

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, OR 97208**

In Reply Refer to:
5400 (OR-931) P

August 5, 2003

EMS TRANSMISSION 08/12/2003
Instruction Memorandum No. OR-2003-100
Expires: 9/30/2004

To: District Managers: Coos Bay, Eugene, Lakeview, Medford, Roseburg, and Salem

From: State Director

Subject: Use of Reciprocal Right-of-Way Agreements for Small Business Administration (SBA) Set-Aside Timber Sales

Program Area: Timber Sale, Small Business Administration Set-Aside Program

Purpose: To clarify procedures when planning SBA set-aside timber sales which involve the use of Bureau of Land Management (BLM) Reciprocal Right-of-Way Agreements with non-SBA qualified permittees that predate the July 18, 1958, amendment to the Small Business Act.

Policy/Action: Pre-1958 reciprocal right-of-way agreements which have not been assigned or superceded by a new permit and agreement on or after July 18, 1958, continue in effect throughout western Oregon. Many pre-1958 agreements include language requiring that the permittee be allowed to bid on any Federal timber offered for sale in the agreement area. This situation could prevent the BLM from meeting the objectives of the US Department of the Interior (USDI)/SBA timber sale program Memorandum of Understanding (MOU) where the permittee does not qualify as a small business under 13 CFR Part 121. For this reason, access to Federal timber considered for SBA set-aside timber sales should be thoroughly reviewed with respect to the use of pre-1958 reciprocal right-of-way agreements. BLM should not consider the tributary timber for SBA set-aside timber sales where the terms of the agreement allow the permittee to bid on that timber or, alternatively, the BLM may attempt to obtain a written waiver of the applicable agreement provisions from the permittee. The agreement language in Attachment 1 has been developed for this purpose.

Prioritize SBA set-aside timber sales based on the "Revised Operating Procedures for the BLM/SBA Set-Aside Timber Sale Program, Effective October 1, 1990" (Attachment 2) and the Timber Sale Procedures Handbook H-5410-1, Annual Timber Sale Plan, Chapter IV. A. 4. The hierarchy of road classification specified in the Revised Operating Procedures should be utilized when evaluating projects for their suitability as SBA set-aside sales. If necessary to meet the terms of the 1959 USDI/SBA MOU, as amended, utilize access under reciprocal right-of-way agreements that predate July 18, 1958, only after obtaining written agreement from a non-SBA qualified permittee.

Timeframe: Upon Receipt

Background: The BLM/SBA set-aside timber sale program was a topic of discussion at a recent annual right-of-way meeting with a reciprocal agreement permittee. The BLM District activated the SBA set-

aside program due to shortfalls in small business qualified purchases of BLM timber and notified the permittee of BLM's plans to use their roads for access to some of those sales. The permittee, who does not qualify as a small business, questioned

the BLM's rights to utilize their roads under the agency's right-of-way and road use agreement. BLM representatives informed the permittee that agency guidelines are in place regarding access to SBA sale offerings. However, the BLM District Forestry program leads have requested clarification as to whether rights-of-way and road use agreements with permittees not qualifying as small business concerns, as defined by 13 CFR Part 121, can be used to access BLM timber for SBA set-aside timber sales.

In 1959, a MOU was implemented between the USDI and the SBA. This MOU was designed to ensure that the objectives of the Small Business Act (P.L. 85-536, as amended) are accomplished in the sale of Government timber. The result of this agreement is the SBA set-aside program, where a portion of Federal timber sold in each semi-annual period is designated for purchase by small business concerns as defined by 13 CFR Part 121.

Effective May 13, 1976, BLM/SBA operating procedures were adopted for gaining access to SBA set-aside timber sales. These procedures include, as a last resort, the use of roads owned or controlled by a permittee of the United States who does not qualify as a small business concern as defined by the SBA when such roads are subject to use by the United States and its licensees and permittees through a BLM right-of-way and road-use permit or agreement executed on or after July 18, 1958. This includes any such permit or agreement executed on or before July 18, 1958, which has been assigned or superseded by a new permit or agreement executed on or after July 18, 1958. July 18, 1958, is the date that the Small Business Act was amended to include the sale of Federal timber.

The Timber Sale Procedure Handbook section 5400-1, Appendix 2, contains the Revised Operating Procedures for the BLM/SBA Set-Aside Timber Sale Program, effective October 1, 1985. These operating procedures were again revised effective October 1, 1990. The use of privately owned or controlled roads is addressed in Section VII "Privately Owned or Controlled Roads" which specifies that:

"Effective May 13, 1976, access to a set-aside sale shall be done by one or a combination of the following:

- "A. Public Roads;
- "B. Roads owned or controlled by the United States;
- "C. Roads owned or controlled by a private firm or individual, but on which the United States has use rights for its licensees by means of a non-exclusive easement;
- "D. Roads owned or controlled by a permittee of the United States who qualifies as a small business concern as defined by the Small Business Administration, when such roads are subject to use by the United States and its licensees and permittees through a Bureau right-of-way and road-use permit or agreement;
- "E. Roads owned or controlled by a permittee of the United States who does not qualify as a small business concern as defined by the Small Business Administration when such roads are subject to use by the United States and its licensees and permittees through a Bureau right-of-way and road use agreement executed on or after July 18, 1958. (This includes any such permit or agreement executed on or before July 18, 1958, but which has been assigned or superseded by a new permit or agreement executed on or after July 18, 1958.)

"Policy Element "E" will only be applied when the other four elements have been exhausted, or when an equitable distribution of set-aside sales is impaired."

Manual/Handbook Sections Affected: Timber Sale Procedures Handbook Series, H-5410-1, Annual Timber Sale Plan, § IV. A. 4.

Coordination: Preparation of this Instruction Memorandum (IM) was coordinated with John Styduhar, BLM Realty Specialist; Linda Hagen, SBA Industrial Specialist (Forestry); Mariel Combs, US Department of the Interior Regional Solicitor's Office; and the Westside District Forestry Leads.

Contact: For additional information contact David Roché, Forester, SBA program coordinator, Oregon State Office.

Districts with Unions are reminded to notify their unions of this IM and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
Charles E. Wassinger
Associate State Director

Authenticated by
John Hamil
Staff Assistant

2 Attachments

- 1- [Access under pre-1958 Right-of-Way and Road Use Agreements to Accomplish SBA Set-Aside Timber Sales](#) (1 p)
- 2- [Revised Operating Procedures for the BLM-SBA Set-Aside Timber Sale Program](#) (7 pp)

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Attachment 1

Access under pre-1958 Right-of-Way and Road Use Agreements
to Accomplish SBA Set-Aside Timber Sales.

Bureau of Land Management (BLM) records indicate that BLM and _____ have entered into Reciprocal Right-of-Way agreement No(s). _____, which is/are dated _____. The BLM is planning the _____ timber sale, Tract No. _____, located in T. _____, R _____, Section(s) _____, Willamette Meridian. In conformance with the United States Department of the Interior/Small Business Administration 1959 Memorandum of Understanding, as amended, the Small Business Administration has requested that BLM set aside this timber for sale for offering to a small business concern, as defined in 13 Code of Federal Regulations Part 121. To access the lands where this timber sale is located, BLM must use the roads and/or right(s)-of-way described in the Right-of-Way Agreement(s) listed above. _____ is not a small business concern. BLM requests that you, the _____ representative, waive its right to bid on the subject timber sale. All other conditions and terms of the agreement would remain in effect. BLM requests that you also grant access to BLM so that it may award a Small Business Administration set-aside timber sale on the lands described above.

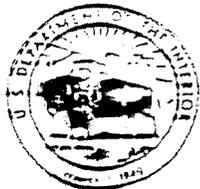
_____ agrees to waive its right to bid on the _____ timber sale. It also agrees to grant the BLM access to the lands described above.

_____ does not agree to grant the access requested.

Signed: _____

Title: _____

Date: _____



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
OREGON STATE OFFICE
P.O. BOX 2965 (1300 N.E. 44th Avenue)
PORTLAND, OREGON 97208



IN REPLY REFER TO

DECISION

REVISED OPERATING PROCEDURES FOR THE BLM-SBA SET-ASIDE TIMBER SALE PROGRAM, EFFECTIVE OCTOBER 1, 1990

I. Sales of BLM Timber: In connection with sale of BLM timber, a small business concern is a concern that is primarily engaged in the logging or forest products industry; is independently owned and operated; is not dominant in its field of operation; and together with its affiliates, its number of employees does not exceed 500 persons. In the case of BLM sales of timber reserved for or involving preferential treatment of small businesses, purchasers of such sales shall be governed by the regulations set forth in Title 13, CFR Part 121.1001.

The 30/70 rule applies to BLM sales set aside for preferential bidding by small business concerns. The purchaser of a set-aside sale must certify at the time of executing the sale contract that no more than 30 percent of the advertised sale volume may be delivered to a large business firm.

II. Marketing Areas: In western Oregon, a small business marketing area will be no smaller than a BLM master unit, and no larger than a BLM District; elsewhere, it will ordinarily be no smaller than a BLM District and no larger than a State.

III. Determination of Small Business Base Average Percentage: The small business base average percentage shall be determined for each timber marketing area. The five-year base period to establish this historical percentage will be Calendar Years 1968-1972, inclusive (see Attachment 1).

Any percentage established by periodic recomputation must not be less than 50 percent of the base average percentage established for the 1968-1972 base period. Timber sale volume purchased by large and small business will be tallied for the base period to arrive at the base average percentage bought by small businesses. Purchases by firms that change size status during the

ATTACHMENT 2

- A. When an initial trigger occurs (i.e., set-asides are triggered in a period following a period when no trigger occurred), the volume set aside shall be approximately equal to one-half the sum of the small business share and the deficit. Example:

Share 56%

Deficit 16 MMBF

Sale Volume 86 MMBF

$$\frac{(.56 \times 86) + 16}{2}$$

$$\frac{48.2 + 16}{2}$$

$$\frac{64.2}{2} = 32.1$$

Set-Aside Volume 32.1

- B. If the computation at the end of a triggered period indicates a set-aside program is triggered for the following period, the set-aside volume shall be approximately equal to the full small business share plus the deficit.
- C. If a small business set-aside program is triggered during either of the final two six-months periods of the five-year recomputation period, then the set-aside volume shall be approximately equal to the full small business share plus the deficit.
- D. Provided, however, in no case shall the set-aside volume exceed 80% of the planned total sale program for the period. In a triggered set-aside situation where the predicted adjusted small business share exceeds 80 percent of the planned sale volume in a six-month period and small business firms purchase a sufficient volume of open sales to satisfy the trigger, no set-aside sales will be carried into the next six-month period. The BLM and SBA retain the prerogative of creating, or withdrawing, set-asides should circumstances warrant such action.

VII. Privately Owned or Controlled Roads: Effective May 13, 1976, access to a set-aside sale shall be done by one or a combination of the following:

- A. Public roads;
- B. Roads owned or controlled by the United States;

period will be tallied for the five-year period according to the size of the firm as of December 31, 1972. The SBA size definition will be the basis for analyzing concerns. Ratios of non-manufacturer volume of log deliveries to small and large business (from a two-year history of non-manufacturer log deliveries) will be used for crediting non-manufacturer purchases to small and large business. Thereafter, the ratios will be updated annually based on rolling two-year historical log delivery data. "A non-manufacturer is a concern which (including its affiliates and its use of leased facilities, and including concerns with whom it or its affiliates subcontract for the manufacture of one or more products) manufactured or contracted for manufacture less than 50 percent of its annual merchantable timber sale volume removed from Bureau of Land Management lands within a specific market area."

IV. Analysis Period and computation of Adjusted Small Business Shares: The analysis period will normally be a six-month period. The small business share is the product of the base average percentage or recomputed average percentage multiplied by the volume of timber sold in a marketing area during an analysis period. The adjusted small business share for each marketing area is the small business share of the current analysis period plus any deficit volume or minus any surplus volume from the preceding analysis period. The deficit or surplus volume shall be determined by comparing the adjusted small business share with the volume purchased by the small business sector in a marketing area. Surplus small business volumes as of April 1, 1985, will be dropped.

Set-aside sales not bid upon by small business and subsequently sold to large business shall be credited toward meeting the adjusted small business share in the six-month analysis period, and shall be credited to large business for the purpose of recomputation. Sales which receive no bids and are subsequently re-offered under the same or revised conditions, shall be resold under the same classification (open or set-aside). If the sale is re-offered during the same period or a subsequent triggered period then the sale must be designated set-aside. If the trigger has been satisfied or the sale is re-offered in an open period then the sale may be an open sale.

V. Set-Aside Procedures: The adjusted small business share in each timber marketing area is computed at the end of each analysis period. If the analysis shows that the small business sector failed to purchase the adjusted small business share volume by 10 percent or more, SBA may request set-aside sales in the next analysis period.

Commencing April 1, 1990, drop negotiated sale volumes from the data based for operation of the program including six-month analysis and five-year recomputations.

VI. Set-Aside Volumes: Effective October 1, 1990, where a set-aside program is triggered, the set-aside volumes shall be subject to the following limitations:

- C. Roads owned or controlled by a private firm or individual, but on which the United States has use rights for its licensees by means of a non-exclusive easement;
- D. Roads owned or controlled by a permittee of the United States who qualifies as a small business concern as defined by the Small Business Administration, when such roads are subject to use by the United States and its licensees and permittees through a Bureau right-of-way and road-use permit or agreement;
- E. Roads owned or controlled by a permittee of the United States who does not qualify as a small business concern as defined by the Small Business Administration when such roads are subject to use by the United States and its licensees and permittees through a Bureau right-of-way and road use permit or agreement executed on or after July 18, 1958. (This includes any such permit or agreement executed on or before July 18, 1958, but which has been assigned or superseded by a new permit or agreement executed on or after July 18, 1958.)

Policy element "E" will only be applied when the other four elements have been exhausted, or when an equitable distribution of set-aside sales is impaired.

VIII. Recomputation of Small Business Average Percentages: (Historical Data for informational purposes only.) Recomputation of the small business average percentage will occur at five-year intervals for each marketing area in accordance with the following procedures and schedule:

- A. For the five-year period commencing October 1, 1985, (10/01/85 to 9/30/90) the small business average percentage will be based upon timber sales data for the period January 1, 1973 through March 31, 1978. Timber volume purchased by small and large businesses during this period will be tallied to arrive at the small business average percentage, except that only 50 percent of non-manufacturer purchases will be tallied to small business.
- B. For the five-year period commencing October 1, 1990 (10/01/90 to 9/30/95) the small business average percentage will be based upon timber sales data for the period April 1, 1980 through March 31, 1990. Timber volume purchased by small and large business during this period will be tallied to arrive at the small business average percentage, except that for the period April 1, 1980 through March 31, 1985, 50 percent of non-manufacturer purchases will be tallied to small business and for the period April 1, 1985 through March 31, 1990, non-manufacturer purchases will be tallied to small business in accordance with the procedure described in Part III above.
- C. For the subsequent five-year periods, the small business average percentage will be based upon timber sales data for a rolling ten-year period. For example, for the five-year period commencing

October 1, 1995, the small business average percentage will be based upon timber sales data for the period April 1, 1985 through March 31, 1995. Non-manufacturer purchases will be tallied to small business in accordance with the procedures described in Part III above.

IX. The 1990 Recomputation:

- A. The current shares for all market areas will remain in effect for the 1990 to 1995 program period.
- B. All deficits and surpluses will be dropped effective October 1, 1990.

X. Future Recomputations: Beginning with the scheduled recomputation in 1995, the small business share will be established for each five-year period based upon a rolling ten-year average of the small business purchase history.

- A. Carryover - Carry forward of deficits or surpluses following recomputation shall be based upon the following rules:
 1. If the change in share is less than 5.0 share points, retain the deficits or surpluses in the market area.
 2. If the change in share is 5.0 share points or more, drop all deficits or surpluses.
- B. Beginning with the 1995 recomputation, shares shall be based upon a ten (10) year rolling average of small business purchase history. The Indicated Share shall be the sum of the annual small business purchases for each year expressed as a percent of total purchases during each year, divided by 10. (The half-year data base included at the beginning and end of the rolling ten years shall be weighted by .5).
- C. The Indicated Share shall be adopted as the new small business share subject to the following limitations.
 1. If the current share is 50% or less, the change in share shall be limited to ten share percentage points.
 2. If the current share is over 50%, the change in share shall be limited to 10% of the current share.
 3. Provided, however, that in no case shall the small business share exceed 80% or be less than one-half the original base shares established in 1972.

4. Provided, further, that in each market area where the Indicated Share change without the limits would have exceeded 10 percentage share points, the State Director of the BLM and the Small Business Administration shall conduct a review of the market area to determine the appropriateness of the share. Such review shall include opportunity for comment from effected industry. The review shall consider changes in the structure of industry, capacity of firms active in the area, timber supply, probable effects on communities where manufacturing facilities are located, effects of carryover volumes, and other items deemed appropriate. If the State Director, in consultation with the Small Business Administration, finds that the proposed share is inappropriate the State Director may establish a different small business share for the market area for which the changes exceed those developed using the above limits.

XI. Newly recomputed percentages will be used to determine whether sales will be set-aside (following procedures stated in Parts IV and V) at the beginning of the fiscal year following the recomputation period. The newly recomputed percentage will be used for a total of ten six-month analysis periods (see Attachment 1).

XII. In the case of a protested, appealed or litigated sale, the sale volume will be credited to the size class of the successful bidder at the time of contract award, rather than the time the sale was bid. In the case where an open timber sale contract is assigned to a third party having a different size status (small or large), the BLM will adjust large and small business volumes by BLM's estimate of the remaining volume at the time of the assignment except when the contract is assigned to a non-manufacturer. There will be no volume adjustments for defaulted or bought-out sales which are returned to the United States and subsequently re-sold.

Purchases by firms that change size during a recomputation period will be tallied to the size class of the firm at the time of the timber sale purchase.

XIII. Review: BLM and SBA may periodically review the operational procedures guiding this program as determined necessary to assure that the declared policy of Congress as expressed in Section 15 of the Small Business Act is carried out. The Small/Large Business Consensus Agreement of September 6, 1990 specifically requested that the 1995 recomputation be performed in compliance with the procedures reflected in this document and that "future review of the operating procedures be undertaken only where there is a demonstrated compelling reason to do so and the need is mutually agreed to by the agency, SBA and small and large business representatives."

Small Business Average Percentage Shares, Western Oregon

<u>Marketing Area</u>	<u>1973 Base Computation^{1/}</u>	<u>1978 Recomputation^{2/}</u>	<u>1985 Recomputation^{3/}</u>	<u>1990 Consensus^{4/}</u>
Columbia - Salem 2	53	52	50	50
Alsea/Rickreall Salem 1	42	43	42	42
Clackamas-Molalla/ Santiam River - Salem 3	26	31	30	30
Eugene	45	42	41	41
Roseburg	43	47	45	45
Josephine - Medford 1	63	61	59	59
Jackson/Klamath - Medford 2	57	57	54	54
Coos Bay	58	58	57	57

- ^{1/} The 1973 computation based upon sales data for the period 1/01/68 through 12/31/72. Non-manufacturer purchases credited 100 percent to small business.
- ^{2/} The 1978 recomputation based upon sales data for the period 1/01/73 through 3/31/78. Non-manufacturer purchases credited 100 percent to small business.
- ^{3/} The 1985 recomputation based upon sales data for the period 1/01/73 through 3/31/78. Non-manufacturer purchases credited 50 percent to small business.
- ^{4/} In Consensus Agreement between large and small business dated 9/6/90, all shares in effect will remain the same until scheduled recomputation in 1995. No recomputation. All surplus and deficits dropped.