the loading site.

- **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;**

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- **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 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.**

A Federal Register Notice requesting comments was published on July 20, 2021, on page 38266-38268, Volume 86, Number 136. The Agency received no comments.

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.

The Forest Service contacted the following representatives to obtain their views as follows:

Boise Cascade
Mr. John Fullerton
Grand Marais, MN

No comments received.

Federal Timber Purchasers Committee
Ms. Molly Pitts
No comments received.

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Neiman Enterprises, Inc.
Mr. Dan Buehler

No comments received.

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 provided to respondents.

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

There are no assurances of confidentiality for the information collected except for business records obtained pursuant to contract provision B/BT6.9. When not in use, the information collected under B/BT6.9 is stored in a locked filing cabinet, with access limited to only those Federal employees that need access to the information. Official copies of all other information collected are stored in project files for each contract maintained in the open file system.

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 questions of a sensitive nature are part of this information collection.

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.**

Please refer to the tab labeled *Burden* in supplemental document entitled *0596-0225 Burden-cost Spreadsheet* for Burden and cost estimates.

All estimates are based on data pulled from the Timber Sale Accounting system in preparation of this submission. The number of sales is currently approximately 30% less than the 2009 data used for the previous submission. The number of sales is constantly changing as new sales are sold and previous sales are closed so both sets of data represent a snapshot on the date the data was pulled from the Timber Sale Accounting system. We predict that the number of sales will increase over the next three year period and have based the burden estimates for this submission on the 2009 data as a better estimate of the burden for the upcoming 3 year period.

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The number of respondents was estimated by a query of the Automated Timber Sale Accounting System, displaying all contracts for the past three years, and then using professional judgment to determine the average number of respondents each year.

The number of responses per respondent was estimated by using professional judgment, considering such things as number of contracts, average number of contracts per respondent, volumes harvested, number of contracts with specified roads, and number of contracts with volume determined by scaling.

The burden per response was estimated with input from respondents and using professional judgment.

- **Record keeping:**

There is no record keeping requirement placed upon respondents.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

Please refer to supplemental document entitled *0596-0225 / Burden-cost Spreadsheet* for cost estimates. The wage of \$33.40 per hour is based on information from Department of Labor, Bureau of Labor Statistics Economic News Release, July 2021, Table 9 *Private industry, goods-producing and service-providing industries, by occupational group*.
(<https://www.bls.gov/news.release/pdf/eci.pdf>)

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 estimated cost to the Federal government is \$128,105.67.

For the complete break out of the cost estimate please view separate tab labeled *Gov Cost* of the supplemental document entitled *0596-0225_Burden-CostSpreadsheet*.

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

Program changes included in this submission have not changed the burden estimates for this collection. The estimated cost to respondents has decreased

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from \$3,053,006 to \$128,105.67 due to the project needs and the pandemic.

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

There are no plans to publish the information collected.

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 Forest Service requests permission to exclude the expiration date of the OMB approval because the OMB expiration date has caused confusion with contract, permit, and load receipt effective dates, resulting in unnecessary confusion and litigation.

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

The Agency is able to certify compliance with 5 CFR 1320.