

May 25, 2022

Small Business Set-Asides for Federal Timber Sales

Overview

Congress has a direct role in the management of federally owned forests, including the sale of federal timber. Congress established the Timber Sales Assistance Program in 1958, one of a several federal Natural Resource Property Sales Assistance Programs overseen by the Small Business Administration (SBA), to ensure that small businesses obtain a “fair share” of federal timber authorized for sale. The program applies to timber and related forest products owned and sold by the federal government, primarily from lands managed by the Forest Service (FS) and the Bureau of Land Management (BLM). It allows for preferential bidding on sales by eligible small businesses under certain circumstances, such as when small business participation in sales falls below a specified amount. The buyers of federal timber are typically logging and lumber manufacturing firms, which mainly purchase sawtimber.

About 31% of U.S. forestland (238 million acres) is federally owned. From FY2019-FY2021, the FS and BLM sold or had contracts to sell an annual average of \$364 million worth of timber volume. Federal timber harvest volume has fallen substantially since the late 1980s for a variety of reasons, and most timber harvested in the United States is from private lands. However, federal timber sales remain relevant to small businesses in the forest product industry, particularly those located near forests managed by FS and BLM.

Authorization and History

Federally-owned timber sale set-asides for small businesses are authorized by P.L. 85-536, as codified at 15 U.S.C. §644: “With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator [of the Small Business Administration] and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.”

The program originated in 1958 when the SBA and FS created a timber sale set-aside for small businesses. Over the years, the program has been reexamined and its procedures modified through agency regulations. In addition to the statutory requirement to provide an opportunity for small businesses to participate in federal natural resources sales, the program has garnered congressional attention due to concern about acquisition of small forest product businesses by larger ones, resulting in industry consolidation. The timber set-aside has been held up as a tool for limiting such consolidation.

Small Business Eligibility Criteria

A small business must meet the following requirements, described at 13 C.F.R. §121.507, to be eligible to purchase government-owned timber under the timber set-aside program:

1. Be primarily engaged in the logging or forest products industry;
2. Have 500 or fewer employees, taking into account its business affiliates; and
3. Make certain agreements regarding the manufacture and resale of the timber purchased, so as to ensure that small logging and forest product firms remain the main beneficiaries of the government’s sale.

Small businesses that purchase timber under a set-aside must not sell more than 30% of the timber to a business that does not meet the small business size requirements outlined above (Alaskan businesses must not sell more than 50% to larger businesses). They must also manufacture the logs they purchase at their own facilities or at another small business that meets program size requirements.

A separate but related timber sales set-aside program, the Special Salvage Timber Sale Program, exists for very small businesses with fewer than 25 employees. The program is restricted to timber that is dead, down, or dying; the harvesting of which can help generate revenue for restoration and other activities. Program regulations stipulate separate size standards and requirements for the salvage program, available at 13 C.F.R. §121.508.

Implementation

The FS and BLM sell almost all federal timber. BLM generally sells timber in the western United States, where almost all BLM land is located, while Forest Service timber sales take place across the country. Other agencies that sell federal timber, although at smaller volumes, include the Department of Defense, Department of Energy, Fish and Wildlife Service in the Department of the Interior, and the Tennessee Valley Authority.

Federal agencies sell timber under a number of authorities. For example, the Multiple Use-Sustained Yield Act of 1960 directs FS to balance multiple uses of the National Forest System (e.g., recreation, timber, water, and wildlife habitat, and others) and to provide a sustained yield of these uses “in perpetuity.” The Federal Land Policy and Management Act of 1976 provides similar direction for the public lands managed by BLM. The Oregon and California lands (O&C lands) in western Oregon are managed by BLM and FS for

permanent, sustainable timber production, among other specified uses.

Timber harvesting on FS and BLM lands may be conducted for a variety of purposes, such as to produce commercial timber, to promote certain forest conditions (e.g., to control the spread of insects and disease), or for multiple purposes. Congress has directed FS and BLM to engage in long-term land use and resource management planning, which sets the framework for land management, uses, and protection, including describing where timber harvesting may occur and sustainable timber harvest levels. The FS and BLM use these plans to guide implementation of individual timber sales.

The SBA's Role in Interagency Coordination

The SBA and agencies that sell timber (hereinafter, partner agencies) jointly administer timber sales set-asides for small businesses. The SBA's role in the program comprises two activities: (1) establish set-asides when necessary to ensure that small businesses are receiving a fair share of government property sales; and (2) aid, counsel, and assist small businesses on all matters pertaining to disposal and/or leases of government property.

The SBA's Office of Natural Resources Sales Assistance (ONRSA) works with timber sales agencies by reviewing their timber sale plans, evaluating the effect of the sales on small businesses in the area, and recommending changes. ONRSA's specialized industry staff are located in field offices covering different geographic areas of the country and maintain relationships with the officials and personnel at the federal agencies selling timber.

Timber sales are meant to be set-aside for exclusive bidding by small businesses when market conditions show that small businesses are not receiving enough timber volume under full-and-open competition. Because statute does not define the "fair proportion" of federal sales for small businesses, agencies have used "market share" methods based on prior small business participation in a particular geographic or market area, such as a particular national forest, to establish the appropriate amount of small business sales.

Determining Set-Asides

Memoranda of Understanding (MOUs) between the SBA and agencies selling timber, along with agency policies, guide sales and the creation of small business set-asides.

Both FS and BLM have specific procedures for determining the appropriate small business market shares of sales. Other partner agencies designate sales for small business bidders when either a specialist in the SBA's ONRSA or the contracting officer for the timber selling agency substantiates a need for such a set-aside.

FS's market share calculation methods are described in a *Federal Register* announcement (81 FR 66199):

In order to determine the small business market share that triggers a set-aside sale, FS calculates the current small business market share based on small business

purchases of sawtimber volume sold under the timber program over a five-year period. This percentage, based upon historical purchases of sawtimber in the market area, sets the framework for what constitutes small businesses' fair proportion of the total sales volume. If at any time, the small business market share falls below this percentage, subsequent timber program sales would be set-aside for preferential bidding by small businesses. Set-aside sales in the timber program will continue until such time that the small business market share rises above the triggering percentage.

The BLM's timber sales set-aside program includes its Non-activated Program and Activated Program. Under the Non-activated Program, an MOU with the SBA permits the SBA to review BLM's annual timber sale plans prior to publication and to request set-aside sales. When BLM agrees to set-aside certain sales for small businesses, BLM consults with SBA concerning financial and other performance qualifications to be included as conditions of a sale. Under the Activated Program, sales in the O&C lands in western Oregon are set aside when triggered by semiannual analysis; if triggered, the BLM and SBA negotiate the selection of sale tracts to be set aside in the following six-month period.

Set-asides are triggered when the small business sector fails to purchase at least 90% of the "adjusted small business share" of a market area's timber sales volume. The adjusted small business share equals the percentage of total timber volume sold to small business in the current six-month analysis period, plus any deficit or minus any surplus from the preceding analysis period.

Proposed Program Changes

One of SBA's currently proposed rules would affect the timber set-aside program, but only as it applies to the FS. The rule would amend regulations to include instructions on how timber hauling costs are estimated in developing an appraised price for small business set-aside sales. The SBA recently indicated that it intended to issue a final rule in September 2022.

Program Importance to Congress

As part of its oversight role with respect to the FS and BLM, Congress may be interested in the impact of federal timber harvesting on small businesses and the local economies near national forests. Additionally, Congress may consider legislative proposals that affect timber sales and set-asides. For example, legislation during the 117th Congress proposes to convert timber sales to salvage sales on lands impacted by wildfires.

Additional Resources

For additional information, see the following reports: CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle; CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle; and CRS Report R46976, *U.S. Forest Ownership and Management: Background and Issues for Congress*, by Katie Hoover and Anne A. Riddle.

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IF12121

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