

2012 Supporting Statement for OMB 0596-NEW
Post-Decisional Administrative Review Process
(Proposed Rule)

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.**

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

This information collection is in support of a proposed rule amending the current 36 CFR 251 Subpart C regulation that would shorten the appeal process, shorten the appeal period, and reduce the cost to the appellant and government of processing the appeal. The proposed rule moves the amended provisions to a new part 214 and removes part 251 subpart C.

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

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

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

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

The information (appeal) will be collected (submitted) from individuals who are holders or operators of a valid written authorization or in some cases an applicant

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for a written authorization to occupy or use NFS lands and resources. The appellant (holder or operator) voluntarily participates if they seek a review of a decision that was made that directly affects their written authorization. This appeal process does not require the services of an attorney; however some respondents choose to use the services of an attorney in preparing their response.

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

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

d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the information? If so, what are they?

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

e. How frequently will the information be collected?

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

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

The appeal record is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1. The collected information is shared only if requested by other organizations or government agencies.

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

This is an ongoing collection without an OMB number. The Forest Service acknowledges that it has not been compliant with the Paperwork Reduction Act (PRA) regarding this appeals process. This is the first time the agency has submitted an information collection request for this appeal process. The 251 appeal process was promulgated through rulemaking on January 23, 1989. At that time, the Forest Service misinterpreted the PRA and determined and stated in the proposed rule language that the rule imposes no paperwork burden on the public and therefore

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an information collection package was not completed at that time. The Agency recognizes that error and is now meeting the requirements of the Paperwork Reduction Act by promulgating this information collection request.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

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

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

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

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

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

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

The agency promulgated this regulation in 1989 as a result of a review of the current rule (in place at the time) as required by E.O. 12291 and to respond to the findings of the review; namely, that the agency needs to streamline, simplify, and expedite the appeals process and to eliminate the longstanding confusion of purpose and procedures contained in the current appeal regulation (language from the 1988 proposed rule).

The agency and public have been using this appeal process for 23 years and to discontinue this process now would result in the agency not providing an open and

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transparent process for a specific National Forest System user group.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**

Those choosing to file an appeal must do so within 45 days of the date of the decision. The proposed rule reduced the time to 30 days and in response to comments received the agency is keeping the time period at 45 days in the final rule.

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

The post-decisional administrative review process has no such requirement.

- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not 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

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address comments received on cost and hour burden.

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

A total of 43 responses were received on the proposed rule. No comments were specific to the Information Collection. Public comments received on the proposed rule centered around a few sections of the proposed rule. Commenters did not agree with the proposed reduction of the appeal filing period from 45 days to 30 days. The final rule keeps the time period at 45 days. Commenters did not agree with the proposed reduction of the two levels of review to one level of review for district ranger decisions.

After careful consideration of the comments received, Forest Service has decided to maintain that the final rule will keep the proposed rule language that sets one level of review for all decisions. Additionally, in response to other comments received, minor edits were made to some definitions and clarifications added to other sections of the final rule.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

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

The Office of General Council has reviewed the required information to be collected described in question 2a.

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 agency randomly selected three appeals that were filed within the last 14 months. Two were filed by individuals and were short and written in a simple format with no legal or other references included. One appellant stated that he spent 4 to 5 hours preparing his appeal. He found the instructions/process as outlined in part 251 subpart C to be helpful and clearly explained the steps he needed to follow to file an appeal. The second individual stated he spent approximately 2-3 hours in preparing his

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appeal and the process and procedures outlined in the regulations were clear and adequate.

The third appeal was filed by an attorney. Some respondents feel that their response will be better heard if prepared and presented by an attorney. This attorney represents numerous cabin owners in one appeal. The attorney stated that the current regulations are well written. The attorney provided a range of 10 to 100 hours of time required to prepare an appeal dependent on the issues as well as the number of parties the office may be representing in a specific appeal. For the 100 hours estimate he stated that he was representing 50 appellants for an average on 2 hours of burden per respondent.

The agency believes that an estimate of 8 hours per respondent is valid and supported by the information provided by the contacted respondents.

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

There is no payment or gift provided to respondents.

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

No assurance of confidentiality is provided. The appeal record, which includes the appellant's submitted appeal, is open for public inspection in accordance with the Freedom of Information Act, the Privacy Act, and 7 CFR part 1.

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

No information is collected that could be considered sensitive or personal in nature.

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

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

a) Description of the collection activity:

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- 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- Appeals received by year

(a) Description of the Collection Activity	(c) Number of Respondents		
	FY2008	FY2009	FY2010
Post-Decisional Appeal	69	179	226

It is difficult to estimate the number of respondents because written authorizations are not amended on a regular basis and the holder of the authorization may or may not choose to appeal a decision. Forest Service asked its regional appeal coordinators how many 36 CFR 251 appeals each of the regions received (regional, forest, and district) for the years of 2008, 2009, and 2010. These figures are represented in Table 1.

Although there has been no additional emphasis placed on this program over the last few years, there has been an incremental increase in the reported number of appeals received. This increase in reported appeals may be due to the fact that in recent years the field units have started keeping better records on the number of appeals received.

For calculating the burden estimate represented in Table 2, Forest Service is using the highest annual number of appeals received during the last 3 years, which was 226 in 2010.

Table 2 – Estimated Hourly Burden

COLLECTION ACTIVITY	ESTIMATED ANNUAL NUMBER OF RESPONDENTS	ESTIMATED NUMBER OF RESPONSES ANNUALLY PER RESPONDENT	TOTAL ESTIMATED ANNUAL RESPONSES	ESTIMATED HOURS PER RESPONSE	TOTAL ESTIMATED ANNUAL BURDEN HOURS
Preparation and Submittal of Appeal	226	1	226	8	1,808

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- **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):**

There are no recordkeeping requirements placed upon the respondents.

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

Table 3 – Estimated Total Annual Cost to Respondents

COLLECTION ACTIVITY	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL BURDEN HOURS	ESTIMATED AVERAGE INCOME PER HOUR¹	ESTIMATED COST TO RESPONDENTS
Preparation and Submittal of Appeal	226	1,808	\$21.74	\$39,305.92

¹Hourly wage is from Bureau of Labor statistics for occupation code 00-0000 (all occupations). This wage code was selected because a holder of a written authorization could be from any background and occupation. <http://www.bls.gov/oes/current/oes231011.htm>

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

There are no capital operation and maintenance costs.

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

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

The estimated processing times were obtained through discussions with agency appeal coordinators.

The estimated cost to government as shown in Table 4 below was calculated by taking the cost per appeal and multiplying by the estimated 226 annual appeals received, resulting in an estimated total cost to government of \$624,745.36

Table 4 – Estimated Annual Cost to Federal government

DESCRIPTION OF ACTIVITY	TOTAL ANNUAL APPEALS	PERSONNEL	GS-LEVEL	HOURLY RATE ¹	HOURS PER APPEAL	COST TO GOV'T PER APPEAL
Receiving appeal and analyzing issues		Forest Appeals Specialist	GS-11 Step-1	\$29.93	24	\$718.32
Summarizing, reviewing, and preparing appeal response		Regional Appeals Specialist	GS-12 Step-1	\$35.88	20	\$717.60
Summarizing, reviewing, and presenting appeal response		National Appeals Specialist	GS-14 Step-1	\$50.41	24	\$1,209.84
Issuing Final Appeal Decision		Deciding Official	GS-15 Step-1	\$59.30	2	\$118.60
Cost per Appeal						
TOTAL	226					\$624,745.36

¹The hourly costs were obtained from the OPM salary table for 2011.

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

15. Explain the reasons for any program changes or adjustments reported in items

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13 or 14 of OMB form 83-I.

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

The collected information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

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

There are no exceptions.