

The Supporting Statement for OMB 0596-0141

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

Terms of Clearance

None

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.**

This is an extension of a currently approved information collection request, with revision.

Laws, Statutes, and Regulations

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

The Forest Service (FS) administers the Small Business Timber Sale Set-Aside Program (Set-Aside Program) in cooperation with the Small Business Administration (SBA) under the authorities of the Small Business Act (15 U.S.C. 631), which establishes Federal policy regarding assistance provided to small businesses; the National Forest Management Act of 1976; the Administrative Procedures Act (5 U.S.C. 522), and SBA's regulations found at 13 CFR part 121. The Set-Aside Program is designed to ensure that qualifying small business (timber) manufacturers have the opportunity to purchase a fair portion of National Forest System sawtimber offered for sale. Small business (timber) nonmanufacturers (i.e. loggers) may participate in the Set-Aside Program.

Under the Set-Aside Program, the Forest Service must recompute the shares of timber sales to be set aside for qualifying small businesses every five years, based on the actual volume of sawtimber purchased by small businesses. Procedures are outlined in Forest Service Handbook 2409.18, Chapter 90. Additional recomputation of shares must occur if there is a change in manufacturing capability, if the purchaser's size class changes, or if certain purchaser(s) discontinue operations.

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

The Conference Report accompanying the 1997 Omnibus Appropriation Act (Public Law 104-209) found the Forest Service's decision to eliminate an administrative appeals opportunity for the Small Business Timber Sale Program "unacceptable" and directed the Forest Service to reinstate an appeals process before December 31, 1996. The Conference Report required that the agency establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-Aside (SBA) shares, structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. It also provided that, as in the past, decisions related to the designation of the sales to be set aside are not open for appeal. The agency determined that an informal rule was necessary to establish the appeals process in title 36 CFR 223.118. A final rule for the appeal process was published in the Federal Register on January 5, 1999 (64 FR 411). The Office of Management and Budget determined that the rule was non-significant.

Title 36 CFR 223 covers the regulations for sale and disposal of National Forest System timber. Title 36 CFR 223.118 (Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputation of Shares) sets forth the appeal process for Small Business Timber Sale Set-Aside Program share recomputation decisions. This process is also referenced in agency policy at Forest Service Handbook 2409.18 Chapter 90, section 91.17(2).

The Forest Service makes a draft decision (e.g. pre-decisional) to reallocate small business shares. The Forest Service provides qualifying timber sale purchasers 30 days to review and comment on the draft decision (pre-decision) to reallocate shares, including the data used in making the proposed recomputation decision; per 36 CFR 223.118(b). The regulation does not specify any required content or formatting for the pre-decisional comments, other than in writing. The opportunity for pre-decisional review and comment is provided via written notice (normally signed by the Forest Supervisor) of the draft decision and mailed to all parties on the national forest timber sale bidders list for the affected area.

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

If the timber sale purchaser or their representative wishes to pursue an appeal of the Notice of Decision, they must file a notice of appeal with the appropriate Forest Service official within 20 days of the date on the Notice of Decision. Only those timber sale purchasers, or their representatives, who are affected by recomputations of the small business share timber sales and who have submitted pre-decisional comments, may appeal recomputation decisions under 36 CFR 223.118. One level of appeal is provided.

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

additional information to review and comment on the information, and the appeal decision period will be extended five additional days.

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

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

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

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

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

No personally identifiable information (PII) is collected.

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

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

To clarify issues raised in an appeal, the Forest Service Appeal Deciding Officer may request additional information from other Forest Service officials,

the appellant, or an interested party who has submitted comments on the appeal. At the discretion of the Appeal Deciding Officer, an appellant or interested party may be invited to discuss data relevant to the appeal.

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

The collected information is reviewed by Forest Service officials who use the information to render decisions on appeals related to recomputations of timber sale shares to be set aside for small business timber purchasers.

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

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

d. How will the information be collected (such as 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?

There is no agency created form. The information (appeal) is collected in writing, which can be delivered by mail, fax, or email.

e. How frequently will the information be collected?

There is no prescribed frequency for collecting the information. The information is voluntary based on the timber sale purchaser's decision to comment upon and appeal a decision. However, we estimated on average we will receive (2) written responses per respondent; one for pre-decisional comments and the second for the appeal filing.

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

The information is not shared with any other organizations inside or outside the USDA or the Federal Government. The information is, however, shared with interested parties who have submitted comments on the appeal.

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

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

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

technological collection techniques or other forms of information technology, such as permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

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

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

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

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

Only information specific to the interest of the small business timber purchaser is collected. If the timber sale purchaser decides to appeal a decision related to (two or more) recomputations of shares, the appeal may be filed with only one office.

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

This is an ongoing, voluntary information collection. Without this information, the agency would not be able to meet regulation requirements nor the direction from Congress requiring an appeal opportunity for the Small Business Timber Sale Set-Aside Program.

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;**

Title 36 CFR 223.118(e) requires the appellant to file a notice of appeal with the appropriate Forest Service official within 20 days of the date on the Notice of Decision.
- **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 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 28, 2024, a 60-day Federal Register notice was published at 89 FR 85493. A copy of this Federal Register notice is included in this package. No public comments were received.

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 following individuals were contacted to provide their views:

Adam Molenda, President, Timber Products Manufacturers, Inc., Spokane, WA (509) 535-4646, stated the following by email:

"The Appeal process looks pretty good and it is really thorough. My thoughts are the following:

1. Data: Getting all the data can be a challenge for the small mills, however, one thing that is very important that should be included in the data is the Destination of the logs following the purchase. A lot of times a contractor may say that they are sending 50% to a certain mill however it turns out to be more or less than that. This can have a very large effect on the outcome of the share percentage and impact the appeal. To provide some insight if the structural recomputation could include all the data it would save a large amount of time trying to recalculate the 5 year recomputation decision and whether to appeal or not.

2. It would be really nice if the Regional Forester would coordinate an appeal with the SBA and have a discussion as to why the appeal is occurring. Including the SBA in the appeal process would tie the whole program together versus just having the Regional Forester make the final decision. If this is occurring it would be great to include this in the appeal process protocol.
3. It would also be beneficial in the disclosure section to know who is sending in appeals and why. If that was available to all the parties submitting an appeal that would be greatly appreciated.
4. One last thing, I noticed that if an association submits an appeal and a member submits an appeal it may not be accepted. As an Association if we address another issue that a purchaser did not would that be considered just not the exact same letter sent.
5. Not really an issue with the appeal process: During the 5 year recomputation it would reduce the appeal numbers if there is 2 or less SBA Set Asides in a given market area then there should be no reduction in the share percentage. There is not enough valid data to truly increase or decrease the shares. This has been an issue of not including IRTC's because recently the Stewardship contracting sales have been larger than in the past as well as some of the SBA Set Aside Sales have also been larger than in the past and probably should have been broken out into two different sales so that small businesses could handle the volume of timber on the sale."

Paul McKenzie, Vice President, F.H.Stoltze Land & Lumber, Columbia Falls, MT, 406-892-7012 provided the following by phone interview:

- **availability of data**—This is one of the most difficult issues and one of the main reasons for appeals. For example, because stewardship volume is not included in the set-aside program, it can be difficult to obtain or verify. Since the set-aside program was developed before stewardship and it states that small business should have the opportunity to purchase a fair portion of sawtimber, stewardship should be included. Another example is the FS uses estimates of where non-manufacturer volume is delivered (to large or to small business) based on information from the purchaser at the time of bid opening or award. These estimates may be deliberately false and the FS should use actual data or monitor actual v estimated for issues.
- **frequency of collection** - Frequency is reasonable and scheduled (5 year recomputation)
- **clarity of instructions and record keeping** - Instructions in the regulation are pretty clear. While no record keeping is required, purchaser chooses to keep records due to data issues described above.
- **disclosure** - Would like to see disclosure of appeals to interested parties or at least other parties who have appealed.
- **reporting format (if any)** - no form, required information is clear and reasonable.
- **data elements to be recorded, disclosed, or reported** - no comment

When asked about the burden estimate, Mr. McKenzie responded that based on

his experience the current estimates are on the low end due to time spent researching/verifying data. To do analysis and provide rationale for claims takes longer. He estimated he probably spent 25 hours just preparing the appeal last time; not including pre-decisional comments.

Rob Freres, President, Freres Engineered Wood, Lyons, OR, (503) 859-2121 provided the following by phone interview:

- **availability of data**—Receive notice when 5 year is taking place. Not overly familiar with the regulation and would be helpful if agency highlighted regulation and policy applicable to the process so the public knows if the recomputation is justified and how to properly comment so they can provide useful responses.
- **frequency of collection** - 5-year recomputation is reasonable. Lots of abnormalities over time and it may be difficult to address unusual circumstances such as wildfires, hurricanes, etc. Does the FS have discretion to consider those circumstances?
- **clarity of instructions and record keeping** - Uses data from Douglas McDonald to review/confirm FS data. Provide detailed list of sales (in addition to provided summary) sold during 10 periods could help public better understand why wood went where it did and why surpluses/deficits are/aren't carried forward. Help identify unique circumstances. Never paid attention to this program until volume offered declined so much that it has become critical.
- **disclosure** - Comments are part of the record and we do get a reply and response—general summary of comments and response to comments. Don't always agree with the response and may follow up.
- **reporting format (if any)** - n/a no form
- **data elements to be recorded, disclosed, or reported** - required information helps agency understand the specific circumstances of the commenter.
- Other comments:

Time spent on pre-decisional notice - Probably spent 3 hours research and request for special recomputation

When there was a large timber program and the set-aside program was in place, set-asides actually sold for more than open sales because large mills have fee lands and won't bid as much.

Would like to see set-asides appraised to nearest small purchasing mill. In OR, 90% of timber from private so mills don't buy public due to risk and certification.

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.

There is no assurance of confidentiality. The information collected is available to other interested parties as defined at 36 CFR 223.118(c). No information covered by a Privacy Act System of Records, Personally Identifiable Information, or other confidential information covered by a statute, regulation, or agency policy will be collected.

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

There are no questions of a sensitive nature.

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

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**

- a) **Description of the collection activity**
- b) **Corresponding form number (if applicable)**
- c) **Number of respondents**
- d) **Number of responses annually per respondent,**
- e) **Total annual responses (columns c x d)**
- f) **Estimated hours per response**
- g) **Total annual burden hours (columns e x f)**

Table 1 – Annual hour burden estimate

(a) Description of the Collection Activity	(b) Form Number	(c) Number of Respondents	(d) Number of responses annually per Respondent	(e) Total annual responses (c x d)	(f) Estimate of Burden Hours per response	(g) Total Annual Burden Hours (e x f)
Pre-decisional comments (required to qualify for appeal)	n/a	10	1	10	8	80
Appeals filed	n/a	10	1	10	12	120
Totals	---	20	---	20	---	200

Please refer to supplemental document *0596-0141 SBA Burden Hour Cost Spreadsheet* for burden and cost estimates.

Table 2: For all National Forest System market areas combined, the total number of appeals filed, during Fiscal Years 2016 through 2024, on any recomputation decisions of the small business share of National Forest System timber sales (per 36 CFR 223.118(c), (e), and (f)).

Fiscal Year	# of Appellants	Number of Appeals Filed
2016*	5	6
2017	0	0

2018	2	4
2019	0	0
2020	0	0
2021*	6	8
2022	0	0
2023	0	0
2024	0	0
Total	13	18

*These years included recomputation of small business shares in all market areas

The number of respondents (timber sale purchasers or their representatives) is estimated as follows:

The potential number of respondents is all of the timber sale purchasers, or their representatives, who are listed on the national forest timber sale bidder's list for each affected area and who have submitted pre-decisional comments on the draft decision. The estimate of 10 annual respondents is based on historical data, which can vary a great deal. For instance, there are more recomputation decisions every five years (FY2016 and 2021 above) during the regular process of recalculating the shares in all market areas, and therefore more appeals.

The number of responses per respondent is estimated as follows:

Due to the requirement that appellants must submit pre-decisional comments prior to filing an appeal, two responses are received per respondent; one (1) for the pre-decisional comments and the second (2) for the appeal.

The estimated time per response is estimated as follows:

The estimated average of 20 hours is based on contacts made with respondents who report an average time of 8 hours to prepare pre-decisional comments and an additional 12 hours to prepare the notice of appeal.

- **Record keeping burden should be addressed separately and should include columns for:**
 - a) **Description of record keeping activity:**
 - b) **Number of record keepers:**
 - c) **Annual hours per record keeper:**
 - d) **Total annual record keeping hours (columns b x c):**

No record keeping is required.

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

Table 3 Annualized cost to respondents

(a) Description of the Collection Activity	(b) Estimated Total Annual Burden on Respondents (Hours)	(c)* Estimated Average Income per Hour	(d) Estimated Cost to Respondents
Pre-decisional comments	80	29.23	\$2338.40
Appeals filed	120	29.23	\$3507.60

(a) Description of the Collection Activity	(b) Estimated Total Annual Burden on Respondents (Hours)	(c)* Estimated Average Income per Hour	(d) Estimated Cost to Respondents
Totals	200	---	\$5846.00

The cost to respondents is estimated as follows:

Respondents are qualifying timber sale purchasers or their representatives. Thus, estimated average income per hour is based on May 2023 National Occupational Employment and Wage Estimates, United States, Occupation Code NAICS 45-1001 (First-Line Supervisors of Farming, Fishing, and Forestry Workers) which shows a \$29.23 mean hourly wage <http://www.bls.gov/oes/current/oes451011.htm>.

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

There are no capital operation and maintenance costs.

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

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

- **Employee labor and materials for developing, printing, storing forms**
- **Employee labor and materials for developing computer systems, screens, or reports to support the collection**
- **Employee travel costs**
- **Cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information**
- **Employee labor and materials for collecting the information**
- **Employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information**

Table 4

ACTION ITEM	PERSONNEL	GS LEVEL	HOURLY RATE*	HOURS	SALARY
Preparing, mailing, and handling comments and appeals received; Small Business	Clerical	5/5	\$27.94	2	\$55.88

ACTION ITEM	PERSONNEL	GS LEVEL	HOURLY RATE*	HOURS	SALARY
Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares.					
Review, analysis, and decision-making per each appeal received – Small Business Timber Sale Set-Aside Program: Appeal Procedures on Recomputation of Shares.	Management/Staff	12/5	\$61.39	6	\$368.34
Total					\$424.22

\$424.22 [rounded to \$424] per response X 10 responses = \$4240

* Taken from: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/RUS_h.pdf Cost to Government calculated at hourly wage multiplied by 1.3

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

This is an extension of a currently approved information collection, with revision. There are no additional program changes or adjustments, except the burden estimate was reduced based on data for number of respondents, and salaries were adjusted to reflect the latest available hourly wages for respondents and federal estimates.

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.

No collection instruments are associated with this information collection request, and therefore an OMB control number and expiration date cannot be displayed.

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 the collection of information encompassed by this request complies with 5 CFR 1320.