

**Forest Service Handbook
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Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook

Chapter 90 - Programs with Small Business Administration

Amendment: 2409.18-2007-1

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Digest: Following is an explanation of the changes throughout the directive by section.

92.3: This amendment incorporates with no changes, the direction previously issued in interim directive (ID) 2409.18-2006-1. Changes authority to approve variations from the required set-aside program from the forest supervisor to the Deputy Chief, National Forest System. Changes consultation with the Small Business Administration from the regional representative to the national representative.

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This chapter contains operational instructions for the administration of the small business timber sale set-aside programs. Line officers, timber sale contracting officers, and other timber sale officers must use this direction and direction in FSM 2436 to administer the small business timber sale programs.

90.4 - Responsibilities

In addition to the responsibilities in FSM 2436, the following positions have responsibilities for small business timber sales programs:

90.41 - Forest Supervisors

See FSM 2436.04d for overall responsibility. In addition, Forest Supervisors have the responsibility to:

1. Conduct semiannual analysis of each market area to determine if set-aside program should be triggered.
2. Initiate the timber sale set-aside program when the 6-month analysis indicates the small business deficit equals or exceeds 10 percent of the small business share.
3. Select and announce the timber sales that are to be set aside following consultation with the SBA Regional Representative of the Small Business Administration (SBA).
4. Document structural changes within 60 days of their occurrence or as they become known through personal knowledge or following request by an interested party. Make a determination if conditions that permit a structural change recomputation were met.
5. Recommend new boundaries for any changes proposed in market areas to the Regional Forester.
6. Identify circumstances that may justify recomputations to deal with unique circumstances, document justification for it, and if warranted, recommend change to the Regional Forester.
7. Provide public notice, appropriate analysis, and decision documents pertaining to recomputations of share percentage points.
8. Maintain communications with appropriate representatives of the Small Business Administration concerning set-aside and other small business programs that are ongoing on the administrative National Forest.
9. Establish and announce new shares for scheduled and structural change recomputations that do not require Regional Forester approval.

90.42 - Contracting Officers

It is the responsibility of timber sale Contracting Officers to:

1. Ensure that the appropriate contract provisions are included in contracts for set-aside sales and that they are properly enforced. Also ensure that bidders meet qualifying requirements prior to award of the contract.
2. Accept bids only from self certified small businesses (the bidder by signing the bid form, FS-2400-14, certifies its status).
3. Accept self-certification unless the firm was declared large by the Small Business Administration and has not been recertified as small.
4. Defer award of set-aside sales for 5 days to allow for protests of size class.
5. Accept protests of small business size class, or when appropriate, personally question size class. Forward all protests to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested company is located and immediately inform the Regional Forester.
6. Defer award of sales with a protest of size class until the SBA has made a size determination and appeals have been resolved.
7. Inform the SBA Government Contracting Area Office of protested sales that include timber in urgent need of harvesting and of the salvage nature of the sale. If a size determination is not rendered in 10 working days, contact the Chief through the Regional Forester for advice.
8. Ensure that SBA Form 723 (Small Business Certification Required on All Preferential Sales of Set-Aside Timber) is mailed to the apparent high bidder with the sale award letter and is received by the Contracting Officer prior to execution of the contract.
9. Monitor delivery of timber from set-aside sales in the course of administering the timber sale contract. Notify the SBA of suspected noncompliance with set-aside requirements, and if they certify noncompliance, take appropriate action for breach of contract.
10. Modify contracts, if necessary, to provide for the collection of road construction loan installments under terms of the agreement (FSM 1539.5) between the Forest Service and the SBA. See section 95 of this handbook.

11. Take actions to modify and administer timber sale contracts, supply information to the SBA, and arrange billing procedures as needed to act as an agent for the SBA in securing repayment of road construction loans for certain small business timber purchasers.

90.5 - Definitions

The following definitions apply to small business timber sale set-aside programs:

1. Original Base Share. The original base share is the small business share percentage for a market area as determined using small business purchase volumes of the 5-year period beginning January 1, 1966 and ending December 31, 1970. This was the original small business base share percentage used for the first 5-year program (CY 1971 through CY 1975). The analysis to determine the original base share was based on a recognized market. If new market areas are created, an original base share percentage must be calculated using the procedures in 91.3. There are no limitations on the original base share percentage.
2. Deficits and Surpluses. The accumulated volume which results from the difference between the small business market share of sawtimber volume sold and the volume actually purchased or credited to small business firms. These deficit and surplus volumes guide operation of the 6-month timber sale set-aside program and are used in the calculations for periodic recomputations of market share.
3. Eligible Firms. SBA size standards and other requirements for purchasing set-aside sales and special salvage timber sales (SSTS) are defined in 13 CFR Part 121. The following requirements are intended as summaries only.
 - a. Under SBA requirements, an eligible small business:
 - (1) Is primarily engaged in the logging or forest products industry.
 - (2) Does not employ, together with its affiliates, more than 500 persons.
 - (3) Agrees to manufacture lumber, timbers, or veneer from logs sold in set-aside sales only at its own facilities or those of concerns that qualify as a small business.
 - (4) Agrees that if it resells the timber from a set-aside sale, it will resell no more than a specified percent of the advertised sawtimber volume to other businesses that do not qualify as small businesses.

(5) Agrees that for a period of 3 years following the date of contract award, it will maintain a record of the name, address, and size status of every concern to whom it sells or otherwise disposes of the sawlogs, and the species, grade, and volumes of the sawtimber sold from the set-aside sale.

(6) Agrees that for a period of 3 years following the date of purchase, it must, by contract, require all small business re-purchasers of the sawtimber to maintain the records described above.

b. Under the special salvage timber sale (SSTS) program, an eligible small business: (13 CFR Part 121):

(1) Is primarily engaged in the logging or forest products industry.

(2) Has had, together with its affiliates, no more than 25 employees during any pay period for the past 12 months.

(3) Agrees to accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees, or employees of another business that is eligible for SSTS.

(4) Agrees to manufacture a significant portion of the logs with its own employees, if it does not intend to resell the timber.

4. Market Areas. Market areas are the basic units for administration of the timber set-aside program. They generally coincide with logical and feasible administrative units—the National Forest in most instances. Traditional marketing patterns, geographic or topographic barriers, limits of the transportation system, or other factors may delineate more than one market area within the Forest.

5. Market Area Change. (See section 91.3) Market area boundaries seldom change, but occasionally there may be a need to split a market area or combine one or more market areas. A Market Area Change Recomputation may occur within a 5-Year Recomputation period. When a change in market area boundary is warranted, a small business percentage share for the new market area(s) must be computed, as well as a small business share which will remain in effect until the next scheduled recomputation.

6. Manufacturer. A manufacturer is a concern with an existing sawmill, specialty mill (such as a cedar mill, shingle or shake plant, pole plant, or deadwood stud mill), or veneer manufacturing facility within an economic or logical haul distance, or with firm commitments and permits for construction of such a facility. The purpose of this facility is the processing of the sawtimber component of a timber sale.

7. Nonmanufacturer. A nonmanufacturer is:

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- a. Any concern which manufactures, with its own or leased facilities, or contracts for manufacture less than 50 percent of its total annual sawlog production within an economic or logical haul distance to such facilities, including pulp and fiberboard mills without a contiguous integrated manufacturing facility for lumber, timbers, or veneer from a sawtimber component.
 - b. A specialty concern that does not have the capacity to manufacture 50 percent or more of its average annual sawlog production because of factors such as timber species or size.
 - c. Any concern purchasing National Forest timber outside an economic and logical haul distance to its manufacturing facility.
 - d. Any pulp mill, fiberboard mill, or chip plant that purchases sales with a sawtimber component when it has no manufacturing facility for lumber, timbers, or veneer.
8. Recomputation. The process of computing the small business share percentage for a market area. Recomputation normally takes place at 5-year intervals, but recomputations for Structural Change or Special Recomputations for unique circumstances may occur more frequently.
- a. 5-Year Recomputation. (See section 91.21 and 91.22) The 5-Year Recomputation occurs in 5-year intervals beginning October 1 and ending September 30 of the fifth year. There are ten 6-month analysis periods in each 5-Year Recomputation. The effective date of the recomputation of shares is October 1 of the new 5-year period.
 - b. Structural Change (applicable to Regions 1-6 only). A Structural Change may occur during a recomputation period when a small or large business firm that purchased at least 10 percent of the total sawlog volume during the last recomputation period discontinues operations or changes its size status through the sale or purchase of manufacturing capacity. When a structural change occurs, the small business share must be recomputed in accordance with the procedure set out in section 91.22b.
 - c. Special Recomputation. (See section 91.23) A Special Recomputation for a market area may be needed due to unique circumstances, such as catastrophic natural events or damage to processing facilities that results in abnormal delay in repairs. A Special Recomputation may be warranted within a 5-Year Recomputation period or in place of the 5-Year Recomputation.
9. Small Business Share. The small business share is the amount of timber that small businesses are expected to purchase within a market area. It is determined through the Forest Service periodic recomputations of market share, is expressed as a whole percent, and is referred to as Market Share or share percentage points.

10. Timber. Trees or portions of trees cut in the form of sawlogs as listed in sale contracts or permits, and which are suitable for manufacture into lumber, timbers, or veneer and are normally appraised as such.

11. Logging and Significant Logging. To meet requirements (13 CFR Part 121), logging of timber means felling and bucking, yarding, and/or loading. It does not include hauling. Significant logging of timber means a business uses its own employees to perform at least two of the following: felling and bucking, yarding, or loading.

12. Manufacturing or Processing. Sawtimber from a set-aside sale will be considered manufactured or processed, at a minimum, when the sawtimber is manufactured into rough-cuts of the finished product (CFR 13 Part 121). This usually means the sawtimber is taken out of the round. There are special agreements with SBA concerning some products in some market areas. Consult with the SBA Regional Representative if necessary.

13. 6-month Analysis Period. Each fiscal year is divided into two 6-month analysis periods: October 1 through March 31 and April 1 through September 30. A semiannual analysis is prepared at the end of each 6-month period. The sale information from the previous analysis period is used to determine if the following analysis period is triggered (See section 92 for analysis instructions). Use FS-2400-31- Cumulative Set-Aside Program Analysis Report to report each analysis period. This form is to be submitted to the Forest Service Regional Office SBA Representative and to the Regional SBA Representative within 30 days of the end of the 6-month period (May 1 or November 1, respectively).

14. Trigger. A small business set-aside program is initiated (“triggered”) on a market area when the cumulative deficit volume of small business purchases equals or exceeds the small business share of volume sold during any 6-month period by 10 percent. An initial trigger situation is any trigger following a period when no volume is set aside.

91 - Guidelines for Recomputation of Shares

91.1 - General Guidelines

Recomputation processes differ for various areas of the country and the type of recomputation, however some general direction applies to all recomputations. Consult with the Forest Service Regional SBA Representative and Regional SBA Representative in all recomputations to ensure that the correct procedures are being used.

91.11 - Limits on Market Shares

The small business share in any market area must not exceed 80 percent nor be less than 50 percent of the original base share. When recomputation results in a share of 80 percent or greater, the small business share must be 80 percent.

91.12 - Rounding of Share Percentages

Round share percentages to the nearest whole percent. For example, round 20.6 percent up to 21 percent and round 20.4 percent down to 20 percent. Where applicable, use the odd-even rule. For example, raise 19.5 percent to 20 percent and lower 20.5 percent to 20 percent.

91.13 - Volume Used for Share Calculations

Use the volume amount from the sales data listed on the FS-2400-31 Cumulative Set-Aside Analysis Report for the applicable calculation period. No changes in sales or volume numbers should be made except as allowed in section 92 - Operation of the Regular Set-Aside Program.

91.14 - Size Class of Businesses

Use the definitions for eligible firms, manufacturer, or non-manufacturer in section 90.5 to determine whether a purchaser's operation is a small or large business and a manufacturer or non-manufacturer. Request from the appropriate SBA Government Contracting Area Office Size Determination Officer a size determination if there is doubt or if requested to do so by interested parties.

91.15 - Crediting Volume for Recomputations

See section 92 for guidance on crediting of purchased volumes to large or small businesses for both recomputation and 6-month analysis purposes.

91.16 - Carryover Volume

Recomputations may result in carryover volumes applicable to the next recomputation period. Determine deficit or surplus carryover by following these steps:

1. To determine the deficit or surplus volume, calculate the sum of Column 8 on Form FS-2400-31, Cumulative Set-Aside Program Analysis, over the specified recomputation period (3 or 5 years).
2. If the new share is 80 percent or greater, or if a small business share percentage change exceeds five percentage points, the deficit or surplus is dropped.
3. If the small business share percentage changes five percentage points or less, the deficit or surplus volume is carried forward and used to determine the cumulative deficit or surplus (column 9) for the next 6-month analysis period.
4. To determine deficit or surplus carryover volume for a 5-Year Recomputation, calculate the sum of Column 8 (deficit/surplus for period) on form FS-2400-31, Cumulative Set-Aside Program Analysis.
5. Use the actual fractional share percentage of the recomputed share to decide if the change in the small business share percent is greater or less than five percentage points.

Example: if the actual fractional share percentage for the new small business share is 41.01 percent and the previous share is 36 percent, the new share exceeds the previous share by 5.01 percentage points. Use the entire previous small business share percentage (36 percent). Do not go back to find the actual fractional share percentage of the previous share.

91.17 - Establishing New Small Business Shares and Appeal Procedures

Consult the SBA Regional Representative and request review of all recomputations as well as any determination of structural change. Following review by the Small Business Administration, the responsible line officer shall:

1. Conduct such analysis and documentation required by 36 CFR 223, Subpart B - Timber Sale Contracts.
2. Give to interested parties notice of the decision establishing the small business share and of any appeal opportunity (see 36 CFR 223.118, for regulations governing Appeal process for small business timber sale set-aside programs share recomputation decisions) A determination as to whether a structural change has taken place is appealable at the time the determination is made and at the time the recomputed share is established, which is approximately 3 years after the determination is made.
3. Make any new share effective at the beginning of the first 6-6-month analysis period following the decision to establish it.
4. Document any disagreements between the SBA Regional Representative and the Forest Service resulting from any recomputation, including industry comments, and refer the matter to the Regional Forester for decision. Do not implement a disputed recomputation until a final determination results.

The Regional Forester may establish shares that differ from recomputation results and standard limitations upon recommendation of the Forest Supervisor (FSM 2436.04c and 2436.04d).

91.2 - Recomputation of Shares

91.21 - 5-Year Recomputation in Region 10

Base the small business share on volume, rather than a percentage. The Regional Forester and the SBA Regional Representative must review the timber sale program for the Tongass and the Chugach National Forests and consult with interested parties within the region. When an agreement is reached on a small business share volume, the existing agreement will be revised to provide a supply of sawtimber to the small businesses example: the volume share established for FY 1998 was 124 MMBF or 50 percent of the Planned Sale Volume for the Region. This is the annual share agreement until the agreement is revised in FY 2000. The next 5-year agreement should be completed before November 1, 2000.)

91.22 - 5-Year Recomputation in Regions 1-9

Recomputations of the small business share percentage for each market area are scheduled every 5 years. Use data from the time period between the scheduled recompute and the most recent previous recompute (5-Year recompute, structural change recompute, or special recomputations), which will be the preceding 5-year period. A 5-year recompute is also required following a structural change, unless the recompute for that structural change occurs 1 year before or after the scheduled recompute (see section 91.23).

Recompute the small business market area share percentage by dividing the total small business sawlog purchases by the total sawlog volume purchased over the applicable time period. See section 92.11 for limitations on which sales to include in the calculations and how to credit the volumes to small and large businesses.

91.22a - Limits on Share Change in Regions 1 - 6 During 5-Year Recomputations

Use the recomputed results to establish the new small business share. However, increases or decreases in market shares must be limited at each recompute as follows:

1. If the share is 50 percent or less, changes in share must be limited to 10 share percentage points.
2. If the share is more than 50 percent, changes in share must be limited to 10 percent of the current share.
3. The total share must not be increased to more than 80 percentage points nor decreased below one-half the established original base share.

In each market area when the recomputed share would result in a share change of more than the limit established in paragraphs 1 or 2, or in a recompute period of less than 3 years, analyze the structure of the timber industry in the market area in cooperation with the Small Business Administration Regional Representative and determine the impact of the limits. If, based on this analysis, there are strong reasons that the limit should not apply, determine an appropriate small business share, and propose it to the Regional Forester for approval. In the analysis supporting a proposal for a share above the limits, consider the capacity of the firms active in the market area, the available timber supply, the probable effects on communities where manufacturing plants are located, the effects of timber volume carried over from prior periods, and other factors deemed significant.

91.22b - Structural Change Recomputation in Regions 1 - 6

Recompute the small business share percentage following a structural change. The procedure for recompute of shares following a structural change is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect changes that may develop.

Forest Supervisors may recognize structural change or may act upon recommendation of their subordinate staff when conditions for structural change appear to have occurred. Act, in consultation with the Small Business Administration, upon a request for recomputation due to structural change from any manufacturer or their representative within 60 calendar days of the request. Make a determination as to whether the definition for structural change was met. The purpose for making the determination is to enable clear and accurate records of the events at the time they occur rather than to reconstruct them at the time the recomputation is due, three years later.

If structural change did occur, include the date at which the structural change was judged to have taken place, the time period to be included in the purchase data for the recomputation, and when the recomputation is expected to become effective if a change in shares should result. Document the results of the determination, make the documentation available to interested and affected parties, and if structural change did occur, retain as an open file until the recomputed share is in effect.

Recompute small business shares 3 years after a structural change occurs. Base the recomputation on the purchase history for the 3-year period, beginning with the first full 6-month period following the structural change. When a recomputation for a structural change would occur within a year of a scheduled recomputation (before or after), skip the scheduled recomputation. Complete the recomputation promptly and establish new shares with an effective date, according to direction in section 91.17. In the event two or more structural changes occur in the same 6-month period, make only one recomputation with respect to all structural changes that occurred in the same half year.

Compute the small business shares following a structural change in the same manner as a 5 year scheduled recomputation using 3 years of data instead of 5 years. Structural change recomputations are not subject to the limitations on the amount of share change applicable to scheduled recomputations, but are subject to the lower limit of one-half the established base share and the upper limit of 80 percentage points.

91.23 - Special Recomputations

Unique circumstances may develop which require special recomputations and departure from the established procedure. Consult with the SBA Regional Representative, and propose procedures necessary to adapt to the situation. Solicit the views of firms operating within the market area before submitting to the Regional Forester a proposal to deviate from the normal recomputation process.

Examples of unique circumstances include, but are not limited to, catastrophic natural events that substantially disrupt normal operations or an event that causes substantial damage to a processing facility and results in abnormal delay in repairs. Within the identified market areas, wide variation occurs; however, several of these variations may be duplicated in several market areas. Under such circumstances, special recomputations would be appropriate.

91.3 - Change in Market Areas

Changes in market area boundaries may be warranted when significant changes occur in the economic factors affecting the area (section 90.5 defines market area). Factors to be considered, which may initiate an analysis to change market area boundaries include, but are not limited to: improvement in the forest transportation system that joins two previously separate market areas, a major purchaser discontinues business, firms from outside the market area begin to routinely operate within it, a change in administrative boundaries occurs, a change in traditional marketing patterns takes place, a change in topographic or transportation barriers occurs or there are changes in other factors. A change in administrative boundary is not, by itself, sufficient reason to change market area boundaries.

Prior to submitting a proposal, consult the SBA Regional Representative and then solicit the opinions of firms operating within the affected market areas. Avoid making market area changes that would favor individual firms or communities rather than small businesses as a class. Document the proposal, calculations, and rationale for the boundary change. If there is sufficient reason to make the market area boundary change, any pending structural change recomputation within the affected area must be canceled.

Each new market area must have four specific steps completed at the time of Market Area Change:

1. Establish a small business share percentage.
2. Recompute an original base share.
3. Calculate carryover volume.
4. Establish a sale history for the current 5-year recomputation period. If a Market Area Change is accomplished at a 5-year recomputation, this step may be omitted.

91.31 - Dividing a Single Market Area into Two or More Market Areas

1. The small business share percentage for each of the new market areas must be the same as the old market area.
2. The original base share for the new market areas must be the same as the old market area.
3. Carryover volume for the new market areas must be an amount distributed from the current surplus/deficit volume of the old market area found in Column 9 on Form FS-2400-31 for the old market area as of the effective date for establishing the new market areas. This amount is the total current carryover volume, which equals the sum of Column 8 plus the carryover volume from the previous recomputation for the old market area. Use sale history for the current 5-year recomputation period to calculate the weights by dividing the sale volume to effective date for each new market area by the total sale volume to effective date for the old market area. The sum of the carryover

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volumes for the new market areas must equal the total current carryover volume that would have been in effect on the old market area. See 91.31, exhibit 01 for an example of distributing carryover volume.

4. The sale history for the new market areas must be calculated using the sale purchase information from the current 5-year recomputation period. Determine which sales for each 6-month analysis period should be in the new market areas, and complete a new Form FS-2400-31a (Volume Distribution Worksheet for Form FS-2400-31) for each 6-month analysis period for each of the new market areas. Fill out a Form FS-2400-31 (Cumulative Set-Aside Program Analysis) for each new market area using the Form FS-2400-31a worksheets. Sales should be set-aside for small business only if there is a trigger in the 6-month analysis period after the effective date of the market area change.

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91.31 - Exhibit 01

Distributing Carryover Volume

New Market <u>Area</u>	New Market <u>Area Volume</u>	Old Market <u>Area</u> <u>Volume)</u>	Old Market Area Carryover <u>Volume</u>	New Market Area <u>Carryover</u> <u>Volumes</u>
X	1,200	÷ 3,480	x 760	= 262
Y	1,050	÷ 3,480	x 760	= 229
<u>Z</u>	<u>1,230</u>	÷ <u>3,480</u>	x 760	= <u>269</u>
Totals	3,480	100%		= 760

Total sale volume from old market area = 3,480
Total carryover volume from old market area = 760

91.32 - Combining Two or More Market Areas into One Market Area

1. When combining two or more market areas into one market area, use the purchase history, the number of years used during the most recent computation, and the current share percentage from the most recent recomputation for each market area. See 91.32, exhibit 01a for an example of consolidating three market areas into one market area.
2. To calculate the Original Base Share for the new market area, use the total sale volume in the previous 5-year recomputation period. There are no limitations on the Original Base Share percentages. See 91.32, exhibit 01b for an example of computing an Original Base Share.
3. Carryover volume for the new market area is the combined sum of the current surplus/deficit volumes for the old market areas taken from Column 9 of the Form FS-2400-31 worksheet as of the effective date of the boundary change. This surplus/deficit volume in Column 9 of the FS-2400-31 equals the sum of Column 8 plus the carryover volume from the previous recomputation.
4. Sale history for the current 5-year recomputation period is created by consolidating the information on Forms FS-2400-31 and FS-2400-31a from the old market areas. Sales should be set-aside for small business only if there is a trigger in the 6-month analysis period after the effective date of the market area change.

91.32 - Exhibit 01a

Consolidating Three Market Areas
Calculating the Small Business Share

Market Area	Sum of Total Purchased Volume During Most Recent Recomputation	Number of Years Used During Most Recent Recomputation	Average Periodic Sale Volume	Current Share Percentage	Calculated Volume	Carryover Volume Column 9
A	150	÷ 5	= 30	x 75	= 22.5	-36
B	120	÷ 3	= 40	x 50	= 20.0	-12,516
<u>C</u>	250	÷ 5	= <u>50</u>	x 80	= <u>40.0</u>	<u>382</u>
X(A+B+C)			120		82.5	-12,170
New Small Business Share = 82.5/120 = 68.75% (round to 69%)						

91.32 - Exhibit 01b

Consolidating Three Market Areas
Calculating the Original Base Share

Market Area	Total Volume Purchased - Most Recent 5-Year Recomputation	Original Base Share Percentage	Calculated Small Business Volume
A	150	x 29%	= 44
B	200	x 38%	= 76
C	<u>250</u>	x 94%	= <u>235</u>
X (A+B+C)	600		355
New Original Base Share % = $355/600 = 59.17\%$ (round to 59%)			

91.33 - Realigning Market Areas

1. When realigning market areas into new market areas, ensure that the weighted average share volume of the former market areas equals the total of the revised market areas. Use the purchase history, the number of years used during the most recent computation, and the current share percentage from the most recent recomputation for each market area. See 91.33, exhibit 01a for Step 1 and 91.33, exhibit 01b for Step 2 as examples of the steps to be taken.
2. When calculating Original Base Shares for the new market areas, use the total sale volume in the previous 5-year recomputation period. See 91.33, exhibit 02a for Step 1 and 91.33, exhibit 02b for Step 2 as examples. There are no limitations on the Original Base Share percentages.
3. To calculate carryover volumes for the new realigned market areas, first sum the current carryover volumes for the old market areas using the same procedure described above in section 91.32, Combining Market Areas. This is the total current carryover volume. Next, distribute this carryover volume to the realigned market areas based on sale history using the same procedures as described in section 91.31, Dividing Market Areas. The sum of carryover volumes for the new Market Areas must equal the sum of the current carryover volumes for the old Market Areas as of the effective date of the change.
4. The sale history for the new market areas must be calculated using the sale purchase information from the current 5-year recomputation period. Determine which sales for each 6-month analysis period should be in the new market areas, and complete a new Form FS-2400-31a (Volume Distribution Worksheet for FS-2400-31) for each 6-month analysis period for each of the new market area. Fill out a Form FS-2400-31 (Cumulative Set-Aside Program Analysis) for each new market area using the Form FS-2400-31a worksheet. Sales should be set-aside for small business only if the 6-month analysis period after the effective date of the market area change is triggered.

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook

Chapter 90 - Programs with Small Business Administration

Amendment: 2409.18-2007-1

Effective date: June 19, 2007

91.33 - Exhibit 01a

Realigning Four Market Areas Into Three
Calculating Small Business Shares

Former Market Areas - Step 1

Old Market Area	Sum of Total Purchased Volume During Most Recent Recomputation	Number of Years Used During Most Recent Recomputation	Average Periodic Sale Volume	Current Share Percent	Calculated Volume
Avocet RD	600	÷ 5	= 120	x 50%	= 60
<u>Auk RD</u>	<u>400</u>	÷ <u>5</u>	= <u>80</u>	x <u>50%</u>	= <u>40</u>
MA (A) Total	1000	5	200	50%	100
Bluejay RD	200	÷ 5	= 40	x 75%	= 30
<u>Bass RD</u>	<u>300</u>	÷ <u>5</u>	= <u>60</u>	x <u>75%</u>	= <u>45</u>
MA (B) Total	500	5	100	75%	75
Coho RD	450	÷ 3	= 150	x 30%	= 45
<u>Coyote RD</u>	<u>300</u>	÷ <u>3</u>	= <u>100</u>	x <u>30%</u>	= <u>30</u>
MA © Total	750	3	250	30%	75
Deer RD	100	÷ 5	= 20	x 40%	= 8
<u>Dog RD</u>	<u>275</u>	÷ <u>5</u>	= <u>55</u>	x <u>40%</u>	= <u>22</u>
MA (D) Total	375	5	75	40%	30
Total/Average	2625		625	45%	280
Weighted Average Share for Old Market Areas = 280/625 = 44.8 % (round to 45%)					

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook
Chapter 90 - Programs with Small Business Administration
Amendment: 2409.18-2007-1
Effective date: June 19, 2007
91.33 - Exhibit 01b

Realigning Four Market Areas Into Three
Calculating Small Business Shares

New Realigned Market Areas - Step 2

Old Market Area	Sum of Total Purchased Volume During Most Recent Recomputation	Number of Years Used During Most Recent Recomputation	Average Periodic Sale Volume	Current Share Percent	Calculated Volume
Avocet RD	600	÷ 5	= 120	x 50%	= 60
Auk RD	400	÷ 5	= 80	x 50%	= 40
<u>Bluejay RD</u>	<u>200</u>	÷ <u>5</u>	= <u>40</u>	x <u>75%</u>	= <u>30</u>
Bird MA	1200		240	x 54%	= 130
 Bass RD	 300	 ÷ 5	 = 60	 x 75%	 = 45
<u>Coho RD</u>	<u>450</u>	÷ <u>3</u>	= <u>150</u>	x <u>30%</u>	= <u>45</u>
Fish MA	750		210	x 43%	= 90
 Coyote RD	 300	 ÷ 3	 = 100	 x 30%	 = 30
Deer RD	100	÷ 5	= 20	x 40%	= 8
<u>Dog RD</u>	<u>275</u>	÷ <u>5</u>	= <u>55</u>	x <u>40%</u>	= <u>22</u>
Mammal MA	675		175	x 34%	= 60
 Total Average	 2625	 ÷	 625	 x 45%	 = 280
<p>Weighted Average Share for Realigned Market Areas = $280/625 = 44.8\%$ (round to 45%)</p> <p>Small Business Share for (new) Bird MA = $130/240 = 54.17\%$ (round to 54%)</p> <p>Small Business Share for (new) Fish MA = $90/210 = 42.86\%$ (round to 43%)</p> <p>Small Business Share for (new) Mammal MA = $60/175 = 34.29\%$ (round to 34%)</p>					

NOTE: The total and average share volume of the former market areas must agree with that of the revised market areas. When these two figures agree, they verify that the weighted average share remains unchanged.

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook

Chapter 90 - Programs with Small Business Administration

Amendment: 2409.18-2007-1

Effective date: June 19, 2007

91.33 - Exhibit 02a

Realigning Four Market Areas Into Three
Calculating Original Base Share Percent

Former Market Areas - Step 1

Old Market Area	Total Purchased Volume Most Recent 5-Year Recomputation	Original Base Share %	Calculated Small Business Volume
Avocet RD	600	x 29	= 174
<u>Auk RD</u>	<u>400</u>	x 29	= <u>116</u>
MA (A) Total	1,000	29	290
Bluejay RD	200	x 100	= 200
<u>Bass RD</u>	<u>300</u>	x 100	= <u>300</u>
MA (B) Total	500	100	500
Coho RD	650	x 58	= 377
<u>Coyote RD</u>	<u>855</u>	x 58	= <u>496</u>
MA © Total	1,505	58	873
Deer RD	100	x 45	= 45
<u>Dog RD</u>	<u>275</u>	x 45	= <u>124</u>
MA (D) Total	375	45	169
Total/Average	3,380	54	1,832
Weighted Average Original Base Share for Old Market Areas = $1832/3380 = 54.20\%$ (round to 54%)			

Forest Service Handbook 2409.18 – Timber Sale Preparation Handbook
Chapter 90 - Programs with Small Business Administration
Amendment: 2409.18-2007-1
Effective date: June 19, 2007
91.33 - Exhibit 02b

Realigning Four Market Areas Into Three
Calculating Original Base Share Percent

New Realigned Market Areas - Step 2

New Market Area	Total Purchased Volume Most Recent 5-year Recomputation	Original Base Share %	Calculated Small Business Volume
Avocet RD	600	29	174
Auk RD	400	29	116
<u>Bluejay RD</u>	<u>200</u>	<u>100</u>	<u>200</u>
Bird MA	1,200	41	490
Bass RD	300	100	300
<u>Coho RD</u>	<u>650</u>	<u>58</u>	<u>377</u>
Fish MA	950	71	677
Coyote RD	855	58	496
Deer RD	100	45	45
<u>Dog RD</u>	<u>275</u>	<u>45</u>	<u>124</u>
Mammal MA	1230	54	665
Total/Average	3380	54	1832

Weighted Ave Original Base Share for Realigned Market Areas = $1832/3380 = 54.20\%$
(round to 54%)

New Original Base Share for New Bird MA = $490/1200 = 40.83\%$ (round to 41%)

New Original Base Share for New Fish MA = $677/950 = 71.26\%$ (round to 71%)

New Original Base Share for New Mammal MA = $665/1230 = 54.07\%$ (round to 54%)

Note: The total and average share volume of the revised market areas must agree with that of the former market areas. When these two figures agree, they verify that the weighted average share remains unchanged.

92 - Operation of the Regular Set-Aside Program

92.1 - Semiannual Analysis

Prepare a semiannual analysis of the set-aside program for the first and last 6-months of each fiscal year, for each market area on the Forest. Summarize sawlog volume data, using the Forms FS-2400-31, Cumulative Set-Aside Program Analysis, and Volume Distribution Worksheet for FS-2400-31a. These forms are available electronically. Forests or Regions may choose to use a spreadsheet that portrays the same information as an alternative to the forms.

Reports must be completed and submitted to the SBA Regional Representative and Forest Service Regional Representative for review within 30 days of the end of the 6-month analysis period (May 1 and November 1, respectively). The Forest Service and the Small Business Administration must resolve any differences within 10 days (May 10 and November 10). FS must initiate and submit an SBA Form 441 to the SBA Regional Representative no later than the 10th day of the second month following the end of each 6-month analysis period (May 10 and November 10, see section 92.41).

92.11 - Crediting of Purchased Volume

Credit purchased timber sale sawtimber volume to the size class of the initial purchaser using the bid date of the timber sale, within the following exceptions and limitations.

92.11a - Set-Aside Purchased by Noncertified Bidders

Credit sawtimber volume from set-aside sales on which no self-certified small business bids were received or for no bid set-aside sales in the following manner:

1. Readvertised and small business purchased. To small businesses for 6-month analysis purposes and to small businesses for 5-year recomputation purposes.
2. Readvertised and large business purchased. To small businesses for 6-month analysis purposes and to large businesses for 5-year recomputation purposes.

Do not include set-aside sales not bid upon by either size class firms in the 6-month program or recomputation data. Do not increase set-asides later by volumes in which small businesses were not interested.

92.11b - Nonmanufacturer Purchases of Open Sales

Use the information collected in Block 16b of the Bid for Advertised Timber, Form FS-2400-14, to credit sawtimber volume from open timber sales purchased by nonmanufacturers (section 92.12). Do not credit Special Salvage Timber Sales (SSTS) volume.

92.11c - Nonmanufacturer Purchases of Set-Aside Sales

Credit all of small business nonmanufacturer purchased sawtimber volume from set-aside sales to small businesses even though, in most market areas, they may deliver a portion of advertised sawtimber volume to a large business firm. Do not credit Special Salvage Timber Sales.

92.11d - Excepted Sales

Define excepted sales for each market area. Do not credit volumes from excepted sales to either small or large purchasers. Excepted sales may include sales in urgent need of harvesting, sales under \$2,000 in advertised value, sales within some Federal sustained yield units and those sales included in the Special Salvage Timber Sale (SSTS) program.

Include sales under \$2000 in advertised value in the semiannual analysis and in compilation of the recomputed share only when they form a substantive portion of the sale program over a historical period of time. To be included, sales must be advertised on Bid for Advertised Timber, Form FS-2400-14.

92.11e - Delays in Sale Award

At the end of each 6-month period, sale award may not occur until later periods, if at all, for reasons such as size protests, appeals, lawsuits, or election of Government road construction. In all instances, use the bid date in preparation of the semiannual analysis. Credit volumes to the size class of the successful bidder on the bid opening date. If a purchaser successfully bids and receives credit for a sale, but does not consummate or receive sale award, make retroactive adjustments in accordance with section 92.11h.

92.11f - Calculations

For each 6-month analysis period, compute and report all volumes in CCF, including cumulative volumes reported on Form FS-2400-31. Compute and report cumulative small business share percentages by using the rounding criteria described in section 91.12. Complete the semiannual analysis promptly to determine whether to initiate a set-aside program during the next period.

92.11g - Change in Business Size

If it is determined that a business changed its size status two or more semiannual analysis periods prior to the agency's knowledge of the change or prior to awareness of an SBA determination of such change, make corrections in accordance with section 92.11h. Do not include in the adjustment the semiannual analysis period in which the SBA determined that the change of size occurred. To minimize the need for corrections, delay award of set-aside sales long enough to allow the SBA to process size class protests and appeals to the Office of Hearings and Appeals.

92.11h - Incorrect Crediting

Occasionally, incorrect crediting of timber purchases occurs. Make changes in the current 6-month analysis period and for one previous 6-month analysis period. Do not retroactively change volume credited in previous semiannual analysis periods as a result of purchase history reviews, except as noted here and or for reasons other than those in sections 92.11e and 92.11g.

92.12 - Nonmanufacturer

Credit nonmanufacturer volume by size class for purchases during each semiannual analysis period at time of bid. Use procedures historically followed in the market area. Use the historic procedure to complete 6-month analysis and as the basis for assigning nonmanufacturer volume for the recomputation procedure. Do not include Special Salvage Timber Sale volumes.

Give consideration to the following methods:

1. Use a certification provided by the purchaser to determine if changes from past practices have occurred. Estimate where the purchaser (nonmanufacturer) delivered sawtimber for manufacture from the certification.
2. Determine whether the sale size, species, quality, and location affect the purchaser in differing delivery patterns. Have the purchaser verify the distribution for each different type sale, and credit each sale accordingly.
3. Consult with the purchaser to establish whether changes from past practices may occur.
4. As a last resort, distribute volumes by a standard formula division of volumes, based on average sawtimber volume distribution for nonmanufacturers in the market area for the past recomputation period.

92.2 - Initiating Required Set-Aside Program

Initiate a set-aside sale program when the accumulated timber volume deficit to date (in any full 6-month analysis period) equals or exceeds 10 percent of the small business share for the previous 6-month analysis period. In this event, a trigger situation exists.

Also initiate a set-aside program following a decision to establish a new share when the triggering of a set-aside program occurred as a result of the last 6-month analysis under the previous share and volume deficits sufficient to continue the trigger were carried forward from the previous recomputation.

When a set-aside program is triggered, always provide at least 20 percent of the volume in a 6-month period as open sales. In Regions 1 through 6, in an initial trigger situation, set aside the timber volume approximately equal to one-half of the sum of the deficit and the share volume subject to the limitation that 20 percent of the offered volume must be in open sales. An initial trigger situation is any trigger following a period when no volume is set aside. If at the end of that set-aside period, sufficient deficit remains to cause a trigger situation, set aside both the deficit and the small business share volume except for the 20 percent of the volume that must be offered as open sales. Set aside the deficit and small business share in each successive 6-month period where a trigger situation exists, subject to the 20 percent open volume limitation. Furthermore, during the last year of a recomputation period, set aside both the deficit and the share, even in an initial trigger situation, subject to the limitation that 20 percent of the volume be offered as open sales.

In Regions 8 and 9, set aside both the share and the deficit each time the program is triggered, subject to the 20 percent in open sale volume limitation.

92.21 - Sale Volumes

When a set-aside sale program triggers, individual sale volume makeup may make it impracticable to set aside volume exactly equal to the amount of deficit and share calculated for the analysis period. Select set-aside sales that total as close as practically possible to the calculated amount, but the actual set-aside volume may be more or less than indicated by the calculation.

92.3 - Variation From Required Set-Aside Program

The Deputy Chief, National Forest System (FSM 2439.04d), upon consultation with the SBA National Representative, may establish or eliminate set-aside sales when determined appropriate under the Small Business Act. Document such variances.

92.4 - Selecting and Scheduling Set-Aside Sales

Initiate the selection of tentative set-aside sales early enough to reach agreement with the local SBA Regional Representatives 60 calendar days prior to the start of the next 6-month period.

92.41 - Sale Selection

As each 6-month period progresses, assess the potential need for set-aside sales in the next 6-month period. If it appears that set-aside may be triggered, initiate the selection process early enough to reach agreement with the local SBA Regional Representative on tentative set-aside sales at least 60 days prior to the start of the next 6-month period. Following consultation with the SBA Regional Representative, document the agreement on tentative set-aside sales in writing. At the end of the 6-month period, when the actual volume needed for the set-aside program is established, list enough sales from the tentative selection to meet the required program on SBA Form 441, Joint Set-Aside for Small Business Timber, and secure the SBA Regional Representative's signature on that document. The executed SBA Form 441 provides

the basis for advertisement of the listed sales as set-asides. Announce both the tentative and final selection of set-aside sales.

Avoid changes or departure from announced programs because of the necessity for prospective bidders to examine proposed sales during accessible periods. If specific sales cannot be offered, as agreed, or the program requires additional sales to meet the actual set-aside program, reach agreement with the SBA Regional Representative on substitute or additional sales and execute a revised SBA Form 441.

92.41a - Selection Considerations

In selecting set-aside sales, consider any of the following elements that are applicable:

1. The allowable sale quantity and the annual budget for the forest control the amount of timber offerings in specific time periods.
2. The U.S. Department of Agriculture has a broad concern for industry and community stability. This requires that the Forest Service know and consider the business and timber supply problems of local forest industry enterprises that draw on National Forests for their timber supply.
3. A basic premise in administration of the set-aside program is to avoid timber supply decisions and policies that may lead to timber allocations to individual companies or specific communities.
4. Multiple-use objectives for the management of the National Forests have a proper place in determining the rate, timing, and size of timber sale offerings.
5. The National Forest sale program should make the allowable sale quantity available in a variety of size classes and sale terms and of a quality designed to meet the range in demand as represented by its purchasers.
6. The type of material that is needed by small business and the capability of small business to operate the sales should influence sale selection.
7. The bidding method for set-asides should be the same as for open sales offered in the area.

92.42 - Bid Package

Do not include a self-certification form, SBA Form 723, Small Business Certification Required on All Preferential Sales of Set-Aside Timber, with the bid package. The SBA Form 723 is mailed to the apparent high bidder with the sale award letter and must be received by the Contracting Officer prior to execution of the contract. This form is required on all preferential sales of set-aside timber.

92.43 - Contract Provisions

Incorporate the requirements for delivery of timber volume from sale set-aside under the regular program to small business in timber sale contracts through appropriate contract provisions. The contract requirements (sec. 53) shall bind the purchaser and any successor in interest to the purchaser, whether or not purchaser or a successor remains a small business concern. Any third-party agreements applicable to set-aside sales must include the required delivery to small business.

92.44 - Exclusion of Sales From the Set-Aside Program

92.44a - Unusual Circumstances

Timber sales may be excluded from the set-aside program when unusual circumstances disrupt the planned sale program. Consult with the SBA Regional Representative and secure approval of the Regional Forester prior to excluding sales. Unusual circumstances may include sales in urgent need of harvesting because of a natural disaster or large volume sales that disrupt the normal sale pattern. Grant such exceptions only when strict adherence to standard procedures would substantially delay rapid and orderly removal of timber in urgent need of harvesting or cause the spread of insects. Make appropriate adjustments in purchase history for operation of the 6-month program analysis and share recomputation.

Immediately refer unresolved disagreements over inclusion or exclusion of sales in urgent need of harvesting to the Chief for resolution.

92.44b - Special Sale Types

Do not set aside timber sales that are not part of the regular timber sale program. Eliminate offerings such as administrative use, settlement, exchange, trespass, or seized materials.

92.45 - Size and Type of Sale

See FSM 2431.13.

92.46 - Sale Selection Disputes

1. It is the intent of the sale selection process to reach agreement between the Forest Supervisor and the SBA Regional Representative on set-aside sales 60 calendar days prior to the beginning of the next 6-month period. If agreement does not occur, the SBA may request a review by the Regional Forester. Withhold advertisement of a disputed sale until the dispute is resolved.
2. The Regional Forester shall investigate, consult with the SBA, and arrive at a decision. If the matter is not satisfactorily resolved at this level, the Regional Forester or the SBA Regional Representative may submit the issue to the Washington Offices of the two agencies for resolution in a timely manner. Following review by both agencies, the Chief makes the decision (FSM 2436.04).

92.5 - Required Delivery of Set-Aside Volume

The required delivery of sawtimber volume to small businesses varies by Region. See SBA regulations at 13 CFR 121.6 (b)(2)(ii)).

92.51 - Thirty Percent Rule

In all Regions, except Region 10, ensure that purchasers of set-aside sales do not deliver more than 30 percent of advertised sawtimber volume (30% Rule) to processing facilities that are other than small business.

92.52 - Region 10

In Region 10, ensure that purchasers of set-aside sales do not deliver more than 50 percent of the advertised sawtimber volume to processing facilities that are other than small business.

92.53 - Purchase of Small Business by Large

If, after award of a set-aside sale, a small business concern sells out to, becomes controlled by, or merges with a large business, ensure that the new entity sells an amount of sawtimber volume to one or more small businesses to comply with the applicable volume delivery requirement. Any agreement for return, directly or indirectly, of logs from small to large concerns, which do not meet the delivery requirement, shall constitute noncompliance. In cases of possible size change status, ask the SBA to determine the size status.

92.54 - Change in Size Class Due to Growth

Do not apply the sawtimber delivery requirements to the manufacture of preferential timber by a small business concern that purchases the set-aside sale, and at a later date exceeds the applicable small business size standard due to internal growth. Internal growth includes an internal increase in number of employees without change of control. Examples of changes of control include those which may occur in the acquisition or merger of small business concerns or in a joint venture in which conditions of the venture bind performance or operation of the subject firm's management or has the power to control it.

92.55 - Change in Certification of Size Class

Do not apply the delivery requirement to a concern certified as small business at time of sale award but later certified as large business if large business did not purchase, assume control, or merge with the small business after sale award date. Determinations regarding changes in size of a firm are most appropriately referred to the SBA for resolution.

93 - Special Salvage Timber Sale Program

The National Forest Management Act authorized the establishment of a revolving fund to cover the cost of preparing and administering sales of insect-infested, dead, damaged, or down timber. The fund is intended to increase the salvage sale volume (FSM 2435).

The Special Salvage Timber Sale Program (SSTS) operates as a joint program administered by the Forest Service and the SBA (13 CFR 121.6 (c)). This program is independent of the regular set-aside program (section 92) and timber volumes from sales set aside under the special salvage timber sale program are not included in the 6-month analysis for the regular program.

93.02 - Objective

The objective of the SSTS program is to make a portion of the additional volume of timber prepared under special salvage sale funds available for harvest by small loggers or forest products firms.

93.1 - Small Businesses

The SBA has established a small business size standard that defines eligible firms (section 90.5) that qualify for preferential award of SSTS offerings.

93.2 - Salvage Sale Criteria

Set timber sales aside under the SSTS program only when the proposed sales meet all of the following criteria:

1. Salvage sale funds predominately finance sale preparation activities. These sales may include material such as cedar products, even though salvage sale funds did not finance preparation. Where a mixture of appropriated and salvage sale funds finance sale preparation, salvage sale funds must comprise more than 50 percent of the estimated preparation cost.
2. The sale period does not exceed 1 year. For a sale sold part way through a logging season, the sale period may extend through the following operating season.
3. The sale involves only minor (less than \$10,000 in value) road construction or reconstruction.
4. The sale does not involve significant catastrophic damage, such as fire or windstorm.

93.21 - Exceptions

93.21a - Lack of Competitive Bidding

Do not set aside salvage sales if experience demonstrates that competitive bidding by small loggers and small forest products firms will not occur. To minimize the likelihood of uncompetitive bidding, prepare and offer smaller sales suitable for completion in the time period described above and which loggers of average capability in the area can complete in time. Offer larger sales, provided the logging firms of average capability in the area can complete them in time.

Avoid larger sales suitable for logging by a limited number of operators in the area, to prevent allocation to individual firms.

93.21b - Catastrophic Losses

When significant fire, windstorm, or other catastrophic losses occur, the circumstances may require the total capacity of the industry to salvage the timber in a timely manner. Therefore, eliminate such sales from set-aside under this program. A significant catastrophic loss results from a single, identifiable event that affects more than 10 percent of the volume planned for sale on the affected Ranger District within any 6-month period, or 2000 ccf (1 million board feet), whichever is less. As a general rule, manage the size of the program in any locality to the existing capability of the local qualifying firms.

93.31 - Sale Selection Process

Upon consideration of advice from the SBA Regional Representative, select set-aside salvage sales for preferential bidding by businesses with less than 25 employees. Use SBA Form 441, Joint Set-Aside For Small Business Timber, to document the selection process and to notify the SBA Regional Representative of sale selection. In appropriate situations, lump several sales and list the expected special salvage sale volume for the period. Ensure that the SBA Regional Representative signs and returns a copy of SBA form 441 to indicate concurrence in the selection.

In the event the SBA Regional Representative disagrees whether or not to set aside a proposed sale, refer the matter promptly to the Regional Forester for review. Because of the need for prompt action on salvage sales, failure of the agencies' representatives to agree should not result in delay of the sale. Lacking agreement, advertise the sale as an open sale. However, if the SBA Regional Representative or the Regional Forester believes that the disagreement involves policy issues relating to the operation of the program, either of them may seek review of the policy issues, without delay of the particular sale, by higher authorities within both agencies. If the parties agree to a set aside sale and the Forest Service later finds the sale no longer advisable or proposes a new sale after agreement on the 6-month program, consult with the SBA Regional Representative. Follow the same procedures as outlined above.

93.32 - Contract Conditions

Include provisions in the contract (section 53) that require the purchaser to make records, including payroll, available to the Forest Service and the SBA to verify eligibility for participation in the program.

Do not require the purchaser to provide the Forest Service with an accounting of log deliveries. Do not include contract provisions that require delivery to small businesses. Purchasers of special salvage timber sales may sell the logged volume to other firms irrespective of their size class.

94 - Procedures Applicable to Both Regular and Special Salvage Set-Aside Programs

94.1 - Award of Set-Aside Sales

Set-aside timber sales may be awarded only after opportunity has been given for firms to protest the size of the apparent high bidder. Delay award of all set-aside sales for 5 working days. The Forest Service has no authority to shorten this procedure. Accept the self-certification unless:

1. The Contracting Officer or another interested party protests within 5 working days of the bid date.
2. The SBA has previously declared the firm as a large business for sake of Government timber purposes, and that business has not obtained a recertification of small business status. The SBA determines which firms are eligible for set-aside sales (36 CFR 223.103).
3. A small business bidder must be afforded the opportunity to apply for a certificate of competency from the SBA, if the Contracting Officer decides not to award to a small business. Do not award to another bidder until the SBA completes determination of competency.

94.2 - Protests of Size Status

Any interested party may challenge (protest) the small business status of any bidder on a set-aside sale. Protests must be received in writing by the Contracting Officer within 5 working days of bid opening, to ensure consideration by the SBA. If the Contracting Officer questions the small business status of the highest bidder, a written request for a size determination must be submitted to the SBA within 5 days. Any protester must provide a factual basis for the protest in the written request.

Promptly forward all written size protests to the appropriate SBA Government Contracting Area Office and immediately notify the Regional Forester who in turn notifies other Forests and Regions where the disputed purchaser might bid on timber sales. After receipt of a protest and response, the SBA determines the small business status of the protested bidder and notifies the Contracting Officer, the protestant, and the protested bidder of its decision within 10 working days, if possible (13 CFR 121).

If a timely protest is received, and the sale does not include timber in urgent need of harvesting, delay sale award until the SBA Government Contracting Area Office makes a size determination. However, if the delay exceeds 20 working days following the date the Contracting Officer forwarded the request to the SBA Government Contracting Area Office, contact the Chief for advice through the Regional Office.

If the sale does include timber in urgent need of harvesting, and a timely protest is received, also withhold award, but the request for a size determination must include informing the Representative of the salvage nature of the sale and of the need for a prompt decision. If the

Small Business Administration does not render a size decision within 10 working days after notifying the Representative, the Regional Forester should contact the Chief for advice.

94.3 - Appeals of Size Status

Inform concerned parties that the SBA Office of Hearings and Appeals has jurisdiction to consider appeals of formal (written) determinations of a concern's small business size status. Those who may file an appeal include:

1. Any concern or other interested party that has protested the small business status of another concern and that the SBA Government Contracting Area Office denied.
2. Any concern adversely affected by the decision of the SBA Government Contracting Area Office or delegate.

SBA regulations (13 CFR 121.11(2)) provide that an appeal of a size determination concerning a bidder or offer in a pending Government property sale shall be filed in writing no later than 5 days, exclusive of Saturdays, Sundays and legal holidays after receipt of the size determination made by an SBA Government Contracting Area Office. Unless written notice is filed within the prescribed time limits, the appellant is deemed to have waived all rights of appeal as far as the pending sale is concerned, but the appeal may proceed to final determination and shall apply to future sales.

After a formal determination of size class by the SBA Government Contracting Area Office, delay sale award another 5 days to provide the affected parties the authorized time to exercise the appeal rights described above. Following this 5 working day period, award the sale if no appeal has been made and the SBA Government Contracting Area Office has determined that the high bidder qualifies as a small business eligible for preferential award of the set-aside timber sale.

When a concern appeals the Regional Representative's decision, direct the appeal to the Office of Hearings and Appeals, Small Business Administration, 409 3rd St. S.W., Washington, DC 20416, Attention: Size Specialist, within 5 working days of receipt or notification of the decision on the protest if a sale is pending and within 30 days if there is not. Allow an additional 20 working days, if the additional delay will not disadvantage the Government. If the Office of Hearings and Appeals does not make a determination within the applicable time period and has not notified the Contracting Officer, contact the Washington Office Director of Forest Management for advice. Normally, allow the Office of Hearings and Appeals sufficient time to complete their size review before awarding the sale to anyone.

In the event award of a set-aside sale occurs during an appeal of high bidder size class, and the decision declares the purchaser as a large business, apply the decision to the award. Ensure that the purchaser meets the small business delivery requirements that apply in the Region containing the sale. Credit the sale as a small business sale for 6-month analysis purposes (see also section 92.11g).

Delay award of other set-aside sales to bidders when a protest or appeal affects their status until resolution of the protest or appeal results.

After resolution of protests or appeals, notify the appropriate Forest Supervisors and other Regions as necessary.

94.4 - Monitoring

Monitor volume delivery requirements for the regular timber sale set-aside program as part of normal sale administration processes (FSH 2409.15). Check set-aside sales during the course of sale administration, scaling, log accountability, and review of export control reporting. If questions arise concerning operator compliance with certification conditions or delivery requirements, notify the SBA Regional Representative for investigation and action.

94.41 - Noncompliance With Delivery Requirements

Notify the SBA Regional Representative if delivery requirements appear to be in noncompliance. Cooperate fully in their investigation and actions. Document all pertinent information and retain in the contract records.

94.42 - Certified Noncompliance

If the SBA certifies noncompliance with the requirements of either the regular or special salvage timber sale set-aside contract provisions, take appropriate action for breach of contract (FSH 2409.15, section 63.3). If a number of contracts are involved or a pattern of noncompliance occurs, bring the matter to the attention of the Forest Supervisor for recommendation to the Forest Service Debarring Official under 36 CFR 223.130-145.

94.5 - Reviews by SBA

To carry out its responsibility under the Small Business Act, the SBA may conduct reviews of the small business program for the sale of National Forest timber at field offices of the Forest Service. Upon receipt of due notice of intention to perform such a review, the field office concerned should agree upon a time schedule for the review and cooperate fully with the reviewers.

95 - Small Business Administration Road Construction Loans

95.1 - Loan Agreement

The Forest Service, under a general delegation of authority from the Secretary of Agriculture, has entered into an agreement (FSM 1539.5) with the SBA to develop a program of financial assistance to purchasers of National Forest timber who are qualified small business concerns to build timber access roads.

95.2 - Road Construction Loans

The road construction loan program provides small business concerns with funds to build the specified roads or sections of specified roads included in the contract. The Forest Service, within policies, funds, and procedures of the SBA, must implement road construction loans approved by the SBA for all current and future contracts awarded to qualifying purchasers.

95.3 - Collection of Loan Repayment

Under the terms of the agreement with the SBA and upon application of the purchaser, the Contracting Officer shall modify a timber sale contract to permit the Forest Service to act as a collection agency for road construction loan repayments.

95.4 - Forest Service Action

If a small business timber sale purchaser is expected to obtain a loan from the SBA for road construction, the Contracting Officer may modify a timber sale contract or a sample contract to permit the Forest Service to collect road construction loan repayment installments. Normally, execute the modification prior to loan approval or upon receipt of the loan authorization from the SBA. Upon request of the purchaser, add provision C/CT4.22 to the contract. Follow regular modification procedures (FSH 2409.15, section 33) when adding the provision to an executed contract.

When requested, supply the SBA with:

1. Two copies of the executed contract with road specifications and drawings.
2. Two copies of the contract modification permitting the Forest Service to act as a collection agency for the SBA for road construction loan repayments.
3. An extract from the appraisal, in duplicate, that shows stumpage rates and volumes for each species or species group.
4. An amortization schedule if needed for the applicable road or section of road stated in the loan request if the purchaser applies for a loan on a portion of the specified roads listed in the contract.
5. A purchaser's statement of financial ability, if received by the Forest Service and with the purchaser's consent.

95.5 - Small Business Administration Action

After receipt of a loan application and documents listed in section 95.4, the SBA acts on the application. If approved, the SBA furnishes the Forest Supervisor a copy of the loan authorization showing the repayment amount due for each species or species group. At a later date, the Forest Supervisor will receive a notification of the loan repayment schedule. This notification confirms the loan authorization after the SBA regional office checks it.

SBA policy directs amortization of road construction loans over 75 to 80 percent of the Forest Service volume estimate. This results in a safety factor of sufficient magnitude that repayment of loans can normally occur on a timber scaled and reported basis.

95.6 - Repayment

Upon receipt of a loan authorization with payment schedule from the SBA, ensure that repayment billing (FSH 6509.14, Collection Officer Handbook) begins with preparation of the next statement of account. Continue the billing until the SBA sends a notice of the final repayment amount. The SBA determines rates of repayment based on Forest Service road cost estimates, except for tree measurement sales. Normally, request repayment billings based on timber scaled and/or reported cut, instead of using advance deposits. Like other billings for timber sales, repayment billing relies on estimated or actual volume removed or cut. Use locally established procedures such as some form of scaling, volume estimation, or monthly statements of account to estimate volume cut and scaled. In the event of scaling delays, use estimated volume in order to protect SBA interests. When a purchaser does not perform under the contract, request repayment installments based on estimated volumes cut but not scaled. Regional Foresters should issue instructions to guide needed actions in these situations (FSH 6509.14). Calculate the dollar amount of the repayment billing.

Determine the total amount of a repayment request by applying species road amortization rates, as determined by the SBA and listed in the road construction loan authorization, to volumes of that species reported as cut and scaled for the reporting period.

When loan repayment completion nears, the SBA notifies the Forest Supervisor to collect the final payment on a specified date. The SBA also furnishes a table that shows daily interest charges, subsequent to the final payment date. Base the final billing on the notice of final payment, plus daily interest charges for 15 days beyond the notice date. The SBA makes final adjustments and notifies the Forest Supervisor when they close the case.

Promptly notify the SBA if it becomes apparent that the sale will under run the advertised volume. The timber sale contract or performance bond does not protect loan repayments. In the case of volume under runs and when sales do not proceed in the normal manner, advise the SBA of the situation so that they may take action.

95.7 - Other Services

Subsequent to a modification of the contract, and upon receipt of the loan authorization from the SBA, provide the following additional information to the appropriate office of the SBA:

1. Two copies of all statements of account prepared after contract modification and receipt of the loan authorization and payment schedule from the SBA.
2. Two copies of periodic inspections and of the final acceptance inspection of road construction.

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3. One accomplished and one confirmed copy of certificate of deposits (FSH 6509.11k).
4. Under some circumstances, and when specifically requested by the SBA, special road construction inspection reports.

95.8 - Other Conditions

A sale with an unpaid road construction obligation and with additional volume to cut may qualify for extension of contract if the sale otherwise qualifies and the purchaser applies to the Forest Service for an extension.