Comments by the United Brotherhood of Carpenters

In Response to the Invitation by the Small Business Administration, issued March 16, 2015, to Submit Comments on Rule Changes Pertaining to Small Business Timber Set-Aside Program

The United Brotherhood of Carpenters and Joiners of America represents workers employed in the forest products industry and, consequently, has an interest in how timber sales from public lands are allocated to small companies under the SBA timber set-aside program.

The UBC fully supports a comprehensive review of the SBA timber set-aside program—a review that looks at the purpose of the SBA program, how it impacts prices, sales volumes, cost structures of small timber companies and how it impacts prices, sales volumes, cost structures for other sales going to medium and large companies.

There has been a radical transformational in the timber industry in the last two decades. This change should not be minimized. The size of companies, the number of companies, the precipitous drop in the volume of timber sales from public lands, technological changes that have made it possible to produce large quantities of end-use product with a much smaller workforce have all converged to make the issue of timber sale allocation much larger than merely a "recalculation or enumerating" of the volume of timber produced through stewardship contracting. It is our view that this inquiry should ask the question, 1) should the SBA timber set-aside program be ended and 2) if the program still has merit and still meets the objectives set in its 1970 origins, what changes are necessary to insure that it promotes rural employment and rural incomes within this radical new set of circumstances?

This inquiry should go well beyond questions of adjusting allocation formulas and how to compute log-haul costs. The program should be analyzed by each national forest and, further, by smaller working circles. Due to the transformation that has occurred in the industry the impacts and results will likely vary widely from working circle to working circle. In some working circles the program may now be so small and fragmented that the number of "small" operators has diminished to the point where the program no longer adheres to the competitive parameters originally envisioned (between small operators). To have credibility the study should conduct research into the number of "small" firms bidding in the same market area on a head to head basis. It seems to us that the solution to this problem is not to increase the allowable log-hauling costs but, rather, decide to end or drastically reduce the volume of timber sold under the SBA program in that area. Too few bidders mean there are more opportunities for collusion between bidders. This certainly raises questions about the USFS not getting full market appraised prices for its timber offerings in SBA sales. The program was not set up to subsidize individual companies based on size. That's why it is urgent that this inquiry includes this very central aspect of the program.

Review Definition of "Small" at 500 Employees

Another key and central question is the matter of the qualifying size of a "small" SBA bidder. We know of cases in which companies have intentionally manipulated their employment numbers to stay under the 500 threshold employment number. There is a need to review these criteria. In this age of climate change, thinning contracts being let to mitigate catastrophic fire and to enhance forest health, there are many other criteria that should be wrapped into future small business set-asides. For example, should a share of the cost a stewardship contractor puts into landscape enhancement or watershed protection be imputed into the cost of logs coming off that landscape? If the answer is yes, then bidders (SBA or not) might be purchasing logs at a higher than market appraisal rate.

Judging the size of a timber operator by the number of employees is antiquated. It is much more objective and a true indication of "small" if firm size is based on mill capacity at the head rig or capacity measured as output of end-use product. This would take into account the capital equipment in place and the efficiency with which that equipment converts logs to lumber. In the last two decades the industry has witnessed a great leap forward in the output per man hour—the fundamental measure of productivity. Given the new technology it is now conceivable that a mill employing 499 workers could produce an output of nearly double of the volume it produced before introducing technology and automated systems. The effect of the new automated technology is to, 1) get more volume of end-use product from each log and 2) reduce the number of workers to produce the same quantity or more. Consider the firm that employs 600 workers with an output virtually identical to that of a so-called "small" firm employing 300 workers—but with advanced technology. In this scenario it makes no sense designate the 300-employee company as "small" while considering the 600-employee company not eligible for SBA timber set-aside sales. Thus, the UBC would propose that the study include a measure of individual mill capacity compared to employment size at that mill as defined by SBA rules.

Review Differentials in Labor Cost/Conditions Between "Small", Medium and Large Firms

This study and review of timber sales under the SBA program provides an opportunity to answer the question as to whether small firms receiving an allocation of federal timber sales are meeting accepted area industry standards when it comes to compensation, benefits and working conditions. The UBC holds the view that so-called small firms should not be eligible to bid on set-aside timber sales if they do not meet these area standards. The government compounds the error of allocation to a specific class of buyer if that buyer is taking unfair advantage of its competitors (medium and large) by shaving wage costs, benefit costs or not complying fully with Workers Compensation, Unemployment Compensation or Occupational Safety and Health laws. Large firms typically provide health care coverage while small firms oftentimes do not. Further, employers that have committed unfair labor practices to deny employees their right to join a union and to enter into collective bargaining should be barred from SBA allocated sales. The UBC, therefore, proposes that the U.S. Department of Labor be asked, as an integral part of this review and inquiry, to undertake a study of compensation differentials, benefit differentials, differentials in government required payments sorted by firm size. In addition, this study should include an enumeration of OSHA inspections/violations/penalties and a listing going back at least five years on unfair labor practice violations committed by timber firms that purchase USFS sales, also sorted by firm size.

Review the 70-30 Rule

Currently, a purchaser of an SBA set-aside sale can sell no more that 30% of the volume to a large mill. Given the radical restructuring and specialization that has occurred in the forest manufacturing this rule deserves close scrutiny. This feature is an important element of the SBA program because it promotes local manufacturing and it allows small firms to sell logs not suited to their own mill. The program endeavors to promote local manufacturing while not becoming a mere pass through to large companies. The UBC suggests that it may be worth serious consideration to change this "ratio" rule to something more advisory---such as, "It is the intent of the program that at least 70% of the volume sold be processed by the small company making the purchase but if mill capacity does not allow a small mill to manufacture the entire volume purchased, the small firm can apply to SBA for a permit to sell the portion that mill cannot process to a large company."

Stewardship Contracting

The UBC has long been a proponent of stewardship contracting. In 2013 the USFS issued 195 stewardship contracts. These are longer term contracts, for up to ten years, that we believe will improve the health of our public forests, provide sustainable timber outputs and provide employment and income opportunities to help rural communities. It is our belief that the USFS will, in the future expand the use of stewardship contracting once the results are in form those contracts already granted. With this in mind we will endeavor to address directly several of the questions raised in the SBA request for comments.

> 1.&2.How should the FS include the saw timber volume on stewardship contracts awarded to small business in the computation of small business market share? It is too soon to allocate or to compute any of the stewardship saw timber volume to SBA sales. The stewardship contracting system is new and needs monitoring and review to insure it is meeting its all of its mandates---not just the effort to produce timber volume for sale. The UBC understands that this entry into stewardship contracting is a goods-for-services arrangement.

Stewardship contracts even consider the possibility that the cost of services required by the USFS may exceed the value of the timber that may come off those lands. It must be remembered that timber outputs is a secondary or ancillary to the goal of enhancing and rehabilitation of fire-prone forests, water quality, soil protection, landscape diversity and wildlife habitat. Further, there is no need to rush to include stewardship timber sales in the SBA allocation because strong evidence exists that small timber companies already take a share of USFS sales that is greater than their relative capacity when compared to mill capacity of larger mills. Northwest Management's assessment of headrig capacity released in March 2015, shows that in all USFS Regions small mills are getting a disproportionately large share of USFS timber when comparing it to their relative position with respect to capacity. This analysis, for example showed that small firms in USFS Region 6 accounted for 31% of mill capacity measured at the head rig. Yet these so-called small firms account for 58% of USFS timber sales and 46.4% of the volume produced by stewardship volume. In actual fact, SBA-designated are receiving a share of the timber sales volume that exceeds what one would reasonably consider to be a "fair and proportionate" share. This inquiry should actually be looking at ways to reduce the proportionate share of USFS sales being allocated to SBA timber set-asides---not increasing them.

3.b. If inclusion of saw timber volume from stewardship contracts leads to lower stumpage prices, what is the impact of land management activities (paid for by stumpage prices) and retained receipts? If the outcome of including saw timber from stewardship contracts leads to lower stumpage prices in undermines the primary goals around ecosystem enhancement of stewardship contracting. The UBC would like to give the concept of stewardship contracting a fair chance of succeeding and a goods-for-service arrangement must be based on sound market-based prices not subject to the undulation of the market. As stated above, the stewardship contracting model needs more time, study and review before wholesale modifications are made that could potentially undermine it.

4. If there is a strong will to insure that a portion of stewardship contracting timber is awarded to small business there should first be qualifying factors. One of those factors should be verification of the small firm's mill capacity. If the timber acquired is higher than the relative share of mill capacity versus all mills in the working circle, the small mill should be prohibited from acquiring timber from stewardship contracting. If they have acquired less than their relative capacity, they should be restricted from buying any more than an amount that would put them at their proportionate share.

<u>Appraisals and Log Hauling Costs</u>

The UBC holds the view that the current system of appraisals and log haul costs has merit. By tying the appraisal to the nearest mill, small or large, the local manufacturing feature of the program is maintained. Even if SBA considers a change to this rule, the rule should not be merely exchanging the appraisal point from the near-by large mill for the nearest small mill but, rather, the nearest small mill but not further than 25 miles (or some other agreeable number) from the large mill. This way, the local manufacturing aspect is kept intact and you avoid SBA-eligible firms bidding from mills great distances from the sale.

Submitted on May 12, 2015

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