May 26, 2015

Brenda J. Fernandez, Procurement Analyst
U.S. Small Business Administration
Office of Policy, Planning and Liaison
409 Third Street SW., 8th Floor
Washington, DC 20416

Re: Advanced Notice of Proposed Rulemaking (ANPR); Small Business Timber Set Aside Program; RIN 3245-AG69

Dear Ms. Fernandez:

Thank you for the opportunity to provide the Small Business Administration and the Forest Service our comments regarding the March 25, 2015 Federal Register Notice, 80 FR 15697 regarding the Small Business Timber Set Aside Program (RIN 3245-AG69).

Public Timber Purchasers Group has long advocated for a comprehensive review of the entire Forest Service set-aside timber sale program and we are very pleased to see that the SBA is also participating in this review.

To be very clear, the Public Timber Purchasers Group (PTPG) is strongly opposed to the SBA proposed specific actions in the ANPR regarding the appraisal point policy and stewardship contracts. It is the responsibility of the US Department of Agriculture and the Forest Service to administer the sale of federal timber. The SBA proposal clearly exceeds the agency’s authority, as it would have the SBA regulating the Forest Service operations; a role that has never been authorized by Congress.

This letter details PTPG concerns regarding the SBA proposals, highlights the opportunities for the Forest Service to modernize their set-aside timber sale program and also provides specific responses to the questions listed in the ANPR. Where appropriate, we have included attachments to provide either additional comments or relevant assessments.

Background
Public Timber Purchasers Group (PTPG) is a regional trade association representing large business operations that rely on the purchase of Forest Service timber sales to operate mill facilities. PTPG members own and operate approximately 100 wood processing facilities employing over 13,000 people in Oregon, Washington, California and Idaho. These facilities significantly rely upon raw materials from public lands including those lands managed by the Forest Service (FS) and the Bureau of Land Management (BLM). Under the SBA rules, PTPG members do not qualify as “small business”. As a result, PTPG members are excluded from bidding on a significant portion of the timber volume offered by
the FS and BLM. Therefore, PTPG members are significantly impacted by policy decisions and agency rules regarding the offering of timber sales limited to small business.

Members include Idaho Forest Group, Stimson Lumber Company, Murphy Company, Swanson Group, Roseburg Forest Products, Timber Products Company, Boise Cascade Wood Products LLC, Hampton Resources, Sierra Pacific Industries and Interfor Pacific. Our members are active purchasers of Forest Service timber sales in California, Oregon, Washington and Idaho and BLM timber sales in western Oregon.

**SBA Proposed Changes**

PTPG is strongly opposed to the SBA proposed changes regarding the Forest Service’s appraisal point policy and the inclusion of stewardship contracting in the set-aside program. First, these changes exceed the authority of the SBA as they regulate the administration of the Forest Service’s set-aside timber sale program. (See Attachment No.1) Second, the SBA proposals will have significant and negative impacts upon the Forest Service timber sale and stewardship programs, the US Treasury, rural communities and thousands of forest industry workers from loggers to mill employees. (See Attachment No. 2)

**Appraisal Point Policy.** PTPG cannot support the SBA’s proposal for the long standing Forest Service appraisal point policy as the change would produce negative impacts throughout the industry and beyond while providing a new and significant federal subsidy to small business mills. Our concerns include:

- With Forest Service receipts reduced due to higher appraised haul costs and the expiration of the Secure Rural Schools and Community Self-Determination Act in two years, the SBA proposed appraisal point policy would exacerbate the current financial disruption for many rural counties.
- With Forest Service receipts reduced due to higher appraised haul costs, the US Treasury will collect less revenue from the sale of federal timber.
- As a senior Forest Service official has stated that National Forests would use stewardship funds to offset the higher appraised haul costs for set-aside sales, fewer acres would be treated resulting in higher risks to forest health, rural communities, private property and human lives.
- The current Forest Service appraisal point policy is compliant with the Small Business Act and related agreements and law.
- A change in the appraisal point opens the door to unfair and inappropriate business practices.

**PTPG recommends the Forest Service retain the current appraisal point policy.**

**Stewardship Contracts.** The congressionally authorized end result stewardship contracting requires the Forest Service to select contractors on a “best-value basis” with
project that “meet local and rural community needs” (16 U.S.C. 1604). As the goal of the stewardship program is to accomplish forest health, watershed improvement and similar projects with the timber offsetting some or all of the costs for the project work, the selection process focuses on the ability of each prospective contractor to complete those projects within the designed parameters. This “Best Value” contracting methodology, by necessity, is a subjective process. Including stewardship contracts to be part of the set-aside program would violate Congressional directive. (See Attachment No. 3)

PTPG is opposed to the SBA’s proposal to include stewardship contracts within the set-aside timber sale program. Our concerns include:

- The congressional authorization for the Forest Service’s end result stewardship contracting does not align with the set-aside timber sale program.
- Coupled with the SBA proposal for the appraisal point policy, the Forest Service will see a reduction in revenue from stewardship contracting. In addition, stewardship funds would be used to subsidize the increased appraised haul costs. These two factors remove millions of dollars from the stewardship program and thus reduce the acres treated.
- The Best Value evaluation process includes selection criteria addressing local employment, the ability of the proposer to complete the stewardship elements of the contract and related factors. The selection process should remain open to all so the Forests can best achieve the goals of the stewardship program.

PTPG recommends the SBA and Forest Service not include stewardship volume and/or the stewardship contracting program with the set-aside timber sale program.

One More Point...Fair Proportion.

The Small Business Act states that small business interests are to have a “fair proportion” of the federal timber supply. However, neither the SBA nor the Forest Service or Bureau of Land Management has specifically defined the term “fair proportion”. Instead, the agencies have relied upon the market share computation processes of the set-aside program to identify that “fair proportion”. As the manufacturing infrastructure for both large and small business mills has dramatically changed over the last 30+ years, those processes have clearly failed to fully address those changes. This failure has resulted in a general distortion of the market share concept where small businesses are acquiring an “unfair proportion” of the federal timber supply. Based upon the following three figures developed by Northwest Management1, small businesses purchase a significantly larger proportion of the Forest Service timber supply than the small business proportion of mill log consumption. This demonstrates

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that the Forest Service’s set-aside program as currently administered does not comply with the “fair proportion” requirement of the Small Business Act.

**PTPG recommends the Forest Service realign and update the set-aside timber sale program procedures so that small business interests have preferential access to only a “fair proportion” of the Forest Service timber supply.**

*Figure 1: Distribution of USFS Volume to Small or Large Business Manufacturers*

*Figure 1 includes volume from all USFS timber sales from 2010 to 2014 and includes sales purchased by known manufacturers as well as those purchased by non-manufacturers and processed by unidentified manufacturers.*
Figure 2: Division of Current Annual Log Consumption Between Small and Large Business USFS Timber Sale Purchasers

*Figure 2 does not include log consumption for manufacturers that did not participate in the USFS timber sale program during the study period.

Figure 3: Percent of Purchasing Mill Log Consumption Supplied by USFS Volume
Modernizing the Set-Aside Timber Sale Program

The Forest Service set-aside timber sale program developed in the 1970s simply does not work in 2015 for either most of the rural communities of the western United States or the majority of wood products manufacturing facilities. Now is the time for the Forest Service to update the entire set-aside timber sale program so that the interests of small business, large business and the rural communities dependent upon those mills can all be addressed.

Define the Set-Aside Timber Sale Program Within the Code of Federal Regulations. Since its inception, the Forest Service's set-aside timber sale program has been implemented through provisions in the Forest Service Handbook (FSH) and Manual (FSM) rather than the formal rulemaking processes defined in the Administrative Procedures Act. The Forest Service's decision to conduct rulemaking outside of the APA and within the FSM/FSH has deprived all interested parties including PTPG and its members of the opportunity to seek administrative relief and/or judicial review of the Forest Service's rules relating to the set-aside program. Any interested party is also unable to effectively challenge the Forest Service's administration of its rules for the set-aside timber sale program through judicial review because the Forest Service has taken the position that the FSM/FSH do not have the force of law. **PTPG recommends the Forest Service utilize the APA to codify the current rules and to address the following actions needed to modernize the set-aside program.**

Update the Standard for a Forest Industry Small Manufacturer. Section 3 of the Small Business Act (15 U.S. Code Section 632) defines a small business as "...one which is independently owned and operated and which is not dominant in its field of operation". The Administrator may use "...number of employees, dollar volume of business, net worth, net income a combination thereof, or other appropriate factors" to define a standard by which a business is determined to be a small business.

The SBA has defined a qualified small business forest products manufacturer only by employee size; disregarding the other factors identified in the law. Originally, the number of employees was 50, then was raised to 100, raised again to 250 and finally in 1964 it was increased to 500 employees. In its April 5, 1979 report, the GAO found that the SBA's 1964 decision to increase the employee standard to 500 was done without the benefit of the required study of industry conditions. The GAO's analysis also found that companies with less than 100 employees have limited access to the set-aside program as the larger "small business" operations dominate the program.

**PTPG recommends that the Forest Service and/or SBA jointly conduct the required study of industry conditions and then update the size standard for the forest products industry.** In conducting an assessment of the size standard, the Forest Service and/or SBA should utilize the full range of factors noted in Section 3 of the Small Business Act. While the number of employees for a SBA qualified operation should be significantly reduced, the SBA should also examine a definition that includes dollar volume of business and/or log consumption and/or manufacturing capacity.
70-30 Rule. The current SBA and Forest Service rules require the purchaser of any set-aside sale to market no more than 30% of the advertised sale volume to large business with no less than 70% of that sale volume milled in a small business facility. As small business mills have consolidated or closed, loggers have become more active in purchasing timber sales including set-asides. As the SBA has repeatedly stated that the set-aside program is for only small manufacturers, the Forest Service should remove the 70-30 rule from any set-aside contract purchased by a non-manufacturer. The 70-30 rule restricts the logger’s ability to merchandise logs when there is no small business operation within an economically feasible haul distance willing to purchase 70% of the sale volume. **PTPG recommends that the Forest Service and SBA develop a waiver of the 70-30 rule under specific circumstances, i.e. no small business mill in the market area or within an economically feasible haul distance.** **PTPG also recommends the Forest Service once again require the purchasers of set-aside timber sales to provide periodic volume reports in order to assess compliance with the 70-30 rule.**

Five-Year and Structural Change Recomputations. The Forest Service has two processes to re-compute market shares; the periodic five-year recomputation and a three-year structural change recomputation initiated when significant changes, i.e. mill consolidation or closure, impact a market area. **PTPG recommends the Forest Service consider a three-year periodic recomputation.** Such a process would provide a more timely review and update of market shares without the need for two processes.

Suspending the Set-aside Timber Sale Program. A market share is defined as "...the amount of timber that small businesses are expected to purchase within a market area..." In addition, the Forest Service Handbook states, "A basic premise in the administration of the set-aside program is to avoid timber supply decisions and policies that may lead to timber allocations to individual companies..." **PTPG recommends the Forest Service develop a policy by which a Forest Supervisor can suspend the set-aside timber sale program within any market area with no operating small business mill. In addition, the suspension process should be utilized when there is only one operating small business manufacturing facility, as that situation is also non-compliant with overall policy direction of the program.**

Allocation of Non-manufacturer Purchased Volume. The Forest Service Handbook provides conflicting guidance for allocating open sale volume purchased by non-manufacturers. Each Region (R1, R4, R5 and R6) has a different approach to allocating this volume. **PTPG recommends the Forest Service provide consistent direction that has timber sale reports more accurately reflect the actual volume distribution of sales purchased by non-manufacturers.** For example, if a non-manufacturer purchases an open timber sale, the volume allocation should reflect that purchaser’s planned distribution of the sale volume.

Definition of “Manufacturing”. The FSH defines a manufacturer as "...an existing sawmill, specialty mill (such as a cedar mill, shingle or shake plant, pole plant or deadwood stud mill), or a veneer manufacturing facility..." The SBA has stated that chipping of sawlogs from set-aside sales does not comply with their definition of "manufacturing", but on multiple occasions the Forest Service (R6) has permitted sawlogs in set-aside sales to be chipped even though the FSH definition cannot be stretched to include a chipping operation. **PTPG recommends the Forest Service and**
SBA come to agreement on the definition of manufacturing and consistently apply that definition throughout the set-aside timber sale program. (See Attachment No. 4)

20% Rule. The Forest Service Handbook requires that at least 20% of offered timber sale volume in any six-month period be in the form of open sales available to all prospective purchasers. There is a history of non-compliance with the 20% rule in Region 6 and occasional failures beyond R6. PTPG recommends all Forests fully comply with the 20% rule and this rule remain in the program as a tool for providing all bidders with access to the Forest Service timber supply.

Designating Set-aside Timber Sales. The Forest Service Handbook, FSH 2409.18 Chapter 92.41, details a process for identifying set-aside timber sales. In designating set-aside sales, the process, in turn, also designates the open sales. The sale designation process currently does not permit participation by all potential purchasers. Given the current manufacturing infrastructure and the current level of Forest Service timber sales, PTPG recommends the Forest Service develop a transparent process open to all interested parties for designating set-aside and open timber sales.

Triggering the Set-aside Timber Sale Program. The Forest Service Handbook, FHS 2409.18 Chapter 92.2, details the conditions that “trigger” a market area. PTPG recommends the Forest Service provide Forest Supervisors the authority to forgo triggering a market area under certain conditions, i.e. the lack of a small business manufacturing facility within the market area.

Market Shares. The current base market shares were established about 40 years ago and have no relevance to today’s markets and manufacturing infrastructure. PTPG recommends the Forest Service review and update all base shares to better identify current conditions. In addition, the current Forest Service rules limit the amount of change for market shares during the five-year recomputation process. These limits cause a recomputed market share to misrepresent current market conditions. Since a market share is the amount of timber that small businesses are expected to purchase, PTPG recommends the Forest Service remove limits on market share changes.

PTPG Responses to SBA Questions in the Advanced Notice of Proposed Rulemaking...Stewardship Contracting

How should the FS include the saw timber volume on stewardship contracts awarded to small business in the computation of small business market share?

The Forest Service’s timber sale program and the end result stewardship contracting program are two separate and very different programs. The timber sale program is designed to move sawlogs to the private market while the stewardship program’s goal is to accelerate the timeline for improving forest health, watershed conditions, recreational opportunities and fish and wildlife habitat on federal lands. PTPG recommends that these two programs not be co-mingled nor should the Forest Service create a new set-aside program within stewardship contracting. By maintaining the current approach of two separate programs, the Forest Service achieves the following:
- Maintains and enhances the Forest Service's ability to treat hazardous fuels, improve forest health and resiliency.

- Compliance with congressional intent to obtain "best value" and local preference in stewardship contracting.

- Maintain the focus on improving the current supply of federal timber sales and the "fair proportion" aspects of the set-aside timber sale program.

Small businesses are already obtaining their "fair share" of stewardship volume. Based upon Forest Service timber sale data for October 2010 to September 2014, small businesses received a significantly higher percentage of volume available in stewardship contracts compared to the percentage of small business annual log use. In some market areas—Colville, Bitterroot, Trinity and Sequoia—small businesses have been awarded 100% of the stewardship volume.

**Table 1: Stewardship Volume Obtained by Small Businesses Compared to Small Business Current Log Use for All Mills Purchasing Forest Service Timber Sales**

<table>
<thead>
<tr>
<th>Region</th>
<th>Percent of Stewardship Volume Obtained by Small Business</th>
<th>Small Business Log Use as a Percent of Total Log Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region 1</td>
<td>45.8%</td>
<td>29%</td>
</tr>
<tr>
<td>Region 5</td>
<td>49.2%</td>
<td>17%</td>
</tr>
<tr>
<td>Region 6</td>
<td>46.4%</td>
<td>32%</td>
</tr>
</tbody>
</table>

How might including stewardship saw timber volume impact future market share calculations for small business concerns that participate in stewardship contracts and/or conventional timber sales?

The factors that impact the purchase of open sales and set-aside sales and the "best value" contractor selection for stewardship projects are many and vary by market area. The impact on future market shares of including stewardship volume within the set-aside timber sale program will certainly vary by market area.

What are the potential impacts (costs and benefits) if SBA regulations at 13 CFR 121.506 were to include the saw timber volume from IRTCs and IRSCs in the calculation of small business market share?

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2 Compiled by PTPG; Source Data – Forest Service Timber Sale Reports, October 2010 to September 2014.

a. What is the anticipated impact of the inclusion of saw timber volume from stewardship contracts on stumpage prices?

As more timber is removed from open sales and selected for the set-aside program, the bid price for that volume will decrease. A recently completed economic assessment of four geographically diverse market areas determined appraisal values would have decreased 3-76% with bid values decreasing 6-57% if the proposed SBA changes had been in place over the last four years. (See Attachment No. 2)

In their 1979 review of the federal timber set-aside program, the GAO found that set-aside sales are higher in quality and return less revenue than open sales to the U.S. Treasury. Specifically, the GAO found that in 50 of the 58 National Forests reviewed, set-aside sales were of higher quality than open sales. In 48 National Forests, set-aside sales returned less revenue than open sales. At three of the five Bureau of Land Management districts, GAO found set-aside sales were larger and were considered more desirable than open sales, but returned less revenues than open sales.4

For example, the GAO reviewed 108 set-aside sales on the Umpqua National Forest and found that those sales (even though of higher timber quality) returned 18 percent less overbid than the lower quality open sales.5 While the GAO hesitated to extrapolate this data across all national forests, it did state that the results exemplify that “...restrictive bidding conditions do exist on set-aside sales; the results also serve as a rough measure of the impact of the restrictions at the various national forests. At most of the national forests, the restrictions resulted in less revenues of varying magnitude.”6

b. If inclusion of saw timber volume from stewardship contracts leads to lower stumpage prices, what is the impact to land management activities (paid for by stumpage prices) and retained receipts?

Utilizing the last four years of Forest Service timber sale data, a recently completed economic assessment of four geographically diverse market areas identified reductions in national forest retained receipts from stewardship contracting ranging from 0.9% to 13% for an estimated total of $640,000 to $1,155,000. (See Attachment No. 2) Expanded across the entire National Forest System, the annual loss of retained stewardship receipts would likely exceed $100 million. Treated acres would be significantly reduced at a time when Congress and other interested parties are pursuing efforts to increase treated acres.

c. What is the anticipated impact on sale values both from an agency perspective and a treasury perspective?

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4 “Allegations Regarding The Small Business Set-Aside Program For Federal Timber Sales.” U.S. General Accounting Office; April 5, 1979 (Pages 6-7)
5 Ibid. at Page 55.
6 Ibid. at Page 54.
In addition to the findings of the GAO report noted above, the Bureau of Land Management (BLM) recently found that appraising to the nearest small mill "...resulted in very long haul costs which reduced the value of the timber." The BLM then stated:

- "Appraising timber haul to export timber from one market area to another market area is not a sound business practice: Defeats the purpose of the market area and the protection of local jobs and manufacturing facilities situated within the market area.
- High haul costs reduce the timber receipts that are available for payment to the O&C counties. If a sale is appraised to export timber outside of a market area and receives no-bids, the sale may be held open for bids but may not be reappraised. Bidders of any size class may bid on the timber, but the stumpage value remains depressed due to the appraisal allowance for exporting the volume out of the market area.
- Artificially maintains a high SBA market share by preventing the proper function of the SBA share adjustment calculations that are designed into the system to adjust (increase or reduce) the SBA share as the number of qualified purchasers within a market area changes." (Emphasis added)

The extensive GAO review, contemporary observations by the BLM and the recent market area economic analysis (See Attachment No. 2) clearly demonstrate that the set-aside program returns lower revenue to the U.S. Treasury when compared with open sales.

The ANPR failed to address one other financial impact of the proposed changes...the impact upon local governments that historically have received a share of the Forest Service receipts. Using the economic assessment of four market areas, the estimated financial impact to the local county governments ranged from 1% to 19% for a total of $698,000. Once again, expanding this across the entire National Forest System would result in tens of millions of dollars in lost revenue for local government. (See Attachment No. 2)

What would be the most efficient and effective way to account for actual saw timber volume from stewardship contracts awarded to small business?

As previously discussed, creating a set-aside program within stewardship contracting is contrary to congressional intent for the program to use best value contracting to benefit local communities and restore forest health. It is noteworthy that after hearing the arguments from small business interests in 2013, Congress permanently re-authorized stewardship contracting without subjecting it to set-aside requirements.

In addition, Forest Service data demonstrates that small firms already are receiving at least a "fair proportion" of timber volume from the stewardship contacting program. Thus the dual policy goals of addressing forest health and insuring small businesses get a fair proportion of the federal timber supply are already being accomplished.

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7 Report of the BLM District Manager for the Medford District (Medford 2 Market Areas); June 2014 (emphasis added)
Would an increase in the utilization of stewardship contracts in a market area result in a lower representation of small businesses successfully bidding for timber sales in that market area? Should this lead to lowering the market share for small business set-aside sales in that market area when the FS and SBA compute small business participation?

As small businesses have been very successful in being selected for stewardship contracts, there is no reason to conclude that an increase in stewardship contracting would negatively impact small businesses.

Would including stewardship saw timber volume on contracts awarded to small business in the calculation result in more accurate representation of small business participation in the market area?

The current market share recomputation processes do not accurately reflect the participation of small business in the market area. Timber volume purchased by non-manufacturers is not accurately allocated to small and large business. The current rules for modifying the rate of market share change also distort the participation of small businesses in the market area. Inserting volume from stewardship contracts into market share recomputations will only exacerbate an already broken process.

PTPG Responses to SBA Questions in the Advanced Notice of Proposed Rulemaking...Appraisal Point

How can the actual haul costs to eligible small business timber set-aside purchasers be better reflected in the appraisal process?

Under the National Forest Management Act of 1976 (NFMA), the Forest Service is to sell timber at not less than appraised value—the minimum acceptable bid—to assure that the government obtains fair market value for the timber. In addition, the Forest Service Handbook (FSH 2409.18 Chapter 45.11 titled “Appraisal or Marketing Point”) states: “Consider all costs, including specified roads, and identify the marketing location that will develop the highest appraised or advertised value” (Emphasis added).

In compliance with NFMA, timber sale appraisers use the nearest wood products manufacturing facility as the appraisal point as this results in the highest appraised value for the Forest Service. Changing the appraisal point for set-aside sales will simply provide a new and significant federal subsidy for small business manufacturers with local government and the US Treasury paying that bill while also reducing stewardship funds. An assessment\(^8\) of the Deschutes Market Area found that, if the SBA’s proposed appraisal point policy were in place over the last four years for the three set-aside sales:

- Appraised haul rate increases would have totaled $643,424, an increase of 47%, or $15.43/CCF.
- The average increased haul distance per sale would have been 48 miles.

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\(^8\) “Analysis of Proposed SBA Timber Sale Policy Changes – Deschutes Market Area; March 16, 2015.”
Appraised values would have been reduced by a total of $415,076, or 76% resulting in an average reduction of $9.95/CCF in appraised value.

This is but one example of how changing the appraisal point policy for set-aside sales would negatively impact the Federal Treasury, the Forest Service stewardship program and shared revenues to local government.

Should there be considerations for keeping the appraisal point to the nearest mill on a small business timber set-aside sale in those market areas that do not have mills that would qualify as "small" under the SBA criteria?

The current appraisal point policy should be retained for all timber sales in all market areas. The Forest Service Handbook states, "A basic premise in the administration of the set-aside program is to avoid timber supply decisions and policies that may lead to timber allocations to individual companies..." Therefore, the set-aside timber sale program should be suspended in any market area no or only one operating small business manufacturing facility as the program in that market area is clearly benefiting only one operator and thus is non-compliant with overall policy direction of the program.

How should the prohibition against small businesses reselling more than 30% of the saw timber volume to a large business concern be taken into account when making appraisals for small business timber set-aside sales?

PTPG's views on the 70-30 rule are detailed on page 4.

What is the financial impact to the Forest Service if the 30% rule is included in the appraisal point haul cost calculation of a small business timber set-aside sale?

PTPG's assessment of the financial impacts of the SBA's proposed change in appraisal point policy were adopted have been discussed in prior responses and detailed in Attachment No. 2. If the 30% rule was incorporated into the appraisal point policy, it would complicate the Forest Service's appraisal system, i.e. which 30% of the sale volume would be appraised to a different mill, and the timber sale valuation process of potential bidders. The current appraisal point policy complies with Federal law, has well served the Forest Service and, as the timber sale record demonstrates, has not been a hindrance to the success of set-aside program.

What is the anticipated impact on trust funds (e.g., Knutson-Vandenberg), if any, if appraisals are made to a small mill rather than the closest processor?

The Knutson-Vandenberg Trust Fund, as authorized by the Act of June 9, 1930, as amended (16 U.S.C. 576-576b), allows portions of the receipts from timber sales to be deposited into the K-V Fund to be used to reforest timber sale areas. In addition, these deposits may also be used for eliminating unwanted vegetation and for protecting and improving the future productivity of the renewable resources such as sale area improvement operations, maintenance, construction, and wildlife habitat management.

As K-V funds are directly obtained through timber receipts and the SBA proposed change in the appraisal point policy will reduce the appraised and bid value of set-aside timber sales, the SBA proposal will clearly reduce the funds transferred to the K-V fund.
The Forest Service will have fewer dollars for reforestation, vegetation management, wildlife habitat improvement and related K-V funded work.

SBA is also requesting data on mill size and location.

The SBA, Forest Service and Bureau of Land Management all need to better understand the forest products manufacturing mills, both small business and large business operations. An analysis of that infrastructure within each market area and the factors that influence those operations should be completed prior to addressing the SBA proposed changes.

Other Comments.

The ANPR notes that the BLM also administers a set-aside timber sale program, but excludes that program from comment. **PTPG recommends the BLM set-aside program be opened to comment and discussion as the first step in revamping that program to reflect current conditions.** (See Attachment No. 5)

Thank you for the opportunity to comment upon the ANPR including the comprehensive review of the Forest Service set-aside timber sale program. PTPG will continue to work with all interested parties to develop a federal timber sale program that meets the needs of both small and large business manufacturers.

Sincerely yours,

William A. Dryden

Executive Director

cc: Tom Tidwell, Chief, US Forest Service

Neil Kornze, Director, Bureau of Land Management
ATTACHMENT NO. 1.

The ANPR Fails to Comply with the Small Business Act, the 1971 USDA-SBA Memorandum of Agreement and U.S. Code for Forest Service Operations.

After reviewing the ANPR, the 1971 Department of Agriculture (USDA) – Small Business Administration MOU and several U.S. Code sections regarding the National Forest System timber sale program, we can only conclude that the SBA is improperly inserting itself into the administration of the Forest Service’s set aside timber sale program. Specifically, if the SBA promulgates rules relating to stewardship contracting and the location of the appraisal point for set aside timber sales, the agency is involving itself in the administration of timber sale set aside program. That action is counter to the Small Business Act and the subsequent 1971 Memorandum of Agreement between the USDA and SBA.

U.S. Code
Congress has clearly designated the Secretary of Agriculture and the Forest Service as the responsible parties for the management of the National Forest System including the sale of Forest Service timber. Here are two examples.

16 U.S. Code § 472a – Timber Sales on National Forest System Lands (a) Authorization; rules and regulations; appraised value as minimum sale price.

For the purposes of achieving the policies set forth in the Multiple-Use Sustained-Yield Act of 1960, the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

This section of the U.S. Code states without reservation that the Secretary of Agriculture, not the SBA, has the responsibility for prescribing the rules and regulations including determining the appraised value for the sale of timber from National Forest lands.

36 CFR § 223 -- Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputation of Shares. Sixteen years ago in 1999, the USDA developed the current regulations addressing appeals of market share recomputations. In Federal Register Notice Vol. 64 No. 2 page 408, USDA noted in the response to an SBA request for joint agency decision on all market share recomputations..."Moreover, the administration of the timber sale set-aside program, including decisions regarding the recomputation of shares, is ultimately the responsibility of the Forest Service."

As major decision points such as market shares are solely the responsibility of the Forest Service, then operational decisions including selection of the appraisal point and determining which, if any, program such as stewardship contracts that are outside the timber sale program should be part of the set-aside timber sale program are clearly the sole responsibility of the Forest Service.
Small Business Act
In passing this Act, Congress clearly defined the roles of the two agencies for the set aside timber sale program. For example, the SBA is responsible for determining the size standard for qualifying as a small business and the SBA Size Appeals Board is the arbiter of a size protest associated with the FS set aside timber sale program. Congress did not and has not transferred any authority for conducting the timber sales on the National Forest System from the Forest Service to the SBA.

In addition, Forest Service OGC found current policy as legal and unbiased. In 2007, five small business timber sale purchasers filed protests with GAO on eight set-aside timber sales. The protesters wanted the appraisal point to be at the nearest small business mill. The Forest Service’s OGC (Senior Counsel Lori Polin Jones) capably defended the current appraisal point policy with the following argument.

"By appraising all timber sales, whether restricted to bidding by small businesses, or open to bidding by both large and small businesses, in the same manner, i.e. to the same appraisal point, the Forest Service has not violated NFMA, the SBA Act, the 1971 Forest Service-Small Business Administration agreement on administration of the set-aside program, or other Forest Service policy. The Forest Service is not exhibiting bias or preference toward one size class or another." Page 11, USDA Request for Dismissal, or in the Alternative, Denial of Trinity River Lumber Co.’s Protest, B-310371.

The General Counsel for GAO agreed with the Forest Service’s position and all eight protests were denied. To change the appraisal point would clearly introduce bias into the Forest Service timber sale program as noted by the agency’s own legal counsel and will subject the Forest Service to legal proceedings including litigation.

The 1971 USDA – SBA Memorandum of Agreement
To facilitate the development and operation of the Forest Service’s set aside timber sale program, the USDA and SBA developed the 1971 MOU. Once again, specific roles were defined. For example, the SBA, with proper notice, may conduct on site reviews of the Forest Service’s small business timber sale program. In addition, the SBA must concur with the Forest Service’s proposed sales within the set aside program. The MOU also states the USDA is responsible for "...developing sale programs suitable for bidding by small business". When agreement cannot be reached for designating set aside sales, "In accordance with the Small Business Act, the Secretary of Agriculture has authority to make the final determination." (Emphasis added). As the Forest Service has the final authority to develop the set-aside sale program and to determine which sales will be set aside for small business, then the Forest Service clearly has the final authority to determine the location of the sale, timber volume to be sold, access routes, timber valuation, auction procedures and all other administrative elements for any set-aside sale.

Finally, the SBA failed to utilize the prescribed procedures for seeking changes the set-aside timber sale program. In the 1971 MOU, the SBA agrees to "...consult with USDA on matters involving the forest products industry..." Interagency consultation while recognizing the Forest Service has the ultimate responsibility for administering the set-aside timber sale program was the appropriate process for the SBA. Pursuing rules in
an attempt to tell the Forest Service how to manage its timber sale program is beyond the scope of the SBA's responsibilities.
ATTACHMENT NO. 2

Financial and Rural Communities Impacts from SBA Proposed Changes

Financial Impacts. Delphi Advisors, a consortium of consulting firms specializing in forestry related economic assessments completed a review of the fiscal impacts of the proposed SBA changes on four Forest Service market areas. Using the 2010 to 2014 Forest Service timber sale and stewardship contacting data, their assessments specifically addressed the value change in appraised values for set-aside sales and the value differences expected with the inclusion of stewardship contracting.

<table>
<thead>
<tr>
<th>Market Area</th>
<th>Set-Aside Appraised Value</th>
<th>Set-Aside Bid Value</th>
<th>Payments to Local Government</th>
<th>Stewardship Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gifford Pinchot North</td>
<td>13% reduction</td>
<td>6% reduction</td>
<td>2% reduction</td>
<td>3.5% reduction</td>
</tr>
<tr>
<td>Nez Perce</td>
<td>3% reduction</td>
<td>7% reduction</td>
<td>1% reduction</td>
<td>0.9 - 2.6% reduction</td>
</tr>
<tr>
<td>Deschutes</td>
<td>76% reduction</td>
<td>57% reduction</td>
<td>19% reduction</td>
<td>7-13% reduction</td>
</tr>
<tr>
<td>Klamath</td>
<td>5% reduction</td>
<td>12% reduction</td>
<td>&lt;1% reduction</td>
<td>3.9 - 5.3% reduction</td>
</tr>
</tbody>
</table>

NOTE: Financial impacts on local government are deferred until 2017 due to the two-year extension of the Secure Rural Schools and Community Self-Determination Act.

These four assessments indicate a wide range of financial impacts...all of which are negative...costing the Forests significant revenue from the timber sale program and stewardship contracting. For example, the noted reduction in stewardship funds for just these four market areas is estimated to be $640,000 to $1,155,000. The ability of National Forests to invest in forest health projects will clearly be downgraded.

Rural Communities Impacts. A change in the appraisal point policy will have a negative impact on many rural communities. The forest industry is the backbone of many rural communities, but mill closures and curtailments have dramatically impacted these communities' economic and social fabric. The mills that survive today are the economic focal point of their community as they are successfully competing in the market place under the current policies and procedures. By implementing a new appraisal point policy, the Forest Service will be picking "winners" and creating "losers" in many rural communities.

Forced realignment of forest industry infrastructure. A change in the appraisal point policy would realign the entire Forest Service timber sale program beyond the current set-asides for small business operations. The remaining mills are still operating because they have been able to successfully compete for their log supply based upon the current appraisal point policy. If the appraisal point policy for set-aside sales is changed, in many cases, the Forest Service will appraise that sale to a distant mill, bypassing the local mill that has traditionally been able to successfully compete for those logs.

Loss of community leaders support. One of the key reasons for the success of the stewardship program over the last twelve years is the collaborative effort between local communities and the Forest Service in planning and conducting stewardship projects. The current contractor selection procedures for stewardship contracts include a preference for the use of local labor. Community leaders will simply no longer support stewardship projects when the timber is appraised to a distant mill as local labor would likely be excluded from the processing of the logs and perhaps all work associated with the stewardship contract.

Unfair and inappropriate business practices. The current procedure for selecting set-aside sales requires sale specific approval by the Small Business Administration (SBA). The SBA consults with small business interests on those sales prior to granting agency approval. As there are a relatively few small business mills, the process allows a small business to essentially identify a sale they want to buy as a set-aside sale. With this proposed change in the appraisal point policy, the small business owners will likely select sales farthest from their mill as the log haul will be 100% subsidized. In turn, the sale nearer their mill could then become an open sale where that same small business owner has the advantage of short hauls. Therefore, the small business owner can purchase more timber for a lower cost (and lower revenue to the Forest Service) while using the agency’s appraisal point policy to manipulate the timber sale program to disadvantage competitors.
Congressional Direction for Stewardship End Result Contracting Does Not Align with the SBA Set-Aside Program.

After a brief pilot project program, Congress granted the Forest Service and Bureau of Land Management stewardship end result contracting authorization (Section 347 Omnibus Consolidated Appropriations Act of FY 1999). Land management goals focused on improving forest health conditions, fisheries and wildlife habitat and watershed restoration and maintenance. In addition, the needs of local and rural communities were targeted. To assist the federal land managers in achieving these goals, Congress approved the "best-value" approach to selecting contractors. Any revenue resulting from stewardship contacts is to be retained by the managing agency and re-invested in other stewardship work. In the 2014 Farm Bill (P.L. 113-79), Congress granted permanent authority for stewardship end result contracting. The provisions of this authorization reflected those approved in 1999.

Since its inception, the stewardship end result contracting program has been excluded from the set-aside timber sale program for several reasons. The congressional mandate for the "best value" approach to selecting contractors is a subjective process in which a variety of factors including rural community stability and local employment are evaluated. Congress supported collaborative community engagement in permanently authorizing stewardship contracting. Setting aside a portion of the stewardship contracting program for SBA qualified mills would, in many instances, result in non-compliance with the congressional directed contractor selection process.

Second, the "best value" approach recognizes that any organization—not just forest products operations—can provide a stewardship project proposal. Wildlife conservation organizations, i.e. Wild Turkey Federation; other NGOs, i.e., The Nature Conservancy; local service organizations and other non-forest industry groups have repeatedly and successfully navigated the stewardship contracting selection process. The ability of these groups to continue their work would be significantly curtailed if a portion of the stewardship projects were set aside for small business.

Third, coupled with a change in the appraisal point policy, setting aside stewardship projects for small business would significantly reduce the ability of the Forest Service to complete stewardship projects. Long hauls to distance SBA qualified mills would reduce the revenue from many set-aside stewardship projects. This would reduce the Forest Service’s ability to financially support other projects. In some cases, the stewardship project would change from revenue generating project to a service project; thus requiring the Forest Service to either eliminate the project, reduce the service work or use shrinking stewardship funds to support the project.
In establishing this program, Congress's very specific vision for the stewardship program is for the Forest Service and BLM to address the listed land management goals. Including the stewardship end result contracting program in the SBA's set-aside program would significantly hinder the Forest Service and BLM's ability to achieve those goals. Therefore, the Secretary of Agriculture, the final decision maker regarding the Forest Service's involvement in the SBA's program, should oppose the SBA's proposed actions and direct the Forest Service to maintain the current administrative elements of the stewardship contracting program.
August 29, 2011

John Allen, Forest Supervisor
Deschutes National Forest
1001 SW Emkay
Bend, Oregon 97702

Attn: Contracting Officer
Re: Manufacturer and Manufacturing, Set-Aside Timber Sales

Dear Mr. Allen:

Chipping included timber from Forest Service or Bureau of Land Management Timber Sales is not considered to be manufacturing of timber raw material. This is not an issue of concern in the context of open timber sales as long as volume is credited appropriately between large and small business.

In set-aside timber sale contracts however, raw material cruised, appraised and sold as saw timber must comply with the 30/70 Rule in the final delivery of that saw timber volume. Saw timber, in excess of 30% of the advertised saw timber volume, may not be delivered for chipping and resale to other than a small business and be credited as "manufactured". In set-aside timber sale contracts, offered when a Market Area is triggered, ensure that purchasers do not deliver more than 30% of advertised saw timber volume to processing facilities that are other than small business.

In set-aside timber sale contracts a minimum of all saw timber volume in excess of 30% of advertised saw timber volume, shall be distributed to a qualified small business for manufacturing. SBA should be notified of suspected non-compliance with set-aside requirements.

Small non-manufacturers, qualified and wishing to bid on set-aside timber sale contracts, shall comply with set-aside timber sale saw timber delivery requirements. Small non-manufacturers, who know they cannot meet delivery requirements (30/70 Rule), as included in set-aside timber sale contracts, should not submit a bid on set-aside contracts. A timber sale set-aside contract, in the absence of a qualified small manufacturer or non-manufacturer bidder, should be classified "no-bid" and be re-offered as an open timber sale which will not include saw timber delivery limitations.

To avoid conflict with contract saw timber delivery requirements, SBA requests that Forest Service and Bureau of Land Management announce at all set-aside timber sale auctions, before bidding proceeds, a clarification of the set-aside delivery requirements pertaining to saw timber volume (30/70 Rule): that the requirement is included, it will be enforced, and inability to comply will not be a basis for a waiver of the requirement at a later date.

If you have questions regarding this clarification, please call William J. Bramwell at 206-553-8544.

Sincerely,

William J. Bramwell
Office of Natural Resources Sales Assistance
Small Business Administration
2401 4th Avenue, Suite 450
Seattle, Washington 98121

cc: USDA FS RO - R4, R6, R10
ATTACHMENT NO. 5

Comments Regarding the Bureau of Land Management Set-Aside Timber Sale Program

Background. The Bureau of Land Management administers a timber sale program in western Oregon. The eight market areas are included in the SBA set-aside program. The Oregon/Washington Timber Sale Procedures Handbook provides detailed direction for BLM land managers. The guiding document for this set-aside timber sale program in the six page 1990 Revised Operating Procedures (ROP). On several occasions in the last five years, PTPG has pursued modernizing specific provisions within the ROP. The ROP requires mutual agreement "...by the agency (BLM), SBA and small and large business representatives..." to simply review the operating procedures. Small business interests have blocked any discussions.

Modernizing the BLM Set-Aside Timber Sale Program.

Appraisal Point. The current BLM appraisal point policy is to appraise set-aside timber sales to the nearest small business mill. All other sales are appraised to the nearest manufacturing operation regardless of size. The BLM recently found that appraising to the nearest small mill "...resulted in very long haul costs which reduced the value of the timber." In addition, the BLM concluded that the current appraisal point policy reduced the amount of funds distributed to the O&C Counties and defeated the role of a market area to support local jobs and communities. PTPG recommends the BLM adopt an appraisal point policy that appraises all sales to the nearest manufacturing facility.

Suspending the Set-aside Timber Sale Program. The BLM has exercised the authority to suspend the set-aside program when a market area does not have an active small business manufacturer. PTPG recommends the BLM develop criteria and procedures to suspend the set-aside timber sale program in any market area with either one or no operating small business mills.

Limits on Market Shares. For five-year recomputations, the current ROP (Section X(C)(1,2,3) limits the amount of change for the market share. These limits may cause a recomputed market share to not reflect current market conditions. PTPG recommends the BLM remove the limits on the amount of change for market area shares from the ROP.

Market Area Analysis. The ROP (Section X(C)(4) provides a process for assessing market area conditions when the share change exceeds ten percentage points. The BLM has not developed the specific factors to be evaluated and efforts to define the factors and to conduct market area assessments have been thwarted by small business interests. PTPG recommends the BLM develop the specific factors for conducting a market area analysis.