



## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 121**

### **RIN 3245-AG69**

### **Small Business Timber Set-Aside Program**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) seeks comments on a proposed amendment to its regulations governing the small business timber set-aside program (hereafter referred to as the “timber program”) so that appraisals on small business set-aside sales be made to the nearest small business mill. Timber sale appraisals are performed for small business qualifying set-aside and non-set-aside sales. When the US Department of Agriculture’s (USDA) Forest Service (FS) offers timber for sale, it appraises its potential market value and sets the minimum bid that it will accept based on that appraisal. Currently, appraisals in small business set-aside timber sales take into account the haul costs to the nearest mill regardless of that mill’s size. Since set-aside timber sales require the use of small business mills, SBA proposes that the appraisal on set-aside timber sales be made to the nearest small business mill in order to accurately reflect the estimated cost to an eligible bidder. SBA is also requesting comment on a possible policy alternative that would use a weighted approach to appraising.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AG69, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- For mail, paper, disk, or CD-ROM submissions: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416.

- Hand Delivery/Courier: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please submit the information to: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street, SW, 8<sup>th</sup> Floor, Washington, DC 20416, or send an email to [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8<sup>th</sup> Floor, Washington, DC 20416; (202) 205-7337; [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background and Rationale for Proposed Rule**

In cooperation with SBA, the FS manages the timber program. The timber program was designed for small businesses whose product needs are timber. Throughout the country, the FS offers timber sales that are composed of multi-products for which the purchaser pays different rates for each product. Multi-product sales may be composed of sawlogs, pulp logs, biomass, or other products not generally processed into sawlogs. Timber sales that have substantial sawlog volume are targeted for the set-aside program. Small independent loggers, often called gypos, are identified as small non-manufacturers, and are eligible to purchase the set-aside timber sale and have to adhere to the contract rules of where the timber can be milled. The volume purchased by these non-manufacturers is credited, under the set-aside program, to the small business market share.

Section 15(a) of the Small Business Act authorizes small businesses to receive any contract which would “assur[e] that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns” and which would “assur[e] that a fair proportion of the total sales of Government property be made to small-business concerns.” 15 U.S.C. 644(a). Contracts for the sale of government owned timber are, therefore, required to be set aside for small businesses in order to assure that small businesses receive a fair proportion of such sales. While the Small Business Act does not define “fair proportion,” SBA interpreted “fair proportion” in adopting the market share system used today and detailed below. The D.C. District Court upheld this interpretation in 1974 in Duke City

Lumber Co. v. Butz, 382 F.Supp. 362 (D.D.C., 1974), aff'd, 539 F.2d 220 (D.C. Cir, 1976).

Congress further decreed in section 2 of the Small Business Act that the “economic well-being [and] security of this Nation ... cannot be realized unless the actual and potential capacity of small business is encouraged and developed.” 15 U.S.C. 631. To that end, Congress directed all ends of the Government to “maintain and strengthen the overall economy of the Nation” by assuring that small businesses receive a fair proportion of total government contracts and total government sales. Through sections 2 and 15 of the Small Business Act, SBA is entrusted with keeping Federal government agencies accountable on their collective obligation to deliver a fair proportion of contracts and sales to small businesses. SBA’s regulations, however, currently do not address how SBA calculates “fair proportion” in the context of government-owned timber sales. SBA’s regulations also do not address how goods-for-services stewardship timber sales should be treated in the context of the small business fair proportion or market share calculation.

#### Establishing Hauling Cost Appraisals that are Accurate

SBA proposes to amend its regulations to include instructions on how hauling costs are to be estimated in developing the appraised price for small business set-aside sales under the timber program. SBA’s current regulations provide that on a set-aside sale the small business may not resell more than 30% of the advertised sawtimber volume to a large business concern in all FS regions outside of Alaska. As such, at least 70% of the advertised sawtimber volume must be processed at a small mill. This provision is known as the “30/70 rule.” When the FS offers a timber program sale as a set-aside, it

appraises its potential market value and sets the minimum bid that it will accept based on that appraisal. One factor in the appraisal is the haul cost that the purchaser (small or large) will have to absorb to bring the timber to a manufacturing facility. Currently, appraisals are made to the nearest mill regardless of that mill's size. Because of the locations and sparse number of remaining small sawmills, the current appraisal points used for calculating hauling costs may have prevented small mills from bidding on set-aside sales, since fuel and non-fuel costs for transporting the timber from the forest to the processing location may negate the bidder's profit margin of the purchase when the 30/70 rule is also applied.

In order to provide small businesses an ability to meet the requirements of the law as required under set-aside provisions, and to encourage small business competition, SBA is proposing that small business set-aside timber sales be appraised to the nearest small business mill to accurately reflect the haul costs to eligible bidders. As an alternative, SBA is also requesting comments on whether the requirement to appraise the set-aside timber sales to the nearest small mill should have some reasonable distance or haul cost limitation, such as 60 miles (from the sale area to the nearest mill), because it may not be economically feasible to haul timber over large distances. In addition, SBA is also requesting comments on whether all 100% of the hauling costs should be appraised to the nearest small business mill, or, when the nearest mill is a large business, whether 70% of the hauling costs should be appraised to the nearest small mill and remaining 30% appraised to the nearest large mill in accordance with the 70/30 ratio under the set-aside rule.

The proposed regulatory amendment would affect the FS timber program only. As noted below, FS and the Department of Interior's (DOI) Bureau of Land Management (BLM) are the primary timber "sales agencies." However, BLM's small business set-aside sales, which are limited to eight markets in Oregon (FS Region 6), are made in accordance with the terms of a separate Memorandum of Understanding (MOU) between SBA and BLM. Rather than setting forth considerations for small business market share computation methods, SBA's MOU with BLM affords SBA the opportunity to review BLM's annual timber sale plans prior to publication and to request set-aside sales under the authority of the Small Business Act. When BLM agrees to set-aside certain timber sales for small businesses, BLM consults with SBA concerning financial and other performance qualifications to be included in the conditions of sale. Accordingly, the proposed amendment to the timber program would have no impact on BLM's timber sale program since BLM's current policy is to appraise the hauling costs on its set-aside sales to the closest mill that qualifies as a small business under SBA's regulations. While SBA is also considering an amendment stewardship contracting to include the stewardship sawtimber volume in the small business market share calculation, this possible policy change would not impact BLM's use of stewardship sales since BLM already credits/counts the stewardship sawtimber volume in administering its set-aside program.

SBA invites comments on all aspects of this proposed rule, the timber program, and other policy changes currently under consideration. In particular, SBA requests comments on the proposed change to appraising the haul costs to the small business set-aside sales and the alternative weighted approach to appraising the haul costs using the 30/70 rule. SBA is also interested in comments on whether there should be a

reasonableness test for distance from the sale area to the nearest qualifying small business mill and how this test should be applied. In addition, SBA invites comments on impacts of the potential inclusion of the stewardship sawtimber volume in the small business “fair proportion” calculation that SBA is currently considering but not proposing in this rule.

The federal government regularly sells timber and non-timber products from the federal forests managed by the USDA’s FS, the DOI’s BLM, the DOI’s Fish and Wildlife Service, the U.S. Department of Defense, the U.S. Department of Energy, and the Tennessee Valley Authority. Collectively, these agencies are referred to as the “sales agencies” with FS and BLM being the primary sales agencies.

This proposed rule intends to amend SBA’s regulations governing the timber program. As mandated by the Small Business Act, SBA and the sales agencies jointly set-aside timber program sales for exclusive bidding by small business concerns when market conditions demonstrate that small businesses are not receiving their fair share of timber volume under full-and-open competition or unrestricted sales. When the small business share of the timber market falls below a certain level, a small business set-aside sale is triggered.

In order to determine the small business market share that triggers a set-aside sale, FS calculates the current small business market share based on small business purchases of sawtimber volume sold under the timber program over a five-year period. This percentage, based upon historical purchases of sawtimber in the market area, sets the framework for what constitutes small businesses' fair proportion of the total sales volume. If at any time, the small business market share falls below this percentage, subsequent timber program sales would be set-aside for preferential bidding by small businesses.

Set-aside sales in the timber program will continue until such time that the small business market share rises above the triggering percentage.

Currently, only the advertised sawtimber volume sold under the timber program is used to calculate the small business market share, which establishes whether or not a timber sale should be set-aside for preferential bidding by small business. Sawtimber volume sold under stewardship contracting is not presently considered in this calculation. SBA is considering a change to the calculation of the small business market share using the volume of sawtimber sold under both the timber program and stewardship contracting. By counting all sawtimber volume, regardless of which way it's sold, the triggers for set-aside procedures under the timber program could more accurately reflect the small business market for FS timber. However, SBA recognizes that including sawtimber volume sold through stewardship contracting in the small business market share calculation could, under some circumstances, result in there not being a set-aside sale where there otherwise would have been a set-aside had stewardship sawtimber not been included in the calculation and vice versa. SBA requests comment on the possible impacts to small businesses should SBA propose to include the stewardship sawtimber volume in the calculation of small business fair proportion. The Agency further requests comment on the need for transparency in the timber market as well as additional data in order to help SBA further analyze the impacts of including stewardship sawtimber volume in determining the small business fair proportion of the market used in triggering set-aside sales under the timber program.

It is also important to note that under this potential policy change, although the volume of sawtimber sold through the timber program and stewardship contracting would

be used in the calculation of the size of the small business market share that triggers a set-aside sale, set-aside sales would only continue to occur under the timber program. Since set-aside sales are not provided for under stewardship contracting, such a policy change would not affect the FS's implementation of the stewardship process.

The following is an illustration of how including stewardship sawtimber may result in a more accurate depiction of the market that small businesses are operating in:

Example A. The target market share for small business is 47%. A timber program sale is conducted through full-and-open procedures. A small business wins the award which contains 1,000 CCF (one hundred cubic feet) of sawtimber. Since small business has attained 80% of the sawtimber market share (large business is allotted 20% of the offered timber program sale volume per FS regulations), unless that share drops below 37% (trigger occurs when small business market share is 10 percentage points or more below the established baseline market share) through subsequent timber sales, there will be no trigger for set-aside sales and future timber program sales will continue under full-and-open competition.

Example B. In the same market area, there have also been four (4) stewardship sawtimber sales. These are always conducted as full-and-open competition sales, because set-asides for small business are not provided for in implementing stewardship contracting projects. These four (4) awards have all gone to large businesses, each for 1,000 CCF. The next timber program sawtimber sale is for another 1,000 CCF, but because stewardship sawtimber volume is not counted, the attained small business market share, from example A, is still reflected as 80%. As a result, the next timber program sawtimber sale will be advertised as a full-and-open sale. Had the previous stewardship

sawtimber volume been counted, the attained small business market share would have been reflected as only 20% (1,000 out of 5,000 CCF sold) and this next timber program sawtimber sale would have triggered a small business set-aside since the 20% small business attainment is more than 10 percentage points below the minimum established for the market share of 47% in that market area.

Example C. Even if two (2) of the stewardship sawtimber sales in example B had been previously won by small businesses the trigger for a set-aside of the next timber program sawtimber sale would not have occurred as small business would have been shown to have purchased a total market share of 60% (3,000 out of 5,000 CCF) which is better than the minimum established 47% share for that market area.

The FS received authority to implement pilot stewardship contracting projects in section 347 of the FY1999 Omnibus Appropriations Act (Public Law 105-277, sec. 347). Similarly, BLM was authorized to use stewardship contracting in 2003 (Public Law 108-7, 16 U.S.C. 2104). The purpose of stewardship contracting was to help achieve land management goals in National Forests and in the public lands managed by BLM, in addition to helping meet the needs of local and rural communities. Initially, stewardship contracting was scheduled to expire in 2003 and then again in 2013. The Agricultural Act of 2014 established stewardship contracting as a permanent authority (Public Law 113-79, sec. 8205).

Stewardship contracting is a goods-for-services arrangement that requires timber companies who cut trees on federal (FS and BLM) lands to perform other service work in exchange for the timber volume. Stewardship contracts fall into two general categories, Integrated Resource Timber Contract (IRTC) formats, which were

developed for exclusive use in implementing stewardship contracting projects when the value of goods exceeds the value of services and Integrated Resource Service Contract (IRSC) formats, which were developed for exclusive use in implementing stewardship contracting projects when the value of services exceeds the value of the goods.

### Developments in the Timber Industry

The entire wood products industry in the U.S. has undergone dramatic changes in the past three decades. The sale of timber from the National Forest System (NFS) has decreased from an annual timber volume of approximately 10 billion board feet in 1990 to approximately 2.9 billion board feet in 2015. While the reasons for this decline are not relevant to this proposed rule, the significance of this decline shows that all mills, both small and large, and the communities that they support have struggled to cope with the diminished supply of timber to sustain their operations. Coupled with other economic factors, such as the recession of 2008-2009 which saw a reduction in finished product markets, particularly the new single family home construction market, the decline in the timber industry has resulted in the closure of a significant number of small and large mills. The segment of the U.S. timber industry that derives its timber from the NFS does not operate in a vacuum but in the overall market for timber. In the United States, in the late 1990s, over 90% of the timber harvest volume came from private lands and only about 5% came from USFS sales. During the recession, the drop in new residential construction from 1.7 million units annually to 450,000 and a decline in home remodeling as residential mortgages tightened and home sales dropped combined to impact wood manufacturing. From 2005 to 2009, over 1,000 sawmills closed, comprising nearly 19% of all domestic mills in the forest sector. Many other mills

operated at limited capacity. All mills, both large and small, have been forced to adapt and retool in response to these changes, including mills of all sizes that do not rely on timber supplied from NFS lands. Competition from overseas markets for private timber also complicates the ability for U.S. markets to compete. Thus, the importance of timber supply from FS lands may have increased, however the impacts to businesses may be attributed to a combination of supply, demand and global market changes. The closure of small mills of all sizes has had and continues to have an adverse effect on employment and the overall economy in rural timber communities where the timber industry is the leading provider of employment and income. Small mills depend on the SBA Timber Set-Aside Program to purchase their fair share of timber offered for sale by the FS.

SBA conducted annual field visits in different regions of the country and from interviews with small businesses in the logging, sawmill and other wood manufacturing industries has learned they have suffered immensely due to a diminished supply of timber. Based on the data from the U.S. Census Bureau's County (CBP) Business Patterns Reports available at [www.census.gov/econ/cbp/](http://www.census.gov/econ/cbp/), from 1997 to 2012, the number of small businesses (i.e., fewer than 500 employees) in the logging industry, classified under North American Industry Classification System (NAICS) code 113310 (Logging), decreased 40%. Similarly, based on the data from U.S. Bureau's Economic Censuses available at [www.census.gov/econ/census/](http://www.census.gov/econ/census/), the number of small businesses (i.e., fewer than 500 employees) in the sawmills industry, NAICS 321113, decreased 34% in the same period. The number of employees of small businesses fell by 40% for the logging industry and by 39% for the sawmills industry. The majority of remaining industries in

NAICS Subsector 321 (Wood Product Manufacturing) also saw significant reductions in numbers of small businesses and workers employed by them.

The data also confirms that the number of large business firms (i.e., with more than 500 employees) and number of people employed by them in those industries also decreased. For example, from 1997 to 2012, the number of larger firms decreased 44% in the logging industry and 42% in the sawmills industry. The number of employees hired by large businesses decreased 48% and 52%, respectively. Many other wood product manufacturing industries also saw similar decreases in number of firms and employment.

While total employment fell across both small and large firms in those industries, the proportion of employees that is employed by small businesses increased from 1997 to 2012. For example, as a percentage of total industry's employment, employment by small logging firms increased from 94% to 95%. Likewise, employment by small sawmills increased from 67% of total industry's employment in 1997 to 72% of total industry employment in 2012. This increase in the proportion of workers employed by small businesses has coincided with the significant decrease in the number of small businesses. This indicates that, even if they have decreased in number, small businesses are increasingly responsible for supporting employment in those industries.

As demonstrated in Tables 1, 2, and 3 below, stewardship timber volume (i.e., sawtimber plus non-saw timber) accounted for a steadily increasing percentage of FS's total timber sales from 2004 to 2013. These tables provide data on total and stewardship timber sales for each of the nine FS regions, numbered Region 1 (R-1) through Region 10 (R-10). Region 7 was eliminated in 1965 when the current Eastern

Region was created from the former Eastern and North Central Regions. The nine FS regions that exist today are as follows:

Region 1 (Northern)	Montana, North Dakota, NW corner South Dakota, and Idaho Panhandle
Region 2 (Rocky Mountain)	Colorado, Wyoming, South Dakota, Nebraska, and Kansas
Region 3 (Southwestern)	Arizona and New Mexico
Region 4 (Intermountain)	Utah, Nevada, Western Wyoming, Southern Idaho, and a small portion of California
Region 5 (Pacific Southwest)	California
Region 6 (Pacific Northwest)	Oregon and Washington
Region 8 (Southern)	Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Oklahoma, and Arkansas
Region 9 (Eastern)	Minnesota, Wisconsin, Iowa, Missouri, Illinois, Indiana, Michigan, Ohio, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Maine
Region 10	Alaska

In Fiscal Year 2013, stewardship timber sales accounted for 31% of all timber volume (timber plus non-timber) sold by the FS, up from only 5% a decade earlier. It should be noted that stewardship sawtimber volume is different from the total stewardship timber volume, and that all tables/references are based using the timber volume data only.

<b>Table 1: Total Timber Volumes Sold by Each of the 9 FS Regions* (R-1 to R-10) FY 2004 – FY 2013</b>										
All Sales, Sawtimber + Non-sawtimber (Volumes in Millions of Board Feet (MMbf))										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	159	163	49	107	208	434	359	319	85	1,883
2005	243	132	72	49	386	392	414	364	54	2,105
2006	189	165	69	68	228	470	858	381	83	2,511
2007	135	198	57	69	272	489	501	352	29	2,101
2008	186	201	43	70	109	525	539	349	4	2,026
2009	216	199	21	41	236	498	476	319	6	2,011
2010	180	196	46	60	252	424	540	358	45	2,100
2011	149	159	54	46	212	464	556	379	37	2,056
2012	144	196	32	53	219	512	521	419	41	2,137
2013	115	210	129	71	229	527	475	393	13	2,162

\* Region 7 (R-7) was eliminated in 1965 as part of re-designation of FS regions.

Source: Timber Data Company; November 19, 2013.

<b>Table 2: Stewardship Timber Volume Sold by Each of the 9 FS Regions* (R-1 to R-10), FY 2004 – FY 2013</b>										
Stewardship Timber/Service Sales (Volumes in Millions of Board Feet (MMbf))										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	7	9	25	12	23	19	0	0	0	96
2005	12	9	17	7	23	30	4	2	1	105
2006	48	16	18	15	24	64	42	4	0	231
2007	44	16	28	9	62	91	34	23	1	308
2008	64	35	21	12	14	100	28	10	1	284
2009	45	38	15	11	54	96	62	22	0	343
2010	56	70	26	38	75	120	50	50	0	486
2011	43	33	31	21	47	105	62	50	33	427
2012	41	35	19	22	102	175	92	67	40	592
2013	36	39	107	51	75	202	90	61	0	661

\* Region 7 (R-7) was eliminated in 1965 as part of re-designation of FS regions.

Source: Timber Data Company; November 19, 2013.

<b>Table 3: Stewardship Timber Sales as A Percentage of Total Timber Sold by Region, FY 2004 – FY 2013</b>										
% Stewardship										
Year (FY)	R-1	R-2	R-3	R-4	R-5	R-6	R-8	R-9	R-10	All FS
2004	4%	5%	51%	12%	11%	4%	0%	0%	0%	5%
2005	5%	7%	23%	13%	6%	8%	1%	1%	1%	5%
2006	25%	10%	26%	22%	11%	14%	5%	1%	0%	9%
2007	33%	8%	49%	14%	23%	19%	7%	6%	2%	15%

2008	35%	17%	49%	17%	13%	19%	5%	3%	27%	14%
2009	21%	19%	72%	27%	23%	19%	13%	7%	0%	17%
2010	31%	36%	56%	64%	30%	28%	9%	14%	0%	23%
2011	29%	21%	59%	47%	22%	23%	11%	13%	9%	21%
2012	28%	18%	58%	42%	47%	34%	18%	16%	96%	28%
2013	32%	19%	83%	72%	33%	38%	19%	16%	0%	31%

\* Region 7 (R-7) was eliminated in 1965 as part of re-designation of FS regions.

Source: Timber Data Company; November 19, 2013.

According to historical sales data, the average number of bidders is 1.02 for stewardship timber sales and 1.97 for timber program sales; a statistically significant difference. This suggests that stewardship timber contracting may have fewer competitors. On average, stewardship timber sales are substantially larger than timber program sales, especially those awarded to small businesses. According to the analyses of both timber program and stewardship sales data provided by FS, as shown below in Table 4, compared to timber program volume, small businesses acquired a larger percentage of stewardship timber volume in Region 2 (100%), Region 4 (100%), Region 8 (94%), and Region 9 (87%) where stewardship timber volumes are quite minimal relative to total volumes sold. However, small businesses received a lower percentage of stewardship timber sales in Region 1(70%), Region 5 (49%), and Region 6 (56%) where stewardship timber sales are generally fairly large relative to total sales. While small businesses received a larger percentage of stewardship timber volume in five regions individually, in aggregate (i.e. when all regions combined) the small business share was substantially lower at about 62% under stewardship contracting, as compared to nearly 71% under the timber sales program. Thus, based on these data, SBA is concerned that small businesses may be less successful in getting their fair share of government timber sales under stewardship contracting projects than under the timber program in certain FS regions and markets and that this situation may get worse over time as more and more FS

timber is sold through stewardship contracting, as indicated by recent trends shown above in Table 2. Accordingly, to address this issue, SBA is considering a policy change to include the stewardship timber volume in the calculation of small business market shares. SBA seeks comments on the potential impacts of this change in the methodology, and how any impacts to small businesses may vary across regions or across market areas within the region.

Region	Total Timber Volume Sold (1,000 CCF )						Share of Timber Sold to Small Businesses (%)		
	Timber		Stewardship		Total Timber Sales		Timber	Stewardship	Total
	Total	Small	Total	Small	Total	Small			
Region 1	1,949	1,454	304	213	2,253	1,667	74.6	70.0	74.0
Region 2	2,471	1,910	121	120	2,591	2,031	77.3	100.0	78.4
Region 3	615	615	62	62	677	677	100.0	100.0	100.0
Region 4	859	588	29	29	888	618	68.5	100.0	69.6
Region 5	2,484	1,261	230	113	2,715	1,373	50.7	48.9	50.6
Region 6	8,206	5,369	2,067	1,152	10,273	6,520	65.4	55.7	63.5
Region 8	4,434	3,546	139	131	4,572	3,677	80.0	94.4	80.4
Region 9	1,614	1,533	59	51	1,673	1,584	94.9	86.6	94.7
All Regions	22,632	16,275	3,011	1,871	25,643	18,146	71.9	62.2	70.8

\* Region 7 was eliminated in 1965 as part of re-designation of FS regions. Region 10 was not included in FS calculations.

Source: FS calculations based on the Timber Data Company data for FY 2002-2010 for Regions 2 through 5, 8 and 9, and FY 2002-2015 for Regions 1 and 6.

Still, SBA faces data challenges in analyzing the impact on small businesses from a potential policy change to include the stewardship sawtimber in the calculation of small business fair proportion or market share used to establish a set-aside sale within the timber program. The FS conducted an analysis with FY 2002-2010 data for Regions 2 through 5, 8 and 9 and with FY 2002-2015 data for Regions 1 and 6. To bridge these

gaps in the data, SBA evaluated the percentages of timber program and stewardship sales awarded to small businesses using the data from the SBA’s Timber Sales System (TSS) for FY 2004-2014. These results, as shown below in Table 5, also showed fairly similar patterns as in the FS analysis in Table 4, with small businesses generally acquiring a relatively larger percentage of stewardship timber in most regions where stewardship contracting is limited and a smaller percentage in regions where stewardship timber sales are substantial relative to total sales, such as Regions 1, 5 and 6.

Year	Region								
	Region 1			Region 2			Region 3		
	T	S	Total	T	S	Total	T	S	Total
2004	70.2		70.2	57.3		57.3	100.0		100.0
2005	81.9	100.0	82.2	73.5	100.0	75.2	100.0	100.0	100.0
2006	81.3	89.4	83.5	82.1	54.5	79.6	100.0	100.0	100.0
2007	84.9	94.0	87.8	75.6	100.0	77.8	100.0	100.0	100.0
2008	89.3	85.5	88.0	100.0	100.0	100.0	100.0	100.0	100.0
2009	60.4	64.3	61.0	100.0	100.0	100.0	90.9	100.0	96.4
2010	86.6	38.5	66.9	100.0	100.0	100.0	100.0	100.0	100.0
2011	68.8	50.6	63.7	96.1	100.0	97.0	100.0	100.0	100.0
2012	90.8	15.2	69.8	93.6	100.0	94.8	100.0	100.0	100.0
2013	41.2	34.8	39.4	88.2	100.0	89.6	100.0	100.0	100.0
2014	48.5	100.0	54.1	44.4	100.0	53.4	100.0	100.0	100.0
All years	74.9	55.4	69.9	83.0	97.7	85.4	99.8	100.0	99.9
Year	Region								
	Region 4			Region 5			Region 6		
	T	S	Total	T	S	Total	T	S	Total
2004	66.5		66.5	78.3		77.7	71.2		71.2
2005	94.2	100.0	94.6	28.6	17.6	28.0	54.3	15.2	50.8
2006	77.1	81.5	78.0	28.1	57.4	30.8	57.8	67.7	59.3
2007	74.6	88.9	76.5	58.8	45.6	55.8	62.4	41.3	58.7
2008	76.9	91.3	79.3	86.6	95.7	87.4	63.7	59.5	62.9
2009	79.7	100.0	85.2	71.4	74.7	72.1	75.4	59.5	72.0
2010	100.0	66.7	79.8	62.8	56.4	60.5	64.7	61.2	63.7
2011	100.0	44.3	68.5	54.4	87.9	62.6	66.4	60.3	65.0
2012	96.8	100.0	98.1	79.2	40.6	62.7	64.6	57.6	62.1
2013	95.0	100.0	98.4	68.5	55.6	64.1	65.8	72.8	68.6

2014	100.0	42.4	65.1	37.6	86.0	44.6	70.5	70.1	70.3
All years	82.0	75.5	79.9	56.3	57.8	56.6	65.1	61.6	64.3
	Region								
	Region 8			Region 9			Region 10		
Year	T	S	Total	T	S	Total	T	S	Total
2004	89.3		89.3	78.8		78.8	100.0		100.0
2005	86.9	100.0	87.0	79.3	100.0	79.4	100.0	100.0	100.0
2006	74.1	100.0	75.3	92.7	100.0	92.7	100.0		100.0
2007	80.1	100.0	81.3	85.3	74.3	84.6	100.0		100.0
2008	85.3	97.9	86.0	89.4	100.0	89.6	100.0	100.0	100.0
2009	93.2	94.6	93.3	92.2	100.0	92.8	100.0		100.0
2010	85.4	95.7	86.4	87.8	95.7	88.8	100.0		100.0
2011	86.8	96.7	88.1	85.7	89.9	86.3	100.0	100.0	100.0
2012	91.3	78.8	89.1	88.4	98.2	90.0	100.0	100.0	100.0
2013	91.6	100.0	93.1	90.4	90.9	90.5	100.0		100.0
2014	77.2	89.9	80.4	84.3	80.2	83.6	100.0	100.0	100.0
All years	84.7	92.9	85.5	86.8	90.6	87.1	100.0	100.0	100.0

\* Region 7 was eliminated in 1965 as part of re-designation of FS regions.

Source: Timber Sales System.

As shown below in Table 6, the data further indicates that, during FY 2004 - 2014, more than two-thirds of businesses (68% of all businesses and 67% of small businesses) that receive stewardship timber contracts also acquired timber through the timber program. Likewise, 87% of stewardship timber volumes sold to all firms and 83% of stewardship timber volumes sold to small firms was acquired by businesses that purchase timber through both stewardship and timber program sales (see Table 7 below). Except for Region 4 with respect to the number of firms and Region 3 with respect to timber volume (in both cases the percentages are less than 50%), the results are more or less similar across regions. The majority of stewardship timber purchasers successfully compete in both markets.

**Table 6: Number of Firms Getting Timber Program (T), Stewardship (S), and Both (T &S) Types of Timber Sales by Region, FY 2004-2014**

Region*	T Only	S Only	Both (T & S)	Total S	(T&S)/Total S
Number of All Firms					
1	558	10	34	44	77.3%
2	432	14	30	44	68.2%
3	272	17	17	34	50.0%
4	313	24	20	44	45.5%
5	540	11	44	55	80.0%
6	464	28	54	82	65.9%
8	918	18	56	74	75.7%
9	692	37	85	122	69.7%
10	99	1	6	7	85.7%
Total	4,288	160	346	506	68.4%
Number of Small Firms					
1	546	9	28	37	75.7%
2	407	14	28	42	66.7%
3	268	17	16	33	48.5%
4	300	21	17	38	44.7%
5	516	9	38	47	80.9%
6	447	26	40	66	60.6%
8	861	17	49	66	74.2%
9	645	34	78	112	69.6%
10	97	1	6	7	85.7%
Total	4,087	148	300	448	67.0%

\* Region 7 was eliminated in 1965 as part of re-designation of FS regions.

Source: Timber Sales System.

**Table 7: Volume of Timber Sold to Firms Getting Timber Program (T), Stewardship (S), and Both (C & S) Types of Sales by Region, FY 2004-2014**

Region* (1)	T only (2)	S Only (3)	Both (T & S)		Total S (6 = (3+5))	S Under Both/Total S (5/6) (%)
			T (4)	S (5)		
Timber Acquired by All Firms (in 1,000 CCF)						
1	1,193	156	2,370	1,045	1,201	87.0%
2	2,675	56	1,642	769	825	93.2%

3	297	212	499	186	397	46.7%
4	605	179	604	310	489	63.4%
5	1,241	40	4,843	1,235	1,276	96.8%
6	2,610	188	6,247	2,489	2,677	93.0%
8	6,069	257	4,434	967	1,224	79.0%
9	3,400	107	3,415	583	690	84.5%
10	491	6	456	375	381	98.5%
Total	18,580	1,201	24,510	7,959	9,160	86.9%
Timber Acquired by Small Firms (in 1,000 CCF)						
1	1,114	152	1,311	531	683	77.8%
2	2,177	56	1,337	649	704	92.1%
3	289	212	417	127	338	37.4%
4	497	115	476	206	321	64.2%
5	1,045	26	2,097	592	618	95.7%
6	2,179	139	4,148	1,345	1,483	90.7%
8	4,927	253	4,004	800	1,053	76.0%
9	2,727	97	2,957	419	516	81.2%
10	251	6	832	375	381	98.5%
Total	15,207	1,055	17,580	5,043	6,097	82.7%

\* Region 7 was eliminated in 1965 as part of re-designation of FS regions.  
Source: Timber Sales System.

### The Timber Program

The FS sells logs in accordance with the National Forest Management Act, which describes the process for buying, paying for, harvesting, and removing wood from NFS lands. Pursuant to the Small Business Act (15 U.S.C. 644(a)), SBA established the timber program in 1958. At that time, the timber program was a mechanism for the USDA to set aside timber sales. In 1971, SBA and USDA signed a Memorandum of Understanding (MOU) which established the guidelines for determining “fair proportion,” created a five-year re-computation period for determining the base average shares of timber purchases, and established a “trigger” mechanism for initiating set-aside timber sales. Currently, FS has 9 Regions comprised

of 140 market areas, of which 139 are active as shown in Table 11. See <http://www.fs.fed.us/>. The FS sells timber through both the timber program and stewardship contracting. With respect to timber program sales, each FS market area has a distinct small business market share. This percentage, based upon historical sawtimber volume acquired by small businesses, sets the framework for what constitutes small businesses' fair proportion of the total timber program sawtimber sales volume. Whenever the small businesses market share drops 10 percentage points or more below the established small business market share for a market area, a set-aside sale is "triggered" and FS is required to offer set-aside sales to increase the small business market share. If small businesses do not submit bids, the set-aside sale is converted to a full-and-open sale in which other-than-small businesses can also compete.

Currently, FS does not consider the sawtimber volume from IRTC and IRSC stewardship contracting in calculating the small business market share. The omission of the stewardship sawtimber volume in the calculation may affect small business market shares in either direction relative to the current policy. For example, FS' Mt. Hood market area (located in Region 6) has an established small business market share of 80% (as calculated during the 2010 re-computation of small business market shares). Because 20% of FS' timber program sales must be competed as full and open in order to ensure that large businesses also have the opportunity to compete, 80% is the maximum allowable small business share and indicates a robust small business timber purchase market. Over the period from November 2010 through March 2015, twenty-six (26) timber sales were offered in the Mt. Hood market area. Of those 26 sales, sixteen (16)

were stewardship timber contracts which included timber volume. Twelve (12) of these were awarded to small businesses under full and open conditions. Ten (10) of the 26 sales were timber program sales. Eight (8) were awarded as full-and-open sales, and two (2) were small business set-aside sales.

This data suggests that small businesses have been successfully obtaining timber volume in this market area, but because stewardship sawtimber volume is not included in determining what the correct small business market share calculation should be, the small business fair market share has dropped from 80% to 72%. This is one example of how not counting stewardship sawtimber volume in the calculation can influence what the small business established fair share should be. Based on the limited data available, as it appears, it is also possible that including the stewardship sawtimber volume in the calculation of fair proportion could have the reverse effect in some regions, increasing the five-year fair market share relevant to the current policy.

#### Public Comments in Response to SBA's Advance Notice of Proposed Rulemaking

In response to requests from timber industry stakeholders, SBA published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register on March 25, 2015 (80 FR 15697) inviting the public to submit comments on or before May 26, 2015. Specifically, the ANPRM requested detailed comments addressing the possible inclusion of the stewardship contracting sawtimber volume in the small business market share calculations and the possible appraisal of small business set-aside sales to the nearest qualifying small business mill. SBA received responses from 842 commenters. The summary of comments is provided in the following sections.

## Comments on the State of the Timber Industry

The ANPRM presumed that the U.S. timber industry has undergone dramatic changes in the past decades. As stated in the ANPRM, the supply of timber from the FS timber program decreased significantly over the past three decades impacting both large and small businesses.

Comments to the ANPRM provided more insights into the state of the timber industry. For example, according to comments from a trade group representing small timber products companies, Timber Products Manufacturers Association (TPMA), since stewardship contracting was first piloted, small sawmills' share of Federal timber has declined by 71%. For example, in 1993, 146 small sawmills shared access to the FS timber in the Western regions; in 2014, that number had decreased to 43 firms.

According to comments, remaining small business sawmills have made changes in their processes and the way they do business to remain competitive and stay in business.

TPMA also commented that, as the number of small businesses declines, large firms are increasingly able to raise costs through anti-competitive means. That is, as the number of potential buyers for timber gets smaller, dominant firms are enabled to set the price. TPMA pointed to a study published by the SBA's Office of Advocacy. Innovation & Information Consultants, Inc., 2008, Analyzing the Impacts of Antitrust Laws and Enforcement on Small Business, prepared for the U.S. Small Business Administration, Office of Advocacy under contract no. SBAHQ-06-M-0476, available at [www.sba.gov](http://www.sba.gov). The study found evidence of harmful anti-competitive behavior in the timber industry; however industry-wide trends indicated macroeconomic factors were equally important in the decline of small businesses. Specifically, the study indicated that a particular

global forest products company made efforts to monopolize the red alder timber market in the Pacific Northwest by employing anti-competitive strategies. Still, antitrust litigation in the Northwest did not deter new entry into the market during this time. Thirty-one Washington and Oregon hardwood mills closed between 1980 and 2001, when the large company was suspected of anti-competitive behavior in those states.

In response to the ANPRM, other-than-small industry participants submitted data showing that, as the FS reduced its timber harvest by over 90%, the majority of sawmills in the western United States that existed in 1971 have now closed. According to a regional trade association representing large business operations, the Public Timber Purchasers Group (PTPG), between 1990 and 2010, 207 mills closed in Oregon (a decrease of 66%) causing a loss of 21,000 jobs. PTPG asserted that these economic forces have caused small sawmills to merge or be purchased. As a result, according to PTPG, there is only one operating small business sawmill capable of purchasing federal timber in some FS areas – and in some other areas, there are no longer small business purchasers at all. Additionally, a union representing manufacturing workers observed that, in Oregon, virtually all organized labor in the lumber manufacturing sector is found in mills with consolidated ownership.

Commenters also provided localized observations and data. In Bonner County, Idaho, according to the Bonner County Board of Commissioners, 800 logging and sawmill jobs have been lost and only one small sawmill remains. According to a commenter from Coos Bay, Oregon, one of the largest mill sites has been converted to a casino. An executive from a small lumber products company in Clarkston, Washington, spoke at a May 7, 2015 regulatory fairness hearing in Spokane about closing the

company's Clarkston mill in 2009 because of the recession. However, partly because of small business set-aside timber sales from the Umatilla National Forest, the company has been able to reopen the Clarkston mill and support 80 jobs. It now operates two sawmills and employs 240 workers. Conversely, two small business sawmills in Montana initiated layoffs of between one-third and one-half of their workers.

#### Comments on the Current Timber Set-Aside Program

In response to SBA's invitation for comments on the current Program, 221 commenters expressed general support for the current Program. Commenters generally asserted that small mills depend on the Program to purchase their fair share of timber offered for sale by the FS. By contrast, large business mills appear to make greater use of private land as a reserve for harvesting timber.

TPMA commented that in addition to supporting small firms and their surrounding communities, small business set-asides do not significantly reduce federal revenues. The group's comment pointed to a government analysis showing that set-aside sales take in only two percent less than open sales. A study published in 2013 found that set-asides reduce FS revenue by 5%, and the effect of reducing competition by excluding large businesses is partially offset by increased small business participation. Athey, Susan, Dominic Coey, and Jonathan Levin. 2013. "Set-Asides and Subsidies in Auctions." *American Economic Journal: Microeconomics*, 5(1): 1-27, available at [www.aeaweb.org](http://www.aeaweb.org). The commenter also posited that if small sawmills are pushed from the market, large firms would be able to drive down federal revenues from timber sales. The commenter pointed to revenue data from the Panhandle National Forest to assert that market competition from small businesses stabilize prices for government timber sales.

TPMA asserted that because stewardship contracting is not part of the fair proportion calculation in the small business set-aside Program, small timber product manufacturing companies have sustained a market decline of 71% since the stewardship contracting was launched. The small business trade group observed that, in 2014, one-third of the timber volume offered by FS was distributed through stewardship contracting, including 38% in the western United States. In some regions, stewardship contracting exceeds 70% of FS timber volume transactions. According to the commenter, failure to include the volume of timber associated with stewardship contracting lowers the market share for small business set-aside sales.

SBA also received comments from a variety of local legislators who described how the timber set-aside program operates in their areas. According to the comments, in Klamath County, Oregon, the only operating sawmill is an other-than-small business, so instituting set-asides would impact the county's budget. By contrast, a legislator from Marion County, Oregon, commented that smaller mills that rely on set-asides support much of the county's employment. Fifteen years ago, the milling industry supported 63.5% of the employment in the North Santiam Canyon communities; because of the downturn in the industry, the industry now supports 41% of employment.

The Commissioners of Powell County, Montana, noted that the trend toward increasing stewardship contracts in three national forests – Beaverhead-Deerlodge, Helena and Lolo National Forests – has reduced the potential amount of funding to the county because stewardship contracting does not feature revenue sharing as timber program sales do. From 2001 to 2013, the percentage of stewardship contracting on the

Beaverhead-Deerlodge and Lolo National Forests accounted for over 23% of the sawlog volume sold during that period.

A commenter from Salem, Oregon, responded that the local community has suffered a devastating impact because of the reduction in revenues from timber sales. According to the commenter, declining timber revenues has meant fewer jobs, less revenue for county services, and less revenue to support families.

Several private business commenters remarked that failure to include the volume of timber associated with stewardship contracting lowers the market share for small business set-aside sales. A lumber company in Lyons, Oregon, that employs 430 people commented that 38% of its federal timber was bought on a small business set-aside basis. The commenter expressed concern that half of the sales volume available to it is being distributed through stewardship contracting, which limits the volume available through timber program open and set-aside timber sales. A 93-year-old lumber company in southwest Oregon stated that 100% of its federal timber under contract was purchased through small business set-asides. The commenters worried that, without the small business set-aside program in place, large businesses would starve small businesses out of public timber.

Another small business lumber company in north central Idaho remarked that the small business set-aside program is non-existent in Nez Perce-Clearwater National Forest because in excess of 80% of the forest's timber volume is sold through stewardship contracts. The commenter stated that, because the stewardship program is not subject to set-asides, its business could not avoid bidding against large businesses.

From Montana, a family-owned sawmill and forest management company commented that 15 million board feet of logs from the Flathead National Forest has been made available through stewardship contracting, rather than through the timber sales program. The commenter observed that this volume would be enough to run its mill for nearly six months.

#### Comments with Requests for Government Action

A substantial number of commenters asserted that agency action is required to avoid irreparable harm to the competitive timber market in the United States, leading to the closure of many small timber manufacturers. Many commenters from small business mills are the primary employers in their rural communities, and they believe that the lack of action will result in thousands of jobs lost and the destruction of many of these communities. The small business industry group commented specifically that failing to include stewardship contracts in the small business timber set-aside program has decimated small timber manufacturers.

Several commenters also noted that large multi-national companies have begun to aggressively pursue both timber program full-and-open and stewardship sales in an attempt to drive small businesses from the playing field. For example, a third-generation small business logging operation in Washington and Oregon found that stewardship contracting is replacing the timber sale program. The commenter purchases most of its federal timber from the Mt. Hood and Gifford Pinchot National Forests, but has seen a 90% reduction in available timber volume since 1990. The commenter observed that there are very few small business set-aside sales because of the predominance of stewardship sales, and speculated that large forest products companies have worked to

drive small family-owned companies out of business in order to consolidate the market share.

A small business lumber company from Deer Lodge, Montana, operating in an area where the FS owns over 60% of timber lands, commented that it is dependent on the small business timber set-aside program. The commenter stated that it initially supported stewardship contracting, but did not expect that it would be a major part of FS's timber offerings. As the percentage of stewardship offerings has become a third of the overall timber program volume, the commenter predicted that it would only be able to continue operations if it has an opportunity to bid on a fair share of federal timber sales without interference from large businesses. The Mayor and City Council of Deer Lodge, Montana, also support the set-aside program, stating that the sawmill industry made up the cultural and economic basis for the community.

A small sawmill in Kamiah, Idaho, commented that it had been shut down during the 2008 recession, but started up again with 65 employees after it was auctioned off. The commenter responded that it has found predatory bidding in non-set-aside sales and, as a result, has not been able to purchase public logs in two years. The commenter stated that it is surviving only on private landowner logs, and it believes that its sawmill will fail and 65 jobs will be lost if the set-aside program is not amended. The Mayor of Kamiah commented that the city has one of the highest unemployment rates in Idaho. The Mayor wrote that losing the local sawmill industry would devastate the area economically.

A substantial number of commenters from across the western United States commented that their communities and families relied on the local sawmills. One commenter from Colville, Washington, responded that he has been on unemployment

twice in the past three years because of timber shortages. An individual commenter from St. Regis, Montana, added that small family-owned forest product companies need the SBA set-aside program to ensure stable access to government timber. Similarly, an individual from Lyons, Oregon, commented that the set-aside program supported a stable environment for small-town families. A commenter from Weippe, Idaho, remarked that the sawmill that was founded there in 1947 has relied on set-aside sales to compete with large sawmills.

A union group commented that it opposes any government action and believes that agencies should craft a solution that does not disproportionately punish organized labor.

Several commenters pointed to Congressional efforts to force agency action. Congress has urged the Administration to address this issue through multiple bills and correspondence. In 2014, Congress included the following report language in the Joint Explanatory Statement accompanying Public Law 113-235, the Consolidated and Further Continuing Appropriations Act, 2015 (160 Cong. Rec. H9768, Daily ed. Dec. 11, 2014):

The Forest Service is strongly encouraged to expeditiously prepare and publish draft rulemaking to establish a small business set-aside program for timber contracts undertaken using stewardship contracting authority that is consistent with previous commitments made by the Service and the Department of Agriculture on this matter.

Similar language on the need for either SBA or the FS to address the issue through regulation is included in the FY2016 appropriations bills or in Congressional correspondence to the agencies.

Comments on Including Stewardship Contracting Sawtimber Volume in Small Business Market Share Calculations

Over 300 commenters urged SBA to include stewardship sawtimber volume in the small business market share calculation, while 15 commenters opposed it. Based on SBA's analysis of both the available data and comments received in response to the ANPRM, SBA is considering including the stewardship sawtimber volume in the calculation of small business market shares. SBA's ANPRM requested comments on how the inclusion of stewardship sawtimber might impact future market share calculations, stumpage prices, land management activities, retained receipts, and sale values. SBA also requested comments on whether an increase in the utilization of stewardship contracts in a market area might result in a lower representation of small businesses successfully bidding for timber sales in that market area and whether this should 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. Commenters provided a wide range of views on these topics.

Of the 842 commenters, 327 suggested that stewardship sawtimber sales should be included in the calculation of set-aside trigger points. Further, 14 commenters urged SBA and FS to include the stewardship sawtimber volume in the upcoming (now recent) five-year re-computation of small business shares to ensure accurate representation of small business participation. TPMA, the small business trade group, commented that increasing use of stewardship contracting, in particular IRTCs, creates a "loophole" in the small business market share calculation. According to TPMA, as IRTC contracting becomes more prevalent, the calculated small business market shares become distorted because they are only computed based on a handful of sales. This is because one-third of the market volume is being transacted through stewardship contracts and is currently

excluded from the small business market share calculation. TPMA asserted that the omission of stewardship contracts understates the volume of timber being transacted and thus results in the inflation of the calculation of the small business market share. TPMA pointed to the Payette market area, where there were only two standard timber sales contracts. TPMA asserted that excluding stewardship volumes from the calculation prevents small businesses from achieving a representative re-computation that is consistent with the Small Business Act.

Fifteen commenters stated that stewardship timber volume should not be included in the calculation. The PTPG commented that the goal of the stewardship program is to accomplish forest health, watershed improvement and similar projects with the sold timber offsetting some or all of the costs. Because the selection of stewardship contractors is a subjective process that uses a “best-value” process, PTPG asserted that stewardship contracting should be excluded because re-computations of market shares for set-aside sales should be based upon objective timber sale data. Also, PTPG commented that, if stewardship sales were included in the set-aside timber sale program, the number of potential contractors would be significantly limited for any stewardship sale designated as a set-aside.

Thirty-nine commenters expressed that failure to include the stewardship sawtimber volume in the small business market share calculation will adversely affect the small businesses which rely on the federal timber supply. These commenters suggested that the trend towards stewardship contracting negates the positive impacts of the small business timber set-aside program. In particular, a small business sawmill in Deer Lodge, Montana, and the largest private employer in Deer Lodge, commented that stewardship

contracting has been increasing in use, both in terms of number of sales and sawlog volume. Although the business has promoted stewardship contracting as a positive method of resolving resource conflicts on National Forest Land, it supports including the stewardship sawtimber volume in the SBA set-aside calculations.

Similarly, a trade group in Idaho representing logging and wood hauling contracting businesses supported including stewardship contracting sawtimber in the calculation of shares of timber program sales acquired by small businesses. The trade group observed that, in some Idaho forests, the stewardship timber volume has exceeded over 80% of total timber sales in four of the last five years.

The comments from a small business trade group emphasized that adding the stewardship sawtimber would add transparency and diligence to the recordkeeping process. These commenters observed that, even within the timber program, the volume in transactions with small businesses is inaccurate because the calculations are based on volumes advertised and awarded, and does not include volumes added through contract modifications.

SBA's ANPRM requested comments as to how the stewardship sawtimber volume should be accounted for in calculating the small business market share. Six commenters suggested that FS simply use existing timber program sale rules and norms to count sawtimber volume from stewardship projects. TPMA asserted that adding stewardship sawtimber volumes to the calculation would not be difficult. According to TPMA, FS develops an appraisal for each stewardship opportunity to decide the value of the timber available to be exchanged for services. These volumes and values could be tracked and used to adjust proportions used in the Program. Additionally, TPMA

commented that FS provides upon the requests of the Timber Data Company with Reports of Timber Sales (FS 2400-17) which contain timber volume data for all timber sale contracts.

Three commenters asserted that, depending on the market area, inclusion of the stewardship timber volume may increase small business participation in both stewardship contracting and the timber program. Five commenters felt that increased competition from the inclusion of stewardship sales would increase stumpage rates. The same number of commenters stated that inclusion of the stewardship sawtimber volume would reduce the number of bidders and decrease stumpage rates.

Six commenters felt that any financial impact on sales value is less important than the socioeconomic benefits. These commenters also suggested that while timber prices may increase with the inclusion of stewardship sawtimber volume in the small business market share calculation, it would have no impact to the treasury. Conversely, four commenters stated that inclusion of the stewardship sawtimber volume would reduce treasury revenue and the value of public timber.

Seven commenters felt that the impact on small market shares of including the stewardship sawtimber volume in the calculation would vary by market area. One commenter expressed that inclusion of the stewardship sawtimber volume would have a beneficial impact on future market shares.

Eleven commenters suggested that if stumpage rates were decreased, restoration activities, retained receipts and local employment would be negatively impacted. A small, second-generation, family-owned lumber manufacturing business in Eugene,

Oregon, supported including stewardship sawtimber volume to prevent circumvention of the set-aside program.

Nineteen commenters went so far as to state SBA and FS have a legal obligation to include the stewardship contracting sawtimber volume in the small business market share calculation to ensure small businesses purchase a fair proportion of sawtimber volume. Under section 15(a) of the Small Business Act, SBA bears the responsibility of ensuring that small businesses receive a fair proportion of “total sales” of Government property. SBA believes that sawtimber transacted through stewardship contracting should be properly included as an element of “total sales” under the Small Business Act, because much of stewardship contracting is done through IRTC contracts where FS receives cash from the transaction.

While several commenters believed that the small business market share is overstated, overall small business base market share may actually be understated because small business’ high share of the stewardship contracting sawtimber volume is not included in the base market share calculation. As noted above, stewardship sales account for approximately one-third of total timber sold by the FS. In the majority of FS regions, small businesses purchase the majority of the stewardship contracting timber volume. However, large businesses capture the majority of the stewardship contracting timber volume in some market areas. For example, according to comments, large businesses captured 75% of the stewardship volume in the St. Joe Market Area, presenting a challenge to two small sawmills in the area.

SBA’s is considering a potential policy change to include stewardship contracting sawtimber volume in the calculation of small business market shares. SBA’s analysis

shows that failure to include stewardship contracting sawtimber volume may either favorably, unfavorably, or negligibly skew the base small business market shares used to determine when FS must set aside timber program sales in some market areas. Inclusion of stewardship contracting sawtimber volume in the small business market share calculation could also more accurately capture small business participation and ensure transparency of the Program, another justification under consideration.

SBA welcomes additional comments on the possibility of including the stewardship sawtimber volume in the calculation of base small business market shares. Specifically, SBA requests additional comments and data related to the calculation methodology and analysis set forth in this rule. SBA requests comments as to whether those regions or market areas where small businesses purchase a large percentage of sawtimber through stewardship contracting should receive different treatment in the computation of small business market shares and, if so, what that alternative treatment should be. Likewise, SBA requests comments as to whether those market areas where the stewardship contracting represents a large percentage of overall sawtimber volume should receive different treatment. Additionally, SBA seeks comments as to whether the inclusion of the stewardship sawtimber volume should be subject to any caps or other special considerations. SBA also seeks comment on its authority under section 15(a) of the Small Business Act to treat all stewardship sawtimber sales as an element of “total sales” and whether there are alternative treatments – including whether to consider some or all stewardship contracts as an element of “total purchases and contracts” under section 15(a). In order to have the most robust picture possible, SBA is further requesting additional data regarding the potential impact of including the stewardship

sawtimber volume in the small business market share calculation. SBA is particularly interested in any data suggesting potential impacts on future market shares and stumpage rates.

Comments on Changing Appraisal Point in Calculating Minimum Acceptable Bid for Set-Aside Timber Sales

SBA's ANPRM requested comments on several issues related to the appraisal methodology FS uses to appraise set-aside timber sales under the timber program: how to best reflect the actual haul costs to eligible small business timber set-aside purchasers; whether there should be special considerations in those market areas that do not have mills that would qualify as "small" under the SBA's criteria; how to account for the "30/70 rule" in the appraisal process; and whether trust funds would be impacted by changing the appraisal point in set-aside sales.

Regarding the appropriate appraisal point, 28 commenters stated that appraisal of haul costs should be made to the nearest small mill in set-aside sales while 12 commenters expressed that the appraisal should be made to the nearest mill regardless of size. Those in support of changing the appraisal point in set-aside sales to the nearest small mill believed that such an approach would more accurately reflect the realities faced by small businesses. Several commenters observed that, for its set-aside sales, the BLM appraises haul costs to the nearest small business facility capable of handling the timber volume in BLM's eight markets in Oregon. A small business commenter responded that the current process of appraising set-aside timber sales to a large business defeats the purpose of the set-aside program. The small business trade group commented that the appraisal of a set-aside sale should include a haul-cost adjustment to account for

the actual cost of hauling. The same commenter pointed to the FS Timber Sale Preparation Handbook, Chapter 40, section 45.11 (FSH 2409.18), available to the public at [http://www.fs.fed.us/cgi-bin/Directives/get\\_dirs/fsh?2409.18](http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2409.18), which provides that the FS chooses an appraisal point where the manufacturing facility “is capable of” processing the end product being appraised.” Because of the 30/70 rule, applying the Handbook approach should result in the FS appraising for haul costs to a small manufacturer, rather than the closest large business facility. SBA agrees that appraisal to a small business mill more accurately captures the cost to eligible bidders. As such, SBA is proposing to appraise haul costs to the nearest qualifying small mill in set-aside sales.

Ten commenters felt that a change in the appraisal process would require haul cost subsidies and lead to reduced revenue and reinvestment opportunities. The PTPG, for example, commented that changing the appraisal point would cause the FS to divert stewardship funds to subsidize long hauls to distant mills. Some set-aside sales could result in negative appraised value, according to the PTPG comments. Another commenter responded that a change to the appraisal point would divert federal timber away from union workers and would reduce federal timber receipt-sharing for rural communities.

Four commenters stated that a change in the appraisal point will not impact trust fund collections, while three commenters believed that trust fund deposits would be reduced. The large business trade group in particular commented that, if the appraisals resulted in below-cost timber sales, rural communities would be harmed by the reduction in federal timber payments. The same commenter responded that a change in the

appraisal point would cause inefficiency by allowing distant mills to purchase set-aside logs.

Thirteen commenters felt that FS and SBA should take greater steps to enforce the 30/70 rule in set-aside sales. Fifteen commenters felt that appraisal should be made to the nearest small mill only if it is located within a reasonable distance from the sale. These commenters believed that FS should suspend the set-aside or waive the 30/70 rule if no small mills are located within a reasonable distance of the sale. Seven commenters expressed that the 30/70 rule should either be eliminated altogether or waived for non-manufacturers when no small mill is present. Eleven commenters felt that inclusion of the 30/70 rule in appraisal point calculations would unnecessarily complicate the process, increase risks, and reduce stumpage rates and revenue.

Although commenters to the ANPRM proposed various alternatives as to how haul costs should be appraised in small business set-aside sales, none of the commenters provided any data that would adequately support one alternative over the other. As such, SBA requests additional comments regarding the other alternatives identified in comments to the ANPRM. Specifically, SBA requests comments as to whether haul cost adjustments should be made for non-manufacturers. Further, as noted above, several commenters recommended appraisal to the nearest small mill only if it is a “reasonable distance” from the sale. SBA requests comments as to what constitutes a reasonable distance. SBA also requests examples of market areas where the recommended reasonable distance would make a significant difference in the appraisal price. Understanding that any sale price accepted by the government must be “fair and

reasonable,” SBA requests comments as to why an increased appraisal cost to the nearest small mill would still support such a finding.

SBA is also aware that certain market areas do not have small mills located within their geographic boundaries. Accordingly, SBA requests additional comments regarding potential geographic exceptions for market areas with no small mills.

Finally, with respect to appraising haul costs with respect to the 30/70 rule, SBA requests comments as to whether SBA should consider, when the nearest mill is a large business, appraising 70% of the haul costs to the nearest small mill and 30% of the haul costs to the nearest large mill. SBA specifically requests comments as to whether such an approach is or is not favorable, given that it may accurately reflect the true costs to haul the timber, but may unnecessarily complicate the process.

SBA notes that a number of commenters interpreted SBA’s ANPRM to propose a change of the appraisal point in all timber program sales. This is not SBA’s intent. As noted above, SBA is proposing that the appraisal be made to the nearest small mill only in the case of set-aside sales.

#### Comments on Other Issues

SBA notes that a number of commenters interpreted SBA’s ANPRM as a proposal to subject stewardship contracting to the procedures of the small business timber set-aside program. For example, a large business trade group stated that, if stewardship sales were included in the set-aside timber sale program, the number of potential contractors would be significantly limited for any stewardship sale designated as set-aside. The same commenter remarked that stewardship set-aside sales would complicate the application of the 30/70 rule. The commenter also noted that if a stewardship sale is

designated by the SBA as set-aside and there are no local small business mills, local labor would not be involved in the processing of those logs. Another industry commenter predicted that fewer acres of at-risk forest would be restored if stewardship contracts were subject to the set-aside requirement, and this would be contrary to congressional authorization of local preference and best-value contracting. A union commenter responded that the inclusion of stewardship contracts in the set-aside program would circumvent an award to the most local and economic mill in favor of a small business that could potentially be hundreds of miles away. Six commenters felt that small businesses already purchase a substantial share of the federal sawtimber. Conversely, the small business trade group stated that stewardship sales should be set aside, and the result would be preservation of competition for government sales.

It is not the intent of this proposed rule, however, to apply the set-aside rules to stewardship contracting. The intent of this rule is only to define, under authority of section 15(a) of the Small Business Act, what procedures SBA should use to calculate the proportion of “total sales” of timber flowing to small businesses. SBA is considering whether to include the stewardship sawtimber volume purchased by small businesses in the calculation of small business base market shares used in triggering timber program sale set-asides, but SBA is seeking comments and data before moving forward with such a policy change.

Approximately 45 commenters urged SBA and FS to conduct a comprehensive review of small business timber sale set-aside program procedures before implementing any changes. These commenters observed that SBA and FS rules for the set-aside timber sale program have not been updated to reflect the changing industry infrastructure or

federal timber supply. Other commenters disagreed, urging SBA to make these changes prior to the October 1, 2015 re-computation. These commenters also emphasized that they have been seeking these changes for many years and saw further reviews or studies merely as another delaying tactic.

An additional five commenters felt that the re-computation period should be shortened to ensure continued accurate representation of market shares. Three commenters suggested that the structural re-computation method should be eliminated altogether. One commenter suggested carrying forward market area deficits into the next five-year period. SBA believes these issues are more appropriately addressed through negotiations between SBA and FS.

#### Potential Changes to the Timber Program Currently under Consideration

As discussed in detail above, SBA is considering including the volume of sawtimber sold through stewardship contracting in developing the 5-year re-computation of small business market shares which are used to determine when timber program sales must be set aside for small businesses in the FS regions. SBA recognizes that in some regions, small businesses are successfully competing for full-and-open sales under the stewardship contracts. This possible policy would not likely alter that fact. SBA also recognizes that in some regions, small business may be successfully winning under timber program sales without set-asides. Again, this policy would not be intended to alter that fact. In some regions, counting the stewardship sawtimber volume may result in triggering a set-aside opportunity that might not otherwise occur without this new policy in place. In others, counting the stewardship sawtimber volume may result in removing a set-aside opportunity where one previously existed. In still other regions, including the

stewardship sawtimber may have no impact relative to the status quo. Regardless, this policy under consideration would establish a transparent process across all FS regions.

Compliance with Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5. U.S.C. 601-612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866.

Accordingly, the SBA's Regulatory Impact Analysis can be found below. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 80, et seq.

#### Regulatory Impact Analysis

##### 1. Is there a need for this regulatory action?

The proposed rule furthers statutory intent that small business concerns receive a fair proportion of the total sales of Government property. See Section 2(a) of the Small Business Act (15 U.S.C. 631(a)); Section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

Because of the locations and sparse number of the remaining sawmills, current appraisal points used for assessing hauling costs may have prevented many small sawmills from bidding on set-aside timber sales, since fuel costs for transporting the timber from the forest to the processing location may negate the profit margin of the purchase. As such, the proposal to appraise set-aside haul costs to the nearest small business mill is necessary to accurately reflect the costs to eligible bidders.

As noted above, SBA is also considering a potential policy change, but not proposing in this rule, to include the stewardship sawtimber volume (from both the IRTC

and IRSC contracts) for the calculation of the small business fair proportion market share of timber program sales. To assess the trends on timber program I and stewardship timber sales and impacts to small businesses from such a policy change, SBA conducted multiple analyses with the limited data available. The results showed that timber program set-aside sales have declined since stewardship contracting began and that each FS region has steadily increased the availability of stewardship contracting during the period from 2004 through 2014. In addition, in several FS regions, especially those where timber sold through stewardship contracting is large relative to total timber sold, and in aggregate (i.e., all regions combined) the percentage of timber purchased by small businesses is lower under the stewardship program than under the timber program. Thus, the failure to include the volume of sawtimber sold through stewardship contracting could overstate or understate the small business market share for set-aside sales under the timber program. The available data indicates that, with the omission of the stewardship sawtimber, small business market shares could be understated for regions where small mills dominate the stewardship market and overstated for regions where large businesses dominate that market. Further, including the stewardship sawtimber volume could more accurately reflect small business participation rates for purposes of calculating the set-aside trigger point in the timber program, regardless of the direction of the impact on small businesses. While SBA is not proposing in this rule to include the stewardship sawtimber volume in the small business fair proportion or market share calculation, the Agency is seeking public comment on impacts of this potential policy change in the future.

2. What are the potential benefits and costs of this regulatory action?

SBA's proposal to appraise small business set-aside timber sales to the nearest small business mill would enable small businesses to comply with existing laws affecting set-aside timber sales while promoting an atmosphere more conducive for them to participate in the overall FS timber market. Using the appraisal data received from FS, SBA estimated total sales to be about 2,900 for FY 2009-2014, of which 86% were sales to small businesses. Using the same data, excluding special salvage timber set-aside sales, SBA identified 156 small business set-aside sales (or 5.3% of all sales and 6.2% of all small business sales) that were appraised to a large business mill. A regional breakdown of these data is provided below in Table 9, below. Based on the data obtained from SBA's Timber Sales System (TSS), SBA estimated total average receipts FS received for FY 2002-2014 for all Regions to estimate the cost (i.e., receipt loss) to FS from the SBA's proposed change.

The FS conducted an econometric study to assess the impacts of SBA's proposal to appraise hauling costs of all set-aside timber sales to the nearest small mill and potential policy change to include the stewardship sawtimber volume in the small business fair proportion or market share calculation. Specifically, FS estimated a stumpage equation for each FS region outside of Region 10 (Alaska) with a bid premium (i.e., difference between bid price paid and reserve/minimum bid price set by FS) as a function of a number of variables, including the number of bidders, total haul miles, logging costs, total volume harvested, time trend, and a series of dummy variables indicating whether the sale was a small business set-aside sale, a salvage sale, or a stewardship sale. These results are provided in Table 8, below.

As can be seen from the results in Table 8, the estimated equations explained about 35% of total variation in bid premiums for Regions 1, 3, and 5, followed by 16% for Region 6 and less than 10% for remaining affected FS regions. Thus, the results suggest that several other relevant factors may have been needed to explain the variation in bid premiums.

**Table 8. Stumpage Price Equations Estimated for Regions 1 to 9 by Forest Service**  
**Dependent Variable** (Bid Premium, a difference in the winning stumpage price minus the reserve price (\$/CCF))

Regions	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 8	Region 9
Independent Variables	Parameter Estimates							
Intercept	-15.41*	100.19	-0.02	-28.19	-15.74**	-30.67**	-78.19	807.06
Lumber Price Index	0.07**	-0.14	0.00	0.17	0.02*	0.06		
Hardwood Price Index							0.09	-4.22
Softwood Price Index							0.24	-1.7
Number of Bidders	8.54**	6.6	4.66**	12.97**	10.67**	9.79**	18.99**	70.01*
Total Volume Harvested (1,000 CCF)	-0.58	-0.65	-0.20	-1.59**	0.15	-0.58**	-5.7**	-117.93**
Logging Costs (\$/CCF)		-0.59	0.00	-0.16*		0.06*	0.21**	-4.55
Contract Costs (\$/CCF)	0.19	0.29	0.06	0.02		-0.08	-2.18**	-0.56
Distance to the Nearest Mill (miles)	-0.02	0.35	0.004	-0.01	-0.04**	-0.06**	-0.02	
Hauling Costs (\$/CCF)								2.89
Logging Index	-2.38*							
Sealed Bid Dummy (0, 1)	0.84	29.59	-2.58	-12.43	5.35**	7.52**	28.44*	153.32**
Set-Aside Dummy (0, 1)	-7.88**	-5.87		-12.84	-1.04	-4.77*	-12.29**	-131.51**
Salvage Sale Dummy (0,1)	0.75	1.77	0.11	7.94	6.48**	6.26**	-25.66**	175.88*
Stewardship Dummy (0,1)	-1.38	-2.75	-3.05*	-14.97	5.75*	5.44*	8.96	90.06
Time Trend	-0.31	-5.32	-0.01	2.011	-0.42	0.46	1.73	14.38
R2	0.38	0.04	0.37	0.06	0.36	0.17	0.09	0.03
R2-Adjusted	0.37	0.01	0.34	0.03	0.35	0.16	0.08	0.02
Mean of Dependent Variable	29.85	20.16	3.70	23.55	16.83	22.62	34.92	168.38
No. of Observations	554	627	245	487	973	2,117	2,627	1,883
No. of Observations Used	544	480	210	364	727	1,731	2,273	1,628

Source: USDA Forest Service Econometric Study.

\* Significant at the 5% level.

\*\* Significant at the 1% level.

Note: The significance levels are based on the Heteroscedasticity consistent standard errors. The USDA/FS results didn't include Region 10 (Alaska). Region 7 was eliminated in 1965 as part of re-designation of FS regions.

### Impact of SBA's Proposal to Appraise Any Small Business Set Aside Timber Sale to the Nearest Small Business Mill

To assess the impact of changing the appraisal point for the small business set-aside sales to the nearest small business mill, SBA analyzed the appraisal data provided by FS and timber sales data from TSS. Specifically, SBA received eight different tables from FS with appraisal data for Regions 1 through 9 (the data did not include Region 10). Each table included the appraisal point for each sale during fiscal years 2009-2015, by region. SBA merged the eight tables into one, and then cleaned and reformatted several variables. For example, the numerical value for distance to the nearest small mill was cleaned by taking out the character values (e.g. "mi." = miles). Likewise, the number and size of bidders were separated or reformatted as characters (type of the bidder such as small non-manufacturer, small manufacturer, etc.) or number of bidders, as appropriate. For example, if the original variable included 1-SN and 4-SM in one cell, then one variable was created for SN (small non-manufacturer) and another variable for SM (small manufacturer) and 1 was assigned to the former and 4 to the latter. The cleaned data were then filtered to identify all small business set-aside sales (i.e., set aside = Yes) that were appraised to a large mill (i.e., appraisal point = LM (LM = Large mill/manufacturer)), because these are the cases that will be impacted by the SBA's proposal. When compared with the TSS data, the FS appraisal data for fiscal year 2015 were found to be incomplete and was not included in the analysis.

As shown in Table 9 (below), the results from the FS appraisal data indicate that the SBA’s proposal to appraise the small business set-aside sales to the nearest small business mill would impact 5.3% of all sales and 6.2% of all small business sales. On an annual basis, the proposed change would benefit approximately 65-70 small businesses that participate in set-aside timber sales.

FS Region*	Total Number of Sales		Set-Asides Appraised to a Large Mill		
	All Sales**	Sales to Small Businesses	Count of Sales	Share of All Sales	Average Historical Participation/Number of Bidders Affected
1	159	129	12	7.5%	4.8
2	256	238	2	0.8%	0.3
3	42	42	0	0.0%	0
4	112	110	1	0.9%	1
5	195	146	32	16.4%	10.7
6	397	292	41	10.3%	18
8	858	772	41	4.8%	16
9	897	787	27	3.0%	17.2
Total	2,916	2,516	156	5.3%	68.0

\* Region 10 (Alaska) was not included in the FS appraisal data and Region 7 was eliminated in 1965 as part of re-designation of FS regions.

\*\* Includes sales for which size/type of the purchaser was missing but excludes sales for which region was not specified. Salvage timber sales were also excluded.

Source: FS appraisal data and SBA calculations.

Using the FS appraisal data, SBA was also able to estimate distance to the nearest small mill from the nearest large mill for each set aside sale that was appraised to a large mill and some key summary statistics for the same. These results are provided in Table 10, below. The median distance to the nearest small mill is about 62 miles and the mean distance about 66 miles. This analysis does not reflect the more appropriate analysis of

the distance from the sale to the nearest mill and small mill, for which data were not readily available.

<b>Table 10. Summary Statistics of Distance Between the Nearest Small Mills and the Current Large Mill Appraisal Points (in miles), FY 2009-2014</b>								
Region*	First Quartile (25%)	Median (50%)	Third Quartile (75%)	Mean	Standard Deviation	Minimum	Maximum	No. of Observations
1	37.0	42.0	65.0	52.8	29.1	22	108	12
2	132.0	132.0	132.0	132.0	0.0	132	132	2
3	(no Region 3 set-aside sales appraised to a large mill)							
4	6.0	6.0	6.0	6.0	0.0	6	6	1
5	89.0	101.0	136.0	108.6	54.0	1	195	32
6	30.0	65.0	90.0	66.5	44.6	0	163	41
8	30.0	97.0	97.0	63.9	34.8	10	97	41
9	10.0	15.0	25.0	22.2	18.3	5	70	27
Overall	23.5	62.2	97.0	66.2	48.2	0	195	156

\* Region 10 was not included in the FS appraisal data and Region 7 was eliminated in 1965 as part of re-designation of FS regions.

Source: FS appraisal data and SBA calculations.

With respect to the impacts of the proposed change on bid/stumpage price and on FS receipts from timber sales, FS econometric/stumpage equations included two variables related to hauling costs, namely distance to the nearest mill (for Regions 1 through 8) and total hauling costs (for Region 9) (see Table 8). While FS, based on its conceptual analysis of relationships among reserve price, bid price, bid premium and hauling costs, expected these variables to have a negative impact on bid premium, the results were rather mixed. Specifically, the estimated coefficients associated with distance to the nearest mill were negative for Regions 1, 4, 5, 6, and 8, and positive for Regions 2 and 3. The estimated coefficient for hauling costs was also positive for Region 9. Among the regions with a negative coefficient for distance to the nearest mill, the coefficient was significant only for Regions 5 and 6.

Amid these results, FS concluded that, conceptually, both FS receipts and money flowing into the trust funds from timber receipts will decrease under the SBA's proposal to appraise the set-aside timber sales to the nearest small mill, but without information on the number of set-aside sales that would be affected and additional hauling costs incurred in each affected sale, it is not possible to quantify the financial impacts. However, SBA was able to fill these gaps in the FS analysis by estimating cost (receipts loss) to FS from the SBA's proposal to change the appraisal point for set-aside sales to the nearest mill by combining the results from the FS appraisal data (i.e., number of set-aside sales affected and distance from the current appraisal point to the nearest small business mill for those sales), FS econometric results (i.e., the estimated coefficients associated with distance to the nearest mill and hauling costs), and TSS timber sales data. This analysis is done only for Regions 5 and 6 because these are the only two regions where the estimated coefficient for the distance to the nearest mill was significant and had the FS expected negative sign.

Accordingly, SBA estimates cost or receipt loss to FS due to the proposed change to use the nearest small business mill to appraise the set aside sales as follows:

Receipt loss = regression coefficient for distance to the nearest mill (Table 8) x median distance to the nearest small mill (in miles) (Table 10) x number of set-asides appraised to a large mill (Table 9) x average volume of set-aside sale (CCF) from TSS.

The average volume of set-aside sales was based on the FY 2009-2014 data from TSS. Accordingly, receipt loss for Region 6 is estimated to be about \$1.07 million ( $-0.057 \times 65 \times 41 \times 6,979 = -1,066,439$ ), which is about 0.9 percent of total FS timber

receipts for Region 6, estimated at about \$124 million (i.e., total volume times average bid price) for FY 2009-2014. Similarly, for Region 5, receipt loss is estimated at about \$0.91 million ( $-0.045 \times 101 \times 32 \times 6,261 = -908,634$ ), which is about 2.4 percent of total FS timber receipts for Region 5, estimated at about 38 million (i.e., total volume times average bid price) for FY 2009-2014. These receipts losses to the FS are benefits to small businesses in the form of lowered hauling costs to transport their set-aside timber purchases to a small mill. With lower hauling costs to small businesses, they are likely to bid more for the set-aside timber sales, which would offset some of the receipts losses to the FS due to the proposed change.

FS expressed concerns that by limiting the receipt impact assessment to only Regions 5 and 6, SBA's regulatory impact analysis of the proposed change is incomplete. FS argued that the two regions examined are not representative of all regions and the results cannot be generalized across the country. As shown in Table 8 (above), the FS econometric results do not support a similar analysis for all affected FS regions. For example, the estimated coefficients for distance to the nearest mill (Regions 2 and 3) and hauling costs (Region 9) were positive, although not significant. Additionally, there were no set-aside sales in Region 3 that were appraised to a large mill. Thus, the proposed change would have no impact in Region 3. Using a positive coefficient for Region 2 would yield a counter-intuitive result of positive receipt impact to FS from the SBA's proposal to appraise the hauling costs for set-aside sales to the nearest small mill, which would make no sense. The same is also true for Region 9. Additionally, SBA has no data to convert the mileage to hauling costs to estimate the impact in Region 9. Similarly, the relationships between bid premiums and the mileage to the nearest mill

were not significant for Regions 1, 4 and 8, although they had expected negative signs. The impact estimates based on these results would not mean much on a statistical sense. Given the lack of alternative data to assess the FS receipt impacts from the SBA's proposal for regions for which estimated relationships between bid premium and the distance or hauling costs and were either not significant or had opposite signs, SBA's regulatory impact analysis is limited to Regions 5 and 6 only.

While SBA agrees with FS that every region is different, but because Regions 5 and 6 together account for nearly half (47%) of all set-aside sales and two-thirds (67%) of timber volume appraised to a large mill in all FS regions (excluding unaffected Region 3), the results based on these two regions provide fairly robust indications on the magnitude of impacts the proposed change might have across other regions, as well as the overall FS market.

With respect to benefits to small businesses from the proposed change, as shown in Table 9 (above), based on the historical data, about 65-70 firms (68 to be exact) would benefit from the SBA's proposal to appraise all set-aside timber sales to the nearest small mill. This figure is likely to be higher because some previous set-aside sales that received no bids from small businesses and were subsequently re-offered as full and open sales may become economically attractive for small businesses to bid when they are appraised to the nearest small mill. The SBA's proposal would benefit small businesses by lowering costs in hauling the set-aside timber purchases to the nearest mill

SBA believes that these positive impacts to small businesses justify some losses to FS receipts (0.9% in Region 6 and 2.4% in Region 5) under the proposed change. SBA notes that it did not evaluate the impacts reductions in receipts may have on the

Forest Service's forest management and restoration goals or on payments made to counties for schools, roads, community wildfire protection planning or other purposes as authorized.

The main purpose of the SBA's proposal to appraise the set-aside sale to the nearest small business mill is to more accurately reflect the hauling cost to eligible small business bidders. Based on the historical data, up to 65-70 small business bidders will benefit from this proposed change. As discussed above, SBA expects more small businesses to participate in the timber set-aside program under the proposed change as some small firms that do not bid for set-aside sales appraised to a large business mill currently may decide to participate. SBA believes that the number of set-aside sales that receive no bid from small businesses and become full and open sales will decrease, thereby increasing the number of sales to small businesses. These all will help small businesses keep their business economically viable and to support or create jobs in their communities. Small business employees receive and spend wages within the communities and taxes they pay to local and state governments. These effects, although difficult to quantify, will further offset the impacts of decreases in flows of money to trust funds due to declines in FS timber receipts.

Overall, the proposed change to appraise the small business set-aside timber sales to the nearest small mill is consistent with SBA's statutory mandate to assist small businesses.

Impacts of A Potential Policy Change under Consideration to Include the Stewardship Sawtimber Volume in the Calculation of the Small Business "Fair Proportion" to Establish Small Business Set-Aside Sales Under the Timber Program

A possible regulatory action to include the stewardship sawtimber volume in the calculation of small business fair market share could provide transparency to the process of determining whether or not small businesses are receiving the statutorily mandated fair proportion of timber sale contracts offered by FS. It could provide a market share that would more accurately reflect the small business participation in the government owned timber market and provide the public with more accurate information on functioning of the market. However, at this time, based on the currently available data, SBA's analysis indicates this policy option could have disparate impacts to small timber businesses both within and across regions. Based on the data and cross-tabulations provided by the FS, stewardship sales account for approximately one-third of total timber sold by the FS. As shown in Table 4 (earlier), the FS analysis suggests that, compared to timber program volumes, small businesses acquired a larger percentage of stewardship timber volume in Regions 2, 4, 8 and 9, where stewardship volumes are quite minimal relative to total timber volumes sold. However, small businesses received a lower percentage of stewardship timber sales in Regions 1, 5, and 6 where stewardship sales are generally fairly large relative to total sales. As discussed above, when all regions are combined, the small business share was substantially lower at about 62% under stewardship contracting, as compared to nearly 72% under the timber program.

In addition, in considering the possibility of including the stewardship sawtimber volume in the calculation of small business fair proportion used for determining small business set-aside sales within the timber program market, SBA also re-computed the latest five-year small business market share used to trigger a small business set aside sale by including the stewardship sawtimber volume. (Every five years base small business

market shares are re-computed by including the timber sales data for the previous five years and remain valid until the next re-computation.) The re-computation results are shown in Table 11. As can be seen from the table, the inclusion of the stewardship sawtimber in calculation would result in an increase to the recomputed small market share in eight (12) market areas, a decrease in eleven (14) market areas, and no change in the remaining 113 market areas. The increase in the small business share would range from 1% to 39% and decrease from -1% to -22%. If the recent trend continues, it is possible that with the inclusion of the stewardship sawtimber volume the future small business market shares could be lower or higher in those or more market areas.

Region 10 (Alaska) has an agreement with SBA that small businesses will have a market share of at least 50%. The current market share was determined, via the 5-year re-computation process in agreement with SBA, to be 50% of the planned sale volume for the Region. Over the previous five-year period 100% of both timber and stewardship sales went to small businesses in Region 10. As shown in Table 11, with the inclusion of the stewardship timber volume, an 80% market share would be achievable in Region 10. The Region would have to consult with interested parties, provide notice, and revise the existing agreement with SBA to allow for inclusion of 80% of the Region's planned sale volume in the market (see FSH 2409.18, 91.21.). All re-computed shares reflect the limitations on share movement for the five-year period, except Regions 8 & 9 which do not have limitations on share movement. All shares are limited in movement to no lower than one-half the original base share. Eighty percent is the maximum small business share utilized on any market area, meaning that at least 20% of timber sales have to go to large businesses.

**Table 11. Five-Year Small Business Market Share Comparisons 2010 - 2015, Impacted Market Areas With and Without Stewardship Timber**

Region	Market Area	Current Five Year Share	Recomputed Share (most recent years)	Recomputed Share Stewardship Included	Change in Market Share if Stewardship Included		
					No Change	Increase	Decrease
1	Beaverhead-Deerlodge	49%	41%	41%	0%		
	Bitterroot	80%	80%	80%	0%		
	Clearwater	74%	80%	67%			-13%
	Custer	62%	62%	56%			-6%
	Flathead	60%	64%	63%			-1%
	Gallatin	44%	34%	34%	0%		
	Helena	56%	50%	50%	0%		
	Kootenai	55%	60%	60%	0%		
	Lewis and Clark	56%	50%	50%	0%		
	Lolo	56%	62%	62%	0%		
	Nez Perce	40%	31%	30%			-1%
	Coeur D Alene	14%	13%	13%	0%		
	Kaniksu	13%	14%	12%			-2%
	St. Joe	51%	46%	46%	0%		
2	Arapaho Roosevelt	80%	80%	80%	0%		
	Bighorn	72%	65%	65%	0%		
	Black Hills	80%	80%	80%	0%		
	GM UNC GUNN	80%	80%	80%	0%		
	Medicine Bow	80%	80%	80%	0%		
	Pike San Isabel	80%	80%	80%	0%		
	Rio Grande	80%	80%	80%	0%		
	Routt	80%	80%	80%	0%		
	San Juan	80%	72%	80%		8%	
	Shoshone*	29%	31%	31%	0%		
	White River	80%	80%	80%	0%		
3	Apache	80%	80%	80%	0%		
	Carson	80%	80%	80%	0%		
	Cibola	73%	80%	80%	0%		
	Coconino	80%	80%	80%	0%		
	Coronado**	71%	71%	71%	0%		
	Gila	55%	61%	61%	0%		
	Kaibab North	56%	62%	62%	0%		
	Kaibab South	80%	80%	80%	0%		
	Lincoln	80%	80%	80%	0%		
	Prescott	80%	80%	80%	0%		
Santa Fe	56%	62%	62%	0%			

**Table 11. Contd.**

Region	Market Area	Current Five Year Share	Recomputed Share (most recent years)	Recomputed Share Stewardship Included	Change in Market Share if Stewardship Included		
					No Change	Increase	Decrease
	Sitgreaves	80%	80%	80%	0%		
	Tonto	70%	77%	77%	0%		
4	Ashley	80%	80%	80%	0%		
	Boise	55%	61%	58%			-3%
	Bridger Teton	56%	62%	62%	0%		
	Caribou	80%	80%	80%	0%		
	Dixie	80%	80%	80%	0%		
	Fishlake	80%	80%	80%	0%		
	Manti La Sal	80%	80%	80%	0%		
	Payette	63%	69%	67%			-2%
	Salmon Challis	72%	79%	79%	0%		
	Sawtooth	63%	69%	69%	0%		
	Targhee**	57%	57%	57%	0%		
	Toiyabe**	58%	58%	58%	0%		
	Uinta	80%	80%	80%	0%		
	Wasatch Cache	80%	80%	80%	0%		
5	Eldorado	60%	54%	54%	0%		
	Inyo**	66%	66%	66%	0%		
	Klamath	49%	39%	42%		3%	
	Lassen	29%	39%	39%	0%		
	Mendocino	48%	38%	48%		10%	
	Modoc	80%	72%	72%	0%		
	Plumas	20%	18%	18%	0%		
	Sequoia	80%	80%	80%	0%		
	Shasta	30%	30%	31%		1%	
	Trinity	67%	74%	74%	0%		
	Sierra	80%	80%	80%	0%		
	Gasquet	80%	80%	80%	0%		
	Six Rivers Other	67%	60%	60%	0%		
	Stanislaus	20%	10%	10%	0%		
	Tahoe	22%	20%	20%	0%		
6	Colville	70%	77%	77%	0%		
	Deschutes	23%	33%	33%	0%		
	Fremont Klamath	34%	44%	24%			-20%
	Gifford Pinchot North	62%	60%	64%		4%	
	Gifford Pinchot South	72%	79%	79%	0%		

**Table 11. Contd.**

Region	Market Area	Current Five Year Share	Recomputed Share (most recent years)	Recomputed Share Stewardship Included	Change in Market Share if Stewardship Included		
					No Change	Increase	Decrease
	Malheur	80%	80%	80%	0%		
	Mt Hood	80%	72%	72%	0%		
	Ochoco Prineville	67%	69%	71%		2%	
	Okanogan	51%	46%	46%	0%		
	Puget Sound	57%	51%	51%	0%		
	Rogue River	34%	31%	31%	0%		
	Siskiyou East	55%	49%	49%	0%		
	Siskiyou West	80%	73%	73%	0%		
	Siuslaw	40%	50%	50%	0%		
	Umatilla North	47%	37%	37%	0%		
	Umatilla South	56%	62%	62%	0%		
	Umpqua North	63%	69%	69%	0%		
	Umpqua South	45%	40%	40%	0%		
	Wallowa Whitman	59%	53%	53%	0%		
	Wenatchee	45%	55%	55%	0%		
	Willamette Middle	72%	79%	79%	0%		
	Willamette North	71%	78%	78%	0%		
	Willamette South	80%	79%	79%	0%		
	Winema	40%	31%	31%	0%		
8	Alabama North	80%	80%	80%	0%		
	Alabama South	80%	80%	80%	0%		
	Andrew Pickens	77%	65%	43%			-22%
	Bienville	80%	80%	80%	0%		
	Chattahoochee	74%	63%	66%		3%	
	Croatan	80%	80%	80%	0%		
	Davy Crockett	80%	25%	64%		39%	
	Delta	80%	80%	80%	0%		
	Desoto	64%	68%	71%		3%	
	Enoree	59%	57%	55%			-2%
	Florida Forests	79%	80%	80%	0%		
	Francis Marion*	26%	39%	39%	0%		
	George Washington	80%	80%	80%	0%		
	Holly Springs	80%	80%	80%	0%		
	Homochitto	80%	80%	80%	0%		
	Jefferson*	80%	61%	61%	0%		
	Kisatchie	40%	41%	38%			-3%
	Kentucky North	80%	80%	80%	0%		
	Kentucky South	80%	80%	80%	0%		

**Table 11. Contd.**

Region	Market Area	Current Five Year Share	Recomputed Share (most recent years)	Recomputed Share Stewardship Included	Change in Market Share if Stewardship Included		
					No Change	Increase	Decrease
	Land Between the Lakes	80%	80%	80%	0%		
	Long Cane	80%	80%	80%	0%		
	Nantahala	80%	80%	80%	0%		
	Oconee	80%	80%	80%	0%		
	Ouachita	62%	47%	43%			-4%
	Ozark	65%	69%	70%		1%	
	Pisgah	80%	80%	80%	0%		
	Sam Houston	80%	80%	80%	0%		
	Saint Francis	80%	80%	80%	0%		
	Tennessee North	80%	80%	80%	0%		
	Tennessee South	71%	80%	80%	0%		
	Tombigbee	80%	80%	80%	0%		
	Texas East Side	49%	27%	47%		20%	
	Uwharrie	80%	80%	80%	0%		
9	Alleghany	80%	80%	80%	0%		
	Chequamegon	80%	80%	80%	0%		
	Chippewa	80%	80%	80%	0%		
	Green Mountain	80%	80%	80%	0%		
	Hiawatha	80%	80%	80%	0%		
	Huron Manistee	80%	80%	80%	0%		
	Mark Twain	80%	80%	80%	0%		
	Monongahela	66%	76%	55%			-21%
	Nicolet	80%	80%	80%	0%		
	Ottawa	80%	80%	80%	0%		
	Shawnee	37%	80%	80%	0%		
	Superior	75%	69%	68%			-1%
	Wayne Hoosier	77%	80%	80%	0%		
	White Mountain	80%	80%	80%	0%		
10	Tongass	50%	50%	80%		30%	

\* Indicates market areas with no stewardship sales and \*\* denotes market areas with no SBA's timber program or stewardship sales.

Region 7 was eliminated in 1965 as part of re-designation of FS regions.

The table doesn't include the Chugach Market Area in Region 10 (Alaska)

The FS econometric results showed a significant positive relationship between stewardship sales and bid premiums in Regions 5 and 6, a significant negative relationship in Region 3, and those relationships were not significant in other regions. Based on these results, FS argued that in Regions 5 and 6 where bid premiums are significantly higher for stewardship sales than for timber program sales, stewardship contracting will have a positive impact on retained receipts, land management activities and receipts to the treasury. Similarly, in Region 3 where the results showed a significant negative relationship between stewardship sales and bid premiums, FS believed that stewardship contracting will have a negative impact on retained receipts, land management activities and receipts to the treasury. Since SBA is not currently considering to subject stewardship contracts to set-aside sales for small business nor to reduce stewardship contracting as a result of any change in the small business market share by including the stewardship sawtimber in the calculation, SBA expects very little or no impact on FS receipts because of this possible change under consideration. The current analysis indicates including the stewardship sawtimber volume could either benefit small businesses by triggering additional set-aside sales within the timber program when the overall small business market share falls below the certain level or could lead to fewer small business set-aside sales than under the current policy of calculating fair proportion based only on the timber program volume. Due to the lack of data, it is difficult to estimate the number of additional or reduced set-aside sales that would be triggered or disappear, or the number of small businesses that would benefit or be harmed from this possible policy change.

In its response to the ANPRM questions and impacts of the SBA's proposed changes, FS noted that although historical shares of timber awarded to small businesses under the timber sales program and total sales including stewardship sales are similar, this could change if stewardship sales increase significantly as a proportion of total timber sales. Independent of small business impacts, the inclusion of the stewardship sawtimber, which accounts for one-third of the total timber sales, could provide a more accurate representation of what proportion of FS timber is acquired by small businesses. This could not only provide more transparency of the FS timber program, but also more accurate assessment of if small businesses are getting a statutorily mandated fair proportion of Government timber sales.

3. What are the alternatives to this proposed rule?

Besides the proposal to change the appraisal of the hauling costs on set-aside timber sales, SBA is also requesting comment on various alternatives to this proposal, as discussed in this proposed rule. SBA invites comments on these alternatives as well as suggestions for other alternatives to this proposed change.

Regarding appraising haul costs for set-aside sales, SBA considered imposing haul cost adjustments for non-manufacturers. Because both manufacturers and non-manufacturers must agree to manufacture at least 70% of the sawtimber purchased through a set-aside sale at a small mill, SBA does not believe additional adjustments for non-manufacturers are warranted.

SBA also considered waiving the 30/70 rule if no small mills are located within a reasonable distance of a set-aside sale. Such an alternative would allow small businesses to participate in the set-aside timber sales without requiring them to look for and use

small mills. Although this approach would not increase hauling costs (and hence decrease receipts to the FS), since small businesses would not have to seek out and use small mills located further away, it could lead to inconsistent results. What might not be considered a “reasonable distance” for one sale might be so considered for another.

Instead of appraising 100% of the hauling to the nearest small business mill, SBA also considered appraising, when the nearest mill is a large business, 70% of the haul costs to the nearest small mill and 30% of the haul costs to the nearest large mill. The FS also suggested this as an alternative to SBA’s proposal to avoid overstating the haul costs when the purchaser sells 30% of the sawtimber to the nearest largest mill. This alternative may accurately reflect the true costs to haul the timber if every winning bidder always sells 30% of sawtimber to the nearest large mill and 70% to the nearest small mill. However, SBA’s reviews of all set-aside sales as well as those appraised to the nearest large mill do not support this. Majority of small manufacturers that purchase timber under the FS set-aside sales either use 100% of the purchase themselves or sell 100% to another small mill. More importantly, even a large proportion of non-manufacturer purchasers (i.e., loggers) also sell 100% of set-aside to the nearest mill. For example, of 156 set-aside sales that were appraised to the nearest large mill during FY 2009-2014, 95 were acquired by small non-manufacturers of which 38 (or 40%) sold 100% of timber to a small mill. Unless the FS is certain that the purchaser is going to sell 30% of sawtimber to the nearest large mill and 70% to the nearest small mill, the application of the 30/70 appraisal alternative will always lead to understatement of the hauling costs to the eligible bidders. This approach will also be complicated to implement.

SBA also considered appraising to the nearest small mill only when that mill is located no more than 60 miles from the large mill which would be used as the appraisal point under the current rules. Data suggests that 62 miles is the median distance between a small mill and the large mill NFS used to appraise the historical set-aside sales (see Table 10, above). Historical sales data suggests that appraising to the nearest small mill only when that mill is located no more than 60 miles from the current appraisal point would affect 2.7% of set-aside sales and benefit approximately 35 small businesses annually (see Table 12). The estimated revenue losses to NFS will be reduced to about \$0.53 million (or 0.4% of total) in Region 6 and \$0.15 million (0.4% of total) in Region 5 if the appraisal is done to the nearest mill that is within 60 miles.

**Table 12: Count of Sales and Average Number of Bidders Participating in Set-Aside Sales Where a Small Mill (SM) is Located Within Sixty Miles of the Large Mill Appraisal Point (AP), FY 2009–2015**

FS Region*	Total Count of Sales Included	Set-Asides Appraised to a Large Mill		
		Count of Sales Where a SM is <60 miles from AP	Share of Total Sales	Average Historical Participation/Number of Bidders Affected
1	159	8	5.0%	2.3
2	256	0	0.0%	0
3	42	0	0.0%	0
4	112	1	0.9%	0.7
5	195	6	3.1%	1.8
6	397	18	4.5%	7.2
8	858	20	2.3%	7.7
9	897	24	2.7%	15.3
<b>Total</b>	<b>2,916</b>	<b>77</b>	<b>2.6%</b>	<b>35.0</b>

\* Region 7 was eliminated in 1965 as part of re-designation of FS regions and Region 10 was not included in the FS appraisal data.

Source: FS appraisal data and SBA calculations.

SBA did not propose this approach in the proposed regulatory text as the required step of determining whether a small mill is located within 60 miles of the nearest large

mill could unnecessarily complicate the process. This approach would impact fewer set-aside sales, but it would also benefit fewer small businesses. Overall, the proposed change to appraise the hauling costs for the set-aside timber sales to the nearest small mill is consistent with SBA's statutory mandate to assist small businesses.

With respect to a potential policy amendment to include the stewardship sawtimber volume in the small business market share calculation, SBA considered including stewardship sawtimber only in those market areas where small businesses are particularly likely to be underrepresented if the stewardship sawtimber volume is excluded. Specifically, SBA is considering including the stewardship sawtimber volume only in market areas where small businesses purchase a large percentage of stewardship timber volume or where the stewardship timber volume represents a high percentage of Overall timber volume. However, the purpose of such a possible regulatory amendment is to more transparently and accurately reflect small business participation for purposes of calculating small business market share for set-aside triggers. SBA believes that it is necessary for fairness across the country to have a consistent policy that is not subject to interpretation. While SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. The historical data shows that the inclusion of IRTC and IRSC stewardship sawtimber volume could have a substantial negative or positive impact in the computation of small business market share in many of the 139 active market areas. SBA invites comments and data on how such a policy change would impact small businesses, the stumpage prices, number of set-aside sales, and FS receipts. SBA also welcomes comments on any

potential impacts of reduced receipts to county payment programs or other areas affecting small business economic development.

### Executive Order 13563

SBA has conducted significant outreach to the affected public for many years. Between 1996 and 2002, SBA visited a number of small mills throughout the country to discuss the impact of stewardship contracting on the timber program and their ongoing operations. During this time period, SBA was also contacted by a small business timber association regarding the impact of stewardship contracting on small mills located in Western states. During the 2000 and 2005 re-computations, SBA and FS discussed the impacts of the stewardship program on small business market shares and the possibility of including the stewardship sawtimber volume in the five-year re-computation of the small business fair proportion. In 2006, FS issued a proposed policy directive to include stewardship contracting sawtimber volume in the calculation of small business market shares. At the 2010 re-computation, SBA and FS again discussed the topic of including stewardship sawtimber volume in the calculation. SBA continued to meet with small mills regarding the impact of stewardship contracting between 2005 and 2012. In 2010, SBA held a “town hall meeting” with small mills to discuss the impacts of stewardship contracting. In 2012, small business timber groups submitted complaints to SBA’s Ombudsman and Office of Advocacy regarding FS’ failure to finalize the proposed policy directive to include stewardship sawtimber volume in the small business market share calculations. In 2013, SBA began discussions with FS regarding the current proposed rulemaking which resulted in the 2014 publication of the ANPRM. SBA received 842 comments in response to the ANPRM. During the comment review

process, SBA again met with industry stakeholders regarding ongoing impacts of stewardship contracting and the current method of appraising small business set-aside sales.

#### Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in sections 3(a) and 3(b)(2) of that Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

#### Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

#### Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this proposed rule would not impose new reporting requirements. Stewardship sales will be tracked and recorded using the same method currently set forth in the Forest Service Manual (FSM 2400) – Commercial Timber Sales Manual (FSM 2430) and the Forest Service Handbook (FSH) – Timber Sale Preparation Handbook (FSH 2409.18). FS does not currently make any collections related to tracking this data and no additional information will be collected. The difference would be that the

stewardship sawtimber volume would be included in the calculation. The appraisal point calculation performed by the FS will also be conducted using the same methodology with the exception of the mill location used in set-aside sales.

Regulatory Flexibility Act, 5 U.S.C. 601-612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. In accordance with this requirement, SBA has prepared this Initial Regulatory Flexibility Analysis addressing the impact of this proposed rule and alternatives, including a possible policy change under consideration.

1. What is the need for and objective of this proposed rule?

The proposal to appraise set-aside haul costs to the nearest small mill is necessary to accurately reflect the costs to eligible bidders.

2. What is the legal basis for this proposed rule?

Section 2(a) of the Small Business Act (15 U.S.C. 631(a)) provides that it is the declared policy of the Congress that the Government should aid, counsel, assist, and protect the interests of small business concerns in order to ensure that a fair proportion of the total sales of Government property be made to such enterprises. Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) further provides that small business concerns shall receive any contract for the sale of Government property where it is in the interest of ensuring that a fair proportion of the total sales of Government property be made to small business concerns.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates there are approximately 362 small business firms that may benefit from this rule. SBA estimates these firms will benefit to the extent small business timber sale set-aside bid prices are calculated using the actual hauling costs the bidders will incur. Approximately 5.3% of sales would be impacted, benefiting 65-70 small businesses. No large business would be impacted as they are not eligible to participate in small business set-aside timber sales.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act, and other compliance requirements?

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements. Stewardship sales will be tracked and recorded using the same method currently set forth in the Forest Service Manual (FSM 2400) – Commercial Timber Sales Manual (FSM 2430) and the Forest Service Handbook (FSH) – Timber Sale Preparation Handbook (FSH 2409.18). FS does not currently make any collections related to tracking this data and no additional information will be collected. The appraisal point calculation performed by the FS will be conducted using the same methodology with the exception of the mill location used in set-aside sales.

5. What relevant federal rules may duplicate, overlap, or conflict with this rule?

We are not aware of any rules that duplicate, overlap or conflict with this rule. The FS Timber Sale Preparation Handbook would conflict with the proposed rule, if adopted as proposed. Concomitant with the SBA's rule, the FS would revise its directives, including FSH 2409.18.

6. What significant alternatives did SBA consider that accomplish the stated objectives and minimize significant economic impact on small entities?

Regarding appraising haul costs, SBA considered imposing haul cost adjustments for non-manufacturers. Because both manufacturers and non-manufacturers must agree to manufacture at least 70% of the sawtimber purchased through a set-aside sale at a small mill, SBA does not believe additional adjustments for non-manufacturers are warranted. SBA also considered waiving the 30/70 rule if no small mills are located within a reasonable distance of the sale. Such an alternative would allow small businesses to participate in set-aside timber sales without requiring them to look for and use small mills. Although this approach would not increase hauling costs (and hence not increase the cost to the Government), since small businesses would not have to seek out and use small mills located further away, it could lead to inconsistent results. What might not be considered a “reasonable distance” for one sale might be so considered for another sale. Moreover, without specific data as to what hauling distance leads to a sales price that is not fair and reasonable to the Government, this approach could be challenged as being arbitrary.

In addition, with respect to the 30/70 rule, instead of appraising 100% of the hauling to the nearest small mill, SBA also considered appraising, when the nearest mill is a large business, 70% of the haul costs to small mills and 30% of the haul costs to large mills. Although this approach may accurately reflect the true costs to haul the timber, SBA felt that it could unnecessarily complicate the process.

SBA also considered appraising to the nearest small mill only when that mill is located no more than 60 miles from the large mill which would be used as the appraisal point under the current rules. The median distance between a small mill and the large mill FS used to appraise historical set-aside sales is about 62 miles (see Table 10).

Historical sales data suggests that appraising to the nearest small mill only when that mill is located no more than 60 miles from the current appraisal point would affect 2.7% of set-aside sales and benefit approximately 35 small businesses annually (see Table 10). SBA did not adopt this approach in the proposed regulatory text as the required step of determining whether a small mill is located within 60 miles of the nearest large mill could unnecessarily complicate the process. This approach would impact fewer set-aside sales, but it would also benefit fewer small businesses. Overall, the proposed change is consistent with SBA's statutory mandate to assist small businesses.

As an alternative to a potential policy change, although not included in this proposed rule, to include the stewardship sawtimber volume in the small business market share calculation, SBA also is also considering to include the stewardship sawtimber volume in that calculation only in those market areas where small business participation is particularly likely to be underrepresented if stewardship sawtimber volume is excluded. Specifically, SBA is considering whether to include the stewardship sawtimber volume only in market areas where small businesses purchase a large percentage of stewardship contracting timber volume or where stewardship contracting timber volume represents a high percentage of overall timber volume. However, the purpose of such a regulatory amendment is to more accurately reflect small business participation rates for purposes of calculating the set-aside trigger point.

#### **List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

**PART 121 – SMALL BUSINESS SIZE REGULATIONS**

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. Amend § 121.506 by redesignating paragraphs (a) through (e), as paragraphs (b) through (f) respectively, adding new paragraph (a), and adding paragraphs (g), and (h).

The additions read as follows:

**§ 121.506 What definitions are important for sales or leases of Government-owned timber?**

(a) Computation of market share is the small business market share, expressed as a percentage for a small business timber sale market area based on the purchase by small business in the timber sale program market over the preceding 5-year period. The computation is done every five years by the U.S. Forest Service in collaboration with the SBA.

\* \* \* \* \*

(g) Small business market share is the calculated share of sawtimber that small businesses are expected to purchase within a market area, expressed as a whole percent.

(h) Small business timber sale market areas are physical locations throughout the United States including National Forests used in the administration of the Timber Sale Set-Aside program.

3. Amend § 121.507 by adding paragraph (d) to read as follows:

**§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?**

\* \* \* \* \*

(d) In setting minimum bids for small business timber sale set-asides, the appraisal point to calculate the cost of transportation and hauling shall be the nearest small business manufacturing facility where the raw materials may be legally processed as determined by the U.S. Forest Service.

Dated: September 14, 2016.

Maria Contreras-Sweet,  
Administrator.

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