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SMALL BUSINESS TIMBER SET-ASIDE PROGRAM

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HEARING

BEFORE THE

SUBCOMMITTEE ON SMALL BUSINESS

OF THE

COMMITTEE ON

BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

TO REVIEW THE OPERATION OF THE SMALL BUSINESS
TIMBER SET-ASIDE PROGRAM, WHICH IS RUN JOINTLY
BY THE SMALL BUSINESS ADMINISTRATION AND THE
DEPARTMENT OF AGRICULTURE

AUGUST 22, 1974

Printed for the use of the Committee on Banking, Housing
and Urban Affairs



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SMALL BUSINESS TIMBER SET-ASIDE PROGRAM

THURSDAY, AUGUST 22, 1974

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met at 9 a.m., in room 5302, Dirksen Senate Office Building, Senator Alan Cranston, chairman of the subcommittee, presiding.

Present: Senators Cranston and Packwood.

Senator CRANSTON. The hearing will please come to order. This is a hearing by the Subcommittee on Small Business of the Committee on Banking, Housing and Urban Affairs. In the interest of time, so that all of our witnesses may be accommodated today, I will make my opening statement very brief, and attempt to highlight just a few of the issues that the subcommittee wishes to cover during this hearing today.

One of the declared national policies of the Federal Government is to assure that small business concerns receive a fair proportion of the total sales of Government property. To effectuate this policy, on December 29, 1971, the Small Business Administration and the Department of Agriculture entered into an interagency agreement. Pursuant to that agreement, SBA and the Forest Service jointly determined the fair share of the timber supply in each customary market area of the national forest system.

This fair-share determination was made on the basis of historic buying and manufacturing patterns existing during the 5 years preceding the agreement. The formula agreed to by these two agencies mandates that set-aside sales of forest timber be earmarked to be bid upon by small timber companies whenever it appears that small business has failed by 10 percent or more to acquire its fair share of timber sold in any national forest market area. The set-aside consists of a volume of timber equal to the small business fair share for that 6-month period plus the accumulated deficiency, so that by the end of a 6-month period, small business would have procured its total share of national forest timber sold in that market area.

Let me briefly list the problem areas that have come to the subcommittee's attention:

Adequacy of size determination by the Small Business Administration.

Failure of the Forest Service to designate set-asides.

Definition of a small lumber company.

Foreign control of small lumber companies.

Control of small companies that bid on set-asides by large companies.

Lack of followup on resale of set-asides, and recalculation of the base share.

I hope to highlight some of the economics problems being experienced by small lumber companies who depend on this program for their survival, and hope that we can move forward toward resolution of some of these issues, if not all of them.

Now, we have quite a few witnesses here today. I would appreciate where there are groups, if one person would present the summary of your testimony and limit that summary to 5 minutes; otherwise we will not be able to complete our agenda.

This will allow more time for questioning, which is really the most important part of a proceeding like this. Be assured that your full statement will appear in the record.

Before proceeding with the first witness, I want to give an opportunity to Senator Bob Packwood, who has worked very closely with me—we have worked as sort of a team—on this effort, to deal with this problem. I am delighted that you are here, Bob, and hope that together we can get some action.

Senator PACKWOOD. Thank you, Alan. I view this morning's hearing as the first of many opportunities that we will have to explore the position of small business in the wood products industry.

More important than that, however, is the need to understand the appropriate role to be played by the Federal Government in this respect.

Let me say first that I do not think the basic principle involved here is at all vague. The law clearly states that the Federal Government will "... aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise."

In partial fulfillment of that basic policy, the law goes on to state that the Federal Government will insure that a "fair proportion" of sales of Government property—and that includes sales of Federal timber—will be made to small business.

Simply stated, that is the law, and that law is what we will be discussing this morning and in the weeks ahead.

Let me turn now specifically to the small business timber set-aside program. As I see it, we have three questions before this subcommittee, and the Congress, and these are:

One, what are the objectives we seek to achieve by the timber set-aside program?

Two, how successful have we been in accomplishing those objectives with the current program set-up?

Three, what must we do in order to make the program more effective in terms of accomplishing our objectives?

Let me add at this point, Mr. Chairman, that as far as I am concerned, the question to be answered is not whether there will be a small business timber set-aside program. There will be.

The question is how do we make the program work so that it accomplishes the objectives we seek in a fair, objective, and open manner.

Quite frankly, Mr. Chairman, the longer I serve in Government, the more I see bigness operate, or perhaps I should say try to operate—be it big government or big business—the more convinced I become that one of the highest priorities this Congress can set for America is the maintenance of an economic, political, and legal environment in which the little guy—whether he is small business or local government—can prosper.

We are finally seeing the wisdom of this in our efforts at revenue sharing. Just a few days ago, the Congress finally approved a community development revenue sharing package that this committee has been working on for 4 years.

I believe we are finally coming to recognize that government closest to the people more often than not is much better able to understand and respond to the needs of the people.

We have to see more of this in business. Let's keep things small enough that wherever and whenever possible the worker and consumer can go to the businessman in his community and get answers to his questions and satisfaction of his complaints.

This kind of local concern is best responded to when decisions are made locally. Sometimes businesses legitimately acquire other businesses in order to expand their operation, expand production of goods needed by our people. Sometimes, too, we run into a problem that must be attended to at the Federal level.

But I have seen too many instances where Uncle Sam grabs onto a program, and with it the citizens' tax money, when the problem could best be solved at the local level.

And so, too, there are many instances of businesses whose headquarters are hundreds or thousands of miles away from the plant and community, who gobble up small firms simply to rid themselves of competition.

At this stage, I am not pointing any fingers at anyone in the wood products industry. When the largest lumber producer supplies only 7 to 8 percent of the lumber market, it is absurd to suggest that these fit into the General Motors or IBM class of big.

I see the set-aside program, in a sense, as an insurance policy. Insurance that we never have any General Motors' or United States Steel's controlling the marketplace and the production of wood products. That would not be good for this Nation or the economy, and I will not stand idly by and watch that happen.

It is in this context that I view the role of this committee. We will decide at some future date the appropriate role of Congress in the timber set-aside program.

Is there a need for legislation specifically directed at this program? Or is it sufficient that we express our views as guidance to the officials of the Federal Government—the Small Business Administration, the Forest Service, and the Bureau of Land Management—and entrust to them the impartial enforcement and administration of the law as it stands?

This hearing is the first step in arriving at that decision. There will be many more such hearings in our investigation into the workings of the small business timber set-aside program.

I look forward to participating in this endeavor and I intend to participate actively.

Senator CRANSTON. Thank you very much, Bob. Coming before us first will be Senator Frank Church, who shares the great interest that Bob Packwood and I have in these matters, and has been very helpful. Frank?

STATEMENT OF FRANK CHURCH, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Thank you, Mr. Chairman, and Senator Packwood.

When I first came to the Senate, Mr. Chairman, 18 years ago, I was keenly interested in the passage of this set-aside program. I was one of the original sponsors of the program. And so I am delighted that you are holding these hearings today.

In Idaho, lumber is extremely important, and, though we have several fine large companies that operate there, it obviously serves the public interest to make certain that the public forests do not become tree farms exclusively for the giants of the industry.

We have many small mills in Idaho. By small mill I mean mills that employ 20 men or 40 men or a 100 men. And although this program has been helpful in keeping these small mills alive, in southwestern Idaho, we have an example of the situation in which the set-aside program has never been triggered by the existing mechanism.

And today, a spokesman for the smaller mills is here—Mr. Max Stoddard. He speaks for any number of small mills, and their size is such that they had to get together and send one spokesman.

But I am happy he is here. He is a fine representative of the small mills of Idaho, and I want to introduce him to the committee. Max, will you stand, please?

I hope that when it suits your convenience, Mr. Chairman, you may hear him this morning.

Senator CRANSTON. He is very welcome.

[Mr. Stoddard's testimony begins at p. 193.]

Senator CHURCH. I have prepared a statement, and in the interest of time, I would ask the indulgence of the committee that I might just submit the statement for the record.

I would emphasize just one point in my own presentation this morning, and that is this: I hope the committee will look carefully at the triggering mechanism in this existing law, and see if it may be modified in such a way that the program is brought into operation in all regions of the national forests where there are small mills.

Mr. Stoddard will describe to you this morning a situation in a large section of our State where the present formula simply doesn't work to protect the small operators.

I think there ought to be, within the wit of this committee, and the wisdom, a way to make the formula work for all small mills in the West.

Thank you very much, Mr. Chairman.

Senator CRANSTON. Thank you very much, Senator. We are delighted to have you with us, and your full statement will appear in the record.

[The prepared statement of Senator Church follows:]

STATEMENT OF FRANK CHURCH, U.S. SENATOR FROM THE STATE OF IDAHO

Mr. Chairman, I want to commend you for conducting this hearing on the Small Business Timber Sales Set-Aside Program. I know that your subcommittee shares my interest and concern in assuring that this program is properly administered and that the intent of Congress, as expressed in the Small Business Act, is achieved.

I was a primary sponsor in creating the timber set-aside program. The agreement reached between the Small Business Administration and the Department of Agriculture in establishing this program was an attempt to meet the objectives and spirit of the Small Business Act. The policy of the SBA, which I wholeheartedly endorse, states:

"It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect insofar as is possible the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of total purchases and contracts or subcontracts for property and services for the Government be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the over-all economy of the Nation."

I do not believe the wisdom of that policy is questioned. In a society presently consumed with the idea of "giantism" and large corporate institutions, the small sawmill operator, like the small, independent businessman or the family farmer, is hard put to compete with the multi-national corporations. The trees of our national forests ought to be sold not only to the giant lumber companies but also the small mills. To this end the timber set-aside program was established.

Competition for purchase of public timber has been exacerbated by a tight timber supply situation in southwest Idaho.

Realistically, if we are to solve future timber supply needs, the Forest Service must receive adequate funding to establish and maintain active reforestation and intensive management programs on our national forests. I am pleased to note that the Senate recently adopted an appropriations bill providing funds for the Forest Service above the Administration's request. These badly needed funds will be used for reforestation and other programs designed to increase the productivity of our public forest lands.

To solve the immediate timber supply crunch, I have called upon the Forest Service to complete environmental impact statements on inventoried roadless areas that have not been included on the Forest Service Chief's list of Wilderness Study Areas. Completion of these statements will allow more areas to be included in the allowable cut.

More available timber will bring much needed relief.

The timber set-aside program, if properly functioning in southern Idaho, could be another avenue of assistance to sustain our smaller sawmills through this tight supply period.

The essential parts of the agreement made between the Small Business Administration and the Department of Agriculture in structuring the set-aside program provide for (1) a determination of the fair proportion of timber sales that should go to small business concerns based on a five-year history of purchasing, (2) an analysis procedure to determine if small business has been able to purchase that fair proportion, and (3) the establishment of a set-aside program under which timber sales are designated for preferential award to small

business concerns whenever the analysis shows that small business firms have not been able to purchase their fair share.

As presently operated on the national forests, companies classified as a small business (500 employees or less) bid with large companies for timber sales. If those companies classified as small businesses do not purchase their full percentage share of timber sales during any six month period, then during the following six month period the amount of timber which the small businesses were unable to purchase is set aside. Of that amount set-aside, only small businesses are allowed to make a bid.

In south Idaho, the set-aside program has not been triggered. Sawmill operators, including a representative from Idaho, Max Stoddard of Sawtooth Lumber Company, are here today to explain the reasons why the program is not working in southern Idaho. I will leave the details to those industry representatives who work with the set-aside program. However, it is clear to me that if we are to attain the equity that is sought from the program, a re-evaluation of the size standard of a small business may be in order.

At the beginning of this year, I brought the size standard problem which has been encountered in southern Idaho to the attention of the SBA and the Forest Service. The Administrator of the SBA, Thomas Kleppe, agreed with me that a review of the size standard was needed. In his letter to me, a copy of which I will make a part of this hearing record, Mr. Kleppe stated that the "time has come for a new look at the size standard." However, the SBA added that "regardless of the outcome of the study, the (SBA) did not intend to make a change in the standard until the current agreement with the Forest Service is renegotiated."

I questioned the wisdom of that philosophy and still do. The problem for small sawmills in Idaho exists today and I fail to see why the SBA must wait until the current agreement is renegotiated if the size standard problem is fully recognized. I am hopeful that your hearings will give the timber industry in Idaho an answer to that question.

U.S. GOVERNMENT,
SMALL BUSINESS ADMINISTRATION,
Washington, D.C., February 28, 1974.

Senator FRANK CHURCH,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR CHURCH: We are pleased to reply to your January 21, 1974, inquiry on behalf of Messrs. Dallas H. Harris of Producers Lumber Company and Max Stoddard of Sawtooth Lumber Company concerning the Forest Service-Small Business Administration Timber Sales Set-Aside Program.

You will recall that both of your constituents have asked that we redefine a small business for the purpose of bidding on small business set-aside sales as one whose number of employees does not exceed 250 employees (500 employees is the current standard).

The size standard for the purpose of sales of Government timber was raised from 250 employees to 500 employees in 1964. At that time, it was argued that concerns with between 250 and 500 employees were having difficulty in surviving, that this was particularly true in the case of the plywood industry, and that the increase would permit such concerns to integrate and thus become more competitive. In 1966 we restudied this issue and determined that, between 1964 and 1966, concerns with fewer than 250 employees received a major portion (60 percent of board feet sold) of Government-owned timber sales. We also found that concerns in the 250 and 500 employee category obtained only 1 percent of the total quantity and less than 1 percent of the total value of the sales; and that the effect of the increase was to reduce the quantity of timber available to concerns with fewer than 250 employees by only 2 percent. Under all of the circumstances, we determined to maintain the 500 employee standard, and there it remains today.

Notwithstanding the above, we agree that the time has come for a new look at the size standard in question. However, we are strongly of the opinion that, even if it is determined that the structure of the industry has significantly

changed, no change should be made in the size standard during the term of the timber set-aside agreement which we entered into with the Forest Service on December 29, 1971. Our reason is that the formula under which small business set-asides are triggered is based on the percentage share of timber sold to small business (concerns with no more than 500 employees) as compared with that sold to small business (under the same definition) during the base period, to wit: 1966 to 1970. To change the definition at this time would unreasonably disrupt the process.

Currently, the Forest Service-SBA small business timber agreement establishes guidelines to assure small business its fair share of timber offered for sale by the Forest Service. Provisions of the agreement specifically aid small business by:

1. Defining a fair share of Federal timber for small business, and
2. Defining the procedure to make set-asides if small business is unable to acquire its fair share.

If all small business is unable to acquire a fair share of Government timber in an area, these provisions assure small business the opportunity to compete among themselves for timber offerings in an area without having to compete therefor with large businesses.

One of the major problems in raw material supply in the working area of your constituents is the extreme competition for available timber. There is competition between small concerns as well as between small and large concerns. Competitive bidding has occurred on sales offered by both oral and sealed bids. As competition has increased, concerns are bidding on timber that is farther away from their plants and the prices bid are above, and on many offerings, substantially above the appraised price determined by the Forest Service.

We are concerned that some small businesses are unable to acquire raw material to assure their operation and growth, and yet other small businesses are expanding and competing strongly with other than small business.

The Forest Service indicates that between now and June 30, 1975, approximately 67 million board feet of timber will be offered within the working radius of your constituents. It is hoped that Producers Lumber Company and Sawtooth Lumber Company can acquire additional stumpage in future timber offerings.

We appreciate your concern with the timber supply for small business and, if we can be of further assistance, please advise us.

Sincerely,

THOMAS S. KLEPPE,
Administrator.

U.S. GOVERNMENT,
SMALL BUSINESS ADMINISTRATION,
Washington, D.C., March 25, 1974.

Senator FRANK CHURCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CHURCH: We are pleased to reply to your letter of March 18, 1974, concerning the definition of small business for the purpose of bidding on Government sales of timber.

In our February 28, 1974, letter we did not mean to imply that we were not going to start a reevaluation of the property of the currently effective 500 employee size standard for the above purposes. We are going to proceed at once with such a study.

On the other hand, we did say that, regardless of the outcome of the study, we do not intend to make a change in the standard until the current agreement with the Forest Service is renegotiated. You apparently question the wisdom of that decision.

We will be pleased to consider your views as to the proper time for effectuating a change providing, of course, that our study indicates the desirability of either lowering or raising the current standard. However, we feel that it would be premature to go into the timeliness issue at this time. Our study undoubtedly will take several months, as we contemplate a thorough survey of

the industry's views. Moreover, in view of the controversy as to whether the standard should remain as is, be lowered to 250 employees or, indeed, be raised to 750 employees or 1,000 employees as has also been suggested, we may find it desirable to conduct one or more public hearings.

Please be assured that we will diligently proceed with this matter and will keep you advised.

Sincerely,

THOMAS S. KLEPPE,
Administrator.

Senator CRANSTON. Senator Floyd K. Haskell, of Colorado, is also here. He likewise has been very much interested and involved in this subject. We are very delighted to have you with us, Senator.

STATEMENT OF FLOYD K. HASKELL, U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. Thank you very much, Mr. Chairman, and Senator Packwood. I have a statement which I would like to summarize, but submit for the record, if that is satisfactory.

Senator CRANSTON. Yes, sir.

Senator HASKELL. Basically, my statement describes an unfortunate situation in Colorado where the Forest Service and the Small Business Administration have been unable to agree on a set-aside program for the Routt National Forest.

The two agencies entered into an agreement in 1971, which is set forth in my statement, and the agreement was entered into in the spirit of cooperation and good will. But, unfortunately, to date the two agencies have been unable to come to any final agreement whatsoever to implement a specific set-aside program for the Routt National Forest.

The problem came to my attention early this spring, and I wrote to the Chief of the Forest Service on April 12. At that time, the Supervisor of the Routt had suggested the 34-percent program, and the SBA objected, wanting a 52-percent program, but had suggested a compromise of 42 percent.

I asked the Chief of the Forest Service to look into this matter and to consider the quality of timber set-aside, as well as the quantity.

I also made specific reference to a forthcoming sale, which is in No. 3 Whiskey Park, which would have gone a long way in making up the deficit owed to small business because a final program has not been agreed upon.

The Chief responded to me on April 24, and outlined a set-aside program which would equal the 42-percent compromise, and it seemed to me as if the two agencies were getting together.

But I understand now—and this is third hand—that the Forest Service has changed its mind and backed off the 42-percent program and is back to insisting upon 34 percent.

Now, Mr. Chairman, it is my suggestion that if we can't get the agencies to work together in a spirit of cooperation, and if the desires and the rights of the small business people are frustrated, it may be that Congress must take a separate approach and step in to resolve the squabbling.

Mr. Chairman, another consideration which is important to consider is the problem of the quality of lumber that goes to the small businessmen. The small business operators in my State have complained about the quality of the timber set aside for them.

I am not a forester, and obviously I am not in a position to say whether their complaints are justified or not, but this is a very serious matter, and I know that this is the kind of thing that this committee will look into and see that justice is done, both to the large and the small businessmen.

And for that reason, Mr. Chairman and Senator Packwood, I congratulate you very much indeed for calling the oversight hearing, because I am sure that this type of situation may exist elsewhere in the country.

And I thank you very much for giving me the opportunity to appear.

[Prepared statement of Senator Haskell follows:]

STATEMENT OF FLOYD K. HASKELL, U.S. SENATOR FROM THE STATE OF
COLORADO

Mr. Chairman and Members of the Subcommittee: I am embarrassed to be testifying before you today. I am embarrassed because I have the dubious distinction of representing a state which contains the *only* National Forest which has not reached an agreement to implement the small business set aside program for the sale of national forest timber and related forest products.

That forest is the Routt National Forest which is located in the northern portion of the State of Colorado. That is the source of my embarrassment. I do not understand why reasonable men representing the Forest Service, the Small Business Administration and small and large businesses purchasing timber on the Routt have not been able to arrive at an agreement which takes into account the interests of both small and large business and the principles of sound forest management.

The 1971 agreement between the Small Business Administration and the Forest Service designed to carry out the provisions of the Small Business Act provided the following:

1. In order to fulfill their mutual responsibilities under the Small Business Act, the Department of Agriculture and the Small Business Administration have entered into this agreement for administration of a small business program in the sale of National Forest timber . . .

2. USDA, in developing sale programs suitable for bidding by small business firms, will consult SBA and *give full consideration to* information, advice, and *requests* of SBA. (emphasis added)

3. SBA, in the operation of its various programs designed to assist small business, will consult USDA on matters involving the forest products industry and will give full consideration to information, advice, and requests of USDA.

4. USDA and SBA agree that administration of the National Forest sale program for small business will include the use of the authority of section 15 of the Small Business Act to provide for award of sales set aside for small business when consistent with the purposes established under the Act respecting the sale of National Forest timber. The program for set asides will be based on the following:

- a. A base average share for small business shall be established for each National Forest, or significant marketing area, by comparing the small business purchases to total sales therefrom for a 5-year period. The base shall be recomputed on a 5-year history, ordinarily at 5 year intervals, provided that the recomputed base shall not be less than half the initial base share. Recomputation will be based on size of the firm at the time of each timber purchase during the computation period.

- b. Small business will be assured its base average share is available by the

application of set asides. Standards for the initiating of set asides will be established to achieve this purpose. Set aside sales not bid on by small businesses, however, and sold without readvertisement, will be counted toward meeting the base share for small business.

The agreement, Mr. Chairman, was signed in a spirit of cooperation and good will between the two agencies. There is no indication, however, that the Forest Service and the Small Business Administration have ever been able to meet that spirit of cooperation to arrive at a satisfactory interpretation of this agreement on the Routt. Indeed, the SBA and the Forest Service have been involved in a lengthy disagreement since February, 1973. This has resulted in difficulties for both small and large business, but it has been especially difficult for small businesses which operate with limited resources and which cannot afford the uncertainties growing out of the confusion on the Routt.

Following that 1971 agreement three forests—the Routt, the Medicine Bow, and the Arapaho—were combined in one unit for administrative purposes. By 1973 it was obvious that this approach was unsatisfactory and the unit was abandoned. The other two forests were able to work out an agreement to implement the set aside program. The percentage of the set aside was based on historic sales on the two forests. The participants could not come to an agreement for the Routt. The Forest Service wanted to set a 34% figure. The SBA wanted a 52% figure. The two figures were arrived at by using different means of calculation.

The problem came to my attention early this spring. Understanding the concern of the small lumber firms in my state. I wrote to the Chief of the Forest Service on April 12, 1974. At that time the Supervisor of the Routt had suggested the 34% program. SBA had objected, wanting a 52% program but had suggested a compromise of 42%. I asked the Chief to check into this matter and to consider also the quality of timber being set aside, as well as the quantity. I also made specific reference to a forthcoming sale—#3 Whiskey Park—which would have gone a long way toward making up the deficit the small business program had accrued as a result of the years of arguing.

His response to me, dated April 24, 1974, outlined a set aside program which would equal the 42% compromise. It seemed as if progress were being made and that the two federal agencies were about to arrive at an agreement which would provide something definite for both small and large business on the Routt. I was told that I would be kept advised as to future developments.

I now understand third-hand that the Forest Service has changed its mind and has reverted to the 34% figure. On April 4, 1974 the Regional Forester, William J. Lucas, sent a letter to the SBA in response to their request for a 42% set aside. Let me reemphasize that date—April 4—three weeks before the Chief replied to me. Mr. Lucas' letter stated in part:

"Considering the fact that the forest supervisor intends to set aside for small business about 50% of his sale program for 1974 and 1975, and a new base average share will be calculated for the 1976-1980 period, I have decided that it is not desirable nor necessary to change the 34% base average share for the current period."

The base average share is especially important to small business. They consider the program their lifeblood. If the 34% share is utilized during the entire 1971-1976 period a 17% share could conceivably be set for the next 5 year period. If the 52 or 42% share is utilized instead the share for the subsequent period must necessarily be higher. Bland assurances are not enough for these small businessmen, Mr. Chairman. They need an agreement.

I am not a forester and cannot judge the quality of the timber being offered as a part of the program. But I have had numerous complaints that even those sales which are being set aside are undesirable from the small business point of view.

In an effort to follow up on such complaints, I asked the General Accounting Office to conduct an investigation of this entire matter.

Unfortunately the GAO report is not complete at this time. My staff has been given an interim briefing by the GAO investigators and I expect the investigation to proceed. But I can say that the GAO personnel are perplexed as to why this thing has dragged on for over a year and a half.

The Forest Service Chief's office recently sent out a team of two investigators

to the Routt. Their report to the Chief goes right back to the 34% figure. Administrative appeals are being made and the prospects for a settlement in the near future are growing dim.

Mr. Chairman, many of my constituents are dependent upon the economic well being of both the large and small firms purchasing timber on the Routt National Forest. I am not here to hamper the efforts of either, but to urge that the parties *must* reach an agreement which will enable both to function and to remain in business.

These are difficult times for any businessman, but current conditions are especially harsh on the small businessman who operates on limited resources and who cannot afford even small losses or the luxury of small mistakes in judgment. I believe the health of the large and small firms on the Routt is of such importance that we should demand that the Forest Service and the SBA arrive at a workable agreement immediately.

Others testifying before this Subcommittee will be able to provide technical information which is important to such an agreement. However, I do not believe it is a lack of information which has prevented the development of a satisfactory small business set aside program on the Routt. It is a matter of intent and will on the part of two federal agencies involved.

In conclusion, Mr. Chairman, I believe that the program has at least one serious deficiency which must be looked at by this Committee. If disagreements arise they can drag on for years before being resolved. I do not believe that the Congress intended to have the Forest Service and the Small Business Administration haggling for years over the final terms of the program for each forest. If these two agencies cannot work within the terms of their mutual agreement then I believe it may well be necessary for Congress to step in on such matters. The economic well being of an important industry in my state demands nothing less.

Senator CRANSTON. Thank you very much. We are delighted to have you.

Next is the Honorable Wayne Aspinall, who has had vast experience in this field. We are delighted that he is with us.

Mr. ASPINALL. Mr. Chairman, shall I bring up the people with me at this time?

Senator CRANSTON. I'd prefer not, if we could wait for that panel.

Senator HASKELL. I'd like to take this occasion to congratulate Wayne for appearing here today. He was dean of the delegation from Colorado for many years, and it's a great pleasure and privilege for me to see you here.

Mr. ASPINALL. Thank you very much.

STATEMENT OF WAYNE N. ASPINALL, FORMER MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE STATE OF COLORADO

Mr. ASPINALL. Thank you very much, Mr. Chairman and Senator Packwood. I ask unanimous consent, Mr. Chairman, that I be permitted to file my written statement in the record.

Senator CRANSTON. Certainly.

Mr. ASPINALL. And I will testify orally.

Mr. Chairman, my name is Wayne N. Aspinall. I live at Palisade, Colo. I am a consultant at the present time on natural resource values.

I am interested, of course, in small businesses, as well as large businesses. I supported the Small Business Act when it was before Congress.

I represent here today a small business operator in northwestern Colorado—Black Mountain Spruce, Inc. I take pleasure in appearing before this group—with those of you with whom I worked for many years here in the Congress.

The timber sales set-aside program has been very successful in most places in the national forest and Bureau of Land Management areas. However, in the Routt National Forest in northwestern Colorado, it has not been successful, and when there was an administration area including the Medicine Bow National Forest, the Arapaho National Forest, and the Routt National Forest, it was found that it was not successful at that time in such a large unit with some physical difficulties present.

The set-aside program was 51 percent to the small operators on the above-named three forests, in the beginning, to that area. Then they decided to divide the area and they cut back the set-aside percentage to the small operators on the Routt National Forest.

And as Senator Haskell has said—and I would incorporate in my remarks what the junior Senator from Colorado has said, because he stated the facts exactly as they are. They cut back to a proposed 34 percent, with an understanding that it might go to 42 percent, and the Forest Service has taken upon itself to unilaterally decide on the percentage of 32 percent for the set-aside program for the small operators. This is not fair. It's not in accordance with the historic harvesting of timber at all by big business and small business in the Routt National Forest.

The Forest Service has taken upon themselves the position that they can unilaterally, on the principle of need for the small timber operators, make the determination. This is not in accordance with the agreement that was signed, and it is not in accordance with the spirit and intent of the Small Business Act itself.

They should get together, and it is my hope for my clients that pretty soon there is something definitive arrived at.

Now, the big business operators have 2 years supply of timber already ahead of them for their operations. The small operators in the Routt National Forest have 8 months supply. Anyone who knows anything about the timber industry knows there should be at least 2 to 3 years supply ahead of any operator.

And I would plead that, by some means or other, the small operators in that forest, in the Routt National Forest, be permitted to have a 2- to 3-year supply so that they can have an efficient operation.

The Black Mountain Spruce, Inc. should have at least 16 million board feet of timber ahead of them. For a good operation, they should have 3 years, which would be 24 million.

Mr. Chairman, and Senator Packwood, I think there is real need for continuing oversight, and I congratulate this committee in holding these hearings. I think it's necessary to bring the law up to date, and that we have regulations and amendatory law that will take care of the spirit and the intent of this law.

I do not know whether or not this committee has access to the brief of the *Duke City Lumber Co. et al.*, plaintiffs v. *Earl Butz*, Secretary, civil action 2152-72, in the U.S. District Court for the District of Columbia.

Senator CRANSTON. We have that.

Mr. ASPINALL. You have that? Well, then, I think the committee has perhaps access to a real argument, and with that in mind, I will be glad to answer any questions, Mr. Chairman, when I can bring up the group with whom I am working.

Senator CRANSTON. Why don't we wait until then. Thank you very much.

Mr. ASPINALL. Thank you very much.

[Prepared statement of Mr. Aspinall follows:]

STATEMENT OF WAYNE N. ASPINALL, FORMER CONGRESSMAN FROM THE STATE OF COLORADO

Mr. Chairman and members of the Sub-Committee on Small Business of the Committee on Banking, Housing and Urban Affairs of the United States Senate. I am Wayne N. Aspinall. My residence is 150 Aspinall Drive, Palisade, Colorado. I remember with pleasure my association with several members of this esteemed Sub-Committee during the years that I was a member of the House of Representatives of the Federal Congress. Presently I am engaged as a Consultant in the field of Natural Resources—land, water, timber, vegetation, mining—especially as such values have to do with our public lands. For this Hearing, I am representing Black Mountain Spruce, Inc. of Craig, Colorado. May I say further that I was interested in the welfare of this company and other small timber operators of my Congressional District while I was a member of the House of Representatives.

The declared policy of Congress as stated in the Small Business Act - - - (15 U.S.C. § 631) is as follows:

"The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as it is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contract or subcontracts for property and services for the Government "(-----)" be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the over-all economy of the Nation."

To achieve those ends, the Act further directs that small business concerns (15 U.S.C. § 644) as follows:

"To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency "(-----)" (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; "(-----)".

The Small Business Administration and the United States Department of Agriculture are charged with the responsibility of cooperating through the timber sale set-aside program to insure that an appropriate and equitable share of timber sales are made to small business concerns and in compliance with the objectives and the spirit of the Small Business Act.

It was my responsibility and pleasure to support the passage of the Small Business Act and I am glad to reaffirm that support at this time and to advise that in my opinion the needs for such law are even greater today than they were at the time of the passage of the legislation itself. I urge Congress and

the Administration to strengthen the provisions of the Small Business Administration legislation and especially as its provisions have to do with the "set-aside" program.

Let us all keep in mind the declared policy of Congress in the Small Business Act as we review problems that have developed in the administration of the S.B.A. and U.S.D.A. Agreement on timber sale set-asides. For the most part the program has worked well, but as with any regulations covering broad areas and widely varying conditions, problems of application and interpretation arise. Adminstrating agencies should then rely on the intent and spirit of the Act.

One of the exceptions to the success which has been had on most National Forests relative to the administration of the Small Business Administration set-aside program is what has occurred in the Routt National Forest of northwestern Colorado.

Almost from the very beginning of the set-aside programs the Routt National Forest set-aside program has been fraught with controversy. The Regional Forester and the Forest Supervisor do not even to date, after 3½ years into the program, agree on the base average share percentage for small business. The Regional Forester states 34% is correct and the Forest Supervisor states 42% is correct. The Small Business Administration does not agree with Forest Service administration of the Routt National Forest Set-Aside Program. Large deficits have been permitted to develop by the Forest Service without any administrative action to eliminate the deficits in accordance with the Forest Service regulations.

The Regional Forester and Forest Supervisor have administered the Set-Aside Program on the basis of what they feel are the small business "needs". The Forest Service policy of administration by "need", instead of by law and regulations, has permitted a large deficit and a severe imbalance of timber under contract to develop. Large business has two year's supply and small business eight month's supply. Historical purchase figures indicate that there should be a nearly equal balance between large and small timber operators under contract on the Routt National Forest.

I am advised that a timber operator on the National Forest should have from two to three years of supply awarded to him by contract for an economical timber operation. I am also advised that the recognized big business operator on the Routt National Forest presently has sixty million board feet of timber awarded to him by sale contract, which is a supply for such operator for two years. I am also advised that the small business operators, one of whom I represent here today, have eight million board feet awarded to them for their operations, which is less than a one year efficient operation for them.

For a good and efficient operation for a period of two years, the Black Mountain Spruce, Inc. should be awarded by contract an amount of at least sixteen million board feet. Of course, it would be a more efficient and successful operation if such operator could look forward to a three year contract supply of approximately twenty-four million board feet. When one considers that in the Routt National Forest the big business operator in this particular forest has at least a two year contract supply of operations ahead of him and the small business operators have less than a one year contract supply operation ahead of them it is easy for anyone to see the inequity and unfairness which is present in this particular forest area. This is not in keeping with the intent of the Small Business Administration Set-Aside Program and should not be allowed to continue.

It is clear to me that this situation requires prompt action on the part of the Chief of the Forest Service and the Secretary of Agriculture to see that the laws and regulations are followed in letter as well as spirit and intent.

Mr. Harold Keller of Black Mountain Spruce, Inc. will testify in more detail concerning the Routt National Forest problems of administration in this respect.

Senator CRANSTON. The next witness—I am delighted he is with us—is the Honorable Thomas S. Kleppe, Administrator of the Small Business Administration.

**STATEMENT OF THOMAS S. KLEPPE, ADMINISTRATOR,
SMALL BUSINESS ADMINISTRATION**

Mr. KLEPPE. Thank you, Mr. Chairman and Senator Packwood. These two gentlemen with me are our general counsel, Mr. H. Gregory Austin, and the gentleman on my left, Gene F. VanArsdale, our Chief of Prime Contracts and Property Sales.

And I wanted to advise you, Mr. Chairman and Senator Packwood, that Mr. VanArsdale will be with you all during the hearings to answer any technical questions that might deal with SBA.

With your permission, I'd like to proceed to read my relatively short statement. First of all, I want to congratulate you on conducting these hearings. I think you are dealing with a very important subject, something that we have felt very close to in the 3½ years that I have been at the agency. And I would just like to go forward with this statement.

The enabling legislation for the program is set forth in a portion of section 15 of the Small Business Act, which states:

To effectuate the purposes of this Act, small business concerns within the meaning of this Act, shall receive . . . any contract for the sale of Government property, as to which it is determined by the Administration and the contracting, procurement or disposal agency . . . (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns . . .

This legislation makes it possible for small firms to compete among themselves for a fair share of Government timber sales. The program has preserved and fostered the growth of the small business sector of the timber industry, and served to maintain economic competition within the timber industry.

The small business timber set aside program was initiated in 1959. The Small Business Administration negotiated the first timber set aside program with the Department of Agriculture and involving Forest Service timber.

The cooperation of the Department of Agriculture with SBA in the small business timber set-aside program has been significant in view of the large amount of timber that is managed and sold by the Forest Service. More timber is sold by the Forest Service than all other Federal agencies. In recent years, timber sold by the Forest Service has become more important to small businesses, due to the increasing demand for available timber and the acquisition of small concerns by large business.

In addition to the timber set-aside program with the Department of Agriculture, SBA also works with the Department of the Interior and the Department of Defense with such programs, and the set-aside objective is the same in all agencies.

The Forest Service of the Department of Agriculture and SBA have implemented the mandate of the Small Business Act—and I would add that I was delighted with your introductory remarks regarding the act, Senator Packwood, and also with the chairman's—by entering into an agreement and jointly supporting a program to

assure small business its fair proportion of the total sales of Government timber.

The first agreement was entered into in 1958, and that agreement provided that the Forest Service would make set-asides that are recommended by SBA, unless it was determined that such action would be inconsistent with Forest Service program requirements.

SBA agreed to consider forest management and other pertinent factors involved in such a program, before requesting a set-aside.

Under the 1958 agreement, each forest supervisor at the approximately 150 national forests was responsible for determining if set-asides were warranted on his forest and negotiating for them. Thus, set-asides varied from forest to forest. Negotiations were local.

At times, set-asides were initiated only after small business was in critical need of timber or was out of timber. The Forest Service and SBA agreed in 1969 to review the original program with a view toward establishing new procedures. The present agreement is the result of nearly 2 years' effort in this regard, and was finalized in 1971 as a modification of the 1958 agreement.

I would also add here, Mr. Chairman, that it seems at times that the agreement continues to come under threat. There is no change, no let down whatsoever, in the commitment, the dedication of SBA toward a cooperative spirit with the timber people, and with the Forest Service, to make sure that the conditions of the act are met and that small business is dealt with fairly and properly, because we cannot permit the demise of small business in this particular vital industry.

The essential elements of the set-aside program under the 1971 agreement are:

1. Define significant timber marketing areas—usually a national forest—normally recognized in sale of U.S. Forest Service timber.

2. Establish a small business share for each market area, as calculated from the recent historic purchases of U.S. Forest Service timber from the market area.

3. Analyze timber sales each 6 months. A deficit in small business purchases amounting to 10 percent of sale volume, with a cumulative deficit from past periods, will be corrected in the following sale period by set-asides of the small business share plus deficit volume from past periods.

4. Establish or withdraw set-asides apart from the formulas as may be necessary to fulfill the statutory obligations of the U.S. Forest Service and of SBA.

5. Insure that small business and large business will share equitably any increase or decrease in Government timber sales.

Under administration of the program—with few exceptions, the U.S. Forest Service and SBA have agreed upon the operations of the program. There have been problems, but we have resolved many of them and are working to solve the others.

We believe that the timber set-aside program under the 1971 agreement has been responsive to the need of small businesses. The system has defined when a set-aside is needed and how much volume should be set aside. The guidelines have been conducive to a timely and adequate response when properly used.

We have received a number of comments on the 500 employee size standard for sales of Government timber. Some have recommended that the standard be increased in number; some have recommended that it be lowered. We plan to review the size standard in fiscal year 1975.

I would also like to add, Mr. Chairman and Senator Packwood, that when you deal with size standard changes, much study, much input needs to be received, because they are usually very vital questions, since we determine the difference between large and small by virtue of the establishment of the size standards.

I understand that you may want to direct further questions to SBA on the program after others have submitted testimony. I have already introduced Mr. VanArsdale, who will be here to answer those questions.

Thank you very much, Mr. Chairman, and thank you, Senator Packwood.

I would only add this. We at SBA feel strongly about our position in this program. We have done and will continue to do everything that we possibly can to insure continuity for small business in the timber set-aside program.

There are many threats that can be brought to this particular program, and, again, I want to compliment you, Mr. Chairman, and this committee for calling these hearings and for becoming more aware of the possible threats and the interesting arguments that can be registered.

We have had very interesting dialog with both the small people and the large people. We think our cards are on the table. Our position is clear, and we are going to do the best we can to administer our side of it.

Thank you.

Senator PACKWOOD. Thank you. I hope you won't mind if I ask some questions now.

Tell me about the size standards and the process you go through and how you have come to the 500 employees level. Because I realize you have different size standards for different industries.

Mr. KLEPPE. Precisely correct. It varies by industry.

Senator PACKWOOD. Give me an idea of how you arrived at 500, historically.

Mr. KLEPPE. I guess I can't tell you how we arrived at it. It was there before I came. There's an employment standard of 500. Anybody that has less than 500 employees is small; anybody above is a large business.

I can't give you the background, but if I might add something as to what might be involved in changing it. Over a period of years, when you have a program like this, and you have a size standard, people in business tend to work towards those standards. Either they have an intention of becoming big and outgrowing the size standard, or they have a plan and a program of running their business within the framework of that employment standard. And that is what we have in this industry.

So I would just say that before any changes are made, SBA would go through all of the levels of conducting a hearing, of taking input from both sides, getting all the information and data that we can.

For example, how many companies in America doing how much business would be in the employee level between 500 and 750, let's say, or 500 and 1,000? How many would be in that area? Also, going downward the same way. We would want to know very specifically what is involved.

And, of course, we must go through the process of notification, publishing in the Federal Register, the hearing process, et cetera.

I don't want to hold out a hope to anybody that a change in the size standard is an imminent sort of thing that is going to develop very soon. Rather, I want to express that we have the 500 limit, that over a period of years it has stayed there, and firms have been working towards that level.

Senator PACKWOOD. Tell me how the Size Appeals Board works.

Mr. KLEPPE. Well, when we get a question, and a company or an individual believes that he is being challenged as a small business, and he wants to present his case, we have a Size Appeals Board in our agency to listen to his case as to why he thinks he is not large business.

Usually they deal with subsidiaries. Usually they deal with more than one company and must determine who owns what and who in fact controls what. So it gets to be kind of a technical decision.

Senator PACKWOOD. What do you do on that, Tom? Do you go to the SEC to find out who controls who from an agency standpoint?

Mr. KLEPPE. Yes. We do quite a little digging on it. Maybe I'd rather ask our general counsel for a comment on this.

Mr. AUSTIN. I am likewise not fully familiar with the workings of this Board, but the adverse information is usually presented by other people in the industry who are trying to contest the smallness of a business.

Senator PACKWOOD. Say that again. From others in the industry who are trying to contest a determination that you have found that the mill is small business?

Mr. KLEPPE. Yes. A certain small business has the bid, let's say. Then others will come in and say he's not a small business, that he's big business because he owns 39 percent of this company and, in fact, controls it.

That gets to be the question.

Mr. AUSTIN. A great part of our information comes from another person, who wishes to have this same contract, for example, providing us with information to cast doubt on the smallness of the organization.

Mr. KLEPPE. May I add a word, Bob? Obviously, the Size Appeals Board, which I appoint, functions—and I would just tell you that I would be very, very hard pressed to make a decision that would be contrary to their findings, after the studies they have made.

Senator PACKWOOD. Let me give a specific situation, and quoting

from your Seattle regional order concerning the *West Coast Orient/Mitsui* case:

... information of record is sufficient to warrant the conclusion that, without Mitsui's financial support, [West Coast Orient] would not be able to participate in the volume of procurements or possibly bid at prices which assure success over that of its competitors.

West Coast Orient, of and by itself, is small enough to be classified as small business. The evidence, to me seems reasonably conclusive, however, that without substantial financial backing from Mitsui, hardly a small business, they simply would not be in a class to bid.

What do you do in a situation like this?

Mr. KLEPPE. That's the kind of question where we try to make a determination of exactly the points you are raising. We don't necessarily go out and hunt out those situations, but when somebody has been injured to the point of coming and complaining to SBA, then we become involved.

Senator PACKWOOD. It would be a fair statement, I assume, that you would conclude, if you looked at the facts and really found that West Coast Orient, or any other company, is little more than an agent, or very close to an agent, of a very large company, they are out?

Mr. KLEPPE. That's correct.

[It was requested that the following appear in the record:]

SMALL BUSINESS ADMINISTRATION,
August 6, 1974.

EVERETT PLYWOOD CORP.,
Everett, Wash.

DEAR MR. CRITTENDEN: This office has completed a size determination of West Coast Orient (WCO) in accordance with your letter of protest to Snoqualmie or Gifford Pinchot National Forests. Your firm and several other firms had protested the participation of West Coast Orient in the Sunday Creek, Upper Thirsty Creek, and the White Timber sales.

Based upon our very thorough investigation and the facts developed therefrom we are advising both the National Forests that West Coast Orient is a small business and is eligible to bid on the above mentioned set aside sales.

We have directed our attention to two questions of eligibility which were raised by one or more of the protestants in this case. These questions are:

1. Is West Coast Orient affiliated with Mitsui or any other large business?
2. Is West Coast Orient primarily engaged in the logging or Forest Products industry?

For your information WCO is admittedly affiliated, by reason of common stock ownership, officers and directors with Timber Inspection Bureau, Inc., West Coast Orient Disc. Inc., West Coast Orient Trading Company and West Coast Orient Lumber Mills, Inc. WCO and its admitted affiliates, as indicated above, are well within the applicable size standards of 500 employees.

In regards to the first question, both WCO and Mitsui admit having extensive business relationships. Such relationship is similar to that of Transcontinental Log and Export Company and Simpson Timber Company, on which the Size Appeals Board ruled on July 14, 1971. This is case no. 500, a copy of which is enclosed for your information. Note that, in case no. 500, although information of record is sufficient to warrant the conclusion that, without Mitsui's financial support, WCO would not be able to participate in the volume of procurements or possibly bid at prices which insure its success over that of

its competitors, there is nothing to indicate that WCO does not have the power and authority to make its own decisions. Decisions with regard to the type of business it will engage in, the selection of officers and directors and employees, the rate and manner of their compensation, who it will contract with and under what circumstances, or whether it will engage in any business at all. WCO is not so engaged with Ataka or any other large business. Further, neither Mitsui nor Ataka have any equity interest in WCO and are in no way involved in its management, not do they have control or power to control by virtue of common ownership or common management.

In regards to the second question, previous size determinations on this matter have been made which guide us in arriving at the conclusion that WCO is primarily engaged in the logging or forest products industry. It is evident from the record that the major portion of WCO's business entails entrepreneurial and operational activities directly related to the purchase and removal of timber and the processing of logs (see Size Appeals Board Case no. 656 also enclosed.) The Size Appeals Board has found that the general concept of logging and forest products includes not only concerns that perform manufacturing, such as cutting timber or operating sawmills or plywood or millwork plants, etc., but also wholesalers of logs, regardless of whether they process such logs (see Size Appeals Board case dated January 4, 1966, also enclosed.)

Therefore, based on the above, we have no other choice but to determine that WCO is eligible to participate as a bidder on small business set aside timber sales.

You may submit an appeal to the Chairman, Small Business Administration, Size Appeals Board, 1441 L Street N.W., Washington, D.C. 20416. For guidance as to this procedure please refer to paragraph 121.3-6 Appeals, in the enclosed SBA Rules and Regulations, Part 121, revision 12.

Sincerely,

E. J. SANDSTROM,

Assistant Regional Director for Procurement Assistance.

FINDINGS AND DECISION OF THE SIZE APPEALS BOARD IN THE MATTER OF
SIZE APPEAL OF CAFFALL BROS. FOREST PRODUCTS, INC.

The Size Appeals Board, having considered the appeal of Caffall Bros. Forest Products, Inc. (Caffall), Portland, Oregon, from the September 28, 1973, determination of the District Office of the Small Business Administration, Portland, Oregon, that Caffall was not a small business concern for purposes of the Peace Sale auction of timber in the Gifford Pinchot National Forest, Vancouver, Washington, finds that:

A. The September 13, 1973, Peace Sale auction of timber in the Gifford Pinchot National Forest, Vancouver, Washington, was a small business timber set-aside conducted by the Forest Service, and Caffall, which self-certified as small, was the successful bidder. Fort Vancouver Plywood Company and Stevenson Co-Ply, Inc., protested award to Caffall alleging that Caffall was not a small business concern. The Portland District office rendered an opinion that Caffall was small, and subsequently reversed that decision based on a news release disclosing a merger of Caffall and Louisiana Pacific Corporation. It is not contested that the merger would have rendered Caffall other than small. The appeal is based on the fact that the merger was never accomplished and negotiations for the merger, which are admitted to have been taken place, have been terminated.

Bids on the Peace Sale were opened on September 13, 1973. On September 14, 1973, the Forest Supervisor requested that the SBA Office render its size determination in this matter. On September 25, 1973, SBA Portland determined that Caffall was small, and, on September 28, 1973, SBA Portland reversed its decision of September 25. It held that Caffall was not a small business concern for purposes of the Peace Sale. In a letter dated September 28, 1973, Caffall was advised of the decision and of the right to appeal.

Following the final decision, Caffall attempted to have the Portland Office reverse its decision. On October 2, 1973, Caffall's attorneys requested that the Forest Service hold in abeyance final action on the Peace Sale pending the outcome of these negotiations. On October 5, 1973, the matter was submitted to

the Regional Forester. On November 27, 1973, the Forest Service advised Caffall of their intention to reject all bids on the Peace Sale.

They indicated that they would not formally reject the bids until December 3, and stated that an appeal filed within that delay would be appropriate grounds for them to stay rejection beyond that date. The Forest Service is withholding its decision pending resolution of this appeal.

The appeal was received by the Size Appeals Board on December 3, 1973.

B. Three questions are presented for the Board's resolution in this appeal: (1) is the appeal timely; (2) is Caffall primarily engaged in the logging or Forest Products Industry; and (3) is Caffall a small business concern, under SBA Regulations, to render it eligible for award.

C. With respect to timeliness, SBA Regulations provide that an appeal concerning the small business status of a bidder or offeror in a pending procurement may be taken within five (5) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a decision. Unless written notice of such appeal is received by the Size Appeals Board before the close of business on the fifth day, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned. Section 121.3-6(3), SBA Rules and Regulations.

The record in this case indicated that on September 28, 1973, Caffall was advised of the adverse decision and of its appeal rights under Section 121.3-6 of the SBA Rules and Regulations. Caffall's appeal was received by the Board on December 3, 1973. However, it must be noted that the original matter was submitted to SBA by the Contracting Officer and the matter was then presented to the Regional Forester, who agreed to hold action in abeyance pending an SBA determination on this case. Caffall was then instructed by the contracting agency to perfect its appeal within five days of notice from the Forest Service. Caffall complied with this instruction. Since the Forest Service is withholding a decision in this case pending the Board's determination, the Board will consider this in effect a question for purposes of timeliness similar to an appeal by the Contracting Officer. Since the Contracting Officer may appeal at any time, we accordingly will hold the appeal to be timely.

D. In connection with the sale of Government-owned timber a small business is a concern that is primarily engaged in the logging or Forest Products Industry. Section 121.3-9(b)(1), SBA Rules and Regulations. "Forest Products Industry" is defined as "Logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw material." Section 121.3-2(m), SBA Rules and Regulations. Both sections use the word "logging" which is not defined in the regulations.

Logging consists of felling trees, cutting them into logs and transporting them to mill or market. *Sands v. Superior Buildings Co.*, 358 P. 2d 445, 447 (S. Ct. Mont., 1960); *Hogan v. T. J. Moss Tie Co.*, 27 So. 2d 131, 134 (S. Ct. La. 1946). "Logging" includes felling and preparation of logs for transport, log assemblage, and main log haul. It has principally to do with production of saw logs. It includes also production of large quantities of pulpwood, crossties, poles, piling, mine timbers, veneer logs, bolts and miscellaneous other forms. It involves harvesting the timber or taking it from the stump and delivering it to the point of sawing. *Cherry River Boom Lumber Co. v. U.S.*, 37 F. Supp. 887, 888, 889 (D.C., S.D., W.Va. 1940).

It appears from the record that the major portion of Caffall's business entails entrepreneurial and operational activities directly related to the removal of timber and the processing of logs. Accordingly, we find that Caffall is primarily engaged in the logging industry for purpose of the determination of its size status in connection with the sale of Government-owned timber.

E. The issue of size based on affiliation was argued by protestants based upon (1) a news release in the *Oregonian* on September 28, 1973, reflecting an acquisition of Caffall by Louisiana-Pacific Corporation; (2) an article in *Business Week*, October 13, 1973, referring to the acquisition of Caffall by Louisiana-Pacific Corporation; (3) correspondence dated October 9, 1973, from Caffall authorizing Karl Bialkowsky, allegedly an employee of Louisiana-Pacific, to bid on behalf of Caffall; (4) correspondence dated November 26, 1973, announcing that Eldon D. Stroup was no longer in the employment of Caffall or

Louisiana-Pacific, over the signature of the President of Caffall; and (5) a bid on an advertised timber sale, dated October 12, 1973, executed by Bialkowski on behalf of Caffall as resource manager, wherein Caffall was indicated as a large business. Caffall has denied the import of these documents with regard to the matter presently before the Board, and has offered an explanation of protestant's objections.

The size of Caffall hinges on a factual determination of whether or not Caffall is independently owned and operated, is not dominant in its field of operation and, together with its affiliates, its number of employees does not exceed 500 persons. Section 121.3-9(b), SBA Rules and Regulations. The field office's determination that Caffall was not a small business concern was based on its belief of the veracity of the newspaper release of September 28, 1973, announcing the acquisition of Caffall by Louisiana-Pacific. Caffall urges that no formal agreement was ever finalized, although negotiations admittedly were held.

The Board has consistently held that negotiations leading toward the acquisition of a small concern do not affect the size of the concern unless (1) ownership and control are vested so as to render the small concern large; or, (2) all conditions precedent to finalizing the agreement have been met. Protestant cites Section 121.3-2(c) of the SBA Rules and Regulations, which defines affiliation, and suggests that the data it has submitted confirms affiliation. The definition in Section 121.3-2(a), however, clearly requires control or the power to control based on actuality or implicit from factors such as common ownership, common management or contractual relationships. The mere use of an employee of a large concern by a small concern does not establish ownership or control of the small concern by the large concern, and no evidence of control or power to control has been presented. The facts in this case submitted to the Board do not support a finding of affiliation between Louisiana-Pacific and Caffall. Since Caffall has less than 500 employees we find it to be an eligible small business concern for purposes of this sale of Government timber.

Accordingly, the decision of the District Office is reversed and the appeal is hereby affirmed.

Date decided: March 21, 1974.

LOUIS F. LAUN,
Chairman.
ALICE K. CULLEN.
EINAR JOHNSON.
JOHN C. PATRICK, JR.
RODERICK M. YOUNG.

SIZE APPEAL OF CAFFALL BROTHERS FOREST PRODUCTS, INC.

DISSENTING OPINION OF JOHN PATRICK, OFFICE OF PROCUREMENT AND MANAGEMENT ASSISTANCE

The findings of the case are set forth in the majority opinion. The decision of the Board which follows in that opinion does not, in my view, take sufficient consideration of some facts in the case. I therefore note my dissent.

The crucial area in the appeal is whether Caffall Bros., Forest Products, Inc., meets the criteria of being primarily engaged in the logging or forest products industry, to be classified a small business for the purchase of Government-owned timber—the Peace Sale offered for sale on September 12, 1973. Caffall submitted that their primary business activity is "log procurement and selling logs."

Log procurement and selling logs could be a part of the service industry (wholesaler or broker) or a part of the logging industry. The majority opinion states that "logging consists of felling trees, cutting them into logs and transporting them to market." *Hogan v. T. G. Moss Tie Co.* 27 So.2d 131, 134 (S. Ct. La. 1946)

The Board, on first review, unanimously decided that additional information would have to be obtained from Caffall before a finding could be made as to whether or not this firm is primarily engaged in the logging or forest products industry in accordance with SBA Rules and Regulations.

Additional data was promptly submitted to the Board, in the Caffall letter of March 12, 1974. Information submitted, however, still did not define their

degree of physical and financial participation in the logging or forest products industry. Caffall did not submit figures to substantiate volume and value of logs 1. Purchased as logs and needing no further processing, 2. developed into logs from standing timber purchased by Caffall, 3. manufactured or contracted for manufacture into lumber, poles, piling, etc.

To determine the degree of their participation in the logging or forest products industry, specific data as to volume and/or value of the contribution by Caffall is requisite. Logging and road construction equipment listed as owned by Caffall is primarily road construction type of equipment. By receipts, road construction does not contribute a significant portion to Caffall income. Caffall lists no current ownership of manufacturing facilities. For a listing of equipment in log towing, sorting and processing, Caffall states "a list . . . would be too voluminous to include." The list of log construction equipment was submitted in total. However, the facilities and equipment necessary to define the value added by Caffall in log sorting and log transportation was not obtained. It is not questioned that remanufacture of logs, sorting and further transportation is a part of the logging industry—but data submitted and/or obtained does not verify that such operations contribute a significant percentage of the value added to logs purchased and sold by Caffall.

Based on the fact that incomplete data was submitted by Caffall Bros. Forest Products, Inc., the finding of the Board for the set aside should have been other than small.

JOHN PATRICK,
Office of Procurement and Management Assistance.

SIZE APPEAL OF CAFFALL BROTHERS FOREST PRODUCTS, INC.

MINORITY OPINION OF ALICE K. CULLEN, OFFICE OF PLANNING, RESEARCH AND ANALYSIS

In my opinion Caffall Brothers was ineligible to bid on the Peace Sale and subsequent small business timber set asides because it does not meet the requirements of Section 121.3-9(b)(1) of the Small Business Size Standards, Definition of Small Business for Sales of Government-Owned Timber. This Section states, "In connection with sale of Government-owned timber a small business is a concern that is primarily engaged in the logging or forest products industry." The forest products industry is further defined in Section 121.3-2(m) of the Size Standards Regulation as "logging, wood preserving, and the manufacture of lumber and wood-related products such as veneer, plywood, hardboard, particle board or wood pulp and of products of which lumber or wood related products are the principal raw material."

Arguments Presented by Caffall

The arguments of Caffall that it meets the above requirements are based principally on the use of the Standard Industrial Classification Manual as set forth in a supplement to a letter of March 19, 1974, from their attorney, David P. Houlihan, to Mrs. Clare Dondero, Secretary of the Size Appeals Board. These points of argument are as follows:

1. Caffall's activities fall within the Logging Camps and Logging Contractors Industry (SIC 2411).
2. Application of the value added concept indicates that the preponderant part of the value added of its operation clearly falls within the definition of logging camps and logging contractors as set forth in the SIC Manual.
3. Caffall's position is analogous to that of "jobbers" in the apparel industries who are classified as manufacturers.

Minority View on Argument No. 1.

I accept the *Standard Industrial Classification Manual 1972* as the most authoritative single source on the classification of establishments by type of activity in which they are engaged. It is a recognized source of classification for Government and industry and is the basis for classification of establishment activity in the economic censuses of the Bureau of the Census. The Manual also may be used by the Small Business Administration in defining industries (Part 121.3-1(b)(1)). However, Caffall seems to have largely misinterpreted the intent of the Manual and the value added concept in support of their case.

According to Caffalls descriptions of its activities, it should be classified in the SIC 50, Wholesaling rather than SIC 2411, Logging Camps and Logging Contractors, of Manufacturing.

In a letter of March 12, 1974, to Mrs. Dondero Caffall states the following:

Page 1, paragraphs 2 and 3—"Caffall is engaged primarily in the business of procuring logs for its various customers. We contract for the purchase of standing timber from the U.S. Forest Service On other occasions, we purchase the logs after they have been cut and removed from the forest.

Page 2, paragraph 4—"Caffall contracts all of its logging operations, except for the right-of-way logging for roads we build

Page 2, paragraph 5—"After the timber has been removed the logs are routed through our log storage and sorting facilities near Portland Oregon. . . . Here they are separated by species and grade, sawn to appropriate lengths for the particular markets and otherwise prepared for shipment to customers.

"Also in Caffalls letter of February 13, 1974, to Mrs. Dondero they state they or their affiliates are engaged in cruising timber for others; operation of a towboat company; timber access roads construction; and exporting.

The *Standard Industrial Classification Manual* 1972, p. 90, states that logging camps and logging contractors primarily engaged in cutting timber and in producing rough, round, hewn and riven primary forest and wood raw materials are classified in Industry 2411 of Manufacturing. Again on p. 57 of the *Manual* the basic requirement of manufacturing is set forth as the mechanical or chemical transformation of materials or substances into new products. Caffalls activities do not meet these requirements of manufacturing for the company purchases timber and contracts for all of its logging operations. Therefore, the contractor and not Caffall is engaged in manufacturing.

On page 241 of the *Manual* the chief functions of wholesaling are described as selling goods to trading establishments, or to industrial, commercial, institutional, farm, and professional business users; and bringing buyer and seller together. In addition to selling, functions of wholesalers include *maintaining inventories* of goods; extending credit; *physically assembling, sorting, and grading goods in large lots; breaking bulk and redistribution in smaller lots; delivery*; refrigeration; and various types of promotion such as advertising and label designing. The area of *exporting* also is a part of Wholesaling. According to the above description of Caffall's activities, the company is engaged in the wholesaling activities of storing, separating, and otherwise preparing logs for particular markets which include export markets.

Other activities in which Caffall engages also are not in Manufacturing and are classified as follows:

Cruising timber for others—SIC 0851, Forestry Services.

Operation of a towboat company—SIC 4441, Transportation on Rivers and Canals, including bays and ocean sounds.

Timber access road construction—SIC 1611, Highway and Street.

Construction Except Elevated Highways.

Exporting—SIC 50, Wholesaling.

Minority View on Argument No. 2.

The creation of value added is not limited to manufacturing activities, and in the case of Caffall the principal portion of the value added is created by the wholesaling activity. For example, in a hypothetical case of a company which purchased a tract of timber for \$1 million and a paid a contractor \$300 thousand to cut the timber and saw it into logs and sold the logs for \$3.25 million, the value added would be distributed between the contractor who is classified in manufacturing and the timber owner who is a nonmanufacturer as follows:

Contractor:

Receipts for contract logging of timber owned by others—\$300,000

Less materials, supplies, etc. other than the cost of stumpage cut—\$150,000

Value added by contractor in manufacturing—\$150,000

Nonmanufacturer:

Receipts from sale of logs—\$3,250,000

Less cost of timber—\$1,000,000

Gross margin—\$2,250,000

Less cost of contract work done on timber—\$300,000

Less cost of fuels, energy, water, and other supplies used by the nonmanufacturer in his operations—\$100,000

Value added by nonmanufacturer—\$1,850,000

Minority View on Argument No. 3

The argument of Caffall that its role in logging is comparable to that of the apparel contractor seems to be erroneous. This assumption is incorrect because the example of the apparel jobber is the exception rather than the rule within manufacturing. The relationship of the "contract factory" and the "apparel jobber" is commonplace in the manufacture of apparel and accounts for a very substantial value of the output of some of these industries. As the demand for particular types of apparel is very limited and changeable, apparel jobbers often enter and leave the production of selected types of apparel at short intervals. The apparel contractor usually is somewhat more versatile and tends to shift, within certain manufacturing constraints, from one type of product to another.

There is no situation within Industry 2411, Logging Camps and Logging Contractors, which is comparable to that in apparel. The firm which purchases timber and contracts for the entire output of logs and other forest products is an exception to usual practice in this area of activity. Therefore, logging contracting for nonmanufacturers is a subordinate, not a principal, activity within Industry 2411.

Other Arguments for Caffall's Appeal

Another argument presented in favor of Caffall's appeal was that the company accepted responsibility for delivery of a product. This requirement in no way distinguishes a manufacturer from a nonmanufacturer. All nonmanufacturers who bid on and are awarded Government contracts are responsible for the delivery of a product.

ALICE K. CULLEN,

Office of Planning, Research, and Analysis.

FINDINGS AND DECISION OF THE SIZE APPEALS BOARD IN THE MATTER OF SIZE APPEAL OF BUSE TIMBER AND SALES, INC.

The Size Appeals Board, having considered the appeal of Buse Timber and Sales, Inc., Marysville, Washington, from the determination of the Seattle Regional Office of the Small Business Administration that Transcontinental Log and Export Co., Inc., Seattle, Washington, is an eligible small business concern for the purpose of bidding and receiving award of the Crow's Foot Timber Sale, Mt. Baker National Forest, Bellingham, Washington, finds that:

A. Buse Timber and Sales, Inc. (Buse) was the high bidder on this set-aside sale of Government timber offered by the U.S. Department of Agriculture, Forest Service, and comprising approximately 1500 MBF. Subsequent to bid opening, Buse challenged the small business size status of Transcontinental Log and Export Co., Inc. (Transcontinental). The protest of Transcontinental's size eligibility was based upon certain financial connections between Transcontinental and Simpson Timber Company (Simpson), Seattle, Washington, with regard to prior timber sales. The record does not disclose the significance of Transcontinental's size status on this sale since it was second low bidder and could not possibly receive the award, irrespective of its size. Nevertheless, after an exhaustive investigation by the Seattle Regional Office, Transcontinental was determined to be an eligible small concern and Buse appealed.

B. Transcontinental is owned 100 percent by Albert J. Firchau, its president and one of the three directors. Mr. Firchau admittedly owns or controls six (6) other concerns, active and inactive, which are engaged in the logging business. Total average employment for all these concerns for the relevant accounting period was approximately 35 persons. Simpson denies that it has any equity interest in any of the concerns owned or controlled by Mr. Firchau, or in their management. Its only relationship with Transcontinental is that of a purchaser of logs.

C. Both Transcontinental and Simpson freely admit that Simpson advances sums of money to Transcontinental to enable it to bid on Government timber sales. Such sums are made available for advance stumpage payments, and

sometimes for bid and performance bonds pursuant to written Log Sales Agreements. Under such agreements, the amounts advanced by Simpson are deducted from the price of logs purchased if Transcontinental is the high bidder, or returned if it is not. The evidence indicates at least two instances where Transcontinental has made assignments in trust of timber purchased by it at Government timber sales to Simpson as security for debts owed to Simpson. The record is mute as to the facts and circumstances of these debts.

D. Evidence of record further indicates that the log sales agreements stipulate prices to be paid for logs, place and time of delivery, etc. Whether these incidents of the log sales agreements are set prior to or after bid opening is not clear. Simpson states that prices are negotiated at arms length and reflect the market price for timber at the time of each agreement. There is also considerable information of record that Transcontinental, through its owner, Mr. Firchau, engages in an aggressive pattern of bidding and, on timber sales containing the species and grade of logs desired by Simpson, is very competitive. This, together with other information, is offered as proof that because of Simpson's financial support, it can and does dictate the time, rate, delivery point and the volume of logging by Transcontinental. Therefore, the two concerns are affiliated.

E. Under Section 121.3-2(a) of the Small Business Size Standards Regulation, concerns are considered to be affiliated when either directly or indirectly one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is to be given to all appropriate factors, including common ownership, common management and contractual relationships. Control may be positive or negative, and it is immaterial whether or not it is exercised, so long as the power exists.

F. Albert J. Firchau owns 100 percent of the stock and is its president and a member of its Board of Directors. One of the two remaining directors is an officer of the company. Since Simpson has no equity interest in any of the Firchau owned concerns and is in no way involved in their management, it has no control or power to control Transcontinental by virtue of common ownership or common management. There remains to be considered whether control or power to control exists by reason of contractual relationships or other factors which prove the fact or support such an inference.

G. That Simpson and Transcontinental have extensive contractual relationships is both conceded by them and amply supported by record evidence. It is also true that Mr. Firchau is an aggressive competitor in the logging industry and, by comparison with other small business loggers and/or manufacturers in his area, obtains an unusual share of the sales of Government timber. It appears that his success is attributable to the fact that he is an able and experienced operator, has a keen insight as to the amount and species of timber in the particular national forests offered for sale, and bids at prices above his competitors. While this may be to their disadvantage, it is a normal hazard of the competitive systems which does not go to the issue before the Board, i.e., whether Transcontinental is or is not a small business within the meaning of the size regulation.

H. Simpson admittedly finances Transcontinental's logging operations by providing funds for advance stumpage deposits, bid deposits, bid bonds, and on occasional performance bonds. It also finances the roadbuilding requirement of the Government for removing the timber from forest lands. Thus, it may be said that Simpson finances nearly all phases of Transcontinental's logging operations. Since Simpson is both the financier and a partial market for at least the choice species and grade of logs it desires, it has first choice in their selection and purchase. Funds advanced are deducted from the debt as the logs are delivered. While there is some question whether Simpson dictates the price it will pay for such logs, the evidence supports the conclusion that prices are well within the market range on the dates of the log sales agreements. Time and place of delivery are normal conditions imposed by a buyer upon a seller.

I. We come now to the question of whether Simpson controls or has the power to control Transcontinental by reason of its ability to control Transcontinental's supply of money. That is, does Simpson have the power to make those major business decisions concerning the policy and operation of Transcontinental which, as an independently owned and operated concern, it should and ought to make itself? The Board is not persuaded on the facts of record

that this is the case. Although information of record is sufficient to warrant the conclusion that, without Simpson's financial support, Transcontinental would not be able to participate in the volume of procurements or bid at prices which assures its success over that of his competitors, there is nothing to indicate that Transcontinental does not have the power and authority to make its own decisions regarding the type of business it will engage in, the selection of officers and directors, and employees, the rate and manner of their compensation, who it will contract with and under what circumstances, or whether it will engage in any business at all.

J. Any business concern has the right to choose its mode and method of financing its business activity. That it has chosen a financier which is also a potential market for the product it produces and is to its advantage, does not mean that it has forfeited its independence of operations so long as it does not constitute a subterfuge to circumvent the purpose and intent of the size regulations. Moreover, the Board is advised that this type of financing is a trade practice in the logging industry. While the Board is cognizant of the fact that financing is often the vehicle by which control or the power to control may be exercised, no adverse significance should attach to the selection of a financial arrangement which is advantageous to both the financier and the concern financed. Neither should it operate against an experienced timber operator who cruises his own timber, projects yields which vary from Government estimates (usually upward), has cut costs and devised a method of operation that is the envy of competitors.

K. Additionally, it has not been established that Transcontinental is unable to obtain financing from any other source; that this is the only business activity in which it can engage (its owner controls six other concerns); or that Simpson is the only market for the logs. The record discloses that Transcontinental has sold to other firms. Moreover, Simpson usually purchases only the best grades of specified types of logs, usually Douglas Fir and Western Hemlock. Lower grades of these species and other species from the cuts are disposed of to concerns which have no connection with Simpson.

L. In view of the foregoing and in the absence of more probative evidence to the contrary, the Board finds that Simpson does not control or have the power to control Transcontinental through contractual relationships. It follows that these concerns are not affiliated with each other within the meaning of Section 121.3-2(a) of the Size Standards Regulation and Transcontinental is, therefore, a small business concern for the purpose of this timber sale.

Accordingly, the appeal must be and is hereby denied.

Date Decided: July 14, 1971

ANTHONY G. CHASE,
Chairman.

CLYDE B. BOTHMER.

EINAR JOHNSON.

WILFRED J. GARVIN.

JAMES T. PHELAN.

Senator PACKWOOD. You made some reference, Tom, to the various set-aside programs in different agencies. Especially when it comes to timber, would it be easier from your standpoint if ownerships were blocked together and you just considered all timber in an area, and determined a small business set-aside. Would that be easier than to have so much timber for Forest Service and so much for some other agency?

Mr. KLEPPE. Well, this kind of hits me a little cold, Bob. I would indicate that maybe that would be advantageous. However, if it did happen, I think we would have no choice but to probably quadruple our staff that works on the timber set aside program.

Senator PACKWOOD. Why is that?

Mr. KLEPPE. Because we would have to do so much more monitoring, and have to be much closer to it. As it is now, we have five people. We have a total of six slots in our agency that deal with the timber set-aside program on a monitoring basis.

If this was all put together, well, of course, I suppose legislation could correct that, but it would strike me that we would have a much more difficult monitoring job in order to be on top of the whole program.

Senator PACKWOOD. It would be no more different than monitoring the separate agencies individually, would it?

Mr. KLEPPE. May I call on Mr. VanArsdale?

Mr. VANARSDALE. Sir, the result would be that we would have to assume the responsibility of coordinating all the information from these various agencies and initiating every set-aside and selecting where on the geographic plot it would have to go.

As it presently stands, with our staff we are able to rely in many cases upon the initiative of the BLM or the Forest Service personnel.

Senator PACKWOOD. Now you will often have a situation where you have the BLM and the Forest Service side by side, each in theory applying a small business set-aside, but in actuality having a different trigger or format.

Mr. VANARSDALE. Yes, sir. They do have slightly different rules under which they operate. We are hopeful that we can modify those differences at the end of this present period.

Mr. KLEPPE. I think you are on the track of something, Bob, that has a possibility of simplifying the whole thing. So I would ask and commend to your thoughts that while it would seem to be easier to administer, I don't like to get ourselves in a hole where we can't do it with the personnel we've got. That's why I was hedging a little bit.

Senator PACKWOOD. What do you think the situation ought to be in a case like this? You have a small business set-aside, and then one of the larger mills buys out a smaller mill.

Should the set-aside share go with the mill, or still remain for the remaining small mills?

Mr. KLEPPE. The answer is no, it should not go. This is probably the toughest question that we have to answer insofar as supporting small business. But, very definitely, I think that if you consider that you have a pot here for set-aside, and you have small businesses participating in that on an allocation basis, when a small business is bought out by a large company, maybe he's getting a premium for his business if he can transfer his allocation.

I would like to see the small business get a premium for his business, but I cannot agree that we should ever decrease the total pot for small business. I think we must defend this always.

Senator PACKWOOD. I agree with you, and it seems to me, if you don't, you get to the place where one by one they will be bought out.

Mr. KLEPPE. With no small businesses left.

Senator PACKWOOD. That's right.

Mr. KLEPPE. I've never had anything against big business. I'd like to see them all graduate, as hard and fast as they can, but we are here to help the small businesses.

Senator PACKWOOD. I have no more questions. Thank you.

Mr. KLEPPE. We appreciate being here.

[Attachments to Mr. Kleppe's statement follow:]

SET-ASIDE PROCEDURE IN THE SALE OF NATIONAL FOREST TIMBER

1. The procedure under the agreement signed December 29, 1971, for implementing the timber set-aside program is contained in the *Forest Service Manual*, Amendment No. 67, paragraphs 2431.11-2431.19 (February 1972). It is jointly administered by SBA and the Department of Agriculture/U.S. Forest Service.

2. Only those firms found by SBA to qualify as a small business under 13 C.F.R. 121.3-9(b) are eligible for the benefits of the program. This is in accordance with the underlying purposes of the program which is to insure that small business is given its "fair proportion" of timber sales from the National Forests, in accordance with the Congressional intent of 15 U.S.C. 631, as discussed in the attached brief.

3. The "fair proportion" of Government property sales as set forth in 15 U.S.C. 631 is interpreted in the 1971 agreement by reference to a base average share (5 years). See paragraphs 4a and 4c of the 1971 agreement. This interprets fair proportion by determining that percentage of Government timber from a particular marketing area—which may or may not be a National Forest, which has gone to small business in the base period.

4. The first 5-year period runs from 1966-1970 with revision every five years. The reasons for a 5-year period are: (1) to average out some periodic fluctuations and inequities; and (2) the need for a period of time which would give the most recent yet historically accurate picture of timber sales to small and large business.

5. Since competition, manufacturing facilities, timber species, marketing characteristics, and many other variables necessitate a local approach in administering the program, the geographical unit, for which base shares and other tabulations are made, is termed a market area. Usually this area coincides with a National Forest. However, there are examples where there is more than one market area per National Forest, as well as other instances where parts of more than one National Forest are included in a single market area.

6. For each market area, separate tabulations are compiled assigning the historical purchases of National Forest timber sales during the base period to large and small companies. Once the total timber volume sold for a market area is known, the share of that volume (as expressed in board feet) going to large and small firms is computed as a percentage. These proportions represent the base share which is used in subsequent computations. In this way, the base share of volume of timber purchases by small business is computed for each market area using the 5-year historical base period, 1966-1970.

7. As previously mentioned, the base period is to be moved forward after 5-year intervals so that the base shares can be revised to assimilate changes in the industry through time. Thus, early in 1976 the fair proportions for small businesses in buying National Forest timber will be recomputed for the five years inclusive of 1971-1975. However, as paragraph 4 a of the 1971 agreement provides the recomputed base shall not be reduced in future review below 50 percent of the original base period 1966-1970.

8. The 5-year revisions provide flexibility and adjustment to actual purchasing trends, and the 50 percent floor (of the 1966-1970) base period insures small business a basic minimum proportion of National Forest timber sales, and in this way encourages their preservation and growth, contrary to the recent trend toward merger with large firms.

9. Paragraph 2431.16, *Forest Service Manual*, Amendment No. 67 (February 1972), provides 6-month review periods, for determining whether small business has purchased its fair proportion of timber sales from each marketing area. Thus, each January and July the forest supervisor for each marketing area will review the purchases made during the past 6-month period to determine whether a set-aside program will be required during the next 6-month period. Only when the "accumulated net deficit" is ten or more percent will the set-aside program be triggered for the 6-month period under consideration. Thus, if for the previous 6-month period, small business had purchased more than its base period percentage, no set-aside would be triggered for the new period and in fact the surplus above its share would be carried over from period to period to offset any deficit. Likewise, any accumulated deficiency under 10 percent would be carried over from period to period, until said deficit

reaches 10 percent at which point the timber set-aside would be triggered for the next 6-month period.

10. For example, if the base share for a marketing area is 40 percent, and small business acquired 30 percent in the review period, a timber set-aside program would be triggered for the following review period. In the following review period, two events are prescribed as mandatory: (1) the base share, 40 percent is set aside exclusively for small business bidding, and (2) in addition, any deficit volume from previous review periods will be added for set-asides, to insure catch-up to base share upon triggering.

11. By way of further illustration of the calculation of the accumulated net deficit, the following example is offered. Consider a series of three, 6-month review periods wherein, for simple computation, 100 million board feet (MMBF) was offered for sale each period. Again, using the 40 percent base share for small business, their share in volume terms each period would be 40 MMBF. If the small business sector bought 45 MMBF, 32 MMBF, and 30 MMBF, in the successive periods, the following explanation results: In the first review period, 45 MMBF represents a 5 MMBF overage above the base share of 40 MMBF. In the second review period, small lumbermen were not so successful in the timber market. The deficit below the base share of $40 - 32 = 8$ MMBF was not enough to trigger a set-aside action, but a net deficit from the overage in the previous review period remains at 3 MMBF. As previously explained, a set-aside is triggered in the third period for the following period, when the small category firms failed to acquire their base share by 10 percentage points. Thus, in the fourth review period coming up and still assuming sales of 100 MMBF, the base share of 40 percent (40 MMBF) must be set aside, plus the accumulated net deficit volume from previous periods, which in the example is 13 MMBF, for a total of 53 MMBF. The two conditions for triggering can be restated: A timber set-aside action is required when there is (1) an accumulated net deficit volume, and (2) small business failed to purchase its share by 10 percentage points, or more.

12. A further provision for triggering allows accumulation of the 10 percentage points over a series of consecutive periods. In a different series of review periods, the small forest products industry might fail to acquire its base share by, say, 2, 3, and 5 percentage points. A triggering action would not occur in any single period, because timber purchases did not fall short by 10 percentage points, or more. However, if there was an accumulated net deficit volume, a trigger would occur in the third period for the following period, since the 2, 3, and 5 total 10 percentage points by accumulation.

13. There is ample authority both in the 1971 agreement and in the Forest Service Manual to avoid the use of set-asides where same would be inappropriate or work an undue hardship. Thus, paragraph 4c of the 1971 agreement provides: "The above provisions do not preclude USDA and SBA from taking other factors into consideration in specific cases when computing base average share, nor from otherwise establishing or *eliminating set-asides* which they deem appropriate under the Small Business Act. USDA and SBA may make allowance for such factors as past long-term sales, large salvage sales, or other unusual considerations, when computing the base average share." (Emphasis added.)

14. Finally, it should be pointed out that even though a timber sale has been designated as a small business set-aside, if there are no small businesses which submit a bid on the timber, the bidding on said timber may be opened up to large businesses, 36 C.F.R. 221.8. Moreover, under paragraph 4b of the 1971 agreement, it is provided that: "Set-aside sales not bid on by small business, however, and sold without readvertisement, will be counted toward meeting the base share for small business."

AGREEMENT BETWEEN DEPARTMENT OF AGRICULTURE AND THE SMALL BUSINESS ADMINISTRATION FOR THE DEVELOPMENT AND OPERATION OF A SMALL BUSINESS PROGRAM IN THE SALE OF NATIONAL FOREST TIMBER AND RELATED FOREST PRODUCTS

1. In order to fulfill their mutual responsibilities under the Small Business Act (15 USC 631 *et seq.*), the Department of Agriculture (USDA) and the Small Business Administration (SBA) have entered into this agreement for

administration of a small business program in the sale of National Forest timber. This agreement supersedes the agreement of 1958-1959 as amended in 1966.

2. USDA, in developing sale programs suitable for bidding by small business firms, will consult SBA and give full consideration to information, advice, and requests of SBA.

3. SBA, in the operation of its various programs designed to assist small business, will consult USDA on matters involving the forest products industry and will give full consideration to information, advice, and requests of USDA.

4. USDA and SBA agree that administration of the National Forest sale program for small business will include the use of the authority of section 15 of the Small Business Act to provide for award of sales set aside for small business when consistent with the purposes established under the Acts respecting the sale of National Forest timber. The program for set-asides will be based on the following:

a. A base average share for small business shall be established for each National Forest, or significant marketing area, by comparing the small business purchases to total sales therefrom for a 5-year period. The base shall be recomputed on a 5-year history, ordinarily at 5-year intervals, provided that the recomputed base shall not be less than half the initial base share. Recomputation will be based on size of the firm at the time of each timber purchase during the computation period.

b. Small business will be assured its base average share is available by the application of set-asides. Standards for the initiating of set-asides will be established to achieve this purpose. Set-aside sales not bid on by small business, however, and sold without readvertisement, will be counted toward meeting the base share for small business.

c. The above provision do not preclude USDA and SBA from taking other factors into consideration in specific cases when computing base average share, nor from otherwise establishing or eliminating set-asides which they deem appropriate under the Small Business Act. USDA and SBA may make allowance for such factors as past long-term sales, large salvage sales, or other unusual considerations, when computing the base average share.

5. USDA will afford SBA the opportunity to review prior to public announcement all proposed sale programs involving sales with an estimated value of \$2,000 or more, including set-asides proposed by USDA. SBA will then concur in proposed set-asides or will make recommendations for other set-aside action. If such action is not contrary to the purposes established under the Acts respecting the sale of National Forest timber, USDA will make the set-aside. If the representatives are unable to agree on specific set-asides, they will document their respective views for referral to higher authority within the two agencies. In accordance with the Small Business Act, the Secretary of Agriculture has authority to make the final determination.

6. If a set-aside has been programmed, and subsequent events indicate the action is not in the public interest, USDA may request SBA to concur in withdrawal of the set-aside. Upon such concurrence, the set-aside will be withdrawn. If SBA does not concur, the procedures for resolution and referral, developed to implement item 5 above, will be utilized. Similarly, SBA may request USDA to program set-asides in addition or substitution to those agreed upon in the annual program.

7. SBA may conduct reviews of the small business program in the sale of National Forest timber at field offices of USDA. Due notice of intention to perform such reviews will be given to the field office concerned and a time schedule for the review will be agreed upon by the agencies.

8. A small business which might otherwise be awarded a contract will not be disqualified on the grounds of lack of capacity or credit, but will be referred to SBA for processing of Certificate of Competency, in accordance with section 8(b)(7) of the Small Business Act. In such cases, USDA will provide to SBA all pertinent available information regarding the company and sale in question. SBA will act promptly on the case and submit a decision to USDA within 15 working days. USDA will defer further action on the case until a decision is provided.

9. A concern, to be eligible for award of a set-aside sale, must self-certify that it qualifies as a small business enterprise, as defined by SBA. In the

event of a size protest by the contracting officer or other interested party, SBA will determine whether the concern which certified itself as small is, in fact, a small business under the applicable size standard. Appeals from such determinations may be taken to SBA Size Appeals Board. Should USDA develop or obtain information indicating that size certification requirements have been violated, USDA will report such information to SBA.

10. Details of operational procedures for accomplishment of this agreement will be developed jointly by designated representatives of USDA and SBA to assure mutual compatibility of agency directives on this subject.

THOMAS S. KLEPPE,
*Administrator,
Small Business Administration.*

Dated: December 29, 1971.

CLARENCE D. CALMBY,
*Assistant Secretary,
Department of Agriculture.*

Senator PACKWOOD. Senator Cranston will be back in a few moments. He has asked me to switch the order of appearance and take the panel of large lumber company representatives first.

So that will be Mr. Crowell and Mr. Weinstein, Mr. Kuphaldt, Mr. O'Connor, and Mr. Ehinger? Are there others in the panel?

Mr. CROWELL. I think that covers the panel, Senator.

Senator PACKWOOD. They can all come up to the table.

**STATEMENT OF JOHN B. CROWELL, JR., LOUISIANA-PACIFIC CORP.;
YALE WEINSTEIN, DUKE CITY LUMBER CO.; WILLIAM H.
KUPHALDT, AMERICAN FOREST PRODUCTS CORP.; JOHN J.
O'CONNOR, FIBERBOARD CORP.; AND PAUL F. EHINGER, EDWARD
HINES LUMBER CO.**

Mr. CROWELL. I would like to ask your indulgence to permit each of the members of the panel to introduce himself personally.

I am John B. Crowell, Jr., general counsel for the Louisiana-Pacific Corp. of Portland, Ore.

These other gentlemen, I would like to have introduce themselves, if that's all right.

Senator PACKWOOD. That's fine.

Mr. EHINGER. Paul Ehinger, of the Edward Hines Lumber Co.

Mr. KUPHALDT. William Kuphaldt, assistant general manager of the Amador-Calaveras Division of the American Forest Products Corp., a subsidiary of the Bendix Corp. My home is in Jackson, Calif.

Mr. WEINSTEIN. I am Yale Weinstein, vice president, Forestry-Resources, Duke City Lumber Co., Inc., Albuquerque, N. Mex.

Mr. O'CONNOR. John O'Connor, division logging manager, Fiberboard Corp. I live in Medford, Ore.

Mr. CROWELL. We have agreed that I will summarize the points which the members of this panel have presented in their individual statements. I assume that the statements of each of these individuals will be made part of the record.

Senator PACKWOOD. All of the statements will be made a part of the record. Do you have a written statement of your own?

Mr. CROWELL. I do, and it has been submitted to the committee, a day or two ago (see p. 69).

[The complete statements of the above witnesses being on p. 63.]
 Senator PACKWOOD. I don't have a copy of Mr. Crowell's statement yet.

Mr. CROWELL. The statements have also been submitted to the committee by the panel members. We were originally to be joined by Edwin J. Hasselrud of the Kimberly Clark Corp.'s California operation. He could not be with us, but he, too, submitted a statement to the committee's staff.

Each of us here today appears not only for his individual company, but also appears as a representative of the Ad Hoc Committee of Federal Timber Purchasers, which is a group of 26 companies who have joined together in an attempt to ameliorate some of the very adverse consequences which large businesses are experiencing from the set-aside program which has been in effect since the end of 1971.

The 26 companies are identified on a list which has been attached to a statement submitted on behalf of the ad hoc committee by our counsel, Mr. Angelo A. Iadarola. The statement was submitted to the committee staff yesterday, I believe.

Senator PACKWOOD. Hold on just a minute. Could I have all the statements that the committee staff has? I have only three. do you have others there?

OK. I have been given now all the statements. I apologize. Go ahead.

Mr. CROWELL. That's quite all right, sir.

The Ad Hoc Committee of Federal Timber Purchasers' principal activity since its formation has been to try to modify the program, as I indicated.

After being unsuccessful in attempting to persuade the Forest Service and the Small Business Administration from implementing the program as it is presently implemented, about half the members of the ad hoc committee joined in a lawsuit which Congressman Aspinall referred to when he referred to a brief in that case.

The suit has been brought in the Federal District Court for the District of Columbia, and the present status of it is summarized at pages 4 and 5 of my written statement.

Now, I am not going to take any time to refer to the mechanics of the set-aside program. Mr. Kleppe has already referred to them somewhat, as did Senator Cranston in his opening remarks.

Senator PACKWOOD. If I might interrupt, I know Senator Cranston set a 5-minute rule, but I think we are going to be in reasonably good shape on time. Let me ask some questions as we go along.

The program started in 1958, but everyone refers to 1971 as a critical date. What happened between 1958 and 1971, and what changes were made in 1971 that has made the program adverse to the ad hoc committee?

Mr. CROWELL. The basic change, Senator, which occurred at the end of 1971, was a new agreement between the Forest Service and the Small Business Administration. The new agreement established a set-aside program based on historic base share computations which were made as of 1966 through 1970, a 5-year period.

It established an automatic triggering device for set-asides, and the consequence was that set-asides have become far more prevalent since 1972 than they had ever been previously.

Senator PACKWOOD. How was it done before that?

Mr. CROWELL. Before that, when a small business, who felt that it was not able to obtain its share, would request help from the SBA in persuading the Forest Service or the BLM, as the case might be, to designate sales as set-asides. It was done on a negotiated basis for each sale. Today the negotiation is primarily on which sales are going to be made as set-asides, not whether there are going to be set-asides once set-asides have been triggered.

Now, there are two basic points that we would like to leave with the committee today. The first of these points is that the present size standard of 500 is excessively large for our industry.

The second of these points is that there has been considerable arbitrariness in both establishing the program and in operating it, and these arbitrary aspects of the program ought to be modified in substantial degree.

Turning first to a consideration of the size standard of 500, it's been that size since 1967. Originally it had started, in 1959, as 100, moved up to 250 in 1963, and has been at 500 since 1967, as I say.

An operation of 500 employees in our industry is a very large operation. It could operate from five to seven sawmills and could generate as much as \$30 or \$40 million in annual sales.

In some industries, this might be a small business, but in the forest products industry it certainly is not.

Data from 1967 Census Bureau figures show that as of that year, there were 10,300 sawmills then in existence. Of these, 8,400 had fewer than 20 employees. Those mills would each have produced less than 5 million board feet annually.

Another 1,900 sawmills which existed in 1967 had between 25 and 200 employees, and would each have produced between 5 and 50 million board feet each year.

The mills which had more than 200 employees numbered only 130 in 1967.

Senator PACKWOOD. Say that again? In 1967—

Mr. CROWELL. In 1967, there were only 130 individual sawmills employing more than 200 people.

Senator PACKWOOD. OK.

Mr. CROWELL. There were 8,400 employing 20 or fewer people.

Senator PACKWOOD. Can you give me an idea, in terms of total lumber production in the United States, how much would be produced percentagewise by companies with more than 500 employees?

Mr. CROWELL. We would estimate, on the basis of present figures—and I was going to refer to these in just a moment—that have been recently compiled by Forest Industries magazine, that probably between 40 and 50 percent of the lumber production in the United States

is produced by about 60 large companies, these 60 companies being the ones which are excluded from the set-aside program.

Senator PACKWOOD. Forty to fifty percent?

Mr. CROWELL. Yes.

Senator PACKWOOD. How many companies would that leave with under 500 employees today?

Mr. CROWELL. Well, we have to be careful about distinguishing between individual mills with fewer than 500 employees and mills which in the aggregate, under the same ownership, either are under or exceed 500 employees.

Now, I couldn't tell you what the figure would be for mills with fewer than 500 employees today, but I would venture to guess, based on the 1967 figures, that there hasn't been a substantial change and that probably something like 97 or 98 percent of both sawmills and plywood plants in the country have fewer than 500 employees.

Now, obviously, if you count the number of enterprises that produce lumber and plywood, the percentage is lower.

Senator PACKWOOD. If you have common ownership, though, and you aggregate over 500 employees, you are not qualified for small business set-asides. You fall into the big business category. So you are saying, as best you can tell, roughly 40 to 50 percent of the lumber is produced by 60 large companies, and roughly 50 to 60 percent would be produced by the 98 percent of the companies with fewer than 500 employees.

Do I paraphrase your answer correctly?

Mr. CROWELL. I think you did correctly, Senator, except for the fact that 50 to 60 percent would be produced by manufacturers who qualified as small businesses.

See, the difference is that it's not by mills, but by manufacturers.

Senator PACKWOOD. Yes, I understand.

Mr. CROWELL. Now, referring to the Forest Industries magazine figures for 1973, which have just been published in the recent issue of the magazine—I should say that these are not complete figures, because they depend on voluntary responses by members of the industry who are circulated by the publication—but from the figures which have been compiled, it is apparent that among the 100 largest producers of lumber in North America last year, 30 of them were Canadian producers.

Of the remaining 70, 22 are qualified as small businesses. I have a list here which we compiled yesterday which I would like to submit for the record, which identifies those 22 so-called small businesses who are among the top 70 U.S. producers of lumber last year.

Now, none of those producers produced less than 72 million board feet last year.

I would like to submit that list for the record, if I might.

Senator PACKWOOD. That will be put in the record.

[The list and additional material received for the record follows:]

TOP U.S. LUMBER PRODUCERS—"SMALL BUSINESSES"

Name	Rank	1973 timber volumes (board feet)
Mountain Fir Lumber.....	33	154,237,000
Hampton Lumber Sales.....	37	127,513,000
Davidson Industries.....	40	125,000,000
Hoff Lumber Co.....	42	119,656,502
Avison Lumber Co.....	44	109,296,000
White Swan Lumber Co.....	45	108,400,000
Rosboro Lumber Co.....	49	95,761,000
Burkland Lumber Co.....	51	94,069,241
Idaho Forest Industries.....	52	92,262,000
McNamara & Peepe Lumber.....	53	90,009,203
Golden State Building Products.....	55	87,800,000
Michigan-California Lumber.....	56	87,796,160
Holly Hill Lumber.....	57	86,754,940
Twin Harbors Lumber.....	58	86,752,000
Seneca Sawmill Co.....	59	85,000,000
Del-Cook Lumber Co.....	62	80,188,158
Eel River Sawmills.....	64	77,081,512
Delah Timber Products.....	65	75,196,533
Modoc Lumber Co.....	66	74,266,056
Ellingson Lumber Co.....	68	72,587,000
North Side Lumber.....	69	72,000,000
All-American Stud Co.....	70	72,009,000

Source: "Forest Industries," 1974 yearbook, p. 15.

WILKINSON, CRAGUN & BARKER,
Washington, D.C., September 12, 1974.

Senator ALAN CRANSTON,
Chairman, Small Business Subcommittee, Senate Committee on Banking,
Housing and Urban Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: At the August 22, 1974, hearing held by your Small Business Subcommittee on the operation of the national forest timber set-aside program, you directed several questions to Mr. John B. Crowell, Jr., General Counsel of Louisiana-Pacific Corporation and a member of the Ad Hoc Committee of Federal Timber Purchasers. As Mr. Crowell indicated, complete answers would require further research. These questions were:

(1) What is the average number of employees working for each member of the Ad Hoc Committee?

(2) What is the volume of federal timber purchased by members of the Ad Hoc Committee as compared to the total volume of federal timber sold?

(3) Is recent data available showing the percentage of mills in this country operating with less than 100 employees? (You will recall that the 1967 Bureau of Census figures revealed that 97 percent of all mills employed fewer than 100 persons.)

We have checked and obtained the most accurate information available to answer your questions. Our data reveals the following:

(1) The average employment of each member of the Ad Hoc Committee of Federal Timber Purchasers is as follows (current figures unless indicated by asterisk):

Company	No. of employees
American Forest Products Corp.....	3,867
Bohemia, Inc.....	2,000
Boise Cascade Corporation (United States & Canada).....	27,840
Columbia Corp.....	2,173
(Parent of Columbia Plywood Corporation—342 employees, and Cascade Locks Lumber Co.—168 employees)	
Conner Forest Industries.....	1,000
Di Giorgio Corp.....	15,930
Duke City Lumber Co.....	495
(Subsidiary of U.S. Industries with over 22,000 employees)	
Fibreboard Corp.....	1,800
Georgia-Pacific Corp.....	37,000

Edward Hines Lumber Co.	3,500
International Paper Co.	51,250
Kaibab Industries	1,200
Kimberly-Clark Corp.	900
Louisiana-Pacific Corp.	10,832
Medford Corp.	¹ 763
Pope & Talbot, Inc.	¹ 909
Potlatch Corp.	² 10,788
Publishers Paper Co.	3,100
Roseburg Lumber Co.	¹ 3,993
St. Regis Paper Co. (Libby, Mont. Division—975 employees)	20,000
Sierra Pacific Industries	1,408
Simpson Timber Co.	5,940
Southwest Forest Industries	² 9,042
U.S. Plywood, Division of Champion International	12,323
Weyerhaeuser Co.	¹ 46,000
Willamette Industries, Inc.	6,500

¹ 1972 figures.² 1973 figures.

(2) We have been unable to develop accurate figures in the time available on the total federal timber purchased by each member of the Ad Hoc Committee other than the information provided to the Subcommittee on the purchases of 11 Ad Hoc Committee members by Mr. Calhoun W. Umphlett. The only information presently available breaks down the national forest timber sales according to purchases by "large" and "small" companies during 1972 and 1973 in each of the 10 national forest regions. This is more detailed information than the gross 3½-year figures given to the Subcommittee by Mr. John McGuire. The figures are as follows:

	MMBF				
	Total sales	Small business sales	Percent small business sales	MMBF large business sales	Percent large business sales
Region 1:					
Calendar year 1972	1,280.1	372.5	29.1	907.6	70.9
Calendar year 1973	951.8	306.4	32.2	645.4	67.8
1966-70 (5 yr)	7,139.1	2,308.6	32.0	4,830.5	68.0
Region 2:					
Calendar year 1972	408.7	143.0	35.0	265.7	65.0
Calendar year 1973	197.2	91.3	46.3	105.9	53.7
1966-70 (5 yr)	1,234.2	603.7	49.0	630.5	51.0
Region 3:					
Calendar year 1972	169.8	83.5	49.2	86.3	50.8
Calendar year 1973	178.2	59.5	33.4	118.7	66.6
1966-70 (5 yr)	1,282.6	359.8	28.0	922.8	72.0
Region 4:					
Calendar year 1972	435.5	273.4	62.8	162.1	37.2
Calendar year 1973	522.0	318.8	61.1	203.2	38.9
1966-70 (5 yr)	2,427.4	957.7	39.0	1,469.7	61.0
Region 5:					
Calendar year 1972	1,869.8	680.5	36.4	1,189.3	63.6
Calendar year 1973	2,167.3	679.5	31.4	1,487.8	68.6
1966-70 (5 yr)	10,501.6	3,157.1	30.0	7,344.5	70.0
Region 6:					
Calendar year 1972	4,880.8	2,641.2	54.1	2,239.6	45.9
Calendar year 1973	4,553.8	2,091.3	45.9	2,462.5	54.1
1966-70 (5 yr)	22,549.0	11,690.0	52.0	10,859.0	48.0
Region 8:					
Calendar year 1972	511.7	349.8	68.4	161.9	31.6
Calendar year 1973	469.7	330.4	70.3	139.3	29.6
1966-70 (5 yr)	2,490.7	1,974.0	79.0	516.7	21.0
Region 9:					
Calendar year 1972	148.8	132.9	89.3	15.9	10.7
Calendar year 1973	153.7	136.1	88.5	17.6	11.5
1966-70 (5 yr)	883.4	752.1	85.0	131.3	15.0
Region 10:					
Calendar year 1972	33.5	33.5	100.0	0	0
Calendar year 1973	73.5	73.5	0	73.5	100.0
1966-70 (5 yr)	2,024.4	633.8	33.0	1,360.6	67.0

¹ There being no report for region 10 for the last half of 1973 indicates that the figures shown for calendar year 1973 are probably incomplete.

(3) We understand that the Census Bureau will not have its 1972 information sufficiently broken down to reveal the percentage of mills with less than 100 employees until early next year. However, the Bureau of Census 1972 Census of Manufactures shows that in 1972, 78.9 percent of all sawmills and planing mills had less than 20 employees. In 1967, 81.4 percent of all sawmills and planing mills had less than 20 employees. Thus, the percentage of small sawmills and planing mills with under 20 employees compared to the total of such mills declined by 2.5 percent in the five years between 1967 and 1972.

We would also like to clarify a response made by Mr. Crowell to a question posed by Senator Packwood at the hearing. Mr. Crowell pointed out that the assured timber supply under the set-aside program reduces the incentive of small businesses to be as competitive in terms of capital improvements for increased timber utilization as they would ordinarily be if they had to face keen competition regularly in purchasing national forest timber. (Tr. pp. 50-51). Senator Packwood then asked Mr. Crowell why this same rationale would not apply to a large business like Weyerhaeuser Company which has a guaranteed supply of timber on its own private lands. (Tr. p. 51). Mr. Crowell's answer to the question (Tr. pp. 51-52), though essentially correct, merits brief elaboration to sharpen the point.

The crucial distinction between assured supply from private lands and assured supply from national forest lands is that the private timber supply has already been bought and paid for by the owner. The owner must fully utilize it to realize the greatest return for the money he paid. The assured supply purchased from the Forest Service under the set-aside program, however, is only bought and paid for as it is harvested. The purchaser only pays for the timber he utilizes; he suffers no loss from lower grade material left on the land. Thus, he has little incentive to make capital investments to increase timber utilization.

The main point that we feel must be stressed if your Subcommittee is to assist the truly small timber businesses that require help, is to investigate the merits to justify a classification of 500 employees as the size standard determination for a "small business". We believe that any impartial factual investigation on this issue will reveal that a timber company of over 100 employees is certainly not "small." We further believe that the factor for determination of "small business" to qualify for the SBA benefits should include annual revenue. Consideration should also be given to other factors, such as annual production or some such measuring rod to accord help to the needy smalls. In this respect we agree with your position as related by *Forbes* (May 15, 1974, issue, page 80): "By *small*, Cranston means businesses with less than \$1 million a year in sales and under 500 employees. . . ."

We hope that the information we have developed is sufficient to answer the questions you raised at the hearing and that our comments herein are of some help. If there is additional information you would like or if we can be of further assistance, please let us know.

Very truly yours,

ANGELO A. IADAROLA.

WILKINSON, CRAGUN & BARKER,
Washington, D.C., September 11, 1974.

HON. ALAN CRANSTON,

Chairman, Small Business Subcommittee, Senate Committee on Banking, Housing and Urban Affairs, Washington, D.C.

DEAR SENATOR CRANSTON: Enclosed is an affidavit received from Mr. William A. Tinney who was formerly employed by the Small Business Administration as its "Principal Industrial Specialist". We are submitting this affidavit for inclusion in the written record of the Small Business Subcommittee's hearing of August 22, 1974, on the operation of the national forest set-aside program. The affidavit is most significant since it represents the views of a central figure in SBA in the planning and formulation of the current set-aside program.

We believe that Mr. Tinney's comments are particular enlightening since they significantly contradict many of the facts related by SBA officials to justify the program. We therefore request that this affidavit be made a part of the record.

Sincerely,

ANGELO A. IADAROLA.

AFFIDAVIT

STATE OF WASHINGTON

County of King, ss:

William A. Tinney, being duly sworn, deposes and says:

I am a citizen of the United States and an adult over twenty-one years of age. I reside at Steilacoom, Washington.

I am employed in the Research and Development Department of the Post Blakely Mill Co., which has its main offices in Seattle, Washington.

Prior to assuming my present position, I worked for 6¼ years (February, 1967 to June, 1973) with the Small Business Administration as their "Principal Industrial Specialist" for the forest products industry. As Principal Industrial Specialist, my area of geographical concern was Alaska, Washington, Oregon, Idaho, Montana and northern California. During my tenure as Principal Industrial Specialist, I was involved in the planning and formulation of the present SBA federal timber set-aside program. In this role I was directly responsible to Mr. Gene Van Arsdale, Chief, Prime Contracts and Property Sales Division, and communicated with him frequently by letters and written reports.

In studying the decline of small business in the forest products community during my years with SBA, I found that the decline was attributable to two factors—poor management and underfinancing. Timber availability per se was not a factor.

Of course, in speaking of decline in the number of small businesses, I am referring to involuntary closures. One must be aware, however, that each year there are a number of free choice withdrawals from the forest products industry which are dictated not by business considerations as such but by desires of the owners to retire. Such activity is common in the forest products industry and is due in large part to the fact that family ownership and partnership predominate to this day in the small business segment of our industry. Instances where a single proprietor, a majority owner, or one or both partners of a small business sells his operation in order to retire should not be viewed as a decline in small business which necessitates SBA protective action. Further, statistics documenting these free choice withdrawals should not be included in assessments of the decline of small business.

The present timber set-aside program ignores several of the realities of the forest products industry, including the item discussed immediately above. Because of the treatment accorded acquisitions and mergers of small companies by or with large companies under the set-aside program, the owner of a small company wishing to retire is seriously hindered in his sale attempts. For instance, if a particular small company has a history of stumpage purchases from a National Forest which comprise one-fourth of the small business base average share for that National Forest under the set-aside program, and the owner of that small company sells to a large company, the large company cannot take advantage of that small company's historical reliance on National Forest timber. Notwithstanding the acquisition of the small company, the large business base average share is not increased to account for the fact that 25 percent of the small business base average share is no longer attributable to small business. The end result is that the acquiring large company must find another stumpage source to supply and keep operative the newly-acquired small company: a task which is next to impossible nowadays.

This being the case, large business is extremely reticent to purchase small operations from owners wishing to retire. The small owner, therefore, must sell his business, if at all, to another small business. Those small businesses in the best position to purchase, however, are those best financed, who oftentimes are the larger small companies. A purchase on their part could increase the size of their operation, though, to the point where they could be classified as a large business. Thus, they are unwilling to purchase as well. Ultimately, the small owner desirous of selling his business is placed in a stress position. His market is severely restricted, and if he does sell, he sells at a price below the actual value, a price which bears resemblance to that obtained at a forced sale. One solution would allow for first refusal on the part of small business in the instance of an offer for purchase from other than small business. If small business fails to meet this offer then the sale to other than small business without prejudice as regards Federal timber sales should be allowed.

Another, and perhaps the most significant, reality of the forest products industry ignored by the present timber set-aside program is that of size: what is a large business and what is a small business. The present criterion of 500 employees is totally unrealistic. In fact, use of the number of employees (be it 100, 250, or 500) as a standard for determining smallness, and thus entitlement to the benefits of the timber set-aside program, is not a valid measuring tool. Instead, the relevant criteria which should be used are assets, available capital, gross receipts and net income. Only by looking to those factors can a true understanding be gained of what is a small business. Under the present system a substantial number of companies which are large (in terms of available capital and gross receipts), successful and highly profitable operations in need of no aid or assistance, are classified as small businesses to the detriment of the truly small operators who justly deserve SBA assistance.

As stated previously, my work and study when in the employ of SBA revealed to me that the decline of small business in the forest products industry was not attributable to lack of timber availability per se. The decline was due to poor management and underfinancing.

With regard to the truly small business segment of the forest products industry, what is needed to remedy this situation and arrest the decline, in addition to a reasonable timber set-aside program, is a concentrated loan program which would allow these *small* businesses to regain their financial equilibrium and to adopt competitive and efficient management practices.

Further deponent saith not.

WILLIAM A. TINNEY.

Mr. CROWELL. Now, all of this goes to show, we believe, that the present size standard of 500 is excessively high. It is high because it fails to afford protection to the truly small segment of the forest products industry.

The truly small sector of the industry probably has fewer than 50 employees, and, perhaps with the exception of the west coast area, ought to be identified by fewer than 50 employees.

On the west coast, there is reason to think that, where mills are larger, a fair breaking point between small and large, if you are relying solely on numbers of employees, might be 100. But any higher than that, we submit, puts a mill into the category of a large business.

Now, there are other factors which ought to be considered, we think, besides just the bare number of employees. Those factors are dollar sales volume annually, and production capability.

Let me give an example from one of my own company's operations. We operate a sawmill at Oroville, Calif., which was built in the last 5 years at a cost of between \$5 and \$6 million. It employs 135 union members, and produces approximately 90 million board feet per year. It generates annual sales of between \$7 and \$8 million.

Now, that is just one operation. One mill. We submit that if it were under independent ownership, it ought not to be a small business.

We have made the point in the lawsuit, repeatedly, and it is supported by depositions which we have taken of the agency people—both SBA and Forest Service—that in establishing the present set aside program, there were no studies performed, really, to determine what the adequate size standard would be, or what the real need or justification for the program was.

These studies, to our knowledge, have not yet been made. Thus we welcome Mr. Kleppe's promise today that there is going to be a review in the coming fiscal year of the adequacy or inadequacy of the size standard.

We think that an additional consideration which ought to be kept in mind in determining size standards is the fact that the true small

ownerships in the forest products industry are at opposite ends of the spectrum.

At the one end of the spectrum, we find the small individual entrepreneurship who employs a very few number of employees.

At the other end, we find the large, publicly owned companies which number in our industry maybe 50 or 60. Those companies are actually owned by diverse shareholder interests. The average shareholder interest, we submit, can be readily calculated from the annual reports of those companies, and would indicate that the average equity holding of the owners in those companies is very much less than would be the average equity holding in a sawmill operation operated by an individual and employing as few as 20 people.

Consequently, we think that there should be an awareness of the fact that the small business ownership in this industry is at two ends of the spectrum. One in the publicly held companies, and the other in the small individual entrepreneurships with relatively few number of employees, and with a relatively low dollar volume of sales and of production.

Senator PACKWOOD. Let me be sure I understand you. Are you saying that there are a lot of these small mills that are individually owned by one person and making a potful of money because of the individual ownership? It doesn't matter if they have 20, 30, 40 employees?

Mr. CROWELL. Well, I hadn't said it that way, Senator, but it's true that there are very successful small businesses who don't need the help of a set-aside program to be very successful and to generate profits which, after all, is what the game is all about.

Senator PACKWOOD. How small can a company be and still compete effectively with Louisiana-Pacific Corp. or Edward Hines Lumber? Would it be one with 50 employees? A hundred? Two hundred?

Mr. CROWELL. We think that we have effective competition from small operations that would employ as few as 50 people. One of the factors which is frequently lost sight of in castigating big business and its capabilities for competing with small business is that each one of the mills operated by a large business is operated as an individual profit center. It's got to turn a profit. It's got to be successful if it's going to be continued in operation. If it can't compete, it's either going to be modernized so it can, or it is shut down.

It's a fallacy to assume that many companies, or any company for that matter, will long pour money into the purchase of expensive stumpage and then run it through a facility which can't process it at a profit. Big companies just don't subsidize their individual profit center operations in that way.

Senator PACKWOOD. I have come to the same conclusion you have about the efficiency of small mills. I have gone through them and seen them operate.

When one person owns them, or two or three, they can probably make a decision more quickly than Weyerhaeuser can about what they will sell for what, and how quickly they are willing to cut and move. They are very efficient.

We do have to worry about making sure they have access to the timber base, especially in the West where we have so much public timber. They are not going to operate at all if they can't get the timber.

MR. CROWELL. I would agree with you, Senator. I would say, also, we have to be concerned about access for all existing operations to timber. You know very well from your interest in this timber supply problem that it's a problem for all existing operations, and that there's an increasing dependency upon national forest timber, in the Pacific Northwest particularly, by all operations.

This question of timber supply is probably the single most important issue to our industry. It's a shame, really, that we have to divert all of our efforts and interests to a devisive program of the type that exists in this set-aside situation, rather than being able to focus on what is really our industry's basic problem of long-range timber supply and management of the national forests to assure that the wood needs of the people of the United States are adequately met.

Senator PACKWOOD. Let me ask you about the big size/small size thing again. How many companies would you have in this country that would have between 500 and 1,000 employees. Or is there a tremendous jump from 500? Do you have more than a few more mills in this 500 to 1,000 range and then the big ones are really 3,000, 5,000, 10,000 total employees, or more?

MR. CROWELL. I really don't know the answer to that question. I suspect that there are relatively few of the 60 companies who have more than 500 employees whose employees number less than 2,000.

Senator PACKWOOD. Well, that's a question I was getting to. I get the same feeling as to the companies in Oregon. They are either small, in the sense of individually owned, or the fellow may have a couple of mills, or they are very large operations with many mills.

MR. CROWELL. The large operations, however, are, when you break them down, really operating mills which aren't any bigger than the mills which are being operated by the individual enterprises.

Senator PACKWOOD. I grant you that. I am saying I don't find many individual companies where you have 700 or 800 employees, or 900. Or between 500 and 1,000. They seem, for some reason, either to break smaller than 500 or to be really substantial ownerships with a number of mills and with thousands of employees.

Senator PACKWOOD. You say you can't have an efficient sawmill operation with several hundred employees in it anymore. Plywood operations are a bit different.

Senator PACKWOOD. You say you can't have an efficient sawmill operation with several hundred employees?

MR. CROWELL. No. That's right. If you exceed 200 or 250 employees in a sawmill, why, it's a very rare thing today. The sawmills just aren't made that large. They would have a very large production capacity if they had that many employees, and there just isn't—there aren't many mills of that large capacity in operation anymore.

Senator PACKWOOD. But a plywood operation is another matter?

MR. CROWELL. Yes.

Senator PACKWOOD. There they might have 400 or 500 employees?

Mr. CROWELL. Well, a 400 or 500 employee plywood plant would be a large one.

Senator PACKWOOD. But normally you'd have two and a half to three times as many people in a plywood plant as in a sawmill?

Mr. CROWELL. I would say an average plywood plant might employ 250 to 350 people, depending on the product it makes. The sanded mill would require more employees than a sheathing mill.

But, again, the efficiency of the operation would probably be best at between 250 and 350 employees.

Now, Southern Pine plywood plants would tend to have a few more employees, because in order to feed a lay up line, they have to have additional lathes, and to run additional lathes, you would need more employees.

Senator PACKWOOD. Go ahead.

Mr. CROWELL. The second point which we wanted to leave with the committee was with respect to the arbitrary aspects of the present program. We think that there are a number of aspects which are against the public interest, and which ought to be highlighted for the committee.

The first of these adverse public interest consequences of the present set aside program is that we think it would be demonstrable that it tends to discourage the best utilization of raw material.

Now, the reason for that is that there are restrictions imposed by the set aside program on timber which is sold as set aside. Once timber has been so sold, it cannot be resold, without limitation, to other businesses.

There is a limitation requiring that no more than 30 percent of the timber purchased at set-aside sales be sold to large business. The 70 percent then has to be processed by small businesses.

In wood processing centers like Eugene or Medford, or the northern California areas, or the Puget Sound area, the tendency in the last 15 or 20 years in the industry has been for specialty-type sawmills to spring up. That is one of the reasons why small businesses can be so efficient. It's because they concentrate on the production of certain types or grades or species of lumber, and operate off of a particular type of log.

Now, if those logs cannot flow freely to the mill which can achieve the highest and best utilization of the raw material, the industry is failing to achieve the ultimate which is available with our present productive capacity, and we experience both monetary loss and loss of material.

We think this is a public interest consequence that ought to be thoroughly examined before a set-aside program bearing the automatic consequences of our present set aside program is implemented.

But no such study of this kind of consequence has ever been performed by the particular agencies who implement the program.

An additional adverse public consequence from the present program is that it tends to discourage capital investment in additional technological developments for existing sawmill facilities.

A study which was performed by H.C. Mason and Associates of Milwaukie, Oreg., for the Forest Service, and which was published

about a year and a half ago, indicated that to utilize the present technology available to the wood products industry would require an investment of many billions of dollars.

To the extent that that investment is not made, we are experiencing less than the best utilization of raw material, a raw material that is becoming increasingly scarce and increasingly more valuable.

The set-aside program tends to discourage this needed investment in two ways. It discourages it for the large business, because the large business, no matter how efficient it becomes, cannot acquire any more Federal timber, and in fact is faced with the possibility of gradually lessened raw material sources from the federally owned forests as a result of the set-aside program.

The small business, on the other hand, which has an umbrella held over its head as a result of the set-aside program, has removed from it the sharpest incentive to continue to remain as competitive as possible, so it doesn't make the necessary investments at the same rate that it would otherwise.

And consequently, our industry lags even further behind in making the desirable capital investments which would improve the utilization of raw material from the national and Federal forests.

Senator PACKWOOD. So long as a company is guaranteed what it regards as sufficient access to timber, it is not going to utilize its investment capital properly? Is that what you are saying?

Mr. CROWELL. I am saying that it does not have the same sharp incentive to use it as promptly as it would if it had to be as keenly competitive in buying Federal timber and thus being able to process that timber profitably.

Senator PACKWOOD. Well, then, that statement would also hold true for Weyerhaeuser, would it not, which is almost self-sufficient in its own timber supply and wouldn't have to worry about prompt utilization?

Mr. CROWELL. No, it wouldn't, Senator, because there the incentive is still with the mill owner who has his own timber supply. He has an assured timber supply, and he can attempt to make the largest profit possible by making the necessary investment.

Senator PACKWOOD. Why isn't the same thing true of the small one if he has an assured timber supply?

Mr. CROWELL. The individual small business, of course, does not have it assured, but the sector in which he participates has the assurance. So without the absolute assurance on his side that he is going to be able to get it, why, he doesn't have the incentive as fully as he would if the incentive is to be more competitive than his potential competitor at the bidding table, so that he can perhaps pay a little bit more for some package and gain the edge that he needs.

Senator PACKWOOD. I thought you just said that these small businesses do have the guaranteed umbrella and don't have to worry about getting the timber because they have the protection of the set-aside. You mean even with the set-aside, they still have problems in getting timber?

Mr. CROWELL. Well, individually they still have to go out and buy the timber in competition with other small businesses.

Senator PACKWOOD. OK.

Mr. CROWELL. Another aspect of the present set-aside program which we feel is against the public interest is that it discriminates against employees of large businesses.

To the extent that large businesses are prohibited from buying timber to which they have formerly had access, those employees have their jobs endangered.

Many of these employees, incidentally, are union members, since the larger companies tend to have a higher percentage of unionization in their operation than do the small operators.

There is a discrimination, also, against the small business contractors who contract with large businesses to meet their needs and requirements. Examples of this would be road builders or loggers or log truckers. Or truckers who move the manufactured product to market.

Senator PACKWOOD. Are you suggesting here that there's a question of greater unemployment? Or are you saying that with small business set-asides, you will have more people working for small business, but without them you will have more working for big business?

Mr. CROWELL. What we are saying is, there's going to be an economic dislocation of employees of the small business contractors who work for large businesses, and of small businesses in those communities which happen to be placed where the single resource payroll is operated by a large business concern.

The tendency will be to shift that payroll away from that community to the communities that have facilities operated by small businesses. All of that is an economic dislocation which serves no real public interest.

Senator PACKWOOD. But if you don't have the set-aside, then the tendency is to shift it away from the towns where the small businesses are located to where the large businesses are. That's a dislocation, also.

Mr. CROWELL. No, only if the small business is not competitive with the large business. But there are many small businesses who are extremely competitive with large businesses in buying Federal timber.

Senator PACKWOOD. Let me come to this critical question. Assuming there were no small business set-asides at all, your position is that these small companies could very adequately compete with the large ones on the bidding for public timber and really have no need for the protection as small businesses?

Mr. CROWELL. I haven't gone that far, Senator, because we do not want to be misunderstood as advocating complete abrogation of the set-asides. We think there is a place for them.

However, we think that the set-asides which are made ought to go to the small business which needs it, and which can be assisted to grow larger and to become competitive and stand on its own feet in competing for Federal timber, as do many of the medium-smalls or large-smalls today.

Senator PACKWOOD. So this whole issue is boiling down to simply a question of size. You concede the necessity for some kind of a

small business set-aside program for some kind of small companies whose size you think should be smaller than 500.

But you are saying that there are areas where these small businesses cannot compete with the large ones without the protection of set-asides.

Mr. CROWELL. Well, if you define large businesses as businesses of more than 50 or 100 employees, as we have indicated earlier. There's a place where small business could be properly helped in obtaining access to Federal timber, but, frankly, I, or any other member of the panel, I don't think, know what that point would be at this juncture.

We think that an alternative form of help which might be a lot more beneficial would be financial help, because really that's what it boils down to is management and finance—the availability of capital.

And once a mill has got good management and has adequate capital, that mill can compete very handily with its neighbor next door who may be operated by a large business concern.

We see that all through western Oregon, western Washington, northern California—in fact, all through the whole industry.

Senator CRANSTON. I'd like to say I'm sorry I had to step out for a few minutes to the budget meeting.

Senator PACKWOOD. I have been interrupting him as he is going along, so he hasn't actually finished his statement yet.

Mr. CROWELL. I haven't. I was just going to say that we have not and will not have the opportunity to summarize some of the aspects of the arbitrary application of base share computations which are referred to in a number of the statements by the panel members. I would commend those statements to your attention, because they do indicate some arbitrary aspects of the program.

Now, I'd like to close by summarizing our recommendations for the committee's consideration.

The first of our recommendations is that we would like to see the present set aside program eliminated and completely reworked, and that a set aside program that might be established ought to be established with far more study and consideration than the one that we now have.

It should be done because of the reasons that I have tried to summarize.

We feel that if a set-aside program is going to be determined on the basis of employee numbers, that the employee numbers should be considerably less than 500. We suggested that 50 or 100 would be the top measurement; that other considerations like dollar volume of sales generated annually ought to be taken into consideration, and that probably \$1 million in sales would be a possible breaking point, also.

We think that if there is going to be an automatic set aside program of some kind, that the computation of base shares should be made much more objectively than it has been in the past. I will have to rely on the written statements to indicate the factual background for that recommendation.

And lastly, we would say that if base shares are resorted to, that there should be a recalculation provided for when there is a change in size status. There is no evidence that we are aware of that concentration is so severe in the forest products industry today, or threatens to become so severe, that it is a proper function of either SBA or the Forest Service to try to prevent increasing concentration in the forest products industry.

I'd like to take another minute or two to allow Mr. Ehinger, a vice president of the Edward Hines Lumber Co. who operates on the Routt National Forest, to respond a little bit to the statements which have already been made by a couple of the prior witnesses as to the problem existing there. Paul?

MR. EHINGER. Yes, sir. We have heard earlier from Senator Haskell and Congressman Aspinall regarding the Routt Forest, and I think the concern here from our standpoint is that considerable misinformation is being distributed in this case, and it's crept into the testimony, at this point.

To begin with, the Routt National Forest started negotiations with the SBA when the three forests were split. The Routt, the Arapaho, and Medicine Bow were split into separate marketing areas.

The SBA figures were not published prior to negotiations between the Forest Service and the SBA. In the process of the negotiations, the Forest Service came up with a 34-percent figure, SBA with 52 percent. The figure was compromised at 42 percent.

At that time, which was only 3 months ago, the first time that this figure became public, and it was at that time that our company, who is the primary large business in the area, became aware of the information.

We immediately went to the Forest Service, the agency which we were dealing with, and appealed that decision, and I would like to submit later, for the record, to add to the record of the committee our fully documented brief on the Routt National Forest and the set-aside, because it does tell the full story of why the 34 percent was a valid concept.

Senator CRANSTON. We'd like to have that.

[The following information was received for the record:]

EDWARD HINES LUMBER CO.,
August 30, 1974.

HON. ALAN CRANSTON,
Chairman, Senate Small Business Subcommittee, Senate Committee on Banking,
Housing and Urban Affairs, Washington, D.C.

DEAR SENATOR CRANSTON: I wish to respond to statements made by Senator Haskell of Colorado in his Testimony before your Subcommittee on Small Business, August 22. In his testimony he makes a number of points which need clarification for the record.

In his opening remarks he states, "I have the dubious distinction of representing a state which contains the only National Forest which has not reached an agreement to implement the Small Business Set-Aside Program for the sale of National Forest timber." This is not a correct statement. This forest, the Routt, has indeed implemented the set-aside program. During the past six month period they have offered 12.1MM B.F. for sale designated as small business set-aside. In the present 12 month announced sale program the Forest has designated an additional 13.3MM B.F. to be offered as set-aside. The determination of a fair base share for small business is the point of disagreement between the Forest Service and the Small Business Administration.

He further states, "I do not understand why reasonable men * * * have not been able to arrive at an agreement which takes into account the interests of both small and large business and principles of sound forest management". The set of correspondence developed by these two agencies over this issue reveals that the S.B.A. is trying to bind the Forest Service to an agreement which arbitrarily precludes large business from acquiring their fair share of the Routt's sale program. The 42% share pursued by the S.B.A. provides small business with volume in excess of their needs, while at the same time shorting large business needs and will eventually lead to permanent plant closures. The Forest Service has resisted this pressure which has resulted in the lack of settling the issue.

Senator Haskell next refers to the 1971 agreement between the Department of Agriculture and the Small Business Administration. He leaves out a substantial portion of that agreement which contains one point vital to this discussion. He ends his quote on Item 4 B. Item 4 C states:

C. The above provisions do not preclude USDA and SBA from taking other factors into consideration in specific cases when computing base average shares, nor from otherwise establishing or eliminating set-asides which they deem appropriate under the Small Business Act. USDA and SBA may make allowance for such factors as past long-term sales, or after unusual considerations, when computing the base average share.

It is this provision of the agreement that is the crux of the whole matter. In the case of the Routt the SBA has refused to allow those other factors specifically mentioned in the agreement such as past long term sales, etc., to be used in calculation of base shares. The SBA considered those factors on the Arapaho National Forest because they raised the small business base share from 0% to 16%. No one argued the point. But on the Routt where use of the same type of data lowered the small share from 52% to 34%, they objected. In this area the SBA is operating with a double set of standards, and is being resisted by the Forest Service in their efforts.

Senator Haskell next faults both agencies for not reaching an agreement. In his concluding statement he suggests Congress should intervene to settle the disagreements. He fails, however, to discuss the mutually agreed to regulations formulated by both SBA and the Forest Service and published in the Forest Service Manual, wherein both agreed that the Regional Forester responsible for the Forest will be the final approving officer in matters of this nature. The Regional Forester, in this case, has made his decision and has reaffirmed that decision after a SBA appeal. The SBA, however, has chosen to flaunt their own mutually agreed to procedures and is now appealing the Regional Forester's decision to the Chief of the Forest Service.

Senator Haskell next provides a chronological list of events leading to the present situation. The list omits several occurrences which are important in developing an accurate portrayal of all the facts.

As Senator Haskell points out, in early 1973 the three forests, Routt, Arapaho and Medicine Bow were separated into separate marketing areas. He next states that the Arapaho and Medicine Bow calculation of new base shares was based on historic sales on the two forests. This is an erroneous statement. The two forests with SBA approval established small business shares of 52% for the Medicine Bow and 16% for the Arapaho. Based on an analysis of historic sales the shares respectively would have been 71% and 0%. The Forest Service proposed compromise shares based on data other than historic sales and after minor negotiation the SBA and the Forest Service reached agreement. This is the major stumbling point on the Routt. Shares based on purchase history do not accurately reflect industry's needs. Yet the SBA is unwilling to concede that other factors need to be considered, and they choose to ignore that on the Arapaho small business would have no share if the regulations were strictly interpreted as the SBA insists for the Routt.

Senator Haskell next points out that if the 34% share is established during the entire 1971-76 period "A 17% share could conceivably be set for the next 5 year period." The regulations do set the maximum drop from one period to the next at 50% which in this case would set the minimum at 17%. However, there are a number of other rules governing calculation of a new base share. These rules appear to effectively limit the maximum drop from one period to the next at 10% which in this case could lower the base by 3% to 31%. This can only happen if small business fails to purchase all of the volume allotted to them by their 34% base share, which would logically indicate they don't need it all.

Senator Haskell refers to the inferior quality of timber sale set aside for small business and makes specific mention of a sale called Whiskey Park #3. There has been considerable correspondence developed over the status of this timber sale. The SBA and small business want it designated as a set-aside. The Forest Service has resisted because the only small business mill to which the sale is tributary could not possibly log and manufacture this volume within the time constraints specified in the contract. As far as quality is concerned, the majority of Routt timber purchased by small business is far superior in quality to the average timber in the rest of the forest.

I agree with Senator Haskell's closing remarks in which he states "I believe the health of the large and small firms on the Routt is of such importance that we should demand that the Forest Service and the SBA arrive at a workable agreement immediately. I do believe, however, that upon close examination of the facts involved in this matter the blame for most of the problem rests with the SBA as is evidenced by the arbitrary manner in which they have chosen to conduct their affairs. The 34% base share proposed by the Forest Service truly provides fair and equitable shares to both large and small business, thus providing copy of our brief on the Routt National Forest set-aside program appealing for mutual survival.

As requested by you during the hearing, I am including with this statement a Supervisor Metcalf's decision to change the base share from 34 to 42%. (See Attachment A)

To clarify the developments of the case I will provide the following information, which documents the events leading to the present situation: (See Attachment B)

1. Letter from the Routt Supervisor to SBA dated 3-7-73. This letter proposes the 34% small business share for the Routt.
 2. Letter from SBA to the Routt dated 3-13-73. Notifies the Supervisor that SBA is appealing this decision to the Regional Forester.
 3. Letter from SBA to Regional Forester Lucas, dated 3-15-73. Appeals Routt's 34% small business base share determination and proposes 52% level.
 4. Letter from Regional Forester Lucas to SBA dated 3-30-73. Upholds Routt's determination for small business base share of 34%.
 5. Letter from SBA to Routt dated 10-19-73. Asks for reconsideration of base shares and again proposes 52% level.
 6. Letter from Routt supervisor to SBA dated 10-30-73. Rejects 52% proposal.
 7. SBA Washington office telegram dated 2-21-74 proposes 42% share for small business. Copy not included but referred to in #9 below.
 8. Letter from Routt Supervisor Metcalf to Regional Forester Lucas dated 2-28-74 agrees with 42% level from small business.
 9. Letter from Regional Forester Lucas to the SBA Washington office dated 3-22-74. Notifies SBA that a verbal request appealing the decision to change from 34% to 42% was received 3-21-74. Holds in abeyance Regional Forester's decision on 42% level.
 10. Letter from Edward Hines Lumber Co. to Regional Forester Lucas dated 4-29-74. Provides statement of reasons supporting appeal of Supervisor's decision to change base share from 34% to 42%.
 11. Letter from Regional Forester Lucas to Paul Ehinger, Edward Hines Lumber Co. dated 6-4-74. Upholds the 34% small business base share for the Routt.
- As noted above, the SBA is now appealing Lucas' decision to establish the 34% base share to the Chief of the Forest Service.

Sincerely,

PAUL F. EHINGER,
Senior Vice President.

Before the Regional Forester, Forest Service R-2 U.S. Department of Agriculture

IN THE MATTER OF THE APPEAL OF EDWARD HINES LUMBER CO.

STATEMENT OF REASONS

Edward Hines Lumber Co., hereinafter referred to as "Appellant", appeals from the February 28, 1974 decision of the Supervisor of the Routt National

Forest which set the small-business base share for small business set-aside timber sales on the Routt National Forest at 42%, a level which does not reflect the need for and demonstrated ability to utilize Routt National Forest timber by the small business segment of the timber industry operating on the Routt National Forest.

This appeal is based upon Appellant's contentions that base period records are distorted and do not reflect need for and use of Routt National Forest timber by each segment (large and small) of the timber industry operation on the Routt National Forest; that actual use of base period timber was not consistent with purchase records; that in accordance with instructions in the Forest Service Manual, and in the Small Business Agreement executed December 29, 1971, by and between the Small Business Administration and the U.S. Department of Agriculture, additional considerations above and beyond those listed to date should be brought to bear; and that the base share as proposed is inequitable, unfair, and excessive to the needs of small business, providing small business with *more* than its appropriate share of Routt National Forest timber sale volume.

I. Objective

The objective of this appeal is to obtain a recalculation of the small business base shares on the Routt National Forest, with recalculation of the Cumulative Set-Aside Analysis retroactive to January 1, 1971, based on the recalculated base share.

II. Statement of facts

The factual and equitable considerations in support of this appeal are as follows:

A. DURING 1973 FOREST SERVICE PROPOSED ESTABLISHMENT OF A 34% BASE SHARE FOR THE ROUTT NATIONAL FOREST. THE PROPOSAL WAS DULY APPEALED BY SMALL BUSINESS THROUGH THE APPEALS PROCEDURE. THE APPEAL WAS DENIED, AND FOREST SUPERVISOR'S DECISION TO USE 34% UPHeld BY THE REGIONAL FORESTER. NO FURTHER TIMELY ACTION WAS TAKEN BY SMALL BUSINESS. THUS, SUBSEQUENT DECISIONS CHANGING BASE SHARES HAVE BEEN INAPPROPRIATE TO THIS POINT, THERE BEING NO NEW INFORMATION BROUGHT TO BEAR.

1. On March 13, 1973, Mr. Kenneth R. Meister, Industrial Specialist (Forestry) for Small Business Administration, filed a statement of intent to process an appeal. This was filed with Mr. Walter B. Metcalf, Supervisor, Routt National Forest.

2. On March 15, 1973, Mr. Meister filed with the Regional Office, R-2, a letter including the statement, "Please consider this letter as a formal appeal." The appeal was from the Supervisor's decision to establish a 34% base share.

3. On March 30, 1973, Regional Office, R-2, responded to Mr. Meister with a letter including the following, "The 34% small business set-aside share appears to be equitable and I therefore uphold the Forest Supervisor's decision."

4. Although Mr. Meister requested reconsideration of the 34% base share decision, that request was dated October 19, 1973, and therefore was not timely, and was in violation of the rules of procedures set forth in Section 211.31 of The Appeal Regulation (36 CFR 211.20-211.37).

In consideration of the foregoing facts, Appellant submits that the present question, i.e., the appropriateness of a 42% base share, is unnecessary and inappropriate. The decision to use 34% has been made and upheld. However, since there has been some procedure unknown to Appellant used to re-establish base shares at 42%, Appellant presents the following further considerations in support of Appellant's appeal.

B. THE PROPOSAL TO ESTABLISH A 42% BASE SHARE VIOLATES THE INTENT OF THE SMALL BUSINESS AGREEMENT BETWEEN FOREST SERVICE AND SMALL BUSINESS ADMINISTRATION. A 42% BASE SHARE DOES NOT REPRESENT SMALL BUSINESS NEED FOR OR ABILITY TO UTILIZE ROUTT NATIONAL FOREST TIMBER SALES.

1. The intent of the Small Business Agreement and the Forest Service Manual instructions is clear, i.e., to provide small business purchasers with a fair, or appropriate, share of timber sale offerings under preferential conditions that will

guarantee small business ability to bid on that volume of timber sale offerings without big business competition. There is no further intent shown in these documents.

a. The Small Business Act (15 U.S.C. 631), Section 2, has declared the intent of Congress to "... insure that a fair proportion of the total sales of Government property be made to..." small business.

b. FSM 2431.11 states that the set-aside program is a "... tool provided to ensure that an appropriate share of timber sales are made to small business concerns."

c. The American Heritage Dictionary, 1971, defines "appropriate" as, "Suitable to a particular person, condition, occasion, or place; proper; fitting."

d. FSM 2431.14 states, "The Small Business Act specifies that a fair proportion of National Forest timber be made available to small business concerns."

The preceding confirm that the only objectives of the Small Business Agreement are to ensure that small business has an opportunity to purchase its fair share of timber in the national forest timber sale program, and that the fair share be appropriate, or suitable, to the conditions. No reference is made in the regulations to allocate or otherwise distribute that volume of timber sale offerings that is over and above the appropriate, or fair, share. Once the fair share has been offered and the small business interests protected in this way, any remaining volume to be offered should be offered through the normal competitive bid process, with all bidders—large or small—eligible to bid. If volumes additional to small business need are offered a set-asides, those offerings are not appropriate.

2. The Small Business Agreement and the Forest Service Manual instructions suggest a method of determination of base shares. That method is to tabulate purchases by each segment of business, large and small, during the base period of calendar year 1966–1970. This tabulation would then be used to determine a percentage of volume purchased during that base period by small business. That percentage would be the small business base share.

However, the instructions recognize that there are several reasons why such a tabulation can result in distorted and inappropriate base shares, and they provide authority and responsibility to deviate from the first suggested procedure where necessary.

a. Forest Service Manual 2431.15—"Any purchaser who does not have the capacity to manufacture 50 per cent or more of his annual log production through his own plant because of timber species, size, etc., should be classed as a non-manufacturing firm. Volumes will be credited to the size class of the firm where the timber was actually manufactured." This statement recognizes the fact that at times production of timber volume must come into play in determination of base shares. Further, it anticipates that base period sales will be followed as to their disposition, with no date restrictions. Thus, at any time now or in the future that a base period sale is logged, this concept will hold. It should then be retroactive to make modifications of base share calculations, with third-party situations taken into account.

b. Forest Service Manual 2431.15—"There are instances when sales are third partied but no merger, etc., has taken place. It is simply a transfer of sale volume and the original purchaser remains in business as he was before the sale was third-partied. In those instances where the original purchaser and the third party are of different size class the volume should be credited to the size class as the timber was or will be actually manufactured."

This statement further anticipates the use of processed volume in the base share calculations. Again, time frame is ignored, so that regardless of when a base period sale is cut, it should be calculated in the base share according to Forest Service Manual 2431.15. Retroactive adjustments again become necessary.

c. Forest Service Manual 2431.15—"There may be need for variations in computing the base average share from those indicated by the 1966–1970 base period, such as past long-term sales being completed. . . ."

"Approval of base average share differing from that indicated by actual purchasing history in 1966–1970 period will be by the Regional Forester based on recommendations by the Supervisor and the SBA."

The first of these statements further recognizes the need to depart from the normal determination of base shares from time to time. Such departure can most

logically be on the basis of processed volumes. The second statement once again recognizes the need *and the ability* to depart from the "normal" procedure, and specifically gives the Regional Forester authority to do so.

3. During the 1966-1970 base period, there were conditions in the timber sale program on the Routt National Forest that make use of base period purchases inappropriate for establishment of base shares.

a. A timber sale known as Colorado Creek No. 3 was sold on December 8, 1969, to small business on the Routt National Forest. Contract volume was shown as 7,400 Mbf. During Calendar Years 1972 and 1973, the small business firm that purchased Colorado Creek No. 3 logged an average of 6,024 Mbf annually. This amounted to 3,879 Mbf per year *more* than that purchaser logged during the base period. At that purchaser's request, Appellant's mills operating as Michigan River Timber Co. and Kremmling Timber Co. respectively, actually logged an average of 3,472 Mbf annually from Colorado Creek No. 3 during 1972 and 1973. This was done under conditions equivalent to those that exist with third-party agreements, i.e., although original purchaser retained contractual responsibilities on the sale (as is the case with third-party agreements) Appellant did the on-the-ground work as though the contract were in Appellant's name. Appellant assumed full responsibility for meeting contractual obligations on those portions of the sale which Appellant operated. This amounted to a volume in excess of 98% of the total volume removed from the sale. Absence of formal third-party agreement papers does not alter the fact that the sale was primarily operated as a third-party sale.

Since the original purchaser's cut volume of 6,024 Mbf annually during 1972-1973 consisted in part of 3,472 Mbf annually logged as a third party by big business from a base period sale, the 3,472 Mbf annually for those years should credit big business base shares in accordance with Forest Service Manual 2431.15.

Additional analysis further supports that conclusion. Of the 6,024 Mbf, 3,472 Mbf represents 57%. Thus, in those two years that small business concern was able to utilize only 43% of its log production through its own facility. Again, the Forest Service Manual 2431.15 instructions indicate the clear intent that in such cases volume should be credited as actually processed, in this case to big business.

b. During the 1966-1970 base period, both large and small business logged volumes from prior large sales that were under contract to the respective purchasers at the start of the base period. Large business logged an average of 6,888 Mbf annually from such sales, while small business logged an annual average of 1,621 Mbf from such sales. Large business volume was spread over the years 1966-1969, while small business volume was completed in 1967, with approximately 83% of the small business volume being produced in 1966. The 6,888 Mbf annually logged by large business amounted to approximately 35% of large business needs for the period, while the 1,621 Mbf amounted to approximately 19% of small business needs. Thus, not only did the existence of prior large sales' volumes have significant impact on need for timber by both classes of purchasers during the base period, but large business had significantly greater impact from these sales than did small business. Forest Service Manual 2431.15 recognizes this situation as a valid one which justifies departure from the system of using only base period purchases for determination of base shares.

c. During the base period, small business on the Routt National Forest purchased a total volume of 59,160 Mbf and used 41,829 Mbf. This amounted to an overpurchase of capacity in the amount of 17,331 Mbf. During this same period, large business purchased 64,130 Mbf while using 99,695 Mbf. This amounted to an under-purchase of capacity in the amount of 35,565 Mbf. This again is an indication that use of base period purchases is a distortion of the true need for timber by both large and small segments of industry on the Routt National Forest. The inability of small business to meet its contractual deadlines, as shown by small business disposal of Colorado Creek #3 to large business, and by small business default on the original #5 King Solomon Sale (12-5-66), could have been predicted.

The foregoing considerations are specific examples of types of situations recognized by Forest Service and Small Business Administration as reasons for departing from the base-period-purchase approach to establishment of base shares.

C. A LOWER BASE SHARE OF 30% WILL PROVIDE ADEQUATE TIMBER VOLUME TO MEET THE NEEDS OF SMALL BUSINESS AND THE INTENT OF THE SMALL BUSINESS AGREEMENT TO PROVIDE A FAIR—OR APPROPRIATE—SHARE OF TIMBER VOLUME FOR SMALL BUSINESS.

Since the concept of base period purchases has been shown to be inappropriate in this case, a modification of the "base-period-purchase" approach is necessary. Recognizing the intent to use 1966-1970 as a base period from which to work, but also recognizing the need to meet the intent of currently providing small business with an appropriate share to meet its needs, Appellant proposes and requests that a base share of 30% be established. The 30% is determined as follows:

	Base period cut volumes	
	Volume-Mbm	Percent of total
Small.....	41,829	29.6
Large.....	99,695	70.4
Total.....	141,524	100.0

The above tabulation disregards the volume logged by the Colorado Spruce Company, since most of its volume was dead timber and not subject to inclusion in the computations.

Addition of the Colorado Spruce volume cut during the base period would modify the figures as follows:

	Base period cut volumes	
	Volume-Mbm	Percent of total
Small.....	43,629	30.4
Large.....	99,695	69.6
Total.....	143,324	100.0

The Colorado Spruce volume has negligible effect.

A test to determine whether or not a 30% base share is appropriate must be made. Obviously, if a base share does not provide small business with its fair and appropriate share of timber sale offerings, it falls short of the intent of the Small Business Agreement.

From the Five-Year-Action-Plan of the Routt National Forest, it is determined that the offerings from the Routt National Forest for Fiscal Year 1975-1978 will total 100,800 Mb. These figures do not include volume planned for sale from the Middle Park District of the Arapaho National Forest.

Most recent status figures supplied by the Forest Service indicate that small business has 7,185 Mb. uncut under contract on the Routt National Forest, not considering unadvertised sales. Because of the timing of this appeal and based on past experience, a negligible volume can be expected to be cut prior to the start of fiscal year 1975.

Because of the loss last year of the mill at Craig, Colorado by fire, that mill has substantial volume of logs in its deck at Craig. This volume is estimated to be 5,000 Mb.

A measure of current needs can be determined by a tabulation of the harvest during the three years since the base period. That harvest for small business in Mb, is as follows:

1971	8,781
1972	7,197
1973	8,775
Total	24,753
Average/year	8,251

These figures do not include the percentage of Colorado Creek No. 3 that went to large business, since it has already been shown that inclusion of that that volume would be inappropriate and should be discounted according to Forest Service Manual instructions.

Discounting the present log deck volume at Craig, the available timber for small business including timber under contract for the next four fiscal years through June 30, 1978, is shown in the following tabulation :

	Million
Present volume under contract (FS records)-----	7, 185
Available thru Set-Asides at 30% (0.3 x 100,800)-----	30, 240
Subtotal-----	37, 425
Expected need through June 31, 1978, based on last 3-year harvest (4 x 8,251 million)-----	33, 004
Excess, June 31, 1978-----	4, 421

This shows that a 30% base share would be completely appropriate to maintain small business timber volume on the Routt National Forest, assuming that small business would not and/or could not buy any of the volume to be offered on an open-bid basis. That assumption has no basis in fact in view of the past history of open-bid timber sales on the Routt National Forest.

D. Conclusions

Prior determination of a 34% base share, appeal of that determination, and upholding of that determination through appeal procedures notwithstanding, it can be shown that base period purchases on the Routt National Forest were not indicative of the needs of the two segments of the Routt National Forest timber industry; and that prior large volume sales under contract at the start of the base period significantly affected purchase patterns; and that operation of one sale as a third-party sale affected purchase patterns of the base period; and that the intent of the regulation allows for deviation from the base-period-purchase approach in such cases; and since it is desirable to maintain the base period as the basis of share determination; Appellant hereby requests that the Forest Service use base period timber production as the basis for determination of small business base shares. Such an approach develops a base share for small business of 30%.

Since it is further desirable that any base share provide a level of set-aside offerings consistent with current small business needs; and since the test of 30% against planned offerings and the most recent three-year experience indicates that 30% is in fact equitable; Appellant contends that any level of set-aside base shares higher than 30% would provide a level of preferential offerings to small business on the Routt National Forest in excess of the level needed to satisfy the intent of the Small Business Agreement.

PAUL F. EHINGER,
Senior Vice President.

UNITED STATES DEPARTMENT OF AGRICULTURE,

FOREST SERVICE,

Steamboat Springs, Colo., March 7, 1978.

KENNETH R. MEISTER,
Small Business Administration,
Patio Plaza Building, Albuquerque, N.M.

DEAR KEN: We on the Routt are in agreement that the three forests in Economic Unit #4 be separated and that each forest have their own set-aside base share. In analyzing the Routt's past history of sales, volumes under contract, and harvest by small business, we feel that a set-aside share of 34% should be established on the Routt N.F. This per-centage figure was based on the following criteria :

(1) During the past 5 year period the small business timber purchasers have, as a group, had ample timber volumes under contract.

(2) During the past ten years 1961-1970 the Routt N.F. has not experienced competition in bidding on any sales. Thus small business has not been limited or jeopardized by competition from a large business concern.

(3) In considering items 1 & 2, a logical approach seems to be from an actual performance by small business. During the past 5 year period (1966-1970) the total harvest on the Routt N.F. was 143.3 MMBF; of this small business harvested 43.6 MMBF or 30.4%, an average yearly harvest of 8.7 MMBF. The fact that during the same period small business purchased 52% of offered volume loses its significance, and perhaps relevance, when related to their timber utilization, at a 30.4% rate.

(4) The forest during the past 5 year calculation period has been selling at about 30 MMBF per year. If the sell program continues at this rate, a set-aside share of 34% should be sufficient to sustain the small mills at their present 8.7 MMBF level of harvest. (30 MMBF average sell x 34% proposed base share = 10.2 MMBF.)

We on the N.F. are required to analyze our set-aside program every six months. If this analysis indicates an increased set-aside program is needed, the forest will increase its set-aside program, if possible, in the next 6 month sales period.

The 52% base share calculated on the 5 year volume purchased which you proposed does not seem reasonable considering the cutting records of the five existing operations on the Routt. Also, based on volume under contract, only Craig Lumber Co. seems to be in need of timber.

We want to make this a viable, working program and feel that establishment of a base-share of 34% is equitable.

Ken, we would appreciate your agreement of this base-share for the Routt N.F.

Sincerely,

W. B. METCALF,
Forest Supervisor.

MARCH 13, 1973.

Mr. W. B. METCALF,
Forest Supervisor, U.S. Forest Service,
Steamboat Springs, Colo.

DEAR MR. METCALF: Thank you for your letter of March 7 defining your position on your Forest's small business fair proportion.

I can appreciate your viewpoints and approach to establishing a fair share proportion; however, I still believe that we cannot except the part of the regulations that states the fair proportion will be based on a five-year history. Please refer to my letter of February 20 to you for our standing.

In our telephone conversation of March 13, Dave Hessel reaffirmed your position, and agreed that we carry our appeal to your Regional Office. This week I will write to Stan Undi and send you a copy of our correspondence.

Thank you for your cooperation.

Sincerely,

KENNETH R. MEISTER,
Industrial Specialist (Forestry).

U.S. SMALL BUSINESS ADMINISTRATION,
Albuquerque, N. Mex., March 15, 1973.

Mr. STANLEY I. UNDI,
Assistant Regional Forester, U.S. Forest Service,
Federal Center, Denver, Colo.

DEAR STAN: Attached are copies of correspondence between the Routt Forest and our SBA office here in Albuquerque. These are a continuation of our discussions concerning the division of Economic Unit No. 4 begun on January 29 in your office. On this date agreement was that Unit No. 4 would be separated into the individual Forests with a separate small business fair proportion to be established for each Forest.

On February 20 I wrote to Dave Hessel requesting that a proportion be established on the Routt based on the analysis of timber sale purchases for the base calculation period of 1966 through 1970. This would amount to a proportion of 52 per cent for small business. Dave replied on March 4 proposing that the proportion be 34 per cent which is based on an analysis of average annual cut.

On March 13 we talked by telephone and agreed that the SBA appeal this proposal by the Routt Forest to your office. Please consider this letter as a formal appeal.

Basically, our stand is that the agreement between our two agencies states that the small business base average share shall be based upon an analysis of sales purchases over a five-year period. This is contained in paragraph 4(a), reading as follows, "A base share for small business shall be established for each National Forest, or significant marketing area, by comparing the small business purchases to total sales therefrom for a 5-year period." Furthermore, nowhere in your regulations is any mention made that the analysis can be computed by analyzing annual cuts on Federal timber sales. Wordings in your regulations point to the *demand* for timber by small business through statements directing that timber should be made available to small business that would be based on past purchasing history. Demand for timber is not connected in any way with the timber cut. The cut reflects more the ability or inability to do business, the rate desired by the operator to do business, and the size of timber backlog each individual operator wants.

The people writing our regulations believed that purchase patterns are the most reliable indicators of the demand of small business. In this way, we are dealing with the ability to purchase timber, and any protection afforded to small business would therefore be based on the inability to purchase timber to fulfill their demands. This is borne out by your regulation which states that—"The fair proportion analysis will be based on a 5-year history and the current *purchasing* analysis will normally be based on 6-month periods—". Since cut and demand are not closely related, a proportion based on cut could not be checked or corrected each six-month period by an analysis based on purchases or demand.

The regulations and agreement do state that the USFS and SBA can take other factors into consideration when calculating average shares. These factors are denoted as those that would tend to upset purchasing trends. Nowhere are there words to allow the calculators to use a different basis for analysis—such as annual cut.

We believe that our rules do not allow this type of exception. They plainly state that purchase patterns should be analyzed for the share proportion and correction during the subsequent periods should be by purchase analyses. However, there is allowance to deviate from the calculated proportion if in the purchase analysis, factors have upset the pattern so that the proportion is not workable. This can easily be corrected by negotiation between the USFS and SBA in making allowances for the upsetting factors.

In the analysis of the purchases on the Routt Forest during the 1966 through 1970 calculation period we can note no factors that would upset the purchase pattern, and therefore believe that the 52 percent figure calculated from this period would be the proper proportion to use on the Routt.

Stan, this presentation may seem to be far afield from a practical solution for the Routt, but we believe that in order to make this program work, we should adhere as closely as possible to the general rules and overall policy, and make the possible deviations on the local levels.

Please let me know as soon as possible your decision to agree or disagree. If you disagree, we would like to appeal to your Chief's office with haste so this problem can be resolved quickly.

Sincerely,

KENNETH R. MEISTER.
Industrial Specialist (Forestry).

MARCH 30, 1973.

Mr. KENNETH R. MEISTER,
*U.S. Small Business Administration,
Albuquerque, N. Mex.*

DEAR KEN: We have reviewed your letter of March 15, where you appeal the proposed small business base average share for the Routt National Forest.

Ken, we have again reviewed the small business set-aside program for the Routt National Forest, along with all calculations and have discussed the situations with Mr. Bob Gillespie of the Chief's office. The 34% small business set-aside share appears to be equitable and I therefore uphold the Forest Supervisor's decision.

We agree that paragraph 4a indicates that the base average shall be based upon analysis of sales purchased over a five year period. However, you have to read the entire "Small Business Agreement of December 29, 1971" to get the entire story. We quote section 4c: "The above provisions do not preclude USDA and SBA from taking other factors into consideration in specific cases when computing base average share, nor from otherwise establishing or eliminating set-asides which they deem appropriate under the Small Business Act. USDA and SBA may make allowance for such factors as past long-term sales, large salvage sales or other unusual considerations, when computing the base average share."

We agree that nowhere does the agreement make a point blank statement that annual cut can be used in the base share calculations. However, the agreement talks about taking other factors in consideration and we do believe this means base share calculations based on annual cuts. Ken, you recognized this when you recommend that a base share on the Arapaho be calculated on present mill capacities and this certainly is not consistent with your proposals for the Medicine Bow and Routt National Forests. We know that in either regions, base shares have been calculated by methods other than purchases for the 5-year base period.

The Forest's letter to you dated March 7, sums up our thoughts on the situation. We feel that 34% is equitable. We are submitting the proposals from the three Forests to the Chief's office along with all correspondence. Ken, we would hope a satisfactory solution for all Forests could be worked out locally.

Sincerely,

STANLEY I. UNDI,
W. J. LUCAS,
Regional Forester.

U.S. SMALL BUSINESS ADMINISTRATION,
Albuquerque, N. Mex., October 19, 1973.

WALTER E. METCALF,
*Supervisor, U.S. Forest Service,
Steamboat Springs, Colo.*

DEAR WALT: By this letter, we ask that you reconsider your decision to establish a 34 per cent small business proportion on your forest, instead of 52 percent, which is developed by timber sale purchases during the 1965 through 1970 base period.

Through your letters and our discussions, we gather that you believe that the 34 per cent figure, which is based on average annual cut for the calculation period, is more indicative of the needs of the small business community on your forest. To this end, you also believe that an exception should be made to regulations governing the calculating of this proportion, so that the 34 per cent small business proportion be established.

We believe that the small business proportion should be derived from timber sale purchases during the calculation period 1965 through 1970, and that any deviation from this intent should be restricted to the inclusion of the effect that carryover sales into the base period would have, or, in the case of an insufficient amount of volume or sales, to include an extra, prior period of time.

When the writers of the present regulations drew up their agreement, they believed that the best method of determining the small business proportion was through the history of timber sale purchased by large and small businesses. Nowhere can we find any reference to the method of computing a proportion based on average annual harvest. In September 1971, Amendment No. 62 to Title 2400 refers to "a base average share differing from that indicated by actual purchasing history", but conversation with USFS personnel involved in the regulations writing did not include the average annual harvest method.

Exceptions or deviations can be made to the actual purchasing history through the inclusion of long-term sales, large salvage contracts, or through the effects of third-partying. However, circumstances such as these are not apparent on the Routt Forest.

However, the regulations do allow for variations to an established small business proportion when during any six-month period the proportion will not fit extraordinary conditions on the forest. These conditions might be upset lumber market, unseasonal weather, sales of operations, terminated businesses, or changes of timber demand.

Variations to the proportion by these conditions could be agreed to by the SBA Field Representative. This would pose no unsurmountable problem, but a variation such as calculating a proposition based on average annual harvest would be beyond the discretionary power of either the SBA or the USFS unless an appropriate amendment were agreed upon.

My proposal is that a 52 per cent small business proportion be established on your forest, and during every six-month period, if conditions on the forest warrant that the 52 per cent is not appropriate, timber sales can be set aside or not, as the conditions would dictate.

Our concern is for the well-being of the small business community, insofar as an established fair share, but we will not pursue this path to the detriment of either the large businesses or your timber program. If you would accept the 52 per cent proportion, we would not impose future arguments upon you that would impede your sale program or provide unnecessary hardship upon the large business community.

Sincerely,

KENNETH R. MEISTER,
Industrial Specialist (Forestry)

ROUTT NATIONAL FOREST,
Steamboat Springs, Colo., October 30, 1973.

KEN MEISTER,
*U.S. Small Business Administration, Patio Plaza Building,
Albuquerque, N. Mex.*

DEAR KEN: Since your letter of October 19, 1973, we have analyzed the timber sales purchased during the base period of 1966 through 1970. Attached is copy of the calculation sheet with the sales circled which we feel need correcting. Sales are being excluded from base period calculation for such reasons as: White River N.F. sale, non-advertised sales, product sales, volumes reduced by environmental modification, and a sale bought by small business and resold to large business. One other sale #1 Colorado (7.3MMBF) was sold in 1964 to small business. The sale contract was rewritten to Langendorf in 1966 with no advertisement or bidding and should not be a base period sale.

In recalculation of the base period sales with the above charges the total volume sold was 126.85 MMBF with small business share 55.32 MMBF or 43.6%.

In your letter you stated that the Routt did not have any exceptions or deviations to the actual purchasing history. However, the two years, 1964 and 1965, prior to the base period large business purchased two large sales of 50.59 MMBF. During the same two year period small business purchased 11.9 MMBF. The inclusion of these two long term sales certainly has an effect on large business purchases during the base period.

By including the two years of 1964 and 1965 with the corrected base period calculation, a more viable and realistic base share percentage results. Total volume sold for this 7 year period was 189.34 MMBF of which small business purchased 67.22 MMBF or 35.5%.

It thus appears to us that this latter figure (35.5%) which reflects the actual purchasing history by small business timber purchasers supports the 5-year timber utilization figure of 34% by small businesses. We'd appreciate your thinking in response to the foregoing facts.

Sincerely,

W. B. METCALE,
Forest Supervisor.

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Steamboat Springs, Colo., February 28, 1974.

To: Regional Forester.

I have reviewed the proposal, and its basis, of the SBA Washington Office for establishing a small-business set aside share of advertised sawtimber sales on the Routt National Forest.

The volume of timber during the agreed-upon base period from such sales that was utilized by small businesses equated to 42%. From these facts, 42% is an acceptable set-aside share for small businesses, for volumes in such sales equitable with respect to total volumes purchased in the base period. This share may be revised, by mutual agreement.

W. B. METCALF,
Forest Supervisor,

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Denver, Colo., March 22, 1974.

SMALL BUSINESS ADMINISTRATION,
Attention: Mr. G. F. VanArsdale,
Prime Contracts & Property Sales Division,
Washington, D.C.

DEAR MR. VANARSDALE: This is to advise you that a verbal appeal of Forest Supervisor Walt Metcalf's decision to increase the Small Business set-aside share from 34 to 42 percent has been received.

I am therefore holding in abeyance my decision on the 42 percent proposal, as requested in your telegram of February 21, 1974, pending the outcome of the appeal of the Forest Supervisor's decision made on February 28, 1974, to increase the Small Business set-aside share.

I am also directing Forest Supervisor Metcalf to proceed with his announced FY 1975 timber sale program for the Routt National Forest with the provision that he will identify and withhold from advertisement and sale, the portion of the Small Business set-aside program represented by the difference between a Small Business set-aside share of 34 percent and a 42 percent share.

Sincerely,

W. J. LUCAS,
Regional Forester.

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Denver, Colo., June 4, 1974.

MR. PAUL F. EHINGER,
Senior Vice-President, Edward Hines Lumber Co.,
Westfir, Oreg.

DEAR MR. EHINGER: Reference is made to your letter of April 29, 1974, in which you appeal Forest Supervisor Walter Metcalf's proposal to establish a small business set-aside share of 42 percent for the Routt National Forest.

Enclosed is a copy of my letter to Mr. Metcalf. As you can see, I feel that 34 percent is an equitable set-aside share for small business and plan to continue with this share through the current 5-year period. Therefore, since 42 percent is not necessary that your appeal be processed.

Sincerely,

W. J. LUCAS,
Regional Forester.

Mr. EHINGER. Yes, To have 42 percent, or to have 52 percent, would put at least one of our mills out of business, and all the employees that are concerned with that particular mill. Either the mill in Kremmling or Walden would have to go out of business for the lack of timber.

The 42 percent or the 52 percent share would give small business far in excess of their capacity. It would give them almost double their installed capacity.

Now, the statement was made that the small business had 8 months timber supply and big business had 2 years. Now, I have no way of knowing where the calculations came from on the large business, because there are some large businesses—one closed their own mill in Steamboat and moved to Eagle and they still get some timber.

I don't know where the figures came from but we have the documented figures up to date on our situation, and on the situation of the small mills in the area.

To begin with, the Black Mountain Spruce in Colorado has in excess of 2 years supply of timber under contract at this time. Now, the Forest Service timber sales under contract, true, represent approximately 1 year.

However, at the mill site, there is another full year of logs or approximately $8\frac{1}{2}$ million board-feet of logs at the mill. They have up to this point in time turned down one small business set-aside sale of 3 million 7, earlier this year, which we in turn purchased, once it became a free sale, because we were in a desperate position for timber for the Walden and Kremmling mills.

At the same time, in the timber sale program coming up next fiscal year, starting July 1 of this year to July 1 of next year, there is in excess of 8 million feet to be offered, strictly in the area tributary to that mill, as SBA set-asides, available to no one else on a practical basis.

The other small mill which is in the same town we operate in — Walton—has about 10 months timber supply at present. It also turned down a sale $11\frac{1}{2}$ months ago, in the early part of June, which would give it another year's timber supply, because it chose not to buy it. This was a set-aside sale.

We purchased the sale again, because we were terribly short of timber.

Second, in the next fiscal year, there will be at least one more full year's supply available to that mill, improving its position substantially. At the same time, we will have offered to us less than 1 year's supply, and this is operating on the 34-percent basis.

Now, the timber situation in that area is a very, very fine, critical balance. We all go through it, and are careful to use what we need essentially. We will get through it, and hopefully, as the Forest Service increases management, the volumes of timber available will move up, and we will all be able to expand our mills.

But to go and arbitrarily use the base share at 42 or 52 percent means that one of our mills has to go down, and then there is made available to small business far in excess of its present capacity, far in excess of any capacity they have had in the area of manufacturing the product.

The final request that Senator Haskell made was a discussion of Whiskey Park No. 3. If we add that sale as an SBA setaside, as requested, for the next fiscal year, that would add another 11 million

feet to the timber supply of the Black Mountain Spruce mill, which would be in excess of 1 year, about 1 year and 3 months, I think, plus the year—in other words, they would get an additional 2 years supply. So somewhere in this current year, they would have a 4-year supply at the expense of our mills.

Now, we are in a position where we cooperate with the other mills in the area. We believe the have to live. But we believe that our employees have rights, and our communities have rights, and for that reason we appealed the 42 percent when it was established, and requested a reduction to what we felt was the proper historical basis. And the reason the Forest Service went back to 34 percent was not an arbitrary decision on the part of the Forest Service, but based on a documented case we presented to them, and I will submit that for the record.

Senator CRANSTON. I'd like to ask what percentage of the total volume of timber sales in the country from Federal sources are purchased by large lumber companies. Could you supply it for the record?

Mr. EHINGER. We could.

Mr. CROWELL. That could be more readily supplied by the Forest Service, We'd have to rely on the Forest Service for that.

Senator CRANSTON. If the set-aside program were eliminated for small lumber businesses in excess of 250 employees, how much do you estimate the cost of timber they purchased from Federal forests would increase?

Mr. CROWELL. I don't think any of us would be able to answer that question, either. I suspect that it would not increase markedly.

Senator CRANSTON. How would you recalculate the small business share to take into account purchases of small lumber businesses during the 5-year base period?

Mr. CROWELL. Well, if I understand the question correctly, the problem that we have with the failure of the present set-aside program to allow for recalculations turns on a change in status during a 5-year period.

The recalculation ought to be based on the fact that when a small business becomes large, purchases that have been made by that business ought to be extracted from the small business share, and the small business base share correspondingly reduced.

Senator CRANSTON. What is the average number of employees working for the 26 members of your group?

Mr. CROWELL. I don't know the answer to that question.

Senator CRANSTON. Would you try to calculate that and supply it?

Mr. CROWELL. We could supply it in terms of numbers of employees for each of the 26 member companies, yes.

Mr. WEINSTEIN. I wonder if I might respond to that question?

I am Yale Weinstein with Duke City Lumber Co. We operate with offices in Albuquerque, N. Mex.

We have three sawmills we operate, two in New Mexico, one in Arizona, and a complete manufacturing facility in Albuquerque.

We operate with approximately, at the present time, 495 employees.

Now, we are classified as a large business, because we are a wholly-owned subsidiary of U.S. Industries, and accordingly we immediately have become large business. Prior to our acquisition by U.S. Industries, we would have been considered a part of the small business sector.

Now, our company generates sales in excess of \$20 million, and, Mr. Chairman, I submit, I think you would agree, that it's almost ridiculous that even if we were still operating separately we should be considered a small business that would be passionately protected by the Small Business Administration.

I think that the size standard that is presently in force is a completely unrealistic one.

Senator CRANSTON. We are just trying to get information that will enable us to figure out what approach does make sense.

In Mr. Crowell's testimony, on page 9, the figure is given that in 1967, 97 percent of the mills operating employed less than 100 individuals.

Do you have a figure for 1974, and if not, could you supply that for the record?

Mr. CROWELL. That figure would only be available from the Census Bureau, which is where we got the 1967 figure, and I understand there is not available any more recent data from the Census Bureau.

Senator CRANSTON. Senator Packwood.

Senator PACKWOOD. I might add one thing, I asked earlier about the big size/small size. Apparently the company situation is such that when you get beyond 500 employees there are very few firms with between 500 and 1,000. And then it's quite big up to 2,000, 3,000, 4,000 employees, or bigger.

Senator CRANSTON. Can you give us an example of a case or a circumstance where the best utilization of raw materials was discouraged?

Mr. EHINGER. I might answer that, There's a very good situation on that in the Routt Forest that I just got through taking about.

Both of our businesses need modernization, not to gobble up more timber, but to efficiently manufacture the timber we have.

But the way it's been handled, we are reluctant to commit any capital assets of our company in sufficient quantity to do the job we have to do efficiently. So it's still in limbo.

Senator CRANSTON. I will have some further questions to submit in writing, I'll appreciate your prompt response for this record.

Senator PACKWOOD. No further questions.

Mr. CROWELL. Thank you very much for your attention.

[Complete prepared statements of the previous witnesses follow:]

WILKINSON, CRAGUN & BARKER,
Law Offices, August 22, 1974.

Re: Comments of the Ad Hoc Committee of Federal Timber Purchasers on the
Operation of the National Forest Timber Set-Aside Program

Senator ALAN CRANSTON,
Chairman, Small Business Subcommittee,
Committee on Banking, Housing and Urban Affairs,
Washington, D.C.

DEAR SENATOR CRANSTON: The Ad Hoc Committee of Federal Timber Purchasers respectfully requests that the Senate Subcommittee on Small Business consider its comments herein concerning the operation of the national forest timber set-aside program. The Ad Hoc Committee consists of a group of forest products manufacturing companies which are classified as "large" under the terms of the set-aside program. As such, these companies are directly affected by the program whose terms prevent them from bidding upon all national forest timber sales which are set-aside for purchase by those companies classified as "small" under the program.

Since the Subcommittee intends to focus its attention upon the operation and administration of the set-aside program the comments of the Ad Hoc Committee will be directed to these areas, rather than to the legality or philosophy of the set-aside program itself. (The legal validity of the program is the subject of a lawsuit by several members of the Ad Hoc Committee in the United States District Court for the District of Columbia entitled, *Duke City Lumber Co., et al. v. Earl L. Butz, et al.*, Civil No. 2152-72.)

The Ad Hoc Committee will not address itself to specific arbitrary abuses in the operation of the set-aside program which can better be commented on by our individual member corporations which have submitted written or oral statements at the hearing. Rather, the Committee will express its views on the more general mechanics of the program and how these affect the entire industry, large and small companies alike. A list of the Committee members as presently constituted is attached.

I. THE SIZE STANDARD OF 500 EMPLOYEES FOR QUALIFICATION UNDER THE SET-ASIDE PROGRAM IGNORES ECONOMIC REALITIES IN THE INDUSTRY

Under the set-aside program, companies in the forest products manufacturing industry with over 500 employees are classified as "large" and are ineligible to bid upon national forest set-aside timber sales. This breaking point at 500 employees is exceedingly large; it ignores the needs and requirements of the really "small" timber business concerns contemplated by the Small Business Act. In 1959, the original Regulation set the number of employees at 100 persons. 24 Fed. Reg. 3491 (1959). This was later amended to set the maximum number at 250. 24 Fed. Reg. 7458 (1959). The maximum number was again amended in 1964 to 500. 29 Fed. Reg. 2988 (1964). Therefore, in five years, "small business" in this industry supposedly increased five times in size by definition. It should be noted that, for loan purposes, a 250 employee standard is still used. 13 C.F.R. 121.3-10, Schedule A.

The existing regulations define a "small business" for the purpose of sales of government-owned timber as a concern that is (13 C.F.R. § 121.3-9(b) (1970)):

1. Primarily engaged in the logging or forest products industry.
2. Is independently owned and operated.
3. Is not dominant in its field of operation
4. The number of employees do not exceed 500 persons (this is taken together with the company's affiliates).

The principal problem rests with the fourth requirement which sets the number of employees at 500. This does not provide a proper standard for determining a "small business". The Act itself sets out certain criteria that should be considered, and these include the number of employees and the "dollar volume of business" (15 U.S.C. § 632). The problem with using number of employees of a firm to determine whether it qualifies as "small" is that it

does not accord with the goals of the Act. This is illustrated by the following example. One concern may have 400 employees and produce a dollar volume of business which may be several times greater than another concern which has 550 employees (and thus is not considered "small"). The obvious unfairness here is that the "small" concern with 400 employees and a much greater volume of business is given preferential treatment while the second business fails to qualify for such treatment because of the number of employees. This was not the intent and purpose of the Small Business Act. Such a failure to qualify as "small" may result from a lack of modern equipment to run its business. For instance, the first business concern with its 400 employees may have the best in mechanized and modernized equipment to run its operation thereby eliminating the need of a large labor force while the second organization may still be utilizing obsolete equipment which would result in a larger labor force in order to carry on its operation. In any event, the first business concern with its 400 employees is obviously much larger than the second business concern (perhaps several times as large if we look at dollar volume). Therefore, resorting only to number of employees is not sufficient. It would seem to be a reasonable requirement to include the "dollar volume of business" as suggested by the Act.

This size standard was aptly characterized by Professor D. E. Teeguarden: *"This definition [500 employees] excludes very few firms from bidding on 'set-aside' sales."*¹

In essence, the size standard adversely affects not only the large companies with over 500 employees, but also the truly small companies of under 100 employees which must still compete with most of the other companies in the forest products industry for set-aside timber.

Besides failing to assist the truly small companies, however, the inflexible 500-employee standard is also at variance with the legislative intent of the Small Business Act. The report of the House Committee on Banking and Currency on amendments to the Small Business Act indicates that Congress expected that a flexible size criterion would be adopted by the SBA to accurately reflect the needs of small businesses in the industry:

"The question of a proposed definition of small business has been a recurring one over the years. It has been recognized by this committee that no single definition may be expected to meet all requirements. Recognition of varying situations motivated this committee in drafting the present Small Business Act to depart from rigid standards and leave the definition of small business to administrative determination. The Small Business Act placed this responsibility wholly within the Small Business Administration. A workable definition has been established by the Small Business Administration in its financial-assistance program. Your committee believes the same flexibility and adoptability [*sic*] must be attained in the consideration of contract awards to small business by the Government. The present arbitrary 500 rule used in procurement creates a double standard in treating small business in one fashion for financial assistance and in another fashion for procurement. It is apparent, therefore, that further legislation is required to realize the congressional intent as to the definition of small business.

* * * * *

"The Attorney General said:

"Eligibility for SBA procurement programs . . . is limited in blanket fashion to firms with 500 or less employees. This rigid standard fails to discriminate between various industries. Thus its impact upon the fate of small business varies from one industry to another. . . ."²

The use of the unreasonably high 500-employee standard in the timber industry was the subject of specific criticism by the Public Land Law Review Commission in its 1970 Report to the President and to the Congress:

"The Commission believes that the United States should assure that small firms and dependent firms be given some opportunity to obtain public land timber. *The current definition by the Small Business Administration of small*

¹ Teeguarden, "Allocating Public Timber by Transferable Purchasing Quotas: A Policy Analysis," 9 Nat. Res. J. 576, 586-87 (1969). (Emphasis added.)

² H.R. Rept. No. 55, Hearings on Amendments to Small Business Act before the House Committee on Banking and Currency, 85th Cong., 1st session 6, 7 (1957).

*firms having less than 500 employees sets this limit at an unrealistically high level for the timber industry, where most firms have fewer employees. Accordingly, the size limit for this industry in terms of qualifying for Small Business Administration assistance should be flexible enough to recognize actual conditions and to give real advantages to small firms when conditions warrant."*³

For these reasons, the members of the Ad Hoc Committee believe that the present size standard of 500 employees for the forest products should be substantially reduced.

II. THE SET-ASIDE COMPUTATION FORMULA CREATES A PERMANENT MARKET STRUCTURE IGNORING ECONOMIC REALITIES IN THE INDUSTRY

Forest Service and SBA officials have occasionally maintained that the current set-aside program was adopted because of a decline in the number of small forest products companies due to their inability to purchase national forest timber. Yet, these same officials have admitted, under oath,⁴ that they made no studies to ascertain whether there was a factual basis for this vital premise. Instead, they abandoned a prior program under which set-aside sales were made only where an actual need was demonstrated in favor of a new program which fails to consider need and operates to freeze the market structure of the forest products industry as of a given point in time. In effect, it sets up a federal subsidy for a select group in no way is based on "need". This hardly comports with the declared policy of the Small Business Act that actions taken pursuant to it not be inimical to "free competition" and that "free competitive enterprise" be preserved.⁵

Under the current set-aside program a designated percentage of national forest timber has in effect been guaranteed to small businesses based upon their historic purchases during the initial "base period", 1966-1970. Whenever small businesses fail to purchase their predetermined "base average share" within any six-month period, set-aside sales are "triggered" for the next six-month period to make up the deficit as well as to provide the base average share for that period.

The program also provides that the small business share of national forest timber purchases shall never be less than 50 percent of the small business base average share during the 1966-1970 base period. While this appears to set a 50 percent floor under small business purchases, the mechanics of the program are such that the small business share for any later base period can never be less than 90.1 percent of the prior base period, and then only under a unique set of circumstances. This is due to the fact that the program mandates set-aside sales whenever small business fails to purchase its base average share by 10 percent or more in any six-month period, or cumulatively, over succeeding periods.

This situation is exacerbated by the failure of the program to consider the actual purchases of set-aside timber, when recomputing base average shares every five years. The program provides that where set-aside sales are "triggered" but no small business bids upon them, they may be purchased by large businesses. However, such sales are still treated as small business purchases for purposes of determining the base average share for the next five-year period. Under these provisions, small business could fail or refuse to purchase any national forest timber during an entire five-year base period and, yet, in the recomputation of the base average share for the next period, the small business share would remain the same.

The effect of this is to perpetuate the artificial "small business share" of national forest timber sales as of the original base period, i.e., to freeze the market structure in the forest products industry. That this is the case is further illustrated by the provisions in the program which disregard changes in size classification in computing the base share. The size classifications (large and small) in the timber industry were fixed as of December 31, 1970.

³ One Third of the Nation's Land, report to the President and to the Congress of the Public Land Law Review Commission, 100 (1970). (First emphasis added; second emphasis in original.)

⁴ During depositions taken in *Duke City Lumber Co. et al. v. Earl L. Butz et al.*, Civil No. 2152-72, U.S. Dist. Ct., D.C.

⁵ 15 U.S.C. § 631(a).

After this date, if a small business closes down, its historic share of national forest timber purchases is still counted as belonging to small business until the next five-year recomputation of the base average share. The same is true if the small business becomes "large" through acquisition, merger, internal growth or any other means. Until the recomputation, however, the increased number of large businesses must compete for a static supply of national forest timber.

This deliberate attempt to freeze the market structure in the forest products industry not only ignores economic reality and whether small businesses in fact need timber, but actually works to the disadvantage of small businesses. Historically, owners of small businesses in the forest products industry desiring to sell their companies for retirement or other reasons have looked to large forest products companies who can generally afford to purchase these holdings. Another reason for this is that, under the federal income tax laws, the small owners can dispose of their businesses with a minimum of tax impact through "tax-free exchanges", i.e., exchanges of stock for stock or stock for assets. Such a transaction only has economic merit if the stock acquired is readily marketable as is the case with securities of publicly-held companies. Now, as a result of the set-aside program, many large, publicly-held companies in the forest products industry are precluded from acquiring a small company which relies on federal timber because after the acquisition, the acquired company's timber supply will be drastically reduced. Several small companies voiced this concern unsuccessfully to SBA and Forest Service officials when the current program was first proposed.

In summary, the Ad Hoc Committee believes that the operation of the set-aside program to freeze market structure in the forest products industry is contrary both to the Small Business Act and to the interests of virtually all companies, large and small in the industry.

III. THE SET-ASIDE PROGRAM STIFLES GROWTH AND CAUSES INEFFICIENCY AND UNEMPLOYMENT IN THE FOREST PRODUCTS INDUSTRY

The statutory purpose of the Small Business Act is to provide assistance to small businesses so that they can ultimately compete with large companies in their industry without federal aid.⁶ The Act thus implicitly anticipates that, at some point in time, small business, through federal assistance, will become large. This policy is explicitly stated in the SBA regulations:

"[S]mall business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance."⁷

Despite this statement of policy, the SBA persists in using a rigid size standard of 500 employees in the forest products industry and has successfully advocated a set-aside program which penalizes growth beyond that size. To the extent that small forest products company is in any way dependent upon national forest timber, it would be committing economic suicide by employing more than 500 persons. Therefore, as companies approach the 500-employee limit they are induced to layoff employees or otherwise resist growth in order to continue to qualify for set-aside sales and continue its access to this special federal privilege.

This is not the only way in which the set-aside program adversely affects employment in the forest products industry, however. Several large companies in the industry have had to operate plants at less than full capacity and a few have even had to drastically curtail production due to lack of available national forest timber. These effects are likely to become more prevalent in the future. The resulting decreased production and unemployment can only exacerbate the situation in an industry presently suffering from high prices and unemployment, particularly in the home construction sector. If Forest Service and SBA officials had taken the time to analyze the likely impacts of the current set-aside program before adopting it, they would have been aware of these problems. However, they admit that they made no studies of the possible impacts of the program upon employment and local labor

⁶ 15 U.S.C. § 631.

⁷ 13 C.F.R. § 121.3-1(b) (2) (iv).

conditions, upon labor distribution and dislocation, upon the national economy or state and local economies, or upon economic productivity and the effective utilization of national forest timber.

Regarding effective timber utilization, the provisions of the set-aside program have erected an artificial barrier interrupting the free flow of logs between specialized companies who can make effective utilization of all parts of the tree. It is quite common in the industry for a logger or miller to purchase timber and then sell logs to or exchange logs with a variety of different facilities (shake mills, plywood plants, pulp mills, sawmills, etc.), depending upon the species and grade of the logs, so as to achieve full utilization of all parts of the tree and, of course, to reap the greatest profit. Many of these specialized facilities, especially plywood plants and pulp mills, are operated principally by large companies due to the enormous amounts of capital necessary to construct them and purchase required pollution control equipment. The set-aside program provides, however, that a purchaser of set-aside timber may not sell or exchange more than 30 percent of such timber to or with large companies.⁸ This provision obviously prevents a set-aside purchaser from disposing of the timber in the most efficient manner, as he sees fit, and results in inefficient utilization of a vital natural resource.

CONCLUSION

For all of the above reasons, the Ad Hoc Committee of Federal Timber Purchasers believes that the operation of the national forest timber set-aside program is harmful to the nation as a whole and to both large and truly small companies in the forest products industry. The Ad Hoc Committee appreciates the opportunity to present its comments to the Small Business Subcommittee on the detrimental effects of the operative provisions of the present set-aside program.

Respectfully submitted,

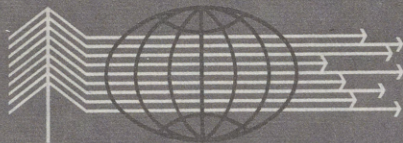
ANGELO A. LADAROLA.

Counsel for Ad Hoc Committee of Federal Timber Purchasers.

AD HOC COMMITTEE OF FEDERAL TIMBER PURCHASERS

American Forest Products Corporation
Bohemia, Inc.
Boise Cascade Corporation
Columbia Plywood Corporation
Cascade Locks Lumber Company
Connor Forest Industries
DiGiorgio Corporation
Duke City Lumber Company
Fibreboard Corporation
Georgia-Pacific Corporation
Edward Hines Lumber Co.
International Paper Company
Kaibab Industries
Kimberly-Clark Corporation
Louisiana-Pacific Corporation
Medford Corporation
Pope & Talbot, Inc.
Potlatch Corporation
Publishers Paper Company
Roseburg Lumber Co.
St. Regis Paper Company
Sierra Pacific Industries
Simpson Timber Company
Southwest Forest Industries
U.S. Plywood, Division of Champion International
Weyerhaeuser Company
Willamette Industries, Inc.

⁸ 13 C.F.R. § 121.3-9(b) (2) (ii).



RANDOM LENGTHS

through a knothole

August 23, 1974



Lumber production in the United States and Canada has become steadily more concentrated in the industry's larger companies over the past six years. Large firms are increasing their share of the total lumber production through acquisitions, mergers, and some building of new mills.

The accompanying chart shows how the share of total annual production in the U.S. and Canada has increased for the 50 largest lumber companies. The shares of production were calculated from the reported annual production of the 50 largest companies (published in Forest Industries Annual Buyers' Guide & Yearbook, available for \$1.50) and a sum of the NFPA and Statistics Canada estimates of annual production in the two countries. A share of production describes the percentage of total production in the U.S. and Canada that a company produced in a given year. The annual survey in Forest Industries covers more than 1,000 companies that produce almost three-fourths of the lumber in North America.

From 1967 to 1973 overall production of lumber in the U.S. and Canada increased 18%, from 45,032 million board feet to 53,126 million board feet. However, this growth in production was realized primarily by the larger companies. During the same period, the 50 largest companies increased their total production from 12,567 million board feet to 21,989 million board feet, a 75% increase. This left the remaining producers in the industry with a 4% decrease in output. Even in 1967, when the industry's overall production fell 3.2% from the 1966 total, the output of the top 50 companies showed a 5% increase.

The brief history of Louisiana-Pacific (spun-off from Gerogia-Pacific in January, 1973) is an exceptional illustration if this trend. In 1972, those G-P mills that were later to become a part of L-P ranked second behind Weyerhaeuser in production. This group of mills produced 2.4% of the volume in 1972. Principally through acquisitions, the share of production of Louisiana-Pacific rose to more than 4% in 1973, although remaining second to Weyerhaeuser. Georgia-Pacific, with 3.3% of the production in 1971, dropped to a 1.3% share in 1972 (after ex-

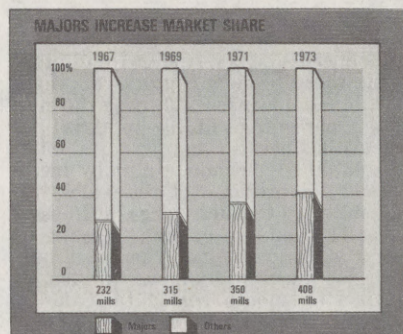
RANDOM LENGTHS

clusion of the future L-P units). In 1973, however, G-P's production share increased to 2.1%. Weyerhaeuser's 1973 share of production was 4.5% while third-ranking MacMillan-Bloedel, the largest Canadian producer, held a 2.4% share.

If a large company had simply kept pace with the 18% growth in output from 1967 to 1973, it would have fallen in Forest Industries' annual rankings of lumber companies. A com-

pany that produced 100 million board feet in 1967 would have ranked 44th. Increasing its production 18%, to 118 million board feet in 1973, this hypothetical company would have fallen to a ranking of 65th.

However, growth in shares of production has not been limited to the largest 50 companies. The listings show that the company ranking 100th in production has increased its share of total production over the 1967-73 period. In 1967, the 100th company produced 0.12% of the industry's total. This figure grew to 0.14% in 1973.



Despite the trend toward increased concentration of lumber production among the larger companies, the industry remains highly fragmented. The number of mills operated by the top 50 companies has shot up from 232 in 1967 to 408 in 1973. However, the Forest Industries survey included data covering 1,714 production units operated by 1,191 separate firms.

**STATEMENT OF JOHN B. CROWELL, JR., GENERAL COUNSEL,
LOUISIANA-PACIFIC CORP.**

Mr. Chairman, Members of the Subcommittee: I am John B. Crowell, Jr., of Portland, Oregon. I am General Counsel for Louisiana-Pacific Corporation and appear here today for that company. Like several of the other witnesses here today, I appear also on behalf of the Ad Hoc Committee of Federal Timber Purchasers, which is a group made up at present of 26 companies which are adversely affected by the inequities of the small business timber set-aside programs. A separate written statement has been filed by the Ad Hoc Committee.

I. LOUISIANA-PACIFIC CORPORATION

First, let me identify Louisiana-Pacific Corporation a little bit. The Company is a relatively new one, having been created by a spin-off of approximately 20 percent of the assets of Georgia-Pacific Corporation on January 5, 1973. Louisiana-Pacific currently employs some 9,000 people and operates many facilities including sawmills, plywood plants, hardboard plants, particleboard plants, veneer plants. Our facilities are located in the states of California, Oregon, Washington, Idaho, Texas, Louisiana, Alabama, Montana, Wisconsin and Michigan. Additionally, Louisiana-Pacific owns a one-half interest in Ketchikan Pulp Company which operates a dissolving pulp mill and two sawmills in southeastern Alaska.

Louisiana-Pacific, exclusive of its interest in Ketchikan Pulp Company, is dependent upon the national forests for about 45 percent of its annual timber supply. Some of its mills are entirely dependent upon Forest Service timber. If

one includes the half-owned operations of Ketchikan Pulp Company, Louisiana-Pacific purchases a greater volume of Forest Service timber than does any other manufacturer of forest products.

II. THE AD HOC COMMITTEE OF FEDERAL TIMBER PURCHASES

The Ad Hoc Committee of Federal Timber Purchasers came into being in May 1971 when it appeared that the Small Business Administration and the Forest Service were committed to putting into effect a revised, ill-conceived, and discriminatory program for excluding large companies (meaning any company having more than 500 employees) from the opportunity to purchase significant quantities of Forest Service timber.

III. THE PRESENT SMALL BUSINESS TIMBER SALE SET-ASIDE PROGRAM

In essence, the program, as originally announced and as currently administered, treated each national forest as one or more economic units. For each economic unit, the volume of timber sold to small businesses during the five-year base period 1966-70 was determined as a percentage of the total volume sold during that period. From 1971 on, if small business in aggregate failed to purchase its base share of the total volume sold on the economic unit by incurring a cumulative deficit of ten percent or more, a program of set-asides was "triggered". The volume to be sold in set-asides (on which large businesses were prohibited from bidding against any small) would be enough to make up any deficit volume from the base share, and would also include the base share percentage of the total volume to be sold in the ensuing six-month period. If there was not enough timber offered in such a six-month period to make up the combined deficit and base share, the volume to be sold in set-asides would be carried over to the next six-month period.

As if all this were not enough, the program specifically prohibits a recalculation of the base share on an economic unit when a small company becomes large either by growth or by being acquired. Every five years the base share is to be recalculated. As a practical matter, the base share can never go down from the original level because the set-aside program assures that at least the original base share will always be credited to small business. The base share can certainly go up, however, because small businesses are free to bid on and to purchase sales sold without set-aside restrictions. The inevitable consequence will be that large businesses will sooner or later be driven from the bidding tables at which national forest timber is sold.

IV. JUDICIAL REVIEW

Faced with a governmental program which held such a drastic threat to many of their mill operations, many of the larger companies in the forest products industry have cooperated in forming and sustaining the Ad Hoc Committee of Federal Timber Purchasers which sought judicial review of the legality of the set-aside program. To that end, the Committee retained counsel and initiated a proceeding for declaratory relief in the United States District Court for the District of Columbia. The plaintiffs alleged (1) that the set-aside program was in excess of and contrary to the statutory provisions of and violated the national policy stated in the Small Business Act, (2) that the set-aside program violated various federal statutes governing the administration of the national forests, (3) that the methods by which the set-aside program was adopted were a denial of due process and that the program was based upon insupportable factual assumptions, (4) that the bar against bidding on Federal timber was a taking of vested property rights without compensation, (5) that the set-aside program violated the national policy stated in the Employment Act of 1946 and in the Economic Stabilization Act Amendments of 1971, and (6) that adoption of the set-aside program was a major federal action having effect on the environment and required an environmental impact statement before its adoption.

A number of small businesses intervened in the suit on the side of the Small Business Administration and the Forest Service. Extensive interrogatories were filed and responded to on both sides. After completion of lengthy discovery proceedings, cross-motions for summary judgment were filed and oral argument was held on them last June 6th; the Court has had the matter under advisement since that time.

It should be added that as of January 1, 1974 the Bureau of Land Management and the Small Business Administration collaborated in adopting a similar (although not identical) set-aside program for timber sales made by the Bureau from the Oregon and California revested lands in western Oregon.

V. RECOMMENDATIONS

Although we strongly believe that the present timber sale set-aside programs sponsored by the Small Business Administration are illegal and that the courts will eventually correct their principal inequities, we also believe there are some steps which this subcommittee could take to restore some balance to the whole situation.

A. Reduction of the "Small Business" Size Standard

The present standard of 500 employees as being the determining point for a small business is unrealistically high for the forest products industry.

An operation in the forest products industry having nearly 500 employees is a large one; it is likely to have from three to seven sawmills and will generate \$30 to \$40 million dollars in sales. It would be permissible to regard such an operation as a small business if most of the competitors in the industry were larger. But in the forest products industry they are not. In 1967, the most recent year for which figures are available, there were approximately 8,400 sawmills in the United States with fewer than 25 employees; these mills would have had annual production capacity of up to 5 million board feet each. At the same time, there were 1900 sawmills with between 25 and 200 employees; such mills would each be capable of producing from 5 to 50 million board feet annually. Mills with more than 200 employees numbered only 130 in 1967. It is reasonable to infer that most of the 8,400 mills with fewer than 25 employees were operated as individual enterprises without affiliation with other sawmills or an unrelated business.

A few illustrations, I think, will further demonstrate the point that a size standard of 500 employees is too high. Louisiana-Pacific's Oroville, California sawmill produces 92 to 95 million board feet of random length lumber each year, 70 percent of it dry and 30 percent of it green. The mill employs 135 people. The sales realization from the production of that mill runs between \$13 and \$17 million annually, depending on market prices for the mill's product. The investment in the sawmill alone, which was constructed about five years ago, was \$6 million; today it would have a considerably higher replacement cost. We submit that an investment of that magnitude with annual sales in the millions of dollars, if it were operated as a separate enterprise, ought not qualify as a "small business" in the forest products industry.

Another case in point is Louisiana-Pacific's mill at Alderpoint, California. This mill produces 100 percent green lumber primarily from small logs. Production is mostly 2 x 4 lumber in random lengths. The mill produces 35 million board feet a year, employs 51 people and generates sales realizations, depending on market conditions, of between \$5 and \$7 million annually. To build such a mill today would cost in the neighborhood of \$1,700,000. It is suggested that even this mill, if it were operated as a separate enterprise could hardly be regarded as a "small business" within the forest products industry. The Oroville and Alderpoint sawmills are reasonably typical of sawmills in the western industry.

Turning to a similar example with respect to a plywood plant, Louisiana-Pacific's Fort Bragg plywood plant produced Douglas fir exterior-glued sheathing at the rate of approximately 100 million square feet on a $\frac{3}{8}$ " basis annually. It generates annual sales in the neighborhood of \$10 to \$12 million a year. It has 190 employees and would cost approximately \$10 million to replace. A western plywood mill manufacturing sanded plywood rather than sheathing would have approximately 20 more employees, would incur annual operating costs approximately \$400,000 higher and would generate a sales realization in approximately the same range of \$10 to \$12 million a year depending on market conditions. Neither of these enterprises can realistically be regarded as "small business."

A southern pine plywood plant, on the other hand, would cost about \$15 million to build because of the need to establish several lathe lines sufficient to produce enough veneer from the small logs which constitute raw material for such mills to feed the lay-up line. Louisiana-Pacific operates three such mills, producing between 150 and 200 million square feet on a $\frac{3}{8}$ " basis annually.

These mills each employ 250 to 300 employees, and generate sales between \$16 and \$20 million annually. Thus, a single plywood plant, whether in the South or the West, would hardly qualify as a small business in common parlance either.

It follows that an operation with nearly 500 employees (thus qualifying as a "small business") could operate six or seven sawmills or two medium-sized plywood plants and generate \$30 to \$40 million in annual sales. We submit that it is absurd to regard an operation of that magnitude in this industry as a small business.

In 1967, about 97% of the sawmills in the industry produced 25 million board feet or less per year and would have had fewer than 100 employees. It seems to us that this is the upper range which ought to be considered for treatment as a small business.

There is an additional inconsistency inherent in the present size standard of 500. Obviously, if the size standard were applied mill by mill, there is probably no sawmill and very few plywood plants operating today which would not qualify as a small business mill. The standard, however, is applied to total number of employees in a company or its affiliates. Thus, a small mill with relatively few employees owned by a large company possibly engaged in totally different lines of commerce is still regarded as a large business, while a larger neighboring mill not otherwise affiliated which produces far more lumber, utilizes far more raw material, but has fewer than 500 employees, has all the advantages under the timber sale set-aside program of being treated as a small business.

In applying the employee size standard, no attempt is made to require equation of one operation to another. Thus, a company which operates six or seven sawmills but contracts all its logging to independent contractors could have fewer than 500 employees and qualifies as a small business. A company with half the number of mills and half the production which does its own logging would exceed the size standard limit and would not be a small business.

B. Review of Effect of Set-Aside Program on Sale Receipts

The timber sale set-aside program, besides restricting competition in the undesirable ways already mentioned, is costing the public treasury money. We have predicted from the outset that an extensive set-aside program of the type we are now dealing with will result in lower stumpage rates to the government for timber sold at set-aside sales in comparison to timber sold at unrestricted sales. This is an obvious result or there would be no incentive to the small businesses to push for and support a set-aside program. We suggest that the Forest Service could already produce figures which would amply demonstrate that, after 2½ years of set-aside programs, set-aside sales are bid at lower average ratios of bid-to-appraised-price than are sales sold on the open market. The result is that set-aside timber is going at a lesser price than it could command in open market sales. That consequence is a direct cost to the treasury of the United States and a direct diminution in the 25 percent funds which are remitted to the counties in which the national forest timber is harvested.

VI. OTHER ADVERSE CONSEQUENCES OF THE PRESENT SET-ASIDE PROGRAM

There are other adverse consequences from the set-aside program which we think are against the public interest and which will only be mentioned without amplification for the sake of keeping this statement to a manageable length.

A. Discrimination Against Large Business Employees and Contractors

The discrimination inherent in the set-aside program, of course, affects employees of large-company mills which are or will be unable to acquire sufficient volumes of public timber upon which they have previously been dependent. The program similarly discriminates against small businesses such as loggers, truckers, equipment dealers and the like, which derive all or much of their livelihood by furnishing services to large business operations now being impacted by the set-aside program.

B. Discourages Best Utilization of Raw Material

The tendency of the set-aside program is to prevent the fullest and best use of logs. It restricts the flow of logs purchased under set-aside programs from

small to large businesses even though the large business may be the only one in an operating area with facilities capable of maximizing utilization of a particular species or grade of log. Consequently, the failure to obtain fullest utilization contravenes the statutory requirement imposed on the Small Business Administration "to maintain or mobilize the Nation's full productive capacity."

C. Small Businesses Which Buy Set-Asides Have Advantage Over Other Small Businesses

The present set-aside program also benefits some so-called "small businesses" at the expense of other small businesses. For instance, the small business in the west which can buy set-aside timber sales has a distinct competitive advantage over the comparable small business operator situated in the southeast which is not near any national forest and which relies upon purchases of private stumpage to supply its mill. Both operators may be selling into the mid-west market, but the producer which has been able to buy its stumpage at a less competitive rate is obviously advantaged. Of course, this type of inequity could be cured by a small business loan or subsidy program which is available to all small business based upon relevant criteria.

VII. THE PROGRAM HAS BEEN ADMINISTERED ARBITRARILY

Aside from the adverse consequences to the public interests which are inherent in the present timber sale set-aside program, the program itself has been administered with considerable arbitrariness.

A. Computation of Base Shares

To begin with, the computation of base shares for the 1966-1970 period was not adjusted for any unusual factors which might have existed during the five-year period. An example of such factors is the case of a large business which purchased a number of Forest Service sales which drastically overran the advertised volumes. In computing the base share, however, the original advertised volumes were employed instead of the actual volumes harvested; thus, the small business share of total volumes harvested from particular national forest during the base period was overstated.

In another instance, computation of the base share accurately reflected purchases made by small businesses and large businesses, but did not take into account the fact that much of the volume purchased by the small businesses actually was processed by large business, since the small businesses did not have the facilities for processing the species making up substantial portions of each sale. Again, the base share for small businesses was considerably overstated and the restriction on resales of set-aside timber prohibits continued effective use of such arrangements.

Still another example of inequity in the computation of base shares resulted in the case of a large company which had historically bought considerable volumes of federal timber to supplement volumes from its own private lands. A substantial fire occurred just prior to 1966 on the private lands of the company. During the 1966-1970 period, the company was necessarily engaged in "salvage-logging" much of the fire-damaged timber and was correspondingly buying less timber from the public sources than it previously had. The base share was overstated in favor of small companies, consequently.

B. Sales Designated for Set-Asides Are Often Closest to Large Business Mill

Other examples of arbitrariness have appeared in administration of the program. A common situation after a set-aside program has been triggered is to find that the sales designated as set-asides are the ones closest to large business mills. The large business mill not only cannot bid on the sale, but it is at a disadvantage in bidding upon more distant timber which can be bid not only by other large businesses but by any small business competitor as well. We understand that this usually occurs after meetings between the benefited small businesses and representatives of the SBA who then persuade the public timber selling agencies as to which sales should be set-asides.

VIII. CONCLUSIONS AND FURTHER RECOMMENDATIONS

An objective review of the present set-aside program requires a conclusion that the program is against the overall public interest and should be aban-

done. If the concept of timber sale set-asides is to be retained at all, it should be on a much more restricted basis; such sales should be available only to truly small operators who can demonstrate an inability to buy timber from any source and who do not have any substantial volume under ownership or contract.

Small businesses in the forest products industry would be better served by more liberal financial assistance in the form of loans to enable them to compete on an equal footing with other competitors in the local timber market. The basic difference between operations of different sizes in the forest products industry is not in terms of numbers of employees or in size of production facilities, but is rather in the ability to command the needed capital.

It may be true that a mill owned by a large company is less financially precarious, but if that mill does not generate profits, it will not long remain in operation. The claimed precariousness of many small businesses could be alleviated by a governmental lending program. The purpose of the Small Business Act would be more effectively met by providing an incentive for growth, rather than penalizing it, as the present set-aside program does.

STATEMENT OF WILLIAM H. KUPHALDT, AMERICAN FOREST PRODUCTS CORP.

Mr. Chairman, Members of the Subcommittee: My name is William H. Kuphaldt. I am Assistant General Manager of the Amador-Calaveras Division, American Forest Products Corporation, a subsidiary of the Bendix Corporation. I am also a member of the Ad Hoc Committee of the Federal Timber Purchasers, an informal coalition of forest products manufacturers which was formed to promote the adoption of a sane, reasoned small business timber sales policy.

American Forest Products Corporation operates primary log processing facilities in California, consisting of seven sawmills and one plywood plant. We also have facilities for the manufacturing of wooden containers, pallets, millwork, cutstock, fencing, particleboard, ladders and aluminum siding. We have a national sales organization and a nation-wide network of building materials distribution centers. Our international division is involved in the import and export of building materials and in developing manufacturing operations in overseas locations. I appreciate this opportunity to present the views, of American Forest Products Corporation, as a member of the so-called "large business" community, on the operation of the Small Business Administration—U.S. Forest Service national forest timber set-aside program.

American Forest Products' primary log processing plants require approximately 300 million board feet of logs annually. We need to purchase 75 percent of this volume, or 225 million board feet, from five of the national forests in Region V of the Forest Service in order to maintain our historical production level while at the same time, practicing sustained yield timber management on our own timberlands as the Forest Service does with its lands. For the period 1961 through 1970, we were the largest single purchaser of national forest timber in California. During the last three years, 1971 through 1973, we have been among the top three purchasers. The attached map shows the general location of our facilities, and the national forests upon which we depend for timber.

Some of our facilities were constructed primarily for processing national forest timber, and all of them are dependent to some degree upon the national forests for their continuing timber supply. Any program or policy which affects the sale of national forest timber is therefore of interest to us. This particular timber set-aside program gives us great concern. We view it as a system which will gradually erode the public timber base upon which our mills have been dependent.

Each of our plant locations has been or will be affected in varying degrees by the set-aside program. Our concern can best be emphasized by citing the specific situation faced by our Amador-Calaveras Division, with which I am directly involved. Our annual log requirements at this location are about 105 million board feet; 35 percent comes from our own timberland, managed on a sustained basis, and 65 percent comes from the El Dorado and Stanislaus National Forests. During the base period 1966 through 1970, which was used to establish the small business shares, we purchased an average volume of 69.2

million board feet annually of national forest timber. In the first three years since the set-aside program started, we have purchased an average of 33 million board feet annually. This is far short of the volume needed to sustain our operation and to permit continuing long-term management of our own timberlands. During this same three-year period, small business firms on the two forests have increased their purchases of national forest timber from a combined base share of 37 percent to 48 percent.

Under the present program, the small business share is to be recalculated on January 1, 1976, based upon actual purchases by small businesses during the five-year period, 1971 through 1975. If the present status is maintained through 1975, we will lose the right to bid on 24.8 million board feet annually on the El Dorado Forest, based upon the current allowable cut of 130.3 million board feet. On the Stanislaus, with an allowable cut of 139.4 million board feet we would lose the right to bid on 11.1 million board feet annually. Once lost, there is no way the volume could ever be regained under the present set-aside program. We are the only big business firm on the El Dorado Forest, and there is only one other large firm on the Stanislaus, so we are under compulsion to buy at any cost in order to maintain our future timber supply.

It has taken us many years and has required a major capital investment to establish a private timberland base and a position in the Forest Service timber market capable of supporting our integrated operation. We are naturally concerned about the prospects of being permanently excluded from any portion of our previous timber base through a reallocation of shares to small business.

It is important to understand some of the reasons for our deteriorating position since the set-aside program began in 1971.

1. Under federal price control regulations, which began on August 14, 1971, and continued until January, 1973, we were at a distinct disadvantage as compared to the smaller firms. We were classified as a Price Category I firm and were subject to prior approval before increasing any of our product prices. Our analysis shows our prices during this period were an average of \$17 per thousand board feet below the general market level being enjoyed by the small business firms with whom we were competing for timber.

2. One small firm, as a result of depleting its own private timber, partly due to a previous export program, is now attempting to increase its purchases of Forest Service timber from a prior level of 25 million board feet annually to a current level of 50 million board feet.

3. Another small business firm during this period was exporting its private timber and apparently substituting Forest Service timber through an aggressive bidding policy.

4. A major forest fire in August, 1973, on the Stanislaus National Forest has resulted in a shifting of the timber sale program, in order to salvage the fire-killed timber, to an area outside of our economic range. As a result, one full year's allowable cut within our operating area has been unavailable for bidding by us in the current five-year set-aside period. In addition, the only other big business firm operating on the Stanislaus National Forest could not purchase the full big business portion of the fire salvage timber sold by the Forest Service because they had a major fire salvage program, resulting from the same fire, on their own timberlands. This situation will cause an unwarranted sharp increase in the small business share for the Stanislaus National Forest during the next base period.

5. It seems apparent to us, as a result of the level of bidding by some small business firms, that they are aware of the advantage they can gain for the future by buying more than their presently established share during this first five-year period. They, therefore, have an added incentive for bidding more than they might otherwise bid.

It is apparent that small business firms in our area do not need help in the form of a guaranteed percentage of the timber sale program. They were successful prior to the adoption of the program, were not then, and are not now in need of this federal subsidy. The set-aside program, on the other hand, will result in a considerable disruption of our operations and a shifting of economic activity associated with harvesting of national forest timber with no compensating net benefit to the economy.

We would urge this Subcommittee to conduct a thorough investigation of the set-aside program, particularly the basis for such a program, and to further

evaluate the full impact this program will have upon all of the forest products manufacturing industry and upon the sale of national forest timber.

In conclusion, the real problem is not one of large business versus small business, but rather one of timber supply. Current sales programs on the national forests have been substantially below the established allowable cut level. In addition, the Forest Service's own analysis shows that intensive management could result in an allowable cut increase of 25 percent above current levels by 1979. The present Forest Service policy of "even-flow" or "non-declining yields" results in withholding large volumes of mature timber from the market to be meted out over many decades. This timber could be used to meet short-term timber demand while at the same time converting the timber stands to a growing condition consistent with sustained yield management.

Of perhaps even greater significance to this Subcommittee is the potential for increasing the long-term timber supply by providing the necessary guidance, incentive, and financial assistance to improve timber production from the 300 million acres of commercial forestland owned by the small, non-industrial forest owners. It has been estimated that this segment of our nation's commercial forestland, which accounts for 59 percent of the total, is producing at only 49 percent of its potential.

Our future timber supply must be increased if we are to meet the projected future demand for wood products, expected to double from current levels by the year 2000. To accomplish such an objective will require the best efforts of government and industry. It should be clear also that this objective will be effectively thwarted by administrative policies, such as the present set-aside program, which strifle growth and which produce a less-than-optimum use of the timber resource and production capacity.

STATEMENT OF YALE WEINSTEIN, VICE PRESIDENT, DUKE CITY LUMBER
COMPANY, INC.

Mr. Chairman and Members of the Subcommittee: I am Yale Weinstein, Vice President, Forestry-Resources, of Duke City Lumber Company, Inc., Albuquerque, New Mexico. I am also speaking as a member of the Ad Hoc Committee of Federal Timber Purchasers, a group of timber companies operating throughout the United States each of whom employ more than 500 employees and who are very much concerned about the adverse effects which the set-aside program has on their business operations in general and, in particular, on the availability to them, and other companies similarly situated, of needed Federal timber.

Duke City Lumber Company has sawmill operations in New Mexico and Arizona and at the present time has approximately 495 employees. It operates very close to the 500 limitation number of employees that would qualify it as a small business; however, our company is a wholly-owned subsidiary of U.S. Industries, Inc. and, accordingly, we are considered as part of the large business sector. Except for very limited volumes of private timber, practically all of the available timber resource in Arizona and New Mexico is represented by public timber ownership, and our operations are wholly dependent upon timber sale offerings from National Forest lands.

From the very outset SBA has indicated their concern about the decline of the number of small businesses in the forest products industry. They further have indicated that this decline is largely the result of the inability of small business to compete with large companies for the available supplies of National Forest timber. I have been employed in the Southwest as a Forester in the private sector for over 35 years and have had a personal and intimate knowledge of our industry in the two-state area of Arizona and New Mexico. While I am quite willing to admit that there have been some temporary dislocations resulting from competitive bidding, a review of the facts indicates, however, that the decline in the number of small businesses has not been the result of large companies bidding timber away from small business. Following is a review of several small businesses that formerly operated in the Southwest and the reasons for their closure as I understand them.

A. Potcreek Lumber Company, Taos, New Mexico, was a lumber company managed by Mr. George Lavendar. This company was a partnership of Ralph Rounds, Wichita, Kansas, and George Lavendar. The company came into being

in the early 1940's when Rounds and Lavendar acquired ownership of the Rio Grande Land Grant situated in Taos County, which subsequently has reverted to public ownership and is now part of the Carson National Forest. The company was wholly dependent upon logging the available timber from the Rio Grande Grant. The amount of National Forest or other publicly owned timber that was bid by Potcreek Lumber Company during their entire period of existence was very negligible. In approximately 1962, Potcreek Lumber Company became involved in attempts to organize their operation by local Unions, and a prolonged strike resulted. This event took place almost concurrently with a lawsuit between Lavendar and Rounds to establish ownership to the Rio Grande Grant. Prior to the final disposition of the suit, Ralph Rounds passed away and the matter then became a decision for his heirs. The lawsuit was ultimately decided in favor of the Rounds Estate. The combination of factors of absentee ownership by heirs, a strike resulting from attempts to organize, lack of additional privately owned stumpage, and the generally depressed economic condition, all contributed to the decision of George Lavendar to liquidate Potcreek Lumber Company. Competition from large companies, or even small companies, had absolutely nothing to do with the demise or decline of that small business.

B. M. R. Prestridge Lumber Company, Alamogordo, New Mexico, was a privately owned small business, managed by M. R. (Bill) Prestridge. Bill Prestridge was a successful contract logger who acquired his sawmill in Alamogordo, New Mexico, from the old Breece Lumber Company in the late 1930's. He placed the mill into operation just prior to World War II and operated the mill until approximately 1958. During that time his mill processed timber obtained from the Lincoln National Forest, the BIA-administered Mescalero Apache Indian Reservation, and State of New Mexico lands. During the period of operation, Bill Prestridge widened the scope of his own business interests and participated in the oil well drilling business, acquired race horses, one of which was Invigurator, who ran third in the Kentucky Derby, built and established the Union Gypsum Company in Phoenix, Arizona, and developed Border Steel Mills in El Paso, Texas. A combination of wise, astute business decisions along with the "golden touch" resulted in Bill Prestridge's lumber interests being a very minor portion of his overall business endeavors. In 1956, most of the readily available virgin timber had been cut over within the economic logging area of his mill and he voluntarily liquidated his entire operation in Alamogordo. There was no competition from a large business. The demise and decline of small business in Alamogordo was the result of a business decision made by M. R. Prestridge.

C. Nagel Lumber & Timber Company, Winslow, Arizona, was one of two small business sawmills operating in Winslow, Arizona in 1958, the other being Duke City Lumber Company which at that time was a small business partnership. Nagel Lumber & Timber Company was a sole proprietorship, owned by Mr. & Mrs. George Nagel. In the early 1950's, George Nagel had sustained a cerebral stroke and was completely incapacitated. By necessity, his wife, Mrs. Mabel Nagel, took over operation of their sawmill, which at that time was co-existing in harmony with Duke City Lumber. Both companies were wholly dependent upon the allowable cut from the Chevelon working circle of the Sitgreaves National Forest. Several events then occurred which indicated that the allowable cut from the working circle would be substantially reduced and that the volume of timber formerly available and capable of supporting two sawmills, now appeared to be destined to be of sufficient volume to support only one sawmill. These events were:

1. The Aztec Land & Cattle Company decision whereby almost 200 million board feet of formerly National Forest timber within the working circle suddenly fell into private ownership, and
2. The disastrous Dudley Lake fire of June 13, 1956, which took almost 26,000 acres of the working circle out of immediate timber production.

During this period of time, George Nagel's physical condition deteriorated considerably and subsequent cerebral stroke attacks completely disabled him both mentally and physically. Mabel Nagel found the responsibilities of continuing the operation too demanding, and she expressed her desire to sell the operation. It was a very logical move on her part to approach Duke City Lumber and offer the operation to them. The transaction for the purchase of Nagel Lumber & Timber Company by Duke City Lumber was completed in April,

1965. At that point, both Nagel and Duke City were small business in terms of present definition, and the demise of Nagel Lumber & Timber Company did not result from any competition from large companies but rather was the result of a prudent, proper business decision. It is interesting to note that today such a purchase would not be feasible on the part of Duke City Lumber Company. As part of the purchase Duke City Lumber acquired 75 million board feet of timber under contract to Nagel. Under present set-aside program regulations, that 75 million board feet would remain credited to the small business share for purposes of determining whether or not to trigger mandatory set-asides. Therefore, Duke City Lumber would be unable to acquire a raw material base in the future for the acquired mill without triggering mandatory set-asides.

D. Whiting Land & Lumber Company of Eager, Arizona, a small business, was a family type operation managed by Virgil Whiting. Virgil Whiting was a young man in his late thirties and while there were other members of the family, either direct or through marriage, who performed some duties and responsibilities, the general management of the entire operation was largely vested in Virgil. The sawmill operation consisted of two locations, one at Eager, Arizona, and the other at Reserve, New Mexico. In the middle 1950's Virgil Whiting departed from the airport at St. John's, Arizona, during a period of very adverse weather conditions, crashed, and his body and plane were recovered two weeks later. The subsequent death of the father, Mr. E. I. Whiting, posed some very substantial cash demands for inheritance taxes and other tax requirements of the Estate. The entire operation was offered for sale and, because of the immediate cash needs, the only company who was capable of purchase was Southwest Forest Industries, Phoenix, Arizona. After the acquisition of Whiting Land & Lumber Company, Southwest Forest Industries coordinated the operation of those mills with their existing operation largely centered at McNary, Arizona. The demise of Whiting Land & Lumber Company was not the result of competition of large companies but the result of a forced business decision, and Southwest Forest Industries was the only available purchaser who could fulfill the requirements of sale. Under the set-aside program's present concept of base average share it is inconceivable that Southwest could have afforded this acquisition and then, resultantly, be excluded from bidding on the National Forest timber previously bid by Whiting Land & Lumber Company.

E. Sweet Home Veneer Company, Inc., Luna, New Mexico, was a company operated by Mr. Vernon B. Geil, who had another operation at Sweet Home, Oregon. Mr. Geil was either attempting to establish an alternate base for his operations in Oregon or, as he frequently stated, was hopeful of setting up an operation for his son, Joe Geil. He mistakenly assumed that there was an excess of readily available cheap timber to be bid on the Apache National Forest and, accordingly, invaded the area about 1964. He established a sawmill at Luna, New Mexico to concentrate on the production of studs. In view of the fact that most of the timber available at that location was virgin ponderosa pine, a species that does not lend itself to stud production, he encountered severe financial difficulties. However, he managed to hang on for a period of about five years. In approximately 1969 it became generally known throughout the southwest area that Vernon Geil's operations were for sale. Southwest Forest Industries already had the only well-established operation in the area and was the only logical purchaser. Geil, in fact, sold to Southwest Forest Industries, and many people in the area thought that he was exceedingly fortunate to escape as he had, particularly in view of the fact that his operation was so ill-conceived. Here again, I am certain that Southwest Forest Industries would never have been in the position to bail Geil out had they been faced with the necessity of having his portion of the small business base average share stay with the remaining small business community.

F. Jackson Sawmills, Inc., was a sawmill operated by Mr. J. W. Jackson at Espanola, New Mexico and had operated in that area since 1968. Jackson Sawmills was operated as a sole proprietorship. Because of what the owner indicated were a combination of environmental pressures and a seeming deterioration of the lumber market, he made the decision, in January, 1974, to liquidate his operation. He assigned his available timber sale contracts, volumes in excess of 30 million board feet, to Duke City Lumber Company, who also purchased his lumber and log inventories, and sold his sawmill at public auction

on February 20, 1974. A review of the facts pertaining to the bidding of National Forest timber would disclose that Jackson encountered as much competition for timber from small business sawmills as he may have ever encountered from the one large business that operated in his area. His decision to liquidate his operation was solely his and his alone, and there was no decline in his operation resulting from competitive bidding by large business.

G. Caldwell Lumber Company was a family-type operation that had one of the longest continuously operating histories in New Mexico. It had operated in the vicinity of Vallecitos and Ponderosa, New Mexico, for at least sixty years. In terms of small business sawmills, Caldwell Lumber Co. typified that concept, never having more than twenty-five employees at any particular time during the course of its long history. The senior member of Caldwell Lumber Company, "Papa Lou", died in 1973 at the age of 88. His death was soon followed by that of his oldest son, "Buster", and the operation of the family enterprise was largely on the shoulders of the remaining daughter, Mary Ellen. Two other younger brothers, for personal reasons, had divested themselves of interest in the family sawmill operation. Caldwell Lumber Company had encountered competition for timber bidding from other sectors of small business and immediately prior to the time that liquidation was decided upon, in February, 1974, it had only one timber sale under contract and that with a remaining volume of somewhat over one million feet. To remain in operation would have necessitated bidding the next timber sale offering which was appraised at an amount in excess of \$100 per thousand board feet. Available land holdings that were a part of the family estate, enabled Mary Ellen to live comfortably without the added responsibilities of continued sawmill operations, and, accordingly, she made the decision to liquidate. She offered the remaining volume of their timber to Duke City Lumber Company and sold the sawmill and other machinery on a piecemeal basis. Again, the demise of the Caldwell Lumber Company was not the result of any competition from large business but rather a business decision made to liquidate the company.

I am not personally familiar with the facts in other forest regions. However, the above matters are all of my personal knowledge. Prior to, and after the time that the set-aside program was instituted, I have never seen any data confirming the fact that there had or has been a decline in small business because of inability of small business to bid on National Forest timber.

Mr. Chairman, I do not appear before your Committee in opposition to an SBA preferential bidding system; nevertheless, the present system as conceived and administered results in grave inequities, and I respectfully request consideration of the following reform and changes:

1. The present size standard of 500 employees does not realistically reflect what constitutes a small business in our industry, and I suggest that the size standard for small businesses should be reduced to not more than fifty (50) employees. At the present time our company has approximately 495 employees, including clerical and administrative. This number of employees includes all of the employees in three sawmills, a complete moulding and cutstock plant facility with dry kilns and remanufacturing. Prior to the time of our association with U.S. Industries, Inc., Duke City Lumber Company, under the present size standard guidelines, would have been considered small business. Mr. Chairman, I think that you will agree that this is an almost ridiculous concept wherein a company of our size with annual sales in excess of \$20 million would qualify as a small business. I am certain that we represent the largest company operating in the forest products industry in New Mexico, and prior to the institution of the set-aside program, we have always been able to operate in harmony with the many small business sawmills that operate in our State.

Mr. Chairman, by coincidence, I recently reviewed an article in *Forbes Magazine*, May 15, 1974 edition. If I assume that the magazine reporter properly and accurately reflected your viewpoint, I can only agree with and reinforce your position wherein you state that small businesses are those with less than \$1,000,000 a year in sales and under 500 employees. In viewing the forest products industry and the small business segment thereof, particularly in New Mexico, I believe that the "AND" in your definition should be stressed. Standing alone, I do not believe that the criteria of 500 employees is in any way compatible with smallness in the forest products industry.

2. The set-aside program has precluded our bidding on several timber sale offerings which, in some instances, has resulted in an identifiable reduction in revenue to the United States Treasury of timber sale receipts. For example, in March, 1972, we submitted a sealed bid for the Pinebatal Timber Sale unit on the Carson National Forest. This Sale was designated as an SBA set-aside offering; accordingly, our sealed bid, which was in excess of the appraised value, was not accepted. We were disqualified from further bidding thereon. Only one other bid was submitted and that by a small business. The timber sale was awarded to that small business at a price less than our sealed bid which had been offered.

3. We believe that the mandatory set-aside program is very discriminatory to the employees of the large business sector. It also discriminates against the sector of small business, the contract logger, that derives its revenues from providing services to large businesses who are now being deprived and impacted by the mandatory set-aside program.

4. The determination of small business base average share has, in many cases, been arbitrarily determined with a failure to recognize special conditions that prevailed during that period from which base average shares are calculated.

On December 28, 1972, we wrote to the Supervisor of the Carson National Forest and advised him that for the first time in the history of our company, we found it necessary to refrain from bidding a timber sale in which we were otherwise interested because of the effects of the set-aside program. In advertising proposed timber sales, the Forest Supervisor had stated in their prospectus: "We will not know whether or not this will be an S.B.A. Set-Aside sale until after the proposed Willow Sale is awarded to the successful bidder." Under the proposed program, we advised the Supervisor of the Carson National Forest that if we successfully bid upon and were awarded Willow Sale scheduled for December 29, 1972, mandatory set-aside sales would be triggered, thus precluding our company from bidding any future sales on the Carson National Forest until at least 64 percent of the volume offered had been offered exclusively to small business. This would have prevented our bidding timber sales that were in closer proximity to our sawmill in Espanola and scheduled for offering during the ensuing period. This paradoxical situation continues to exist in spite of the fact that during the calendar year 1973, the Carson National Forest advertised a total of 26.8 million board feet of timber for sale. Of this amount, 10.4 million board feet was mandatorily set-aside. Only 2.9 million board feet of that 10.4 million set-aside was sold to small business, because small business mills only bid one out of the four sales that were exclusively designated for their purchase.

In the determination of the 64 percent small business base average share for the Carson National Forest, we raised significant questions with both the Forest Supervisor and the Regional Forester. We pointed out in great detail that during the computation period being considered, Duke City Lumber Company had been awarded the Sierra Unit with an estimated appraised volume of 5,400,000 board feet. The actual volume cut, and scaled by United States Forest Service, was 16,636,000 board feet. It is a matter of additional interest that the 16,636,000 board feet that was ultimately cut from the Sierra Unit did not represent the total volume that was available. By mutual agreement, the Sierra Unit was ultimately terminated; however, a review of the record discloses that Duke City Lumber Company subsequently bid Sierra No. 2 and Sierra No. 3 at later dates.

Our efforts to point out to the Forest Service that very substantial overcuts, amounting to more than three times the estimated volume would have profound effects upon the base share determinations that were being considered, were of no avail. In addition to the overcut on the Sierra Unit, there was an overcut on the Yeso Unit, which was cut during this same period designated for controlling base share determination. The Yeso Unit had an estimated appraised volume of 15,400,000 feet and the actual volume cut, and scaled by the United States Forest Service, was 21,087,000 board feet. This volume, too, was not considered in base average share computations.

On November 29, 1971, a letter from the Supervisor of the Carson National Forest advised us that, "The Regional Forester and Mr. Ken Meister of the Small Business Administration have agreed to 64% of the timber volume offered on the Carson National Forest as the base share for small business." In

answer to our many requests for information and further requests that we be permitted to provide some opportunity for input into the base share determination, we were advised by the Supervisor of the Carson National Forest on April 14, 1972, that, "At a joint meeting of the S.B.A. and the United States Forest Service, held in San Francisco, the Carson National Forest sale program for the 1966-1970 period was presented for discussion. It was a joint agreement that sales which were made as long-term sales could be considered. Sales that became long-term sales through extensions and overcuts would not be considered." On April 24, 1972, we wrote to the Supervisor and requested a reevaluation of the base share analysis for the Carson National Forest. On April 28, 1972, we received a response from the Regional Forester, who said in part, "As you are aware, our personnel has spent considerable time and effort evaluating and reevaluating the base shares Region-wide. At this point, I see no opportunity for changing the base shares as now established."

Mr. Chairman, I submit that a meeting between the Regional Forester and Mr. Ken Meister of the Small Business Administration, that resulted in an agreement that 64 percent of the timber volume offered on the Carson National Forest should be the base average share for small business and which agreement completely overlooks and fails to recognize the facts that were submitted, is completely arbitrary, unreasonable, capricious and an abuse of bureaucratic authority. Mr. Chairman, I feel compelled to point out to the Committee that substantial overcuts, such as where an estimated timber sale volume of 5,400,000 feet ultimately yields in excess of 16 million board feet, can only be attributed to a degree of incompetence in the United States Forest Service timber sale preparation. Actual volumes cut should be given proper consideration in determining equitable base share allocations for the periods under consideration.

Mr. Chairman, I very seriously believe that the presently conceived mandatory set-aside program is contrary to the most desirable objectives of both the timber resource and general public interests. If it is felt that a set-aside program is required, it should be on a limited basis, confined to that segment of the industry that is truly small business. Assistance to small business in our industry, I believe, should be confined to:

1. Financial assistance in the form of loans that would enable small business to acquire needed capital.
2. Providing assistance for proper management guidance which would include market analysis and demands. In the Southwest there is a substantial demand for custom manufactured, rough timbers and other specialized lumber products. This demand is accompanied by a need for personalized service that can best be fulfilled by small business in contrast with the mass production scheduling with which our company and other similar companies must operate.
3. Since timber is the only great renewable natural resource, that element of our industry that is truly small business and involved in small timber land ownerships, could greatly profit by having made available to it a technical timber management expertise that would assist in proper forest management practices for their small tracts.

STATEMENT OF EDWIN J. HASLERUD, ASSISTANT CHIEF FORESTER,
CALIFORNIA OPERATIONS, KIMBERLY CLARK CORP.

Mr. Chairman and Subcommittee members, My name is Edwin J. Haslerud. I am Assistant Chief Forester for the California Operations of Kimberly Clark's Forest Products Division. Our operations are concentrated in North-Central California, employing more than 900 people with manufacturing plants located in Anderson, Mt. Shasta, and Wildwood.

At the outset, we should state that we do not oppose a federal timber set-aside program to insure a timber supply for the small timber companies. We do believe that the present set-aside program is arbitrary and unfair. We believe first, that such a program should be based on Need for the timber and not on a fixed triggering formula. Second, we believe that this program must be geared to protect truly "small" companies.

The volume of raw materials needed to sustain our manufacturing requirements is in excess of 150 million board feet of logs annually with a substantial part provided from our own lands, which we manage for maximum, per-

petual yield. The remaining portion must be obtained from outside sources, both public and private. Forest Service timber is therefore a vital part of our supply.

We feel the timber set-aside program unnecessarily prevents firms such as ours having more than 500 employees from competing for timber offered for sale by the Federal Government. Thus, the program poses a threat to our operations and also reduces revenues to the government. This is the reason for my appearance here today. I want to report on how the timber set-aside program affects Kimberly Clark in the California area.

The problems encountered from area to area can be quite different for those of us not enjoying the preferential treatment afforded by set-asides. This statement will highlight our own particular situation. However, you will undoubtedly get a good picture of the magnitude of the problem after reviewing all testimony.

The national forest in which we operate most heavily—the Shasta-Trinity—has a set-aside allocation that is out of balance with the respective needs of the small and large businesses in the area. Furthermore, the imbalance could become greater in the future. This situation is the result of what we feel are the arbitrary procedures under which the program operates. Obsolescence of these rules is assured because they are based on the assumption that the conditions which prevailed when the rules were published are static. This can be shown to be untrue.

In brief review, the architects of the 1971 Forest Service—SBA agreement determined what was to be a fair share of federal timber for those firms with less than 500 employees. It was decided that, as a group, they should be guaranteed a percentage of the timber offered equal to the percentage they had purchased during the five year period, 1966–1970. This allocation is rigidly extended from 1971 through 1975, regardless of any changes that might occur. It should be pointed out here that small business firms may compete for any and all timber sales, not just set-asides.

In the Shasta-Trinity area there are now fewer mills eligible for set-asides than in the 1966–70 base period. The rules however, do not permit recalculation of shares to reflect this change. The net effect is simply that the remaining small firms have a disproportionately larger guaranteed share, with the reverse being true for the large mill group.

The Shasta-Trinity presently has two marketing areas, with a combined small business share of 20.9% as determined by the SBA and the USFS from the base period. The present high set-aside allocation does not reflect the need of small business nor is it any longer a fair share. The current statistics for this area show that the small mills have a combined production capacity of 8.9% of the total. This fact further supports our view that the present set-aside share is artificially high. Furthermore, the unbalanced condition that exists in set-aside shares will likely never self-correct. No set aside sales in Shasta-Trinity go unpurchased by small business. The excessive small business share results in a general lack of competition for the sales. In fact it has permitted small business from a different geographic area to come in and purchase several set-asides. Only an artificial situation would allow geographically removed companies to bid successfully on our local timber when there are many mills willing and able to process this timber right in our own area.

The non-competitive nature of set-asides, in this area, can be documented easily by use of bid ratio comparisons. The bid ratio for any sale is simply the total actual price paid by the high bidder divided by the total appraised Price. For the period June 1, 1973 through December 31, 1973, seven set-asides on the Shasta-Trinity produced a weighted average bid ratio of 1.16. The 16 open sales for the same period, after deleting helicopter sales, which are still somewhat novel, produced a bid ratio of 1.50. It would be extremely enlightening to calculate the actual dollar loss throughout the country as a result of set-asides. In the Shasta-Trinity area we estimate last year the loss from these seven sales alone at almost 2 million dollars. This is lost revenue to the government and a hidden subsidy to firms eligible to purchase set-aside timber.

In addition to pointing out some of the serious defects in the program, the preceding information disproves one of the basic precepts which was cited as a justification to initiate the 1971 agreement: that small business decline was caused by the unavailability of federal timber and that the set-aside program

was needed to stop the decline. This simply has not been true in the Shasta-Trinity area.

In summary, the 1971 set-aside agreement has been in effect several years, and many defects in its operation are evident. We respectfully propose that the subcommittee authorize a comprehensive study into the operation and effects of the present program, specifically, the following basic elements should be examined:

1. Is the set-aside program in its present form needed?
2. Are there alternatives to a set-aside program which would more directly and effectively treat the problems of this segment of the industry.
3. If the set-aside program is needed, what segment of the industry should it protect?
4. What criteria should define qualifications of a truly small business? (i.e. is not the 500 employee size standard too high in defining a "small" company.)
5. How can a program be designed to stay in gear with the present times and not just reflect history?

It is the responsibility of any administrator or steward who controls the use of the nation's resources to audit and reassess the performance of the programs they foster, to determine if the public interest is really being served. We strongly feel that the time to make this assessment of the timber set-aside is now.

Senator CRANSTON. We will now hear from a panel of small lumber manufacturers.

STATEMENT OF RICHARD G. BENNETT, NATIONAL INDEPENDENT FOREST INDUSTRIES COMMITTEE, PRINCETON, IDAHO; JOSEPH W. McCracken, EXECUTIVE VICE PRESIDENT, WESTERN FOREST INDUSTRIES ASSOCIATION, PORTLAND, OREG.; CALHOUN W. UMPHLETT, SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION, COLLEGE PARK, GA; ARNOLD D. EWING, EXECUTIVE VICE PRESIDENT, NORTHWEST TIMBER ASSOCIATION, EUGENE, OREG.; WILLIAM W. COSHOW, REDDING, CALIF.; AND LEONARD R. NETZORG, PORTLAND, OREG.

Mr. BENNETT. Senator Packwood, Mr Chairman, I am Richard Bennett, executive vice president of the Bennett Lumber Products of Princeton, Idaho.

I was originally scheduled to appear today on behalf of the National Independent Forest Industries Committee, which was formed in 1970 to advocate a new national SBA timber set-aside program to better meet the real needs of the independent forest products sector.

I had the honor of serving as chairman of NIFIC during the negotiations and consultations which preceded the 1971 announcement of the new agreement between SBA and the Forest Service, I think I can honestly speak for every small businessman involved at that time in expressing our deep admiration for the stalwart support of SBA Administrator Kleppe and his staff, as well as for the fine spirit of cooperation demonstrated by Chief McGuire and the Forest Service personnel involved.

I think it is appropriate that such commendation be the last official statement of the National Independent Forest Industries Committee, as that body is now being dissolved. This is not because the work is finished by any means, but because those of us in the small business forest products sector have concluded that a more formal and permanent organization should be formed to cope with the

different challenges we face today—the job of preserving the concepts embodied in the 1971 agreement and of making those concepts function most effectively for every small lumberman in every region of the country.

So I am pleased to speak today as spokesman for a new national federation, made up initially of four regional associations of independent forest products businessmen.

Representatives of the Southeastern Lumber Manufacturers Association, North West Timber Association, Western Forest Industries Association and the Ozark-Ouachita Lumbermen's Association, unanimously approved creation of a funded, staffed national organization, and appointed a committee to work the bylaws, funding and staff of such a group. That committee is now at work.

I hope you will overlook the fact that we do not yet have a new name. That will soon be rectified.

Mr. Chairman, today we are going to hear from some of the people who struggle on that sometimes tense and always risky front line between a progressive and innovative small business sector and their counterparts among the large timber companies of the Nation.

We are not here to attempt to gain any upper hand—that would be futile in view of the enormous discrepancies in economic power. We are not here to cripple or to hinder any of the large companies in their pursuit of corporate vitality and economic efficiency. In fact, we encourage them. We think this is one industry where there is room for all who strive for product excellence and better resource utilization.

But bigness is not necessarily synonymous with these virtues.

We welcome competition. We are stimulated by it, challenged by it, and really frightened by it, unless it comes not as a challenge in the marketplace, but as a heavy-handed use of superior economic resources to deprive us of our raw material supplies.

And that is what the small business timber set-aside program is all about, and that is what you are going to be hearing about today.

I want to briefly outline to you the order of our witnesses and the topics they will cover. We are going to try not to burden you with redundancy in oral testimony. Most of the witnesses have submitted prepared statements for the record, and will, in their oral remarks, speak to a specific idea or problem area.

They are anxious to answer any questions that haven't even been thought of yet.

Mr. Joseph McCracken, executive vice president of Western Forest Industries Association, will be our first witness, and will provide a brief overview of the evolution of the SBA program and an outline of problem areas which have developed.

Mr. William Coshov of Redding, Calif., will speak on behalf of a panel of California. They will also emphasize the dangers of a change in SBA size standards which we understand is being sought by some large business firms.

Mr. Cal Umphlett will testify on behalf of the members of the Southeastern Lumber Manufacturers Association.

Cal and his fellow SLMA members have been in the forefront of the effort to make the SBA program a meaningful one for independent businesses, and he will have some suggestions for extending the program to certain other Federal lands.

Mr. Arnold Ewing, executive vice president of North West Timber Association, will head a panel of Oregon lumbermen who, because of export pressures and other factors, have some special problems to describe.

Mr. Leonard Netzorg will be spokesman for the plywood operators in Washington and Oregon who have some severe and growing problems of maintaining adequate supplies of raw materials.

With that introduction, Mr. Chairman, may I thank you very sincerely, for the keen interest you have taken in the SBA timber set-aside program. We appreciate the change to be here today, and with your permission, will now proceed with the presentation.

Mr. McCracken. Mr. Chairman, Senator Packwood, I am Joseph McCracken, executive vice president of the Western Forest Industries Association, with headquarters in Portland, Oreg.

The association is comprised of independent wood products manufacturers located in the 12 Western States.

The interest of these small businesses in the form and administration of the SBA timber set aside agreement cannot be overstated. The set aside program is the only remaining hope of survival for many independent forest products businesses.

The mills operated by these small companies in the West are as efficient—and in many cases more so—as those operated by the largest companies.

They are also comparable in other respects—in the wages they pay, in the environmental precautions they exercise, and in the degree of resource utilization they achieve.

But there are some differences. The major negative difference is that they lack economic power, and the geographic base required to withstand attack from a large company which can afford to take losses in one area under the protection of offsetting earnings elsewhere in their operations.

The Small Business Act of 1958 declared it to be the policy of the Congress that the Federal Government should “insure that a fair proportion of the total sales of Government property” be made to small businesses.

Following that enactment, an agreement was entered into between the SBA and the Forest Service, but the criteria adopted for implementing the “fair proportion” concept were totally inadequate to protect small business from predatory economic pressures.

Consequently, a disproportionate number of small forest product enterprises either failed because they could not obtain raw material at a fair price, or they sold out to big business under the treat of economic domination.

Throughout the decade of the 1960's, this trend to consolidation in the timber industry accelerated at an alarming rate.

There was, however, one event that succeeded in slowing the awesome trend of timber industry consolidation. That was the adoption, in late 1971, of a new SBA-Forest Service timber set-aside agreement.

This followed 2 years of negotiations between the agencies and of their consultation with both large and small businesses in the industry.

The strength of the new agreement is in the following three elements:

1. It establishes a specific fair share for small business in each national forest of the Nation—a percentage share based on purchase history during a 5-year base period.

2. It provides for the automatic use of set aside sales when needed to assure that small business, as a class, does obtain its fair share of sale offerings.

3. It prevents the transfer of any part of the small business base share at the time a small timber purchaser merges with or is acquired by a large company, thereby preventing either from deriving economic benefit from the sale of a federally-allocated share of timber purchase rights.

It is the third factor that has stimulated the greatest controversy and the most imaginative searches for ways to circumvent the provisions of the agreement. Some of the latter will be related by other witnesses in this hearing.

I wish to echo others in stating our deep appreciation to SBA Administrator Kleppe and Chief of the Forest Service McGuire, and their staffs, for the imagination and the determination to make the agreement effective and for having put it into operation.

But we must face the reality that the program, now 3 years in operation, has not yet matured to the point where some problems or aberrations can simply be explained away as unique or temporary.

If a little problem is not handled effectively and expeditiously, in the full spirit of the agreement, it soon spreads to become a major problem, and we do now see major problems developing in several areas which, if left unresolved, could seriously hinder the program.

Senator CRANSTON. I'm going to have to interrupt, so we can be sure we get through all the witnesses, and have a chance to ask some questions.

Instead of reading the entire statement, which is available to us, would you summarize what you consider to be the high points, if you and each member will do that; otherwise, we won't be able to get through.

Mr. McCracken. Fine. Mr. Coshow will handle the problem of the size standard. Mr. Netzorg will be talking about the problem of size determination, and Mr. Ewing and Mr. Umphlett will be talking about the other aspects.

Senator CRANSTON. Thank you very much. Your entire statements will be included in the record (see p. 104).

Bill, I am delighted you are with us here today.

Mr. COSHOW. Thank you, Senator, and Senator Packwood. I am very pleased to see that you gentlemen have obviously done a great

deal of homework here. This is readily ascertainable by the questions which you have asked.

First, I'd like to announce that I am representing 12 specific small businessmen in the northern California industry, 6 of whom have employees of less than 100, 6 of whom have 100 or more. One that I am counting as 100 or more is right on the 100 mark.

Some of them came from California with me. I would like them to stand up.

Bud and Virginia Harwood.

Al Loveness.

John Hamacker and Glenn Duysen and Fred Haynes.

These gentlemen have all submitted statements which are part of the record.

I will limit my comments, although my own statements go to nearly all the issues, to the size standards problem.

In spite of the fact that half of my clients employ less than 100, it is our position that, for this industry, the size of 500 is certainly not too high. To the contrary, businesses vary, and to talk in terms of saying because we sell \$20 million worth of timber that means we are big business, it doesn't necessarily mean that. If you had a steel company that did \$20 million volume a year, it would be a very small steel company—or an automobile company.

The same is true in lumber manufacturing. For example, Mr. Netzorg here is representing the plywood co-ops in Oregon. There is no such thing as a plywood company with less than 100 employees. So you are either going to be able to compete with Champion International, or forget it. There is no such thing as a small business which is deserving of the protection of the Government.

It's interesting to note that although there may be some businesses, small business, of less than 100 that will speak up and say they would like to have the forests as their own bailiwick, this is far from unanimous. As a matter of fact, 6 specific clients with less than 100 employees are unanimous in feeling that the present standard is all the protection that they need.

However, the major industries with 5,000, 10,000, 20,000 employees are the ones that are attempting to reduce the standard, because to do so then would change that portion of the national forests which would be available to them in California from 69 percent to some much higher figure, and we do not have those precisely at this time, because the figures simply aren't available, but it would be certainly in the neighborhood of 85 to 90 percent of the national forests that would be available for the giants in the industry.

And it's also interesting for me to note, during Mr. Crowell's presentation, that he was claiming how disadvantageous this was to big industry and how difficult it is to prosper.

Louisiana-Pacific was created in 1972 as one huge industry, and during that time since then, its acquisitions has resulted in Louisiana-Pacific virtually doubling in size.

We have exhibits demonstrating these acquisitions and specifically we have an exhibit which sets forth what would happen if Mr. Crowell's suggestion that those portions of small business have become big

business by way of acquisition or growth were allotted to big business shares rather than small business shares. It's interesting to note that in the Shasta Forest, in my neighborhood, instead of 32 percent going to small business, it would be reduced to 8 percent.

This is largely due to acquisition of one company, although some others have been equally involved.

I know that we have a time problem here, but I want to emphasize the fact that in the lumber industry, as opposed to my own business, 100 employees would be a huge law office, but 100 employees or 500 employees is not big business in lumber manufacturing. You have, instead, an operation which deals with local banking; it's local business.

It's not in the international money market. It's not in the position to become monopolistic. My clients with 50 or 60 employees are not concerned about a monopoly problem occurring as a result of acquisition or a deprivation of access to the resources by the employers with 400 or 500 employees, but they are concerned about the monopolistic or the oligopoly which could occur by a few of the giants totally controlling the industry and having the total access to the national forests. With the crunch upon the availability of the wood products increasing daily, this is a matter of great concern to us, and we do not want the size standards reduced.

Senator CRANSTON. Thank you very much.

Senator PACKWOOD. Let me ask you one question. In your statement you say:

We are particularly concerned with circumvention of a set-aside program by specific evasions such as exchanges as set-aside timber with big business, the use of non-manufacturers to purchase timber, and the fate of set-aside sales that come under control of big business through merger or acquisition.

Could you elaborate on that?

Mr. CUSHOW. Yes, I will. For example, there was a set-aside sale in the Lassen Forest which was bid upon by the Essex Lumber Co. which was geographically far removed from it—successfully bid upon. The mill was geographically in a location where it could not possibly process the timber.

Senator PACKWOOD. Now that's a small mill?

Mr. CUSHOW. It's a small mill. It's a cedar mill and primarily all pine timber was purchased in the set-aside sale. Sierra had a mill nearby which was capable of processing the pine. Immediately upon the successful purchase by Essex, Sierra Pacific—Sierra Pacific is a large organization—an exchange was made in which Sierra Pacific got the national forest products for its mill and instead exchanged other timber in Plumas County or in the area where Essex is, which I believe is Plumas County, for it; and what it amounted to was a joint venture of a large mill with a small mill using it as a front man, and it was a circumvention.

Another example of a different problem is one in which Louisiana Pacific purchased Cheney. Cheney had purchased a timber set-aside sale. Louisiana Pacific is limited in manufacturing that to no more than 30 percent and they had to engage then in a third party transaction. Instead of the set-aside sale being terminated by a condition subsequent, which we believe should occur at that time and that set-aside not applied, then the major industry is able to sell that. In this

case an exchange was made with Paul Bunyon Lumber Co. which has quite a bit of timber of its own and, again, the major industry was able to use the set-aside sale to become a possessor of a larger portion of the national forest than normally would be the case by making a favorable exchange with Paul Bunyon Co. which is a small business, and because it was profitable for them they did it. Paul Bunyon is one of my clients and Paul Bunyon would not object to a change in the regulations which would make this not legally possible, even though they made profit on this one transaction.

Senator CRANSTON. Have the new regulations issued by the Forest Service and SBA corrected this situation?

Mr. COSHOW. We hope so. You mean the July 29 regulations. We hope so.

Senator CRANSTON. You just don't have enough experience to know yet?

Mr. COSHOW. That's right. And like all lawyers, I'm reluctant to say what a regulation means until it's been applied.

Senator CRANSTON. What happens to set-aside sales under control of a small business when that company is acquired or merged with a big business?

Mr. COSHOW. Well, the set-aside sale then is third parties by the big business. That is, the big business is not permitted to process it and they, in turn, are supposed to sell it to a small business. This permits what happened in the case of Paul Bunyon where an exchange was done with Paul Bunyon Timber or permits the big business to deal with somebody who is favorable to them or perhaps a company that they intend to merge with in the future or they set up a future acquisition.

Senator CRANSTON. Thank you very much.

Senator PACKWOOD. I want to come back to that size thing, also. From the best I can tell from Mr. Crowell's testimony, it wouldn't make any difference if we set the size at 1,000. There are relatively few companies with between 500 and 1,000 employees, I take it.

Mr. COSHOW. As far as we know, this is true. We have not frankly considered that problem in depth. I gather from what Mr. Kleppe said that before anything would be done to change it at all there would be a careful determination, but I think that what Mr. Crowell said is probably true, that you're only talking about a half a dozen mills in the entire United States that would be between 500 and 1,000.

Senator PACKWOOD. Do you have any examples—and again, Mr. Crowell's testimony and the others testified that with the exception of perhaps mills that are 50 or 100 that there should be no difficulty bidding for timber—forget the set-aside. Have you any examples of companies of under 500 where they have had this situation where they cannot get timber?

Mr. COSHOW. Yes. As a matter of fact, Mr. Harwood is present here and he has a mill that employs about 350 or 360 and he recently bid against Mr. Crowell's client for some timber and they both bid well into the red—what you would consider a loss situation—where it was an open sale, and Louisiana Pacific just wasn't going

to let him have that timber, no matter how much money was going to be lost in the transaction. And this is the basic problem.

Senator PACKWOOD. And it was always the problem. There's no other timber to buy. It's this timber or nothing?

Mr. COSHOW. That's right. And without set-aside sales, with the manufacturing capacity substantially exceeding the available timber in the northern California forests—and I think it's true in Oregon and Washington as well, but I can only say as to northern California—there is no question in my mind but that if they were all open sales the big companies would simply freeze out the little guy being willing to take the losses until they were out of business.

Before 1971 there simply wasn't that big a shortage and that's why it is extremely important the set-aside program started at that time, and in some areas today it is still not that important. The Sequoia National Forest, for example, we have never had a set-aside sale triggered because the manufacturing capacity to process more than is available is not there. Therefore, small business has been able to buy its share without—up to this time—however, if we were to terminate the set-aside program, it's only a question of time until the giants would build enough capacity there to freeze out the little man.

Senator PACKWOOD. Let me ask you a question about utilization, and if you're not the one to answer it or if you have somebody else in back who can answer it, fine.

Earlier, in an exchange with Mr. Crowell, I indicated that Weyerhaeuser probably didn't have to be too efficient to have guaranteed access to timber, and he said, "No, as long as they knew what the timber supply was they were efficient," and I have found them very efficient. I have gone through many Weyerhaeuser mills and they are just about one of the best run companies. They are one of the best run companies generally.

Can you be as efficient as they are at utilization? Can you use every bit of the log, not have to burn it and not have to waste it?

Mr. COSHOW. Yes, because Weyerhaeuser, Crown Zellerbach and the rest of the companies that use that portion of the log that we don't have great need for it and they will buy it from us because if they won't, then there is an export market available which will. There's a substantial export market available in chips which has been demonstrated over in the Eureka area where the Georgia Pacific and Weyerhaeuser didn't want to buy the chips at the market price and a group of independents got up an export company and they exported it.

Senator PACKWOOD. Do they manufacture chips themselves?

Mr. COSHOW. The small mills chip it. I'm not sure. I think they vary from mill to mill. Mr. Netzorg says, yes, they do.

Mr. BENNETT. Are you speaking of logs or of a residue?

Senator PACKWOOD. I'm speaking of total utilization. We're talking about how much can we get out of this forest, how much of the log can we use and are we wasting any of it?

Mr. BENNETT. Well, Bob, I think I can answer for Idaho people. We utilize everything. We sell our chips and our shavings and we use the entire log as long as it's solid. We cannot use pulp logs.

Mr. EWING. Senator Packwood, you asked the question about utilization by mills and you indicated an answer, and I think a person very able to answer that is Mr. Nate Coleman from Lane Plywood, Eugene. I think he can tell you very shortly about their utilization.

Senator PACKWOOD. I'd like to hear from Mr. Coleman to explain the situation.

Mr. COLEMAN. I'm Nate Coleman and I'm the president and manager of Lane Plywood, Eugene, Oreg.

We have primarily a plywood plant. In fact, the only reason that we have other operations connected with the plywood plant is in order to get the kind of total log utilization that you're talking about. When we talk of log utilization, I don't start at the mill but I start in the woods because we bring in from the woods very large quantities of highly defective material.

In the area that we operate a very large proportion of the timber that is available to us is old growth, highly defective Douglas fir timber and, in fact, in bidding the sales in our area we even concentrate our bids in going after the defective material because over the last few years we have geared our operation in order to utilize this type of material. We were forced to do this because that is the kind of timber which is available.

We bring in logs which used to be left in the woods. These are chunks of material that's broken; a lot of it is rotten; and we're set up so that we can sort all this material in our yard; we bring it in, hoping we can peel it—that's our objective. We want to peel everything we can. We operate three lathes, one 4-foot lathe and two 8-foot lathes, and if the material can be peeled we will peel it. If we can't peel it, we'll do something else with it.

We have a salvage sawmill which doesn't produce very much and it's only there in order to utilize logs that cannot be peeled. People in the lumber business know there are certain logs that can be peeled and certain ones that can be sawed better. So the ones that cannot be peeled that are too good to chip, we'll run in the sawmill if we can get lumber out of them. It's surprising how much good material we get out of these defective logs due to our sawmill. If we can't either peel it or saw it, well, then, we chip it. And we utilize other residues from the logs. We use the bark. We have a decorative bark plant which we built 2 or 3 years ago. In the process of debarking the log, we save the bark that comes off the log and we size it, we dry it, and we bag it. And we even ship it back East. In walking around a portion of D.C., I've seen ground cover that might have been some of our material.

The part of the material that does not go into our decorative bark plant we're able to utilize in our boilers. We need steam for our plywood presses. We need steam for our veneer dryers. We burn this material that is left over, but we utilize it. In other words, even the bark, the so-called residue, we even sort that. We take out of it what we can utilize in our bark plant and then the rest of it goes into our boiler operation.

Senator CRANSTON. Thank you very much.

Senator PACKWOOD. Thank you. That's very impressive.

Senator CRANSTON. Mr. Umphlett, if you can very briefly summarize the points you wanted to make. Your full statement will be included in the record.

**STATEMENT OF CALHOUN W. UMPHLETT, SOUTHEASTERN LUMBER
MANUFACTURERS ASSOCIATION, COLLEGE PARK, GA.**

Mr. UMPHLETT. My name is Calhoun Umphlett of Moncks Corner, S.C., and I am appearing both as an independent lumber manufacturer and a representative of the Southeastern Lumber Manufacturers Association. SLMA has welcomed every opportunity in recent years to offer its views to the Congress and to governmental agencies concerning issues of timber supply and competition in the forest products industry. SLMA, with headquarters in the Atlanta, Ga., area, is an association of more than 230 independent lumber manufacturers from the States of Florida, Georgia, North Carolina, South Carolina, Virginia, Alabama, and Mississippi.

We cannot emphasize strongly enough the importance of retaining the present size standard which this industry has come to rely upon. To do otherwise, would erode the ranks of small business.

We vigorously urge the continuation and development of the set-aside program, along the lines that have been drawn since late 1971. The set-aside program will not, in and of itself, substitute for other tools that may be necessary in slowing down the trends toward concentration in this competitive forest products industry; however, the program has acted as a very important brake on monopolistic tendencies in bidding for national forest timber. It will always serve as a reminder that affirmative Government policy can assure the survival of many small business firms in a particular industry.

This is not to say that SLMA and its members are pleased with each and every aspect of the set-aside program and its implementation. Problems have arisen and may again develop concerning: (1) The price at which timber is offered for sale on the set-aside program; (2) the quantity of the particular timber set-aside offering; (3) the location of the timber in question, and (4) indeed, the size, species, and quality of the timber offered by set-aside.

The principal underlying reason for such a program is that many small businesses are dependent on the national forests for their timber supply.

Without set-aside protection, it is beyond dispute that the large firms not only can afford to, but will, in fact, purchase more and more of the national forest timber offered for sale. As one large company witness said during deposition, "We have the financial resources to buy what we want." Moreover, the historical record of national forest timber sales during the period immediately prior to the set-aside program demonstrates that this is what, in fact, happened. In many forests, large business proportions went from 33 to 68 percent of total purchases in only a 5-year period.

SLMA believes that the program should go forward and be strengthened. Further, it feels that the principles of this program should not be limited to the national forests. Rather, similar set-aside programs should be implemented on the forest lands control of the Department of Interior, the Corps of Engineers, the Department of Defense, and any other governmental agency involved in timber management.

Thank you.

Senator CRANSTON. Thank you very much.

Mr. Ewing, did you have anything to add at this point before we get to questions?

**STATEMENT OF ARNOLD D. EWING, EXECUTIVE VICE PRESIDENT,
NORTH WEST TIMBER ASSOCIATION, EUGENE, OREG.**

Mr. EWING. Thank you, Mr. Chairman, and Senator Packwood.

I am Arnold Ewing of North West Timber Association, Eugene, Oreg., and we have membership scattered throughout western Oregon.

Upon reading that there was going to be a hearing in Washington, D.C., on the Small Business Administration recognizing the extreme importance of these types of hearings and need for us to tell a thorough and complete story for your understanding, I brought seven people with me and we each went to the trouble of writing an individual statement which you have. You have eight statements of ours up there.

Now recognizing that you are hard-pressed for time and need to conserve time, we are happy to respect your request and I'm going to try to summarize those eight very shortly if I can. However, so that you can get the benefit of the expertise of these people, I would like to introduce them to you and where they are from: The president of our association, Mr. Milton Herbert, from Riddle, Oreg., with 45 employees; the vice president of our association, Mr. Amos Horner, from Sweet Home; Mr. Johnson of the C&D Lumber Co. Riddle, Oreg.; Mr. William Tarr, from Eugene F. Burrill Lumber Co., Medford, Oreg.; Mr. David Vincent, North Side Lumber Co., Philomath.

Just as a comment, as Dave began to write his testimony, he wasn't aware of it—we always consider him a very fierce competitor. I know their neighbors do and several of their neighbors are here. But Dave did not realize when he wrote this testimony, he's been unable to buy any sale except a set-aside sale in the last 2 years and he has bid on several of the open sales.

Mr. Don Johnson from Cabax Mill, Grants Pass. Cabax Mills is a large operator, one of those operators you're talking about, slightly over 500. We'll have some comment on that later; and Mr. Nate Coleman, who you heard from, from Lane Plywood.

I'll try to summarize some of the things for the benefit of all if you don't mind.

As I indicated earlier, any action on the set-aside program is very paramount to our people because we are small business primarily and we are totally dependent on public timber.

It may surprise you but in the late 1950's, when the set-aside program was first introduced, the reaction ranged from outright opposition to mild acceptance of the program. I'm sure this is quite a surprise to you, but most mills felt they were as competitive as any large operator mill for mill. They still feel that way. They still feel just as competitive mill for mill.

Later on as this program progressed through the 1960's, it proved to be a very inept program. A problem developed indicating a need for set-asides. Requests were made to SBA; USFS, and BLM. The results were very disappointing, with a minimum volume and the lowest grade sales being set aside.

This association attended a meeting in February 1971 in Phoenix, Ariz., with the Forest Service, the SBA, and the BLM, and we opposed the proposition of SBA there because we were afraid it would be just another layer of Government and if the results or relief were no more effective than in the past 10 years we didn't want anything to do with them.

By the same token, as an association, our philosophy is that you don't just gripe; you go back and try to develop some constructive criticism. We went back home. We made a 10-year study—part of it is attached to my comments—of the composition of the lumber industry in western Oregon, the number of small and large mills and the change of size classification through that period and the purchasing pattern. There was an increase during those 10 years of available timber from public lands. In fact, just rounding it off, in about 1961, there was approximately 3 billion board feet available for our purchase or bidding. By 1971 this has gone up to slightly over 4 billion board feet. Of this 1 billion board feet increase, the large industry in their tremendous expansion pressures purchases 900 million of it.

So, as you can see, there's been a tremendous increase by these mills in their capacity. The fact is they have gobbled up many small mills in a cannibalistic fashion. You can read any day in the newspaper about one or more small business throughout the industry being purchased by large business. I have a couple examples of that and I'd like to just hit a couple of them that will give you an indication.

Mr. Johnson indicates—I'll just read about three lines here—in the last 11 years, at least 8 independent lumber and plywood producers have been absorbed by big business starting with the acquisition of the Stomar Lumbar Co., and Harbor Plywood interests by Roseburg Lumber Co. and U.S. Plywood. Since then, Roseburg Lumber has acquired National Plywood and Paul B. Hult Lumber Co., and only last month, L&H Lumber Co. The Fibreboard Corp. has acquired Green Valley Lumber Co. and Round Prairie Lumber Co.; and Little River Box Co. was merged into Continental Forest Products, a division of Continental Western Industries. Not only have these manufacturing facilities been acquired by big business, but in several of these plants their production has been expanded significantly.

All of the above mentioned lumber and plywood production facilities, and those of their parent or acquiring company, are competing with nine small business mills in this same immediate geographic area.

Now let's see what happened with this change in this general area. In calendar year 1974, small business has been able to purchase only 13 percent of the sales offered. Small business share is 43 percent in this area. The rest has been purchased by large. Obviously, we are trying to get the BLM to initiate a set-aside program to correct this inequity.

In the Medford area you see the same acquisition, of small by large mills. Mr. Bill Tarr's statement itemizes these changes.

Now let's examine why we have some problems with the set-aside program. There is an acute shortage of raw material in western Oregon.

Now what are a couple solutions to this thing? One of them that's going to help all of us is an increase of raw materials. The Forest Service regularly states at about every hearing I've been at that through intensive forest management practices the yield from forest lands could be increased by as much as 50 percent. Any help toward getting action instead of words from the Forest Service would be helpful, but without the continued set-aside program—and I think this is important to tie these two things together—without a continued set-aside program, the bulk of any increased yields that we may realize from forest lands may be absorbed by large business just as they have done this past 10 years with a normal increase.

Two other things where the Forest Service could probably help quite a bit: even distribution with the sales throughout the year. We have yelled about that and the Forest Service has placed a lot of pressure on the individual forests but the results are still very unsatisfactory.

Senator PACKWOOD. You mean timber sales should be spaced more evenly throughout the year?

Mr. EWING. That is right, something in the distribution of sales, instead of piled up all in June and again in December, so by the time of October and November both large and small people are concerned about the situation—should I sell or should I bid like the devil? Are they going to make the program? We expect performance on that program which we haven't seen. I cannot condemn the Forest Service for that 1 billion board feet last year but I would like some action.

I have one more important item I want to go to here and we'll just drop the rest of the things.

Senator CRANSTON. Be sure to submit everything for the record.

Mr. EWING. I certainly will.

I heard about small business of \$22 million sales as being a large business. If I look at my pocketbook and look at Mr. Nate Coleman who has sales of \$22 million he would have to be considered large in relation to me. However, Mr. Coleman's mill compared to the really large operators is a completely different story. Let's examine this relationship by using information published in Business Week dated August 10, 1974.

This is for 6 months. Boise-Cascade for a 6-month period has \$721 million in sales; Champion International, \$1,279 million; Georgia Pacific, \$1,251 million; Louisiana Pacific, a fledgling outfit that started 18 months ago, \$258 million sales for 6 months; Southwest Forest Industries, \$245 million; Willamette Industries, \$186 million.

I specifically picked those out because those are the people that we compete with every day. So I have here Mr. Nate Coleman's own certified accountant's statement that his sales are \$22 million. I submit to you that there's a large difference; \$22 million seems small to me against a billion or so. In fact, some of these people's profits—and I'm not adverse to making profits—their profits are greater than the total sales of people we consider small.

So I indicate that 500 or 1,000 should be seriously considered as a legitimate reason to consider them small.

Thank you.

[The table referred to above follows:]

Company	Sales			Profits			Margins			Return com. 12 months ending, June 30	Period ending, July 31	12 months earnings per share
	2d quarter 1974, million	Change from 1973, percent	6 month 1974, million	Change from 1973, percent	2d quarter 1974, million	Change from 1973, percent	2d quarter 1974, percent	2d quarter 1973, percent				
Building materials: Cement, wood, paint, heating and plumbing, roofing, etc.:												
American Standard	\$428.7	10	\$830.1	10	\$13.3	20	21	3.1	2.8	10.6	5	2.45
Ameron (1)	46.4	17	82.9	15	2.3	54	23	3.0	3.8	10.9	4	2.64
Bird & Son	48.4	34	85.6	33	2.6	58	49	3.6	3.1	22.5	4	7.52
Bliss & Laughlin Industries	348.5	17	92.0	13	2.6	22	20	3.2	3.2	16.4	4	2.93
Boise Cascade	370.4	8	721.4	9	31.3	13	30	5.2	7.9	14.5	4	3.40
Brown (1)	109.0	47	200.6	46	6.1	112	59.9	5.2	7.9	20.4	5	2.99
Brown (2)	252.4	7	457.4	6	6.1	21	13.5	3.8	3.8	10.9	6	1.44
Carrier (2)	148.9	19	290.5	25	-6.3	NM	NM	4.9	5.5	18.1	9	1.98
Certain-teed Products (2)	682.2	18	1,279.3	19	33.3	20	22	5.7	4.8	13.7	5	3.12
Champion International	61.2	15	119.8	12	3.7	20	1	4.9	4.7	21.3	6	1.71
Copeland (3)	71.6	14	135.4	11	3.8	20	6.5	1.7	4.0	1.65	4	1.65
De Soto	333.3	11	582.5	9	5.0	58	-9	9.0	4.8	8.7	5	1.25
Evans Products	88.2	15	178.0	12	6.7	20	5.6	5.0	5.6	8.2	8	2.88
Feeders (4)	131.8	10	219.2	11	2.3	-44	-1	5.1	9.6	5.9	5	3.25
Flintkote	45.7	3	83.9	8	2.3	6	10	8.9	9.5	23.9	10	2.68
General Portland	670.8	14	1,251.6	13	59.8	42	27	7.1	6.5	15.4	4	2.19
Georgia-Pacific	65.6	30	124.6	32	4.6	21	44	13.6	12.3	15.7	7	3.07
Gifford-Hill	70.5	10	121.7	11	9.6	20	17	3.8	3.5	9.1	5	2.44
Ideal Basic Industries	57.9	11	110.1	9	2.2	20	3	6.1	6.4	11.5	6	2.76
Interpace	284.9	26	513.9	23	17.3	19	3	4.3	7.3	7.7	5	2.07
Joins-Manville	52.8	14	92.0	14	2.5	-34	-3	6.8	9.6	9.1	5	2.76
Kaiser Cement & Gypsum	36.9	1	65.0	6	9.5	-3	-13	5.2	5.3	11.3	5	2.00
Lehigh Portland Cement	180.6	29	319.9	27	7.3	13	39.8	14.7	16.7	NA	17	2.73
Lone Star Industries	138.4	18	258.4	21	20.3	23	16.9	10.6	10.2	22.5	13	1.72
Louisiana Pacific	69.0	18	181.0	22	10.2	7	10.3	10.3	11.3	17.5	6	4.39
Masco	99.7	10	63.6	8	1.4	-44	10.3	4.5	6.6	7.8	7	2.73
Mediate (4)	41.6	9	83.6	5	7.1	-11	9.0	3.4	6.6	8.8	6	2.44
National Gypsum	156.5	8	281.6	8	8.5	-2	6	4.7	5.2	17.3	15	2.75
Norris Industries	103.2	9	200.1	15	4.9	-2	18.3	4.1	5.2	12.1	4	3.78
Owens-Corning Fiberglas	205.5	14	400.5	23	3.4	29	83	4.1	6.6	12.1	4	4.87
Robertson (H.I.)	88.2	36	151.3	23	8.7	11	9.1	4.0	2.1	14.7	7	2.18
Sherwin-Williams (4)	215.4	13	376.7	13	8.7	16	6.9	3.4	4.4	10.4	3	5.19
Southwest Forest Industries	133.4	16	245.3	12	4.5	6	11.9	4.0	3.4	17.6	5	2.91
Southwest Forest Products	169.1	18	320.3	15	6.7	-54	4.8	4.0	4.4	5.9	11	3.45
Tecumseh Products	100.4	17	180.2	15	2.8	1	25.6	2.8	7.1	10.5	6	1.49
Trane	224.0	19	425.1	19	13.9	1	4.8	6.2	7.3	17.6	5	3.12
United States Gypsum	83.8	12	165.6	12	3.6	14	6.2	6.2	4.2	11.6	3	3.45
Wallace-Murray	344.3	26	623.7	23	20.1	40	29.0	5.8	5.3	15.7	5	3.12
Walter (Jim) (4)	40.4	2	75.4	2	1.6	-11	2.7	3.9	4.5	8.8	4	1.49
Weil-McLain	676.4	6	1,299.6	11	94.2	-17	186.8	13.9	17.9	26.1	14	2.62
Weyerhaeuser	104.7	19	186.7	15	12.5	7	21.3	12.0	13.3	24.0	5	3.04
Williamette Industries												
Industry composite	7,294.8	14	13,503.8	14	466.2	-2	792.3	1	7.4	15.1	6	2.60

Source: Reprinted from Business Week, Aug. 10, 1974.

Senator CRANSTON. Thank you very much

Senator PACKWOOD. I've got a question. You said Dave Vincent of North Side Lumber was unable to make any purchases except for set-asides in the last few years. Why is that?

Mr. EWING. Could I ask Mr. Vincent why he couldn't make those sales?

Mr. VINCENT. We normally purchase in any 1 year about 30 million board feet of timber from the U.S. Forest Service. In the Alsea and Waldport District of the Suislaw National Forest, the aggressive purchasing of large business in the last 12 months has caused a deficit in small business's fair share of 43 million board feet and has triggered a set aside program for that amount. This 54 million board feet is enough to run North Side Lumber Co. for 2 years.

Consequently, this is the reason we have only been able to purchase set-aside sales because large business have not been purchasing discretely and within the guidelines of the program. If they would stay on their historical pattern of purchase there would not have been a 54 million board feet excess to big business.

Senator PACKWOOD. One last question. You say Cabax has slightly more than 500 employees?

Mr. EWING. Yes, they do.

Senator PACKWOOD. But are they still a member of your organization?

Mr. EWING. Yes.

Senator PACKWOOD. And they still support this set-aside program even though they're ineligible to participate?

Mr. EWING. I'd like Don Johnson from Cabax to answer that.

Mr. JOHNSON. We feel we should be a member of the North West Timber Association, and another company called Timber Products, of Medford, Oreg., also large business, is the other large business member in North West Timber Association. We are the two large businesses out of 40 companies. We relate to these people because their problem is our problem. We feel that this arbitrary 500 figure should be looked at very closely. We are independently owned. We are totally dependent on public timber. We are not diversified by area or industry.

Senator PACKWOOD. You think the 500 level ought to be raised?

Mr. JOHNSON. Yes, I do.

Senator CRANSTON. Reference was made to Bud's Harwood's inability to purchase. I'd like to have a brief explanation from him at this time also.

Mr. HARWOOD. I'm Bud Harwood from Branscomb, Calif. Do you want me to—

Senator CRANSTON. Just explain what happened, why you couldn't make the purchases that you sought.

Mr. HARWOOD. I spent 1 day about 2 months ago, 10 hours, bidding on two timber sales in the Mendocino National Forest. It all came down to the fact I was bidding against Louisiana Pacific Corp. and it became apparent about 8 o'clock at night, after they had made three phone calls to Portland, Oreg., that there was no way I was going to buy one of those sales. The price just kept going up. I'm sure we'd still be there if I hadn't quit.

Senator CRANSTON. Thank you, Bud.
Mr. Netzorg, did you have anything to add?

STATEMENT OF LEONARD NETZORG OF PORTLAND, OREGON

Mr. NETZORG. I do, Senator. I apologize for not having a written statement. There was a witness who was to be in yesterday with prepared statements and he was unavoidably detained in Seattle, so late last night I was asked to speak.

There's been talk this morning about small entrepreneurial organizations and, on the other hand, the publicly held corporation. The companies for whom I speak are neither. These are companies that are organized under the cooperative laws of the states involved. They are owned entirely by their workers. The workers own all the shares. They are the voters. They are the officers. They are the directors. They hire a professional forestry staff and they frequently hire a professional management, but all the officers, all the directors, all the decisions are made by the men themselves who own the shares.

Their jobs, the whole future of each worker is invested in that plant. They are all, in this instance, small businesses. They make about 50 percent of the sanded plywood that's manufactured in the United States nationally.

One of their prime concerns at the moment is the size appeals procedure. Because they are located in areas where timber supply is very short and their survival is dependent entirely upon a public timber supply, they find from time to time that front organizations are being set up.

Senator PACKWOOD. Front organizations?

Mr. NETZORG. Yes. Senator Packwood this morning referred to one such instance. I believe you read from a decision where a local front organization is being used to acquire set-aside timber where the benefits flow to Mitsui, which is one of the world's great corporations in terms of size.

Now our problem arises when we want to challenge that decision. Again, Senator, we appreciate your raising this. When we want to challenge that, we go through the motions of an adversary proceeding. SBA's size appeals board and its local people expect us to furnish the information that will show the business relationships between the front organization and the economic master behind it.

Well, Senator, this is an impossible task. We are not about to engage, however tempting it may be, in industrial espionage. We can't get this information from our competitors.

They hold it as confidential. SBA could get it. In the past SBA had occasionally insisted that any company that wished to enjoy the benefits of a formal small business classification must, if there was a challenger to its size (including such matters as affiliation, common control, shared control and the like) furnish to SBA all relevant information specified by SBA that was available to the challenged company.

We have had instances where we have had to hire people in Washington, D.C. to search SEC records in order to get the material back

out to the west coast so we could then forward it back here to Washington, D.C. where SBA would use it about six blocks from where we got it to begin with.

Now we take this view, sir, of the SBA obligation. I would like to quote a statement that Mr. Joe Aitchison made when he was on the Interstate Commerce Committee:

The agency does not do its duty when it merely decides upon a poor or non representative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts and to see that they are adduced when the parties have not put them in. The agency must always act upon the record made and if that is not sufficient it should see the record is supplemented before it acts. It must always preserve the elements of fair play, but it is not fair play for it to create an injustice instead of remedying one by omitting to inform itself and by acting ignorantly when intelligent action is possible. Quoted in "*Scenic Hudson Preservation Conference v. F.P.C.*", 354 F. 2d 608 (2d Cir. 1965).

We think that is a useful standard and we would hope that the size appeals board and the size determination people in SBA will give somewhat more heed to that admonition.

I would say this, too: I do not wish to sound critical of the SBA program. The program and Mr. Kleppe are responsible for our existence. It's that innovative and creative program which Mr. Kleppe has installed and has fought for that keeps us alive. Without that, sir, these co-ops are wiped out.

We have one other problem to mention. It's a very big problem easily described. The chairman's opening statement explained it. Assume a deficiency in the small business timber procurements. Small business is not getting its fair share. We trigger a set-aside. Then we are to have set-aside sales.

The problem comes up as to who picks the set-aside sale. We have taken the position and we thought the interagency agreement provided that SBA, which maintains experts who are constantly consulting with small businesses and who know their business and are paid for just that, ought to be able to go into the Forest Service and say, "Here's the sale plan you have issued. It's all public now. We have a set-aside program triggered. We will select for set-asides this sale, this sale, and this sale. Please set them aside for small business."

Bear in mind that each sale in the Forest Service plan had been preferred as an open sale. The Forest Service does not know in the planning stage whether a sale is going to be purchased by small business or large business. All SBA does at that time is to select from the total list of all such sales the particular sales that should have preferential bidding.

Somebody mentioned the transaction on the Routt sale where the supervisor selected a set-aside sale. The timber was of a quality that the small businesses could not use and would not use and would have caused them heavy losses had they bid for and bought it. We are engaged in some litigation at the moment in the Federal courts in Oregon where we are defending, we think, the SBA. At issue is the reason, if any, under the interagency agreement that will justify the Forest Service in rejecting, in a triggered situation, the SBA selection of the specific sales to be set aside. We hope that the litigation

will enduce the kind of real analytical thinking in the Forest Service that will persuade that agency to change its position. We have no problems of this type where there is a supervisor who understands this program and is sympathetic to it. On the other hand, where there is an individual supervisor whose economic philosophy differs from that established by the SBA statute, we do have troubles. We would like to turn that selection decision over to SBA. We can see no policy reason why this should not be done.

I understand that Mr. McGuire is testifying later. We would be grateful to know from him if there's a valid reason for the present Forest Service position to which we object.

[Mr. Netzorg subsequently submitted the following letter for insertion in the record:]

LEONARD B. NETZORG,
Portland, Oreg., August 27, 1974.

MISS CAROLYN JORDAN,
Subcommittee on Small Business, Senate Banking, Housing and Urban Affairs Committee, Russell Senate Office Building, Washington, D.C.

DEAR MISS JORDAN: The unpacking of several briefcases reminds me that in my letter to you yesterday I neglected to supply information for which you asked.

My last minute testimony before the Committee was stated to be on behalf of plywood cooperatives. The specific plywood cooperatives for whom I was speaking are:

Name and Address

Everett Plywood Corp., 21st and Norton, Everett, Washington 98201.
Astoria Plywood Corp., 409—23d Street, Astoria, Oregon 97103.
Fort Vancouver Plywood Corp., Box 289, Vancouver, Washington 98660.
Stevenson Co-Ply, Inc., Box F, Stevenson, Washington 98648.
Multnomah Plywood Corp., P.O. Box 305, St. Helens, Oregon 97061.
Linnton Plywood Association, 10504 N.W. St. Helens Road, Portland, Oregon 97231.

For your information, other worker-owned plywood manufacturers that presumably have problems parallel to those named above are as follows:

Hoquiam Plywood Co., Inc., Box 737, Hoquiam, Washington 98550.
Hardel Mutual Plywood Corp., Box 365, Olympia, Washington 98501.
Mt. Baker Plywood, Inc., Box 997, Bellingham, Washington 98225.
Elma Plywood Corp., Box K, Elma, Washington 98541.
North Pacific Plywood, Inc., 1549 Dock Street, Tacoma, Washington 98406.
Puget Sound Plywood, Inc., 230 East "F" Street, Tacoma, Washington 98401.
Buffelen Woodworking Co., Box 1383, Tacoma, Washington 98401.
Lacey Plywood Co., Inc., Box 3098, Lacey, Washington 98501.
Brookings Plywood Corp., Box 820, Brookings, Oregon 97415.
Medford Veneer & Plywood Corp., Box 2488, White City, Oregon 97501.
Western States Plywood Cooperative, Box 86, Port Orford, Oregon 97465.
Milwaukie Plywood Corp., 815—31st Street, Box 22044, Milwaukie, Oregon 97222.

During the course of my testimony I read a quotation attributed to former Commissioner Aitchison, once a prominent member of the Interstate Commerce Commission. The quotation appears in the opinion of the Court in the action entitled *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F. 2d 608 (2d Cir. 1965). The correct quotation is as follows:

"* * * The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in * * *. The agency must always act upon the record made, and if that is not sufficient, it should see the record is supplemented before it acts.

It must always preserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible * * *."

In the course of my testimony, which was wholly extemporaneous, I neglected to recite a rather vivid illustration of the lack of quality in the matter of size determinations by the Small Business Administration. On May 26, 1972, I wrote to an Associate Administrator of SBA in Washington asking that the Washington office of the agency review a determination made by its San Francisco office that a particular company, a purchaser of national forest timber, was small business during the base period 1966-70. For reasons that were never made clear to me, the Washington office refused my request merely to open the file and look at its contents. Rather, the Washington office informed me that I must file an appeal with one of its components and submit evidence in support of the appeal. So we collected evidence from SEC records in Washington, D. C. and other appropriately available sources and in due course forwarded it to that specific component of SBA in Washington. Thereupon, as I had requested several months before, the Washington office did open the file involved and discovered therein nothing to support the determination that the San Francisco office had made. Accordingly, in the style popularized by George Orwell, I was informed in essence that the determination of the San Francisco office was really a non-determination from which I had erroneously sought to file an appeal. I was further told that the San Francisco office had been instructed to make an original determination to replace its original non-determination. As a reader of the works of Lewis Carroll, I viewed the episode as a bit of administrative enchantment that was only moderately bewildering.

In my letter to you yesterday I referred to the pending litigation on the question of whether the Forest Service or SBA, in a situation where a set-aside program has triggered, ought to select the sales to be set aside for preferential bidding by small business. A statement of the history of the program and the way in which it can be subverted by administrative personnel in the Forest Service who either do not understand or are unsympathetic to the program's purposes is starkly illustrated by this litigation. For whatever assistance it may be to you, there is enclosed a copy of my letter of July 12 to the Regional Forester discussing the history and the purposes of the program, as well as the way in which some elements of the Forest Service implicitly resist what they seem to consider to be SBA's intrusion into matters that the Forest Service believes ought to be confided to its own beneficence. The several administrative decisions to which reference is made in the letter are set forth as exhibits in the Amended Complaint heretofore filed in the action, a copy of which is also enclosed for your convenience.

If there is any other information that you would like to have from us, please let me know.

Again, the thanks of all of us for the obviously great amount of work you have already devoted to our problems.

Sincerely yours,

LEONARD B. NETZORG.

Senator CRANSTON. Thank you very much. We have a few questions.

First, the Forest Service figures indicate that out of a total Federal timber sales of 27.3 billion board feet over the past years, small business has purchased competitively 10.9 billion feet. If you accept those figures, that appears to be a pretty fair share.

In light of that, why do you feel that this program is needed if that much can be purchased competitively?

Mr. BENNETT. I'd like to answer that, Senator. It is our belief that if it was not for that program small business would never have got anywhere close to that. Somebody asked earlier about problems in percentages of purchase. Before this program was initiated, we

had a program initiated on SBA under the old program before the new one, because we had the problem of buying approximately 45 percent small business share in our own forests and in a 2-year period we dropped from 45 to 17 percent because of one or two large bidders increasing their purchases.

Then we got the small business program put in, the set-aside program put in, and that cut us back and we ended up with something like a 29-percent share.

What I'm saying is: Without the program we were out of business.

Now since the program was initiated in those forests there's never been a set-aside sale triggered. The same businesses that were purchasing all the sales quit purchasing over their share.

Senator CRANSTON. The purchases that are covered by these statistics were not under the program, however, as I understand it.

Mr. BENNETT. That was total purchases?

Senator CRANSTON. Yes. These were competitive.

Mr. BENNETT. Competitive and probably under SBA.

Senator CRANSTON. I don't believe they were under that program: 2.4 was under SBA and 10.9 was in the open market.

Mr. EWING. Senator, could I add to that one situation? I consider the set-aside program the most efficient when there is no set-asides. It's there. Both sides understand the situation and I think that's what you will recognize in many areas. They do allow small business to buy a portion of these sales rather than trigger. So it's a very effective tool in that way without triggering it.

Senator CRANSTON. Could you explain the consequences in your view of either a reduction or an increase in the SBA size standard of 500 employees?

Mr. BENNETT. I can very quickly. It would chop our head right off. We are one of the businesses that are over 250, for example. We have been using the 500 as a goal to stay under and not to go over, of course. We would, of course, urge to have it increased. We don't worry about any company of 1,000 or in that neighborhood or under. We can compete with any of those. The only companies we cannot compete with over a long period of time is the large, multi-thousand-employees companies that have either their own resources in timber or tremendous amount of money, one or the other.

Senator CRANSTON. Does the 500 figure encourage companies not to grow?

Mr. BENNETT. It encourages people to stay under 500 if they are in a heavy competitive area.

Senator CRANSTON. What's the effect of that on a company's efficiency and ability to expand its horizons?

Mr. BENNETT. I think you have to temper your expansion with a view of your overall operation. For example, you may have an operation that may not be too economical and may want to limit that and expand in another area.

Senator CRANSTON. When the small business has ceased to exist or been acquired by a large business, should the small business base share remain the same?

Mr. BENNETT. Yes.

Mr. EWING. We feel strongly that if a small business share was transferred to a large that would put a bounty hunting license on our people, especially by the large people. They would continue this cannibalistic action of buying up—first they would buy companies dollar for dollar and as soon as they got down to the last point they might pay a quarter to the dollar.

Senator CRANSTON. Do you have any idea what would happen to small business if the base share was transferred.

Mr. McCracken. I could add something specific. In Crescent City, Calif., there are four mills there. They are all between 250 and 500 employees. The Forest Service share there is now 97 percent for small business. If the size standard is reduced to 250 employees, the small business share would go to zero, or if the share is allowed to be transferred, which is your question, I would guess within 2 years every one of those companies would have to sell out and the share would go to zero, also.

Senator CRANSTON. In cases where no small business bids on a set-aside and big business can still purchase it, is that still counted as part of the small business share? Do you think that's a fair approach?

Mr. COSHOW. No, because as was pointed out by Mr. Netzorg, especially where the Forest Service supervisor is unfriendly to the program, which occurs, they can select a sale which is simply not economically sound for any of the small businesses because of the type of timber available in the sale. And so where they do not bid and they have been bidding in the forest before, it's simply because it's really an attempt to cut down small business' share, and that's why we don't feel it's fair.

Mr. BENNETT. Or in the location.

Senator PACKWOOD. You have very few situations, however, where the small business share goes unbid? It's just sitting there and nobody wants it?

Mr. COSHOW. It would only be in those instances where the timber selected or because of its location or the species would just not be economically sound for small business, and that very seldom happens. It would nearly have to be done deliberately.

Senator PACKWOOD. Isn't it also the reverse? Even in the small business—you guys are really cutthroat among yourselves?

Mr. COSHOW. That is certainly true and I'd like to add if I might on the initial question about why the small business that is acquired should not have its acquisition deleted from the base for set-aside. This program is to enhance small business and if we were to transfer the shares of the small businesses that are acquired by the big businesses, then it would have the exact opposite effect because then it would be in big business interest to acquire these small businesses in order to purchase, in effect, their share of the forests, in those forests where the capacity to manufacture substantially exceeds demand.

Senator PACKWOOD. What do you do with cull logs in small business?

Mr. BENNETT. Sell them to big business. That's an interesting point that's covered in some written testimony but pulp logs, when this program was initiated and we were all going over the program, we all thought that pulp logs were excluded in the program.

Senator PACKWOOD. Cull logs was the question.

Mr. BENNETT. Cull or pulp. It is specifically excluded, for example, in the Southeast, and we felt that that carried true for the Northwest. However, now we find that some forests are considering the pulp logs and cull logs as part of the program. This is something that should be stopped. Pulp logs—not particularly cull logs, if you're speaking of cull cedar or something of that nature—but pulp logs are only good for chipping and are going to end up in big business and shouldn't be considered.

Senator CRANSTON. I understand there are some other Federal agencies that have control over some other timber. Would there be any advantages to you from your point of view to extending this program into those areas?

Mr. BENNETT. There's none in our area.

Mr. UMPHLETT. In the Southeast, I think there would be an advantage. The Corps of Engineers and I think the Department of Interior, both.

Senator CRANSTON. Could you outline very briefly how many builders and other consumers of the program are affected by the program?

Mr. BENNETT. Well, as long as you keep a small business sector alive like the small business program is attempting to do, then the competition factor is going to be there for everybody. There will never be any case where industry can set prices or any segment of the industry can control prices and, therefore, the homebuilder will be able to buy his products at a much more competitive price and cheaper.

Senator CRANSTON. Have you encountered any situations where to your knowledge lumber companies financially sponsor a small business purchaser of a set-aside for resale to a larger company?

Mr. COSHOW. Well, we believe, although we're handicapped as Mr. Netzorg said, we don't have any industrial spies—we believe the example I gave before of the Essex sale was precisely that. We believe Sierra financed it, using Essex to bid on a forest that Essex couldn't use in any sense of the imagination because Sierra Pacific wanted that timber for their Susanville mill.

[Complete statements of the previous witnesses follow:]

STATEMENT OF RICHARD BENNETT, BENNETT LUMBER PRODUCTS,
PRINCETON, IDAHO

Mr. Chairman and members of the Subcommittee, I am Richard Bennett, executive vice president of Bennett Lumber Products of Princeton, Idaho.

I was originally scheduled to appear today on behalf of the National Independent Forest Industries Committee (NIFIC), which was formed in 1970 to advocate a new national SBA timber set-aside program to better meet the real needs of the independent forest products sector. I had the honor of serving as chairman of NIFIC during the negotiations and consultations which preceded the 1971 announcement of the new agreement between SBA and the Forest Service. I think I can honestly speak for every small businessman involved at

that time in expressing our deep admiration for the stalwart support of SBA Administrator Kleppe and his staff, as well as for the fine spirit of cooperation demonstrated by Chief McGuire and the Forest Service personnel involved.

I think it is appropriate that such commendation be the last official statement of the National Independent Forest Industries Committee, as that body is now being dissolved. This is not because the work is finished by any means, but because those of us in the small business forest products sector have concluded that a more formal and permanent organization should be formed to cope with the different challenges we face today—the job of preserving the concepts embodied in the 1971 agreement and of making those concepts function most effectively for every small businessman in every region of the country.

So I am pleased to speak today as spokesman for a new national federation, made up initially of four regional associations of independent forest products businessmen. Representatives of the Southeastern Lumber Manufacturers Association, North West Timber Association, Western Forest Industries Association and the Ozark-Ouachita Lumbermen's Association unanimously approved created a funded, staffed national organization, and appointed a committee to work the by-laws, funding and staffing of such a group. That committee is now at work.

I hope you will overlook the fact that we do not yet have a new name—that will soon be rectified.

Mr. Chairman, today we are going to hear from some of the people who struggle on that sometimes tense and always risky front line between a progressive and innovative small business sector and their counterparts among the larger timber companies of the nation. We are not here to attempt to gain any upper hand—that would be futile in view of the enormous discrepancies in economic power. We are not here to cripple or to hinder any of the large companies in their pursuit of corporate vitality and economic efficiency. In fact, we encourage them. We think this is one industry where there is room for all who strive for product excellence and better resource utilization. But bigness is not necessarily synonymous with these virtues.

We welcome competition. We are stimulated by it, challenged by it, and rarely frightened by it—unless it comes not as a challenge in the marketplace but as a heavy-handed use of superior economic resources to deprive us of our raw material supplies.

And that is what the small business timber set-aside program is all about, and that is what you are going to be hearing about today.

I want to briefly outline to you the order of our witnesses and the topics they will cover. We are going to try not to burden you with redundancy in oral testimony. Most of the witnesses have submitted prepared statements for the record and will, in their oral remarks, speak to a specific idea or problem area. They are anxious to answer any questions you may have. As you may know, lumbermen are notorious for having answers to questions that haven't even been thought of yet.

Mr. Joseph McCracken, executive vice president of Western Forest Industries Association will be our first witness, and will provide a brief overview of the evolution of the SBA program and an outline of problem areas which have developed.

Mr. William Coshaw of Redding, California, will speak on behalf of a panel of California operators who have some very severe problems related to the disturbing trend of small business acquisitions in California. They will also emphasize the dangers of a change in SBA size standards which we understand is being sought by some large business firms.

Mr. Cal Umphlett will testify on behalf of the members of the Southeastern Lumber Manufacturers Association. Cal and his fellow SLMA members have been in forefront of the effort to make the SBA program a meaningful one for independent businesses, and he will have some suggestions for extending the program to certain other Federal lands.

A panel of Rocky Mountain area businessmen will be accompanied by the distinguished former chairman of the House Interior Committee, the Honorable Wayne Aspinall, who will advise you of one of the most troublesome problem areas in the entire national program.

Mr. Arnold Ewing, executive vice president of North West Timber Association, will head a panel of Oregon lumbermen who, because of export pressures and other factors, have some special problems to describe.

Mr. William Lenihan of Seattle, Washington, will be spokesman for plywood operators in Washington and Oregon who have some severe and growing problems of maintaining adequate supplies of raw materials.

With that introduction, Mr. Chairman, may I thank you very sincerely for the keen interest you have taken in the SBA timber set-aside program. We appreciate the chance to be here today, and with your permission, will now proceed with the presentation.

STATEMENT OF JOSEPH MCCrackEN, WESTERN FOREST INDUSTRIES
ASSOCIATION, PORTLAND, OREG.

Mr. Chairman and members of the Subcommittee, I am Joseph McCracken, Executive Vice President of Western Forest Industries Association, with headquarters in Portland, Oregon. The association is comprised of independent wood products manufacturers located in Oregon, California, Washington, Idaho, Montana, Wyoming, Nevada, Utah, Colorado, Arizona, Alaska and New Mexico—all of whom are primarily dependent upon Federal lands for their timber supply.

The interest of these small businesses in the form and administration of the SBA timber set-aside agreement cannot be overstated. In essence, for reasons I will touch upon and other witnesses will expand upon, the set-aside program is the only remaining hope of survival for many independent forest products businesses.

The mills operated by these small companies are as efficient—and in many cases more so—than those owned by the largest companies. They are also comparable in other respects—in the wages they pay, in the environmental precautions they exercise and in the degree of resource utilization they achieve.

But there are indeed some differences. In large part, these businesses are owned by people who have a personal interest in the economic welfare of the communities in which their plants are located . . . because they live there. The major negative difference is that they lack the economic power and the geographic base required to withstand sustained attack from a large company which can afford to take losses in one area under the protection of offsetting earnings elsewhere in their operations.

The Small Business Act of 1958 declared it to be the policy of the Congress that the Federal government should “insure that a fair proportion of the total sales of Government property” be made to small businesses.

Following that enactment, an agreement was entered into between the SBA and the Forest Service, but the criteria adopted for implementing the “fair proportion” concept were totally inadequate to protect small business from predatory economic pressures. Consequently, a disproportionate number of small forest product enterprises either failed because they could not obtain raw material at a fair price, or they sold out to big business under the threat of economic domination.

Throughout the decade of the 1960's this trend to consolidation in the timber industry accelerated at an alarming rate. The two principal reasons were:

1. The rapid growth of a lucrative export market for forest raw materials—a market dominated by a combine of large Japanese trading companies and large domestic timber companies.

2. The shortcomings of the then-existing SBA set-aside program.

The Japanese export market made it possible for companies which were hooked into the system to realize enormous profits on exports of logs from their own lands or—until partial restrictions were imposed in 1968—from exports of logs from Federal timber sales. The bidding on Federal timber took on a whole new dimension. The company with an export agreement could, and would, outbid any domestic processor for timber supplies anytime it wished to do so, and didn't have to worry about losing money on the transaction.

If there ever was a time when an effective timber set-aside program was needed, it was during that period. But the program then in being was too

vague. Its implementation was virtually at the will of local Forest Service personnel. And the standards were such that, by the time set-aside sales were offered, the small business victim had often already succumbed to timber supply anemia or to a massive hemorrhage of capital.

It is important to note here that the 1968 restrictions on exports of unprocessed timber from western Federal lands did not stop the trend, because ways were found by the exporting companies to circumvent the intent of the law and, at the same time, extract even more inflated prices from the Japanese trading companies for material logged under Federal timber sale contracts.

There was, however, one event that succeeded in slowing the awesome trend of timber industry consolidation. That was the adoption, in late 1974], of a new SBA-Forest Service timber set-aside agreement. This followed two years of negotiations between the agencies and of their consultation with both large and small business in the industry.

The strength of the new agreement is in the following three elements:

1. It establishes a specific fair share for small business in each national forest of the Nation—a percentage share based on purchase history during a 5 year base period.

2. It provides for the automatic use of set-aside sales when needed to assure that small business, as a class, does obtain its fair share of sale offerings.

3. It prevents the transfer of any part of the small business base share at the time a small timber purchaser merges with or is acquired by a large company, thereby preventing either from deriving economic benefit from the sale of a Federally-allocated share of timber purchase rights.

It is the third factor that has stimulated the greatest controversy and the most imaginative searches for ways to circumvent the provisions of the agreement. Some of the latter will be related by other witnesses in this hearing.

Though the testimony will show that the program does have its imperfections, let no one mistake the intent of the criticisms. They in no way reflect on the efforts or the accomplishments of those responsible for bringing the agreement into being. SBA Administrator Kleppe and Chief Forester McGuire, along with their staffs, deserve tremendous praise for biting a hard bullet and hanging on in the face of strong opposition from the giants of the timber industry. The same can be said of those involved in the more recent agreement between SBA and the Bureau of Land Management, covering BLM-administered forests in western Oregon.

Any inter-agency agreement which is conceived in controversy and born in compromise is bound to create some problems—not only between the agencies but also with the companies affected, both large and small. And there were some problems from the beginning, but by and large they were handled as they arose. With one important area exception which will be discussed by witnesses who are directly involved, and other specific exceptions, the set-aside program has worked as well as its most optimistic proponents had reason to hope.

But we must face the reality that the program has not yet matured to the point where aberrations can simply be explained away as “unique” or “temporary”. If a little problem is not handled effectively and expeditiously in the full spirit of the agreement, it soon spreads to become a major problem. And we now see major problems developing in several areas which, if left unresolved, could seriously hinder the program.

For example, we are fully aware that a powerful attempt is underway to discredit the essential protection the agreement affords to the continued viability of small business in our industry. Pressures are growing to have the agreement revised to allow the transfer of base share when a small business is acquired by big business. Anyone who has examined this program and understands the reason for its existence can see that such a chance would not be merely a seed of destruction, it would be the bombshell.

As one means of accomplishing their objective, large timber companies have launched an effort to reduce the existing 500 employee small business size standard to somewhere around 100. They know exactly what the effect would be. By throwing the 100-500 employee firms into the same economic basket with those on the Fortune 500 list, they would so fragment the industry politi-

cally that the entire program would collapse. In addition, those firms would then be merged into business at an astounding rate.

Another disturbing trend of late involves the process of size determinations by SBA. When affirmations of small business status are challenged, genuine investigations are either not made or are carried out very perfunctorily. The results, we believe, are increasingly contrary to the stated objectives of SBA. In a recent case, for example, a company that is wholly and continuously financed by, and turns 95% of its wood acquisitions over to, one of the largest of the Japanese trading companies, was held to be independent small business entitled to buy set-aside sales.

Procedural safeguards need to be established for assuring that the basics of the SBA program are not rendered meaningless by allowing powerful economic interests to masquerade as small business under some of the guises that have been adopted. If the original spirit and intent of the program is to be submerged in a sea of technicalities, it won't be long before most big forest product companies will have found ways to get not only their own fair share of national forest timber, but a good part of the small business share besides.

There is also the question of how set-aside sales are selected for offering—and by whom. We see instance after instance where the location of a set-aside, the species of timber involved, road construction requirements or other factors weigh heavily against the small business firms in the area—and for no apparent reason other than to make it difficult or impossible for the small business to avail itself of the protection the set-aside agreement is designed to afford.

Mr. Chairman, other witnesses representing small business will cite specific examples of these and other problem areas that we feel should be addressed by your committee.

Before closing, however, I would like to return briefly to a point touched upon earlier in my statement.

No one should ever be misled into believing that the timber set-aside program is an artificial underpinning for businesses that otherwise would not survive the normal vicissitudes of the marketplace. In our business, you cannot equate efficiency and good management with size. Some of the most obsolete plants are operated by the largest companies in the business. Some of the most efficient mills—in fact, a large share of them—are in the small business sector. They have to be cost efficient because, on average, they pay more for their raw material than those companies with substantial private timber holdings.

The program is no guarantee of success, as former mill operators of recent vintage can tell you.

Those are some of the things the program *does not do*.

What it *has* done thus far—and has the potential to do even better in the future if the proper steps are taken—is to serve as protection against the deliberate and selective use of superior economic power to erode competition in the wood products industry. The small business sector of the industry still commands a reasonable position in the marketplace by virtue of their numbers rather than their size. It is a healthy situation for the consumers of this nation that no one forest products company or combination of companies can set prices or control the flow of materials to the market. And let's hope it never comes to that.

The continued operation and improvement of the SBA timber set-aside program can help assure that the powerful trend toward consolidation in the industry will be halted and that healthy competition will endure.

STATEMENT OF CALHOUN W. UMPHLETT, ON BEHALF OF SOUTHERN LUMBER
MANUFACTURERS ASSOCIATION

Mr. Chairman and Members of the Committee: My name is Calhoun W. Umphlett of Moncks Corner, South Carolina, and I am appearing before this Committee both as an independent lumber manufacturer and as a representative of the Southeastern Lumber Manufacturers Association. SLMA has welcomed every opportunity in recent years to offer its views to the Congress and to governmental agencies concerning issues of timber supply and competition in the forest products industry. SLMA, with headquarters in the Atlanta,

Georgia area, is an association of more than 230 *independent* lumber manufacturers from the States of Florida, Georgia, North Carolina, South Carolina, Virginia, Alabama and Mississippi.

The term "independent lumber manufacturer" is synonymous with small business. While SLMA members are substantial manufacturing entities, and important employers within their own communities, they all qualify as "small business" under the current SBA size standards that define small business as employing less than 500 employees. In fact, we understand that this size standard is under attack. We cannot emphasize strongly enough the importance of retaining the present size standard which this industry has come to rely upon. To do otherwise, would erode the ranks of small business. SLMA members are "independent" in another sense, since they have little timber of their own. Unlike the giant lumber and plywood producers with vast timberlands under their control (either through direct ownership, lease or under timber exchange agreements), the small independent must depend for its timber supply on successful bidding for timber owned either by private land owners or by the Federal Government.

SLMA is pleased to testify today in support of the present National Forest timber set-aside program—a program presently under sharp attack from the big companies. We vigorously urge its continuation and development, along the lines that have been drawn since late 1971. The set-aside program will not in and of itself substitute for other tools that may be necessary in slowing down the trends toward concentration in this competitive forest products industry; however, the program has acted as a very important brake on monopolistic tendencies in bidding for National Forest timber. It will always serve as a reminder that affirmative government policy can assure the survival of many small business firms in a particular industry. Without an effective set-aside program such as the revised program adopted in late 1971, many independent lumber manufacturers may well have disappeared, with severe impact felt by the consumer in the all-important housing market which we serve.

SLMA was instrumental in helping bring about a revitalization of the set-aside program. Indeed, a few years ago many congressmen supported a legislative enactment of such a set-aside program as has presently been put into effect administratively. SLMA and other independent groups and firms strongly supported the administrative development and redefinition of the program now in effect. Further, on behalf of small business, SLMA and others have been involved during the past two years, at great expense, in defending the program in court against a challenge initiated by the large forest products companies. A decision is expected momentarily in this case. It is the hope of SLMA that the court will recognize the broad discretion and mandate which Congress has given the Small Business Administration to take steps to develop, aid and assist small business, and uphold the program in its entirety. If the program is upset in the courts, we will have to return to Congress to seek legislative confirmation of the program's purposes.

It is gratifying when an organization can come before a committee of Congress and express its profound gratitude for the accomplishments of governmental agencies in this regard, and for the concern of Congressional committees such as this for their attention to the problem. SLMA would like to take this opportunity to thank Mr. Thomas Kleppe of the Small Business Administration and his many assistants such as Mr. Gene VanArsdale, who have worked so hard on this program. Similarly, SLMA expresses appreciation to Mr. John McGuire, Chief of the Forest Service, and his industrious staff, including Mr. Worthington, Mr. Todd and Mr. Gillespie.

This is not to say that SLMA and its members are pleased with each and every aspect of the set-aside program and its implementation. Problems have arisen and may again develop concerning (1) the price at which timber is offered for sale on the set-aside program, (2) the quantity of the particular timber set-aside offering, (3) the location of the timber in question, and (4) indeed, the size, species and quality of the timber offered by set-aside.

The Forest Service must take pains to take into account lumber market price conditions in order to avoid setting too high an appraisal (or minimum bid) price in a falling lumber market such as today's. Similarly, the set-aside timber should be located within reach of eligible small business firms, and

should be of the type that is attractive to the conventional small business sawmill, which produces not only .2 inch dimension lumber, but high finish grades as well as industrial and railroad timber, and many specialty items. Efforts should be made to avoid designating stands of small diameter timber in set-aside sales.

It may be useful to reexamine briefly the reason why the set-aside program is essential in the forest products industry. The principal underlying reason for such a program is that many small businesses are dependent on the National Forests for their timber supply. Without set-aside program protection, it is beyond dispute that the large firms not only can afford to, but will, in fact, purchase more and more of the National Forest timber offered for sale. As one large company witness said during deposition, "We have the financial resources to buy what we want." Moreover, the historical record of National Forest timber sales during the period immediately prior to the set-aside program demonstrates that this is what, in fact, happened. The litigation in the District Court here in Washington produced substantial evidence demonstrating and confirming that large business was buying an ever-increasing share of National Forest timber. In many forests, large business proportions went from 33% to 68% of total purchases in only a five year period. And we attach several charts to our statement that were prepared by small business interests based on records of large companies discovered in the litigation. They demonstrated the very dramatic increases in the amount of timber purchased by those particular, complaining large firms.

Finally, that case was instructive in many other ways. Discovery confirmed that, unlike the small firms, most large companies have many meaningful timber alternatives, aside from National Forest timber, available to them, as well as the resources to take advantage of such alternatives. They own substantial timber resources, and they control thousands of acres under lease. They even have developed the practice of timber-chip exchange agreement—a development of particular concern to small companies in our area. These timber-chip exchange agreements essentially amount to arrangements between paper companies with large holdings of timberlands and the giant lumber and plywood companies which produce wood chips as a by-product of the milling operations. The paper companies have a constant need for chips in their pulp operations (since chips are the basic material introduced into the pulping process) and paper mills use interchangeably either chips converted at the pulp mill from pulpwood logs, or chips purchased from sawmills and plywood plants. Forest products companies have a constant need for standing timber from which they can produce plywood and lumber. The exchange agreements parley this mutuality of need into a contract whereby the paper company will agree to sell to the large lumber and plywood company a quantity of stumpage, (standing timber), or cutting rights on its own land, over a given time period for a specified price. The lumber and plywood company will, in return, agree to sell to the paper company a given tonnage of wood chips at a certain price. Such agreements *per se* are not harmful. However, when such agreements become long term and exist only between the very large forest product concerns and the giant paper companies, the result is another harmful restriction on the small independent firm's access to timber supply. SLMA estimates that more than 250 million board feet of timber are tied up annually from these contracts in the Southeast, or more than enough timber to keep thirty small mills in operation for an entire year.

In conclusion, I thank the Committee for this opportunity to point out the importance of the set-aside program to small businessmen everywhere. SLMA believes that the program should go forward and be strengthened. Further, it feels that the principles of this program should not be limited to the National Forests. Rather, similar set-aside programs should be implemented on the forest lands under the control of the Department of Interior, the Corps of Engineers, the Department of Defense, and any other governmental agency involved in timber management.

TOTAL ESTIMATED VOLUME OF TIMBER ACQUIRED FROM NATIONAL FORESTS BY YEAR, 1962-72
[In million board feet]

Year	Georgia-Pacific	DiGiorgio	Ed. Hines	Columbia Plywood	Cascade Locks	Pope & Talbot	Roseburg	Duke City	Medford	Publishers	Willamette
1962	101.00	---	199.00	---	---	---	63.20	43.00	7.00	---	44.00
1963	69.30	41.50	186.00	---	---	---	58.50	35.00	32.00	---	42.00
1964	64.70	48.70	218.00	---	---	---	76.70	51.00	33.00	---	24.00
1965	80.20	30.80	222.00	---	---	---	101.40	44.00	37.00	---	35.00
1966	103.10	47.00	228.00	---	---	---	97.30	50.00	17.00	---	76.00
1967	108.10	---	227.00	---	---	23.30	89.90	67.00	37.00	---	65.00
1968	81.70	159.80	227.00	---	---	41.30	96.20	61.00	34.00	66.30	111.00
1969	111.90	152.90	233.00	---	---	32.50	100.10	70.00	38.00	107.00	125.00
1970	156.50	234.00	234.00	---	28.10	28.90	113.30	79.00	10.00	107.10	144.00
1971	245.70	160.40	284.00	14.10	27.40	56.00	132.90	72.00	32.00	122.20	137.00
1972	305.10	183.90	296.00	23.10	280.00	66.00	167.70	74.00	55.40	170.50	120.00
Average (1962-70)	107.30	91.03	219.33	---	28.10	31.50	88.51	55.56	27.22	93.47	74.00

TOTAL ESTIMATED VOLUME OF NATIONAL FOREST TIMBER SALE CONTRACTS AWARDED, BY YEAR, 1962-72
[In million board feet]

Year	Georgia-Pacific	DiGiorgio	Ed. Hines	Columbia Plywood	Cascade Locks	Pope & Talbot	Roseburg	Duke City	Medford	Publishers	Willamette
1962	61.45	95.80	187.00	---	---	85.20	81.40	32.20	18.00	19.70	0
1963	85.36	28.60	194.20	---	---	45.20	43.30	113.20	23.00	0	64.10
1964	114.46	21.90	209.78	---	---	35.30	97.50	72.10	43.00	0	29.60
1965	188.46	15.90	220.77	---	---	19.00	76.40	95.70	17.00	0	19.40
1966	121.06	44.50	195.50	---	---	23.00	87.00	47.20	38.00	23.60	38.90
1967	273.56	80.40	189.59	---	---	48.20	83.80	31.10	26.00	84.20	85.50
1968	212.76	73.90	227.85	---	---	55.30	118.50	33.03	41.00	84.40	117.30
1969	262.66	162.50	161.51	58.50	---	90.40	77.90	17.50	56.00	155.00	122.10
1970	442.36	149.60	389.72	44.30	52.60	39.70	131.10	67.50	31.00	172.50	111.90
1971	199.36	81.00	250.71	0	14.00	49.60	96.70	74.30	42.00	145.30	135.90
1972	262.96	139.20	222.40	18.90	14.40	25.70	89.90	48.10	25.00	127.30	109.50
Average (1962-70)	195.79	74.79	219.55	51.40	52.60	49.03	96.32	58.84	33.11	59.93	65.40

STATEMENT OF WILLIAM COSHOW, REDDING, CALIF.

Mr. Chairman, I am William Coshaw, an attorney from Redding, California. I am speaking today on behalf of twelve small business lumber producers in California, several of whom are present here today to answer any questions you may have about the situation I will be describing. Six of these operators have less than 100 employees and six have more than 100 employees.

I am submitting for the record an exhibit (Exhibit 1), "Reports of Timber Sales, U.S. Forest Service, form 2400-17" from the national forests in Northern California. It illustrates the extent to which major companies will go in bidding timber in areas in which manufacturing capacity exceeds the availability of timber.

In this area, the major companies who bid on timber include Diamond International, Kimberly Clark, Times Mirror Corp (or Publishers Forest Products), International Paper Co., Boise-Cascade Corp, Champion International, Crown Zellerbach-Simpson Corp, Masonite Corp, Southwest Forest Industries, Fibreboard Corp., Sierra Pacific Industries, Georgia Pacific & Louisiana Pacific.

Exhibit #2 is a list of the California national forests and the fair share established in each for small business. This shows that, on the average in California, the fair share is about 31 percent. Thus, nearly 70 percent of the national forest timber is available for the giants.

Exhibit #3 is taken from Forbes Magazine of May 15, 1974, entitled "The Dimensions of American Business: A Roster of the U.S.'s Biggest Corporations." Most of the big companies bidding on timber in California are on this roster.

Exhibit #4 describes the history of a single corporation which symbolizes the problem we are here to discuss. This corporation is Louisiana Pacific, which was recently created as a spin-off from Georgia-Pacific, and has since exploded in size with numerous acquisitions until it has become potentially the largest producer of lumber in the world.

This program of acquisition by L-P appears to be accelerating so that its growth threatens to destroy the small business segment of the lumber industry.

L-P is not the only giant engaged in the acquisition of small business but it is the most obvious example of the problem, as demonstrated by our next exhibit which lists L-P's facilities and dates of acquisition (Exhibit #5).

We have recently witnessed the effects of oligopoly control in certain other major industries, and unless the small business segment of the lumber industry is protected and enhanced by the fair share concept, the domination of lumber production by a few giants will result in the same type of oligopoly as there is in oil, steel and the automotive industries. This will result in a precarious position for the consumer and the country as a whole.

We are particularly concerned with circumvention of the set-aside program by specific evasions such as exchanges of set-aside timber with big business, the use of nonmanufacturers to purchase timber, and the fate of set-aside sales that come under control of big business through mergers or acquisition.

Our deepest concern centers upon the possibility that the acquisition of small business by the giants will be treated as a justification for reducing small business' fair share. Should the purchase history of small business be transferred, it would only be a matter of time until all small forest industry small businesses are swallowed up by the big companies. Exhibit #6 shows the effect that transferring purchaser history would have in certain California national forests.

Finally, it is suggested that small business be redefined to include only companies with less than 100 employees. We oppose that as being fatal to small business in California. A reduction in size to 100 would necessitate a reduction in the fair share that would devastate the small business community. For example, in the Crescent City area of the Six Rivers National Forest, the small business fair share would go from 97 percent to 0. Other areas would also be affected.

Significantly, it is the manufacturer with 10,000 employees, not the one with 50, who wants to reduce the definition of small business under this program from 500 employees to 100.

We wish to thank you for holding this hearing and hope that this and other hearings will prevent the erosion of the small business program, and instead will result in changes enhancing the program for the mutual benefit of the small businessman and the consuming public.

USDA - FOREST SERVICE

REPORT OF TIMBER SALE
CONVERTIBLE AND NONCONVERTIBLE PRODUCTS
(REF. FSM 2450)

REGION STATE ACRES IN SALE	0 0 4,518 ¹⁴ 15	FOREST COUNTY	0 0 1	DISTRICT OR AREA	2 6 7	SALE NUMBER	0 0 2	QTR.-CY (11-13)	2 1 4																																				
BID DATE	08/14/74	STATUS	1	SALE NAME (19-44)	OUTRISSEY SALE	LEGAL DESCRIPTION (16-50)	T. 28 & 29 N., R. 4 & 5 E., M.D. 1	COMPARTMENT	2 4 2																																				
SALVAGE	08/14/74	PRICING METHOD	2	SBA SET-ASIDE	0.00	PLANT'S SAB COL \$	0.00	CONTRACT DATE	04/04/74																																				
CONT. NO.	008965	CONTRACT FORM	2400	CONTRACTING OFFICER	8	METHOD OF SALE	A	REG. 35CFR21	6																																				
SP	SPEC. PROD. 14-16 17-18	VOLUME	ADVER. BIDDER	STAT. HIGH BID	2ND HIGH BIDDER	3RD HIGH BIDDER	4TH HIGH BIDDER	5TH HIGH BIDDER	6TH HIGH BIDDER																																				
PP	150 1.1	8,000	105.31	251.69	252.00	268.00	215.00	205.00	200.00																																				
SP	117 1.1	15,760	98.69	250.69	251.00	263.00	215.00	208.00	200.00																																				
WF	025 1.1	9,870	74.00	133.69	134.00	101.00	100.00	100.00	101.00																																				
DF	205 1.1	1,280	108.81	108.50	108.81	108.81	108.81	108.81	108.81																																				
IC	005 1.1	880	76.29	75.98	76.29	76.29	76.29	76.29	76.29																																				
1 CERTIFY THAT I HAVE PERSONALLY EXAMINED THE BIDS SUBMITTED FOR THIS SALE AND THAT THIS IS AN ACCURATE RECORD THEREOF. SIGNATURE: <i>Ray A. Williams</i> TITLE: Resource Assistant DATE: 4/4/74 REMARKS: Percent by Log Grade <table border="1"> <tr> <th>Species</th> <th>1</th> <th>2</th> <th>3</th> <th>4</th> <th>5</th> </tr> <tr> <td>PP-JP</td> <td>10.1</td> <td>17.7</td> <td>17.7</td> <td>--</td> <td>54.5</td> </tr> <tr> <td>SP</td> <td>8.2</td> <td>13.1</td> <td>15.8</td> <td>--</td> <td>62.9</td> </tr> <tr> <td>WF-RF</td> <td>4.3</td> <td>24.6</td> <td>71.1</td> <td>--</td> <td>--</td> </tr> <tr> <td>DF</td> <td>162P</td> <td>3P</td> <td>28</td> <td>3S</td> <td>28.9</td> </tr> <tr> <td></td> <td>4.6</td> <td>10.2</td> <td>56.3</td> <td>28.9</td> <td>28.9</td> </tr> </table>										Species	1	2	3	4	5	PP-JP	10.1	17.7	17.7	--	54.5	SP	8.2	13.1	15.8	--	62.9	WF-RF	4.3	24.6	71.1	--	--	DF	162P	3P	28	3S	28.9		4.6	10.2	56.3	28.9	28.9
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200-17 (5/73)

USDA - FOREST SERVICE																																																																							
REPORT OF TIMBER SALE CONVERTIBLE AND NONCONVERTIBLE PRODUCTS (REF. FSN 2490)																																																																							
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ACRES IN SALE 890	40-55	14	LEGAL DESCRIPTION (56-60) T40NR9WDM	11	47	48																																																																	
BID DATE 08/25/76	12-15	16-17	STATUS N	APP. BASE PERIOD 1-7	ZONE 2	CONTRACT DATE 06/25/74																																																																	
SALVAGE 017884	18-19	20	PRICING METHOD 3	21	22	23																																																																	
CONTRACT NO. 017884	24	25	CONTRACT FORM 2409	26	27	28																																																																	
SPEC. PROD. 14-16	17-18	19-20	VOLUME 14-16	21-22	23-24	25-26																																																																	
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SP	117	11	500	87.71	1225.81	240.00																																																																	
W&GRF	025	11	100	35.07	20.88	35.07																																																																	
DF	205	11	500	85.92	105.81	120.00																																																																	
IC	003	11	200	64.08	49.89	64.08																																																																	
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I certify that I have personally examined the Bids submitted for this sale and that this is an accurate record thereof.																																																																							
Signature <i>Shirley J. De Clerk</i>				DATE 6/26/74																																																																			
TITLE Supplyr. Accts. Mnce. Clerk				REMARKS																																																																			
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USDA - FOREST SERVICE

 SCHEDULE OF TIMBER SALE
 CONVERTIBLE AND NONCONVERTIBLE PRODUCTS
 (REF. FSM 2493)

REGION STATE	05 06 14	FOREST COUNTY	Shasta Trinity 105 16 17 18	DISTRICT (OR AREA)	56 SILIGO	SALE NUMBER	7 5 10	QTR.-CY (11-13) QTR. YEAR	2-74 QTR. YEAR
ACRES IN SALE	136	BID DATE	04/23/74 14-15 16-17 18-19	LEGAL DESCRIPTION	T36N R8W NMM				
SALVAGE	20	STATUS	120	SBA SET-ASIDE	N 21	APP. BASE PERIOD	1-7 23	ZONE	3
CONT. NO.	018287 (47-57)	PRICING METHOD	327	PLAN'D S&B COL \$	5,400.00 20-24	TERM. DATE	03/31/78 25-26 27-28 29-30	CONTRACT DATE	04/23/74 41-42 43-44 45-46
SPECIES	150 1-1 2000	ADVERSE RATES	102-24 2820	CONTRACTING OFFICER	68	METHOD OF SALE	A	REC. 30CFR221	6 63
CODE	150 1-1 2000	HIGH BID	2820	6TH HIGH 7TH HIGH 8TH HIGH 9TH HIGH 10TH HIGH 11TH HIGH 12TH HIGH 13TH HIGH 14TH HIGH 15TH HIGH 16TH HIGH 17TH HIGH 18TH HIGH 19TH HIGH 20TH HIGH 21TH HIGH 22TH HIGH 23TH HIGH 24TH HIGH 25TH HIGH 26TH HIGH 27TH HIGH 28TH HIGH 29TH HIGH 30TH HIGH 31TH HIGH 32TH HIGH 33TH HIGH 34TH HIGH 35TH HIGH 36TH HIGH 37TH HIGH 38TH HIGH 39TH HIGH 40TH HIGH 41TH HIGH 42TH HIGH 43TH HIGH 44TH HIGH 45TH HIGH 46TH HIGH 47TH HIGH 48TH HIGH 49TH HIGH 50TH HIGH 51TH HIGH 52TH HIGH 53TH HIGH 54TH HIGH 55TH HIGH 56TH HIGH 57TH HIGH 58TH HIGH 59TH HIGH 60TH HIGH 61TH HIGH 62TH HIGH 63TH HIGH 64TH HIGH 65TH HIGH 66TH HIGH 67TH HIGH 68TH HIGH 69TH HIGH 70TH HIGH 71TH HIGH 72TH HIGH 73TH HIGH 74TH HIGH 75TH HIGH 76TH HIGH 77TH HIGH 78TH HIGH 79TH HIGH 80TH HIGH 81TH HIGH 82TH HIGH 83TH HIGH 84TH HIGH 85TH HIGH 86TH HIGH 87TH HIGH 88TH HIGH 89TH HIGH 90TH HIGH 91TH HIGH 92TH HIGH 93TH HIGH 94TH HIGH 95TH HIGH 96TH HIGH 97TH HIGH 98TH HIGH 99TH HIGH 100TH HIGH 101TH HIGH 102TH HIGH 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I certify that I have personally examined the bids submitted for this sale and that this is an accurate record thereof.		TOTAL VALUE OF BID	
Signature: <i>James D. Sullivan</i>	Resource Assistant	1,195,750.00	1,193,618.00
REMARKS		1,058,250.00	890,550.00
1. 12.00	PP SP WP	695,902.00	368,013.00
2. 8.91	11.68	368,013.00	368,013.00
3. 11.07	13.21	368,013.00	368,013.00
4. --	--	368,013.00	368,013.00
5. 68.02	70.81	368,013.00	368,013.00

DATE: 4/23/74

International Paper Company
SILIGO

CALIFORNIA, U.S. FOREST SERVICE, REGION 5

Forest	Approximate annual cut (million board feet)	Fair share (percent)	Small business volume (million board feet)
Eldorado.....	130	60	78
Inyo.....	15	40	6
Klamath.....	240	40	96
Lassen.....	167	18	30
Mendocino.....	90	10	9
Modoc.....	62	68	42
Plumas.....	220	23	51
Sequoia.....	110	22	24
Shasta.....	100	32	32
Sierra.....	152	10	15
Six Rivers, Gasquet.....	60	97	58
Six Rivers, other.....	146	47	69
Stanislaus.....	139	15	21
Tahoe.....	149	34	51
Trinity.....	184	14	26
Total.....	1,964		608

Note: Average small business share, 31 percent.

EXTRACTS FROM FORBES MAGAZINE LIST OF NATION'S LARGEST CORPORATIONS, DECEMBER 1973

[In thousands of dollars]

	Assets	Sales	Net profits
Boise Cascade.....	\$1,585,377	\$1,324,420	\$90,250
Champion International.....	1,699,554	2,207,956	86,757
Crown Zellerbach.....	1,238,472	1,368,722	102,597
Diamond International.....	461,549	687,723	44,284
Georgia Pacific.....	2,002,020	2,228,700	168,810
International Paper.....	2,197,100	2,314,300	159,800
Kimberly Clark.....	1,067,485	1,178,046	76,918
Louisiana Pacific.....	431,460	416,870	66,460
Masonite.....	253,361	296,854	32,619
Times-Mirror.....	544,516	695,959	54,906

Source: Forbes magazine, May 15, 1974.

HISTORY OF LOUISIANA PACIFIC

July, 1972—Louisiana Pacific incorporated as a wholly owned subsidiary of Georgia Pacific Corporation.

September, 1972—the Federal Trade Commission objected to G-P's size and penetration into the South. FTC forced G-P to transfer to Louisiana Pacific more than 500,000 acres of timberland in the South and Pacific Northwest, plus numerous mills (in all, about 20% of G-P's net income). Under the agreement between the FTC and G-P:

G-P common stockholders received 1 share of L-P stock for each 4 shares of G-P held on the record date, Jan 1, 1973. (13,158,689 shares.)

Directors may not be shared among the 2 companies (G-P & L-P).

G-P may make no softwood plywood company acquisitions in the next 10 years without FTC approval.

G-P is also restricted for 5 years from acquiring Pine or hardwood timber in the South.

G-P will be allowed to purchase up to 100% of L-P's production of the first year; 20% less each year until a 20% level is reached after 5 years.

(This agreement subject to favorable tax ruling and approval by various lenders involved.)

Directors.—William H. Hunt, Chairman; Harry A. Merlo, President; D. R. Kayser; J. C. Jaqua; L. C. Simpson; R. J. Voss.

Counsel.—Sullivan and Cromwell.

Deferred Income Tax: \$12,500,000.

Mills transferred from Georgia Pacific to Louisiana Pacific:

In California.—Big Lagoon; Carlotta; Cloverdale; Eureka; Healdsburg; Samoa; Alder Point; Calpella; Covelo; Dinsmore; Oroville; Potter Valley; Ukiah; Ft. Bragg; Willits. (Samoa Division=8 sawmills, 1 plywood plant and pulp mill; Ukiah Division=8 sawmills, 1 millwork plant).

In Idaho.—Chilco; Moyie Springs; Post Falls; Priest River; Sandpoint.

In Montana.—Intermountain division—7 sawmills, 1 planing plant.

In Washington.—Tione; Walla Walla.

In Oregon.—Pilot Rock.

In Alaska.—G-P's 50% interest in Ketchikan Pulp Co., Ketchikan Spruce Mills, Inc., Ketchikan International Sales Co.

In the South.—(6 sawmills and softwood plywood mills from G-P's Texas & Louisiana division).

Texas.—sawmills at Jasper, New Waverly, Kountze; softwood plywood mills at New Waverly and Corrigan.

Louisiana.—sawmill at DeQuincey; softwood plywood mill at Urania; particleboard plant at Urania.

December 8, 1972—Georgia Pacific stockholders approve spin-off to Louisiana Pacific.

December 27, 1972—Federal Trade Commission issues formal order to G-P requiring divestiture.

January, 1973—L-P directors approve 2 acquisitions—total about \$4 million: L. L. Brewton Lumber Co., Winnfield, La., Kenai Lumber Co., Seward, Alaska.

February, 1973—Purchased from U.S. Industries: Rocky Mountain Timber Co., Columbia Falls, Mont. Northern Timber Co., Deer Lodge, Mont. and Philipsburg, Mont.

March, 1973—("All in the family" *Crow's*) purchased Boise Cascade's softwood plywood plant at Ft. Bragg, Calif. (annual capacity is 150 million square feet—3/8 inch basis).

Also L-P is buying from G-P about 20% of nearby timberland (which G-P had purchased from Boise Cascade; G-P previously purchased Boise Cascade's timberland supplying the Ft. Bragg operations, some 225,000 acres, plus log and lumber inventories. G-P has finalized purchase arrangements with Boise Cascade for 2 former Union Lumber Co. sawmills at Ft. Bragg and a particleboard plant at Ukiah, but actual plant takeover awaits FTC approval.)

Cost of both acquisitions about \$35 million.

June, 1973—purchased Prineville Forest Products Inc., Prineville, Oregon—first in series of planned acquisitions in Pacific Northwest to form a Columbia Corridor division.

June, 1973—purchased Diamond Lumber Co., Tillamook, Oregon; agrees to buy all stock of Hegewald Timber Co., Stevenson, Wash., purchased sawmill and planing mill near Quincy, Calif. from Plumas Lumber Co., Marysville, Calif. to be integrated into L-P's Oroville division, and timber cutting contracts, including federal, state, and private, included in all three instances.

July, 1973—plans to build softwood plywood plant at undisclosed location in Alabama; agrees to purchase Tillamook Plywood Co., Tillamook, Oregon; acquires assets of Oregon-Washington Plywood Co. in California's Mendocino County (timber, logging equipment, machinery from a stud mill).

August, 1973—forms lumber sales department for its Columbia Corridor division.

October, 1973—Pres. Harry A. Merlo will become chief executive officer Jan 1st due to retirement in July, 1974 of chairman William H. Hunt; purchases 49.7 minority interest in Anthony Forest Products, El Dorado, Ark., manufacturer of Southern Pine lumber and plywood and owner of 33,500 acres of timberland; agrees to purchase Caffall Brothers Forest Products Inc., Portland, Oregon (log broker with over 200 million board feet of Douglas Fir and Hemlock under contract. Towboat and export subsidiary also included. To be incorporated into L-P's Columbia Corridor division, headquartered on Swan Island, Portland, Oregon.) This agreement called off in January, 1974.

January, 1974—acquires Evans Lumber Co. sawmill at Nenana, Alaska; intends to acquire hardwood sawmill at Trinity, Texas from Altamil Corp.; plans call for both acquisitions to be enlarged.

February, 1974—acquires 4 Cheney stud mills (Cheney's horse trademark will remain): Columbia Corridor division of L-P will produce studs at Cheney Forest Products, Central Point, Oregon; at Cheney Lumber Co., Tacoma, Wash.; at Cheney California Lumber Co., Greenville, Calif.; and at Cheney-Grant Lumber Co., Ponderosa, Calif. Total stud production of 170 million board feet annually, cutting contracts on 195 million board feet of timber, and existing log inventories.

March, 1974—agreement in principal for purchase of Sierra Pacific Industries for \$67.6 million in cash. Later scratched.

April, 1974—agrees to acquire McAlpine Lumber and Flooring Co., Stevenson, Ala.—hardwood producer; purchases Golden State Building Products, Inc., stud mill and green veneer plant at Lakeview, Oregon, from Forrest Solomon (\$3 million transaction), plus 16,000 acres of timberland from Solomon and Mazama Timber Products, Inc.; reaches agreement in principle to acquire stud mill at Trout Creek, Mont. from Evans Products Co.

May, 1974—construction of new sawmill at Crescent Mills, Calif. (\$1 million); joins planing and dry kiln facilities at site; will have capacity of 125M board feet per 8 hour shift; will produce random length Douglas Fir, Pine, & White Fir lumber.

June, 1974—exchange between Champion International and L-P—transfers L-P's Corrigan, Texas plant to Champion for 2 Champion sawmills in Wyoming and Montana; particleboard plant in Arcata, Calif. (purchased by Champion to include in exchange with L-P). Arcata plant incorporated with L-P's Samoa, California division; Rocky Mountain installation incorporated with Intermountain division.

July, 1974—acquires Commander Industries sawmill and millwork plants at Red Bluff, Calif. plus related timber contracts; will lease Commander mill at Elk Creek, Calif.; expands into hardwood production: purchases for \$9 million 2 veneer plants and 2 sawmills in Wisconsin and Michigan from the Goodman & Staniforth division of Universal Oil Products Inc.; acquires exclusive 15-year cutting contract on 200,000 acres of timberland owned by UOP. This operation becomes new division of L-P.

August, 1974—purchases Sierra Pacific Industries Sawmill operations at Inyokern, Calif.

INDUSTRY NEWS

PLANT OK GIVEN

Pluswood Inc., Oshkosh, Wis., through a wholly-owned Canadian subsidiary, will build an Aspen particleboard plant in Atikokan, Ont. Approval has been granted by the provincial government, clearing the way for construction to meet completion goals set for late 1975 or early 1976. The plant will turn out substrate for prefinished and laminated panels manufactured in Oshkosh.

EXPANSION SET

Kimberly-Clark Corp. will expand its Newberry, Mich., sawmill complex to facilitate tree-length small log processing. The present mill will be converted to double entry with a chipping headrig added to the present circular headrig. Annual lumber production will increase to 30 million board feet, about 60 per cent hardwood and the balance softwood. Completion is scheduled for September, 1975.

L-P ACCELERATES EXPANSION STEPS

Louisiana-Pacific Corp. has taken additional steps to expand and consolidate its manufacturing holdings through a series of recent transactions and agreements involving acquisitions and exchanges.

Agreement in principle has been reached with Champion International Corp. under which L-P will trade its Southern Pine plywood plant at Corrigan, Tex., for U.S. Plywood division sawmills at Dubois, Wyo., and Browning, Mont., and a planing mill in Riverton, Wyo. In addition, Champion has agreed to purchase the Humboldt Flakeboard plant at Arcata, Calif., from Sierra Pacific Industries and include it in the exchange with L-P. This will incorporate the Arcata particleboard plant with L-P's Samoa, Calif., division and the Rocky Mountain installations with the Intermountain division, and will give Champion a plywood plant near its Camden, Tex., sawmill and nearby timberlands.

L-P's Oroville, Calif., division has grown with acquisition of the Sierra Pacific sawmill and planing mill at Inyokern, Calif., and the Commander Industries sawmill, moulding and jamb plants at Red Bluff, Calif. Related timber contracts were included in both transactions. In addition, L-P has obtained a six-year lease on the Commander sawmill and planing mill at Elk Creek, Calif.

Venturing into hardwood production, L-P has purchased for an estimated \$9 million two hardwood veneer plants and two sawmills in Wisconsin and Michigan from the Goodman-Staniforth division of Universal Oil Products Inc. Timberlands did not change hands but L-P acquired an exclusive 15-year cutting contract. This operation becomes a new division of the company.

LOUISIANA PACIFIC, LIST OF ACQUISITIONS

Date and company	Location	Specifics
September 1972:		
Georgia Pacific	Carlotta, Calif.	
Do	Big Lagoon, Calif.	
Do	Cloverdale, Calif.	
Do	Eureka, Calif.	
Do	Samoa, Calif.	Samoa Division—8 sawmills, 1 plywood plant and pulp mill.
Do	Alder Point, Calif.	
Do	Calpella, Calif.	
Do	Covelo, Calif.	
Do	Densmore, Calif.	
Do	Oroville, Calif.	
Do	Potter Valley, Calif.	
Do	Ukiah, Calif.	Ukiah Division—8 sawmills, 1 millwork plant.
Do	Fort Bragg, Calif.	
Do	Willits, Calif.	
Do	Chilo, Idaho	
Do	Moyie Springs, Idaho	
Do	Post Falls, Idaho	
Do	Priest River, Idaho	
Do	Sandpoint, Idaho	
Do	Montana, Intermountain Division.	7 sawmills, 1 planing plant.
Do	Tione, Wash.	
Do	Walla Walla, Wash.	
Do	Pilot Rock, Oreg.	
Georgia Pacific, 50 percent interest in:		
Ketchikan Pulp Co.	Ketchikan, Alaska	
Ketchikan Spruce Mills	do	
Ketchikan International Sales Co.	do	
Georgia Pacific	Jasper, Tex.	Sawmill.
Do	New Waverly, Tex.	Do.
Do	Kountze, Tex.	Do.
Do	Corrigan, Tex.	Softwood plywood (later exchanged with Champion Industries).
Do	New Waverly, Tex.	Softwood plywood.
Do	De Quincey, La.	Sawmill.
Do	Urania, La.	Softwood plywood.
Do	do	Particleboard.
January 1973:		
L. L. Brewton Lumber Co.	Winnfield, La.	Chip mill, studmill, tie mill.
Kenai Lumber Co.	Seward, Alaska	Sawmill, dock facilities.
February 1973:		
From United States Industries: Summit Lumber Co., Rocky Mountain Timber Co.	Columbia Falls, Mont.	Sawmill, chipping headrig sawmill, planing mill.
Summit, Northern Timber Co.	Deer Lodge, Mont.	Studmill, planing mill.
Do	Phillipsburg, Mont.	Chipping headrig sawmill.
March 1973: From Boise Cascade	Fort Bragg, Calif.	Softwood plywood plant.
June 1973:		
Prineville Forest Products Inc.	Prineville, Oreg.	Random length sawmill, planing mill, timber cutting rights.
Diamond Lumber Co.	Tillamook, Oreg.	Sawmill, dry kilns, planing mills, timber contracts.
Hegewald Timber Co.	Stevenson, Wash.	Sawmill, planing mill, green veneer plant.
Do	Home Valley, Wash.	Studmill, green veneer plant, gravel and rock quarry, logging operations, timber contracts.
July 1973:		
Tillamook Plywood Co.	Tillamook, Oreg.	Plant rated at annual capacity of 100,000,000 square feet; logs, fee timber, cutting rights.
Assets if Oregon-Washington Plywood Co.	Mendocino County, Calif.	Timber, logging equipment, machinery from a studmill.
October 1973: Anthony Forest Products Co., 49.7 percent minority interest.	El Dorado, Ark.	Manufacturer of Southern Pine Lumber and plywood, owner of 33,500 acres of timberland.
January 1974: Evans Lumber Co.	Nenana, Alaska	Sawmill.
From Altamil Corp. (intends to acquire)	Trinity, Tex.	Hardwood sawmill.
Cheney	Oregon, Wash., Calif.	Studmills: Total stud production of 170,000,000 board feet annually; cutting contracts for 195,000,000 board feet of timber; existing log inventories.
Cheney Forest Products	Central Point, Oreg.	
Cheney Lumber Co.	Tacoma, Wash.	
Cheney California Lumber Co.	Greenville, Calif.	
Cheney-Grant Lumber Co.	Ponderosa, Calif.	
April 1974:		
Agreed to purchase:		
McAlpine Lumber & Flooring Co.	Stevenson, Ala.	Hardwood producer.
From Solomon & Mazama Timber Products, Inc.	Lakeview, Oreg.	16,000 acres of timberland.
From Forrest Solomon Golden State Bldg. Products, Inc.	do	Stud mill, green veneer plant.

LOUISIANA PACIFIC, LIST OF ACQUISITIONS—Continued

Date and company	Location	Specifics
April 1974: Agreed in principal to acquire from Evans Products.	Trout Creek, Mont.....	Stud mill.
May 1974: New constructions.....	Crescent Mills, Calif.....	Sawmill (\$1,000,000).
June 1974: Acquired in exchange with Champion International Corp., United States Plywood division.	Du Bois, Wyo.....	Sawmill.
	Browning, Mont.....	Do.
	Riverton, Wyo.....	Planing mill.
Humboldt Flakeboard (to be purchased by Champion and exchanged to L-P).	Arcata, Calif.....	Particleboard plant.
July 1974: From Commander Industries.....	Red Bluff, Calif.....	Sawmill and millwork plants; related timber contracts.
6 year lease from Commander Industries.	Elk Creek, Calif.....	Sawmill and planing mill.
From Universal Oil Products, Inc., Goodman-Staniforth Division.	Wisconsin and Michigan...	2 hardwood veneer plants and 2 sawmills.
August 1974: From Sierra Pacific Industries...	Inyokern, Calif.....	Sawmill and planing mill; related stumpage and chip sale contracts.

CALIFORNIA, EFFECT OF TRANSFER OF SHARE ON THE FAIR SHARE

[If acquisition since January 1971 were transferred from small to large in the base period]

Forest	Existing fair share, percent	If transferred fair share, percent	Percent decreased small business
Plumas.....	23	5	79
Klamath.....	40	26	35
Six Rivers South.....	47	18	62
Lassen.....	18	11	39
Shasta.....	32	8	75
Trinity.....	14	8	43

Note: Purchases: Main Lumber Co., by Sierra Pacific; Plumas Lumber Co., Cheney Studs by Louisiana Pacific; Humboldt Fir Lumber Co., by Masonite; Cal-Pac Manufacturing Co., Trinco Lumber Co., by Crown Zellerbach-Simpson.

STATEMENT OF ARTHUR HARWOOD, HARWOOD PRODUCTS, BRANSCOMB, CALIF.

Mr. Chairman, I am Arthur Harwood, a partner in Harwood Products, Branscomb, California. I appreciate the opportunity to state my support for the small business timber set-aside program, and my firm opposition to suggestions from the large business community that the employee standard for small business designation be reduced.

Senator Cranston, the surest way to wipe out the small business lumber and plywood community in California would be to reduce the standard for small business from 500 employees to 100. Big business knows this and without question will try to convince the U.S. Forest Service as well as the Small Business Administration that such action is needed.

Such an action would be disastrous in the North Coast of California, a major lumber producing region. I am a small businessman, employing 360 people in two medium sized sawmills—one in Branscomb and in in Willits, in Mendocino County.

To obtain timber for these mills we must compete with other small business lumber companies and with four of the giants—Louisiana Pacific on the east, Georgia Pacific on the west, and Masonite and Fibreboard to the South. We survive by running an efficient operation. To do this we need not only a sawmill, but we have to have 350 employees to control the total operation from timber harvest until the lumber is sold and delivered to the retail store. We have foresters, loggers, log truck drivers, lumber truck drivers, etc. Only by supervising the entire process can we be independent and efficient. Otherwise, we lose control.

If the size standard were reduced to 50 or 100 employees, we firmly believe that operations such as ours would not exist very long as independent entities. In my opinion, the size standard for our industry should either remain at 500 or be raised to 1000 employees.

What is really significant here is the financial power that the giant companies command. If we want to buy public timber we have to look in our own bank book to see how far we can bid. If we have to put up money for pollution control devices, we check with the local banker to see how much 13% money is available.

But the industrial giant doesn't have to do this. Let me give an example. In June, we bid on two timber sales on the Mendocino National Forest. The bidding lasted 10 hours. We were second bidders on each sale. The winner was Louisiana Pacific Corporation. During each sale the bidder for L-P would call for a recess to call their Portland headquarters. Apparently, each time the response was to buy it. We raised the bid nearly \$80 per thousand board feet on each sale, going in way over our heads. If we had won the bid, we would have lost money, but we needed the timber to operate the mill. It was apparent at the end that L-P would have paid whatever price was necessary to take the sale away from us. With corporate profits of \$66 million in 1973, one sale means nothing to them, for what they spend here they make up elsewhere. Furthermore, they have access to financial markets that are not open to our company.

Most of the independents remaining along the north coast of California are in circumstances similar to ours. There aren't many left. In the Crescent City area there is McNamara and Peepe, Medford Veneer & Plywood, Standard Plywood Co., and Simonson Logging and Lumber Co. This last company is another good example. It is independently owned and operated. It has a single sawmill with a veneer plant, yet it employs about 350 people. It has its own foresters, loggers and log truck drivers. It has salesmen and, because it is not on a railroad, it has a fleet of trucks to transport the lumber to market. If the size standard were lowered they would become "big business", a ridiculous situation.

There would be another effect of reducing the size standard to 100 employees. It would require the Forest Service and SBA to go back and recalculate the fair share in every national forest in the nation. The small business share would be automatically reduced. In the Gasquet district of the Six Rivers National Forest the fair share would go from 97% to 0. On the Orleans, Mad River area the share would go from 45% to about 15%.

Senator, I want to thank you and the Subcommittee for holding this hearing. I urge you to investigate, in depth, the problems being aired here today. Perhaps as a result of your interest in these problems the lumber industry will not end up like the automobile industry with three or four industrial giants and no small businesses. And, hopefully, the small business sector of the lumber industry will continue to play a major competitive role in meeting the country's need for reasonably priced housing.

STATEMENT OF V. ALAN LOVENESS, EDGERTON LUMBER, ADIN, CALIF.

Mr. Chairman, I am V. Alan Loveness, manager of Edgerton Lumber of Adin, California, and vice president of the Loveness Company of Malin, Oregon.

There is one issue which would help small business and large business alike which is outside the SBA set-aside program, but which I would like the Subcommittee to know about.

In 1972, Congressman Tom Foley of Washington introduced legislation which would authorize the Forest Service to allow the transfer of earned road credits from one sale to another within the same national forest. The bill was H.R. 16486, and the language was as follows:

"To authorize the transfer of earned purchaser credits between national forest timber sale contracts.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 4 of the Act of October 13, 1964 (78 Stat. 1089) is amended to authorize the Secretary of Agriculture to include in provisions for amortization of road costs in timber sale contracts the right of the purchaser to transfer earned but unused purchaser credits to other contracts on the same national forest, except that such purchaser credits shall not be transferable when the difference between the timber value at base rates and bid rates is less than the estimated road cost."

This legislation would provide additional financial flexibility for the purchaser by allowing the transfer of purchaser road credits from one sale to another within the same national forest. This would allow more orderly progression of timber removal. Most timber sales necessitate building an access road one logging season prior to timber removal, and if the purchaser road credits can be released for another sale which already has the road completed, the road credits are not "tied up" for the additional year. This is particularly important to small business contractors who are largely limited to their own cash resources.

These credits can be transferred without a great deal of administrative cost to the Forest Service. Furthermore, the Forest Service would benefit as a result of the more orderly progression of road building without undue pressure to finish the road within the same logging season for timber removal.

By releasing the road credits for payment into another timber sale account within the same forest, the purchaser does not burden his cash flow by excessive road construction costs for which there is no recovery in the year the expenditures are made.

This is important to us, and we hope you will assist us in getting the appropriate legislation passed.

STATEMENT OF JOHN HAMACHER, SIERRA FOREST PRODUCTS, TERRA BELLA, CALIF.

Mr. Chairman, I am John Hamacher of Sierra Forest products, Terra Bella, California. Sierra Forest Products is a lumber manufacturing firm located in the southern San Joaquin Valley of California, dependent 100% for survival on timber purchased from the national forests. The company employs 145 men on a year around basis. Since the plant is located in an agricultural economy, it does give stability to a local economy that is heavily seasonal.

The ownership of Sierra Forest Products is in the hands of two individuals. This type of ownership and management was very common in the lumber who reside in the area and are active daily in the management of the firm. industry in the past, but is now becoming rare as more and more small manufacturing units are being merged into the large corporations. This trend is most distressing to the independent lumberman, and should also be to the American consumer. The pricing of lumber has historically been established by the keen competition of hundreds of small and medium size operators. As the manufacture of lumber goes into the hands of a few, the consumer will be penalized with higher and higher prices. Is lumber going to go the route of steel, petroleum products, automobile manufacturing, etc?

Sierra Forest Products strongly supports the Small Business Administration set-aside program. This is a program which encourages the smaller operators to invest in additional plant facilities for increased wood utilization, and to resist the pressures of the "giants" to either sell out or be forced out through lack of a raw material supply.

To further strengthen the set-aside program, we urge that legislation be passed requiring each national forest to have a minimum fair share of 25% for small business. There is no other plan available now that would better encourage and support the small lumber manufacturing operator to continue operating in a period of diminishing timber supplies and to survive the overwhelming economic power of the large timber companies.

Thank you for holding these hearings and for considering our suggestions.

STATEMENT OF FRED HAYNES, STATE BOX CO., SACRAMENTO, CALIF.

Mr. Chairman, I am Fred Haynes, general manager of State Box Co. of Sacramento, California. We have a sawmill at Little Valley, Calif.

As a small mill operator in Lassen County, our company is concerned about three problems:

1. Exchange of timber from SBA set-aside sales between small mills and large mills; and

2. The problem of disposition of SBA-acquired sales when a small mill has sold out or merged with a large company; and

3. The need for policing of set-aside sales when purchased by nonmanufacturers.

As examples of the one of the problems cited above, I would direct the Subcommittee's attention to the Procter Creek sale in the Lassen National Forest and the Reynolds Basin sale on the Shasta Trinity National Forest.

A Small Business Administration investigation concluded that these sales were purchased by the small company exclusively for exchange with a large company.

In another case, a small business purchased set-aside sales and the company was subsequently acquired by a large business. In spite of the set-aside designation, the Forest Service proceeded to transfer these sales to the large company. It required the intervention of SBA to halt this transfer, or at least to assure that 70 percent of the volume is manufactured by small business under terms of the set-aside contract. The fact remains, however, that these set-aside sales are under the direct control of a large company, and we don't feel very easy about it.

Fortunately, regulations have recently been published which will take care of part of these problems.

On point number 3 regarding the purchase of set-aside sales by nonmanufacturers, Forest Service personnel have disclaimed any responsibility for enforcing the provisions of the SBA set-aside agreement which require the manufacturer of at least 70% of the timber by a small business. We don't see how SBA can effectively cope with this problem without the cooperation of the Forest Service.

It is our hope that these hearings will help resolve these and other problems now encountered in the administration of the set-aside agreement.

I am attaching a copy of the recent regulations published in the Federal Register covering the issue of timber exchanges. We think these are proper, and hope that SBA will continue to work on these problems.

[From the Federal Register, July 25, 1974]

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 12, Amdt. 12]

PART 121—SMALL BUSINESS SIZE STANDARDS REGULATION

Sales of Government-Owned Timber

In order to clarify the meaning of various provisions of § 121.3-9(b) of Part 121, Chapter I, Title 13 of the Code of Federal Regulations, § 121.3-16, *Interpretations*, is hereby amended by revising paragraph (b) to read as follows: § 121.3-16 Interpretations.

* * * * *

(b) *Section 121.3-9 of Part 121, "Sales of Government-Owned Timber."* (1) For the purpose of the 30 percent rule set forth in § 121.3-9(b)(2)(ii), the term "sell" includes but is not limited to (i) the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and (ii) an indirect transfer such as the sale of the assets of (or a controlling interest in) a concern after it has been awarded one or more set-aside sales of timber. Under the latter circumstances, if, after being awarded a set-aside sale of timber a small business concern merges with or becomes subject to the control of a large business, so much of such timber for sawlogs therefrom) shall be sold to one or more small businesses as is necessary for compliance with the 30 percent (50 percent in Alaska) restriction.

(2) The provision in § 121.3-9(b)(3) (that a concern which is not going to resell timber or sawlogs shall agree that, in manufacturing products from sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify as small) assumes that the successful bidder will remain a small business until the products have been manufactured. Accordingly, if, after acquiring the set-aside sale the bidder is purchased by, becomes controlled by, or merged with a large business, so much of such timber

(or sawlogs therefrom) as is necessary shall be sold to one or more small businesses for compliance with the 30 percent (50 percent in Alaska) restriction.

(3) Any concern that self-certifies as a small business for the purpose of award under a small business set-aside sale of Government timber is expected to maintain evidence that it did so in good faith. Accordingly, such a concern will have to maintain for a period of 3 years the name, address, and size status of each concern to whom the timber or sawlogs were sold or disposed, and the log species, grades, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years.

Effective date. This amendment shall become effective on July 26, 1974.

Dated: July 12, 1974.

(Catalog of Federal Domestic Assistance Program No. 59,009, Procurement Assistance to Small Businesses.)

LOUIS F. LAUN,
Acting Administrator.

[FR Doc. 74-17118 Filed 7-25-74; 8:45 am]

STATEMENT OF E. P. JOHNSON, C. & D. LUMBER CO.

My name is E. P. Johnson. I am the managing partner of C & D Lumber Co. at Riddle, in Douglas County, Oregon. C & D has been operating in Douglas county since 1943, and currently manufactures about 40 million board feet of lumber annually as well as maintaining our own logging and road building operation. We currently have about 130 employees. The raw material supply to operate our plant is timber and logs that are harvested almost totally from federal lands.

The concept of the timber sale set-aside program was started in 1958 and operated in it's original form for 10 or 12 years. During this period, the program was operated in a very loose, on-again, off-again manner at the request of small business. It became apparent that the program needed to be much more specific if it was going to fulfill it's intended purpose, which was and still is "To guarantee that the small business community be given the first chance to buy a portion of the federal timber sales within certain geographic boundaries."

It was in 1970 and 71, during my term as president of the North West Timber Association, that we and several other organizations within the timber industry started working toward the development of a timber sale set-aside program that did guarantee that a specific portion of the federal timber sales be first offered to small business. It was in April, 1971, that several of us on this panel attended a meeting of the Small Business Administration, the Forest Service and the Bureau of Land Management in the National Forest Products Association office here in Washington and were given the opportunity to propose many of the details of the current set-aside program to them. This meeting was attended by representatives of both large and small business. All of those present were encouraged to make suggestions for the proposed program. If it wasn't for this set-aside program, the outlook for the future of all of the operators on this panel and many others would be very dismal. The trend for the big business community to take over and eliminate the smaller independent operators has been accelerating at an increasing rate during the last several years.

I will get specific about the Umpqua Valley of Douglas County and our concern for the set-aside program. In the last eleven years, at least eight independent lumber and plywood producers have been absorbed by big business starting with the acquisition of the Stomar Lumber Co. & Harbor Plywood interests by Roseburg Lumber Co. and U.S. Plywood. Since then, Roseburg Lumber has acquired National Plywood and Paul B. Hult Lumber Co. and only last month, L & H Lumber Co. The Fibreboard Corporation has acquired Green Valley Lumber Co. and Round Prairie Lumber Co.; and Little River Box Co. was merged into Continental Forest Products, a division of Continental Western Industries. Not only have these manufacturing facilities been acquired by big business, but in several of these plants their production has been expanded significantly.

Now for the real problem, which is timber supply. All of the above mentioned lumber and plywood production facilities, and those of their parent or acquiring company, are competing with nine small business mills in this same immediate geographic area. I would estimate that better than 80 percent of the logs to operate all of these mills come from the Umpqua National Forest and the Roseburg district of the Bureau of Land Management. There has always been competition for timber and logs, but the competitive pressure during the last 6 or 8 months has been almost beyond belief.

The set-aside program in the Umpqua National Forest was triggered last January, and since then, as expected, big business has purchased every timber sale that was open for them to bid on. To date, the set-aside program in the Roseburg Bureau of Land Management has not been activated, and the timber buying pattern certainly reflects this. In calendar year 1974, small business has purchased only 13 percent of all timber sold, and this is less than one-third of the historic small business portion. Small businesses did bid on practically all sales that were offered. We are currently trying to get the BLM to activate the set-aside program in their sales program as soon as possible.

I hope that what I have said illustrates the trend for the take-over of the entire lumber industry by the big business community. I firmly believe that if it were not for the small business set-aside program or some other form of protection, that within a few years the lumber industry would be composed of twelve or fifteen of the industrial giants, and the lumber industry would become like the oil or steel or automobile industries.

We independent members of the lumber industry do *NOT* need protection from honest competition from other efficient manufacturers: in fact, many of our plants are the most efficient within the industry. However, we definitely do need protection from the unlimited economic resources of the industrial giants. We believe that other operators are entitled to outbid us on timber sales when they can log or manufacture that sale more economically, but we don't believe that they should be able to buy all of the sales just because they have unlimited financial reserves. Currently there are factions within our industry arguing about the size standard for the program. There are those that claim 500 employees are too many. There are others that say they are being discriminated against, just because they have a few more than 500 employees, and that they need the same protection that we do and I am sure that they do. My concern is that big business will use this ploy to try to discredit and eliminate the entire program. You *must not* let this happen. I think that this is a major point that many people tend to overlook. The existing program tends to emphasize the need for protection from competitors because they have more than 500 employees. I don't believe this. We need protection from the company with unlimited financial resources that has the capability of freezing us out of the timber market or making us pay more than we can afford.

We feel that the current program may be in jeopardy. There are currently many pressures being applied by big business against the timber selling agencies and in the courts.

The stakes are very high—I firmly believe that the existence of an independent lumber industry lies in the balance.

We implore you to do whatever you can to strengthen and make permanent a set-aside program that will permit the survival of small business within the lumber industry.

Without your assistance, the independent segment of our industry will probably be eliminated and in the long pull, everyone will suffer because it is this kind of competition that has helped make us the strong nation we are today.

STATEMENT OF DONALD W. JOHNSON, TIMBER MANAGER, CABAX MILLS,
EUGENE, OREG.

I am Donald Johnson, Timber Manager for Cabax Mills, of Eugene and Grants Pass, Oregon. This company is composed of a plywood plant and lumber mills in Western Oregon. It is a family owned company, it is not a public stock company, and, as most of the wood products industry of the Pacific Northwest, Cabax Mills is totally dependent on government timber for its existence. Cabax Mills has provided steady and continuous employment

since its purchase in 1951 by the present owner. I will address myself to the problems of Cabax Mills as related to the Timber Sale Set-Aside Program in Western Oregon and Northern California.

This company is in a unique and difficult situation in being classed as large business. Our size falls in the 500 to 1,000 employee range, 500 being the maximum size for small business. To the best of my knowledge, only three other companies are in the same size range in Oregon and Northern California. The other larger businesses are diversified, publicly owned, corporate giants, ranging in size up to 40,000 employees.

Cabax Mills is very concerned with its present situation for several reasons. The wood products industry is presently in an elimination process. Recently, many of the corporate giants have significantly increased their historic purchasing patterns of public timber. This is being accomplished by an apparent concept of buy-at-any-price now and later there will be fewer plants to compete against. At the same time, the volume of available public timber is being reduced significantly by Land Use Planning, Wilderness Areas, and for environmental reasons. This places the businesses that have historically existed entirely on public timber in great jeopardy. Being classed as large business along with being totally dependent on government timber has placed Cabax Mills in double jeopardy.

Competition is intense in purchasing government timber. Cabax Mills has participated in this competition successfully for many years. It does not need protection from the Small Business Administration or anyone else in competing for public timber when it is done on the basis of operating efficiency and utilization. However, bidding against giant companies that have vast relatively unlimited resources, are diversified by industry and area, has caused us to re-evaluate our position. Attempting to purchase government timber as a "small" large business has become increasingly difficult since the Timber Sale Set-Aside Program has been initiated.

The present arbitrary 500 employee limit for small business falls in between several companies that are similar in their make-up, timber useage, and competitive bidding ability on government timber. There are presently several businesses barely under the 500 employee size. It seems improper that a few more or less employees would separate similar companies into a small or large category, giving some the advantage of being able to bid on *all* public timber, while the slightly larger companies are thrown in with the truly giant corporates to compete for the remaining shrinking volume.

For example, if ten businesses are in the 450-499 employee size class, and four businesses are in the 500-750 employee size class, why should 500 employees be the division point, and place the 500-750 group in with companies ranging to the 40,000 plus employee size class? This is not a true grouping between small and large business.

Our own limited study of the sizes of businesses in the wood products industry in Western Oregon and Northern California indicate there are no businesses in the 800 through 1,250 employee size. Only one company that we know of falls near this size area, having approximately 1,300 employees. There are several businesses in the 400-800 employee range, and several in the 2,500 plus employee range.

It seems to us that the 800-1,250 size range is a very significant separation between the publically owned, diversified, giant corporations, and the rest of the independently owned businesses that make up the wood products industry. A study may show that the size range in which there are no businesses may be much larger than I have indicated. It may also show a significant difference in the size groupings between the Pacific Northwest and that of the rest of the nation. If a closer examination verified this situation it would seem appropriate to place the small-large separation number somewhere within this no-mans-land size area of 800 to 1,250 employees. Doing this would require a large business to significantly reduce its size to qualify as a small business, and the small businesses would have some needed latitude to adjust their operations for efficiency, better utilization, and some diversification.

The purchase of government timber is the issue. Cabax Mills is classed as large business, yet we use less public timber than several businesses presently qualified as small under today's standards, which seems inequitable.

Plywood layup plants are a labor-intensive operation. A plywood plant requires approximately three times as many people as a sawmill to manufacture

the same volume of timber. The present size classification standard practically eliminates small business from owning an integrated plywood-sawmill operation. This also seems inequitable.

Cabax Mills requests a complete review and study of the wood products industry in the Pacific Northwest to determine the actual size stratification of the industry in that area. This will allow the Small Business Administration to make a knowledgeable, logical decision once and for all, as to the true grouping of small independents from the industrial giants. We also request that the decision from the results of this study be made will be in advance of January 1, 1976, so that businesses may assess their individual situation and act accordingly.

We recognize the fact that the giant corporations will try to have the size standard lowered, thus allowing more timber to be available for their purposes, and many more smaller businesses exposed to their apparent elimination-of-competition bidding tactics.

We also recognize that companies presently classed as small business will see no need to change the size standard because they are already protected from the large business firms. Also, why should they want to have the size class standard raised to include *more* companies in the small category to compete against on set-aside timber sales?

At a recent meeting of the S.B.A. and industry on the West Coast, the question was asked how changes could be made to the present S.B.A. Timber Sale Set-Aside Program. The S.B.A. answered that if sufficient concern was shown for a change then it would be considered. It was indicated that many requests had already been received to change the size classification standard, ranging from lowering it to 50 all the way to raising it to 1,250 employees.

Our concern is that the 3 or 4 businesses in the no-mans-land of 500-1,000 employee size range will not have a sufficient voice in any decision concerning change of the size standard. We have found no group or association to present our particular problem for us. That is why we are here today as an individual company.

STATEMENT OF NATHAN W. COLEMAN, PRESIDENT, LANE PLYWOOD, INC.

INTRODUCTION

I am Nathan Coleman, President and manager of Lane Plywood, Inc., Eugene, Oregon. Lane Plywood operates a subsidiary company called Zip-O-Log Veneer, Inc., also at Eugene, Oregon. The subsidiary is an integral part of Lane Plywood, and when I cite production figures, number of employees etc. of Lane Plywood, I will be including the production, employees etc. of Zip-O-Log Veneer, Inc.

LANE PLYWOOD—A SINGLE PLANT, INDEPENDENT PLYWOOD PRODUCER

Lane Plywood was organized about 22 years ago by a group of experienced plywood workers and local business men. From the beginning, preference in employment has been given to stockholders, and today nearly one-half of our employees are stockholders. Lane Plywood has just one basic operation—manufacturing plywood. We have only one plywood plant, which has the capacity to produce approximately 14 million square feet, on a $\frac{3}{4}$ basis, of plywood per month.

WE COMPLETELY UTILIZE CULL LOGS

To supply veneer for our plywood plant, we have one four foot and two eight foot peeling operations. Our plywood and peeling operations have been structured to utilize the types of timber most plentiful in our area—highly defective old growth; also small diameter logs from thinning excessively thick stands of 2nd growth. In the process of producing veneer from these logs, a great quantity of residual material develops which is unsuitable for making plywood. And in order to fully utilize these marginal logs we have constructed extensive facilities to supplement our peeling operation for the recovery of valuable by-products which used to be classified as waste. For example, we operate eight chippers, producing wood chips for the paper industry. In order to better utilize the logs which are too good to chip, but unsuitable for peeling, we have a salvage sawmill, producing high grade lumber from logs that cannot

be peeled. Also, we have constructed a decorative bark plant, where we size bark, dry it and bag it for use in landscaping. We save our sawdust and planer shavings for sale to hard-board or particle board operations. What is left over from all of these operations is used for fuel in producing steam which we need for our plywood presses and veneer dryers. With these extensive improvements, what started out to be a relatively simple plywood plant has become a complex wood products operation. In order to continue our existence, even on the scale of small business, we have found it not only desirable but also necessary to develop this capability of complete and efficient log utilization.

SANDED PLYWOOD PRODUCTION AND UTILIZATION OF CULL LOGS PROVIDES JOBS

In our plywood plant we produce primarily sanded plywood (as opposed to sheathing). Even with automation, the production of sanded plywood requires a high proportion of employees in relation to the volume of raw materials consumed. Our concentration on complete log utilization, together with our sanded plywood production, has resulted in a highly labor intensive operation. With just our one plywood plant, along with our peeling and salvage operations, we employ approximately 475 people. In contrast, just one Sawmill producing cants and employing 50 or 60 people could consume the same volume of logs that we require. As long as small business status is determined by the number of employees, the 500 limit should not be reduced. We and similar independent plywood operations should not be penalized because we do a good job of log utilization and provide a lot of jobs while consuming a relatively small volume of logs.

DEPENDENT UPON GOVERNMENT TIMBER

Along with most of the other independent wood products operators in Oregon, we are dependent almost entirely upon Government timber, with most of our purchases having been made in the Willamette National Forest. However, during the past year, although we have continued to bid aggressively, we have not been able to purchase sufficient timber to maintain an adequate inventory. Our inventory has declined to the point that we now have less than one year's supply ahead of us. Also, because of panic type bidding that has prevailed, we have been forced to pay extremely high prices for what we have purchased. Recent bids for timber in our area have averaged more than twice the appraised values. And it appears that prices paid for nearly all of the timber sold in the Willamette National Forest during the past year was sold at substantially higher prices than can be justified by plywood and lumber prices prevailing now and predicted for the coming months. The timber inventories of many of the smaller operators in our area have dwindled to the point that all they have left are recent acquisitions, acquired at prices that they cannot afford. Those that do not have low cost private timber or Government timber purchased earlier at lower prices will not be able to operate unless lumber and plywood prices increase substantially above present levels.

DEFICIT IN SMALL BUSINESS TIMBER PURCHASES

As evidenced by timber sale data maintained by the Forest Service and the Bureau of Land Management, small business has not been purchasing its historical share of Government timber in many sale areas within the State of Oregon. Without the continuation of the small business set-aside program, the small business share of timber purchases would continue to decline to the point, in my opinion, the wood products industry would soon be concentrated in the ownership or control of a few large companies.

STATEMENT OF AMOS HORNER, PRESIDENT, TOMCO, INC.

Mr. Chairman, my name is Amos Horner. I am President and General Manager of TOMCO, Inc., a small family held wood products firm in Sweet Home, Oregon.

Our company produces lumber and veneer, and sawmill and plywood machinery. Our planned production of wood products for 1974 is approximately 70 million board feet. We do about 20% of our own logging. There are four

sub-contractors who do the balance of the logging. We have own own transportation facilities. Also, we do our own wholesaling. The total employment exceeds 200 people on a year round basis. The only time we shut down is for vacations.

We sell our products throughout the United States and in several foreign countries. We manufacture a substantial amount of special products for export.

The name T.O.M.C.O. born out of failure means Try Once More Company, with us it is a philosophy of life. You don't quit, you keep trying. In our company's infancy, our efforts to get started in the lumber business were met by failure, so we started over. We were in such poor shape that even the S.B.A. wouldn't loan us money. Today, the TOMCO effort is 15 years old, a successful, stable company very much involved in the community in which we live.

Our people are proud of and involved in Tomco. Their rewards are: 1. Satisfaction of accomplishment and involvement; 2. Profit sharing; and 3. Salaries about 20 to 25% over industry average.

We live and work in an area that has experienced a continued series of plant shutdowns through the years. Some of these plants died with *competition disease*. The rest Mr. Big bought out. Today, we and one other very small sawmill are surrounded by Mr. Big. Our industry has a long history of the large buying out the small and shutting down the various plants. We don't want this to happen in Sweet Home.

There is no shortage of competition. In our area, there are two small businesses among eight large firms, namely, U.S. Plywood, Champion Papers, American Can Co., Simpson Timber Co., Crown Zellerbach Corp., Willamette Industries, Boise Cascade Corp., and Weyerhaeuser. The least of these companies employ thousands and have three to five hundred million in annual sales.

We are totally dependent upon public timber about 80% Service and 20% Bureau of Land Management. We are continually plagued by the erosion of the allowable cut and sales schedule in our area. Whether it be roadless areas, enlarged wilderness areas, study areas, and you name it; the volume sold annually becomes less and less. Most of the timber is sold in June and December. I have never been able to understand why a planned annual cut of timber couldn't be sold on a monthly basis.

Surely, without the balance of power provided by the present small business program, few small business firms would be left in our industry. You might ask, can't we compete? You darn right we can compete, but only as far as individual sales are concerned. Yes, we can saw it cheaper and we can make it better, but we can't compete with a company who has a large base of privately held timber. Timber that they can use to average their log costs downward. We can't compete with Mr. Big's means of finance and his tremendous flow of dollars. Mr. Big can not stop us cold because our company has three years timber supply. However, if we don't purchase timber, replace what we consume, we are headed for trouble. We, like everyone else under pressure of Mr. Big, are paying prices that are destructive to our housing markets.

It is our firm conviction that a more vigorous program should be legislated. The character of our industry should be studied carefully in the light of what constitutes large and small. For example, in our area, if we had 750 employees, we would still look like an infant against the "Valley of Giants".

Remember this, the small, privately held family company, or corporation, is the birth place of our industry. Most of the innovation, automation, and recovery techniques originated in the mind of some small entrepreneur. They blossomed in some small sawmill or veneer plant. We were using junk logs before Mr. Big even looked at them.

Our company has a small log, computer operator sawmill which is entirely experimental at this stage. However, it does produce the largest yield in board feet of lumber from a thousand board feet of logs I have ever heard of. It is, certainly, far, far better than what is being talked about at the sawmill clinics. This mill will probably be through count down and start up by this year end and will have one of the highest production per man yields per thousand in the industry. When the production record is beaten, it will probably be by another small business firm.

We don't want any more than our fair share. It's our earnest hope that you gentlemen recognize the balance and restraints that small business set-aside program has upon the unfair competition of huge companies, the power

of their dollars, and the remoteness and strength of their corporate entity. We earnestly solicit your help and understanding. Thank you for the opportunity to present our views.

STATEMENT OF MILTON HERBERT, PRESIDENT, NORTH WEST TIMBER ASSOCIATION

I am Milton Herbert, President of North West Timber Association, Eugene, Oregon, and Owner of Herbert Lumber Company, Riddle, Oregon.

North West Timber Association is a nonprofit membership service organization formed eight years ago and represents 38 small to medium-sized mills totally dependent on public timber for their raw material supply. Membership is restricted to Western Oregon. Association activity is restricted to timber supply and related problems.

Annual production of North West Timber Association's 38 mills is approximately $1\frac{1}{2}$ billion board feet of lumber and plywood, and provides employment for approximately 6,000 people. Collectively, this makes us one of the larger employers in the State. But, here is the problem: We are not one large employer with 38 scattered divisions with the ability to shift dollar resources back and forth. We are 38 independent operators committed to sink or swim. Right? We are with limited dollar resources.

As an individual firm, Herbert Lumber Company employs 45 people year around. We have been in business for 28 years. We do everything from falling standing timber to delivery of the finished product at the job site by truck.

Our products are sold in many parts of the world: Clear lumber to Europe and Australia; wood chips to Japan; shavings to particle board plants; garden mulch to domestic users; all other residues are sold for the milling of nickel—clearly complete and efficient utilization.

As an Association of mills, from the standpoint of efficiency we can prove beyond a doubt that we have complete utilization. We can respond very quickly to changing market conditions. Our plants are modern and efficient. Our top managers are usually owners or part owners and, as such, they see to it that their plants maintain efficiency and excellent management. By current standards, two of our members are large. One is represented on this panel for a special reason.

What is our problem? Answer: Competitive pressures from the large industrial giants. They can and do decide to move into an area and bid the timber up to an uneconomic price or buy it with unlimited dollars from the corporate treasury.

The independent operator can sell out, go broke, or shut down. When this competition is removed, the giants can then purchase their timber of a non-competitive basis.

I would now like to introduce Arnold Ewing, Executive Vice President of North West Timber Association and other members of this panel who represent six of the 38 members of North West Timber Association: David T. Vincent, Director of N.W.T.A. and Forester of North Side Lumber Company, Philomath; Amos D. Horner, Vice President of N.W.T.A. and Owner of Tomco Forest Industries, Inc., Sweet Home; Nathan W. Coleman, Director of N.W.T.A. and General Manager of Lane Plywood, Inc., Eugene; Everett P. Johnson, Director of N.W.T.A. and Partner of C & D Lumber Company, Riddle; Donald W. Johnson, Timber Manager for Cabax Mills, Eugene and Grants Pass; and William C. Tarr, Superintendent for Eugene F. Burrill Lumber Co., Medford.

STATEMENT OF ARNOLD D. EWING, EXECUTIVE VICE PRESIDENT, NORTH WEST TIMBER ASSOCIATION

I am Arnold Ewing, Executive Vice President of North West Timber Association, Eugene, Oregon. Thank you for the opportunity to appear before you on this extremely important subject.

Our membership is composed of small and medium-sized independent operators throughout Western Europe. We produce approximately $1\frac{1}{2}$ billion board feet of lumber and plywood annually. We are totally dependent upon Federal timber for our raw material supply. We have no private timber to fall back

on should we fail to purchase our share of public timber. Our ability to continue to purchase our share of this timber is essential to our continued operation.

The background of the Small Business Administration operations in regard to the timber sale set-aside program is probably old hat to this Committee. However, a review of the program since its inception, through the eyes of industry, will perhaps provide you with another facet toward understanding its merits, faults and the need for a continuing, but improved, program.

When the program was first introduced in the late 1950's, it was greeted with mixed emotions by small business in the Northwest. Reaction ranged from outright opposition to mild acceptance. I am sure this may be a surprise to you, but generally it was felt the program was not needed and it just meant another layer of government intervention. The small mills were generally very competitive and the feeling was that they could probably outcompete most large mills in the area. Today, these mills still know that they can compete with any of the large operations mill-for-mill. The problem of competition with the industrial giant lies in the depth of their pocketbook and the fact that they can use their tremendous resources to zero in on an individual area and wield their will regardless of economics.

During the 1960's, the program operated very little. It was weak and ineffective. In fact, so highly unsatisfactory that the program was generally ignored by both large and small business.

In early 1971, the Small Business Administration and U.S. Forest Service held a public meeting in Phoenix, Arizona to present a proposal whereby a certain volume of timber would be set aside each year in all areas for small business, regardless of the circumstances within these areas. This Association attended that meeting and opposed the program on the grounds that we did not want another layer of government universally involved in this industry. If there were problems within individual geographic areas, we did support some sort of a program but not like the piecemeal, ineffective type that we had been accustomed to during the 1960's or the partial relief that was being suggested. We urged a program be developed whereby there was a systematic way of measuring a problem within economic areas and when this trigger reflected a problem within individual geographic areas we wanted relief that was meaningful.

North West Timber Association followed up this meeting by going home and making a ten-year study of our industry in Western Oregon and from that study made a specific proposal in the Spring of 1971 to the Small Business Administration, the Forest Service and the Bureau of Land Management. Many of these suggestions are now part of the present program.

It is interesting to note that the number of operators, both in large and small categories, decreased from 1961 to 1970. The greatest decline was in the number of small operators. (See attached page taken from our 1971 study.) Note that the public timber available in Western Oregon increased from 2,871 MM in 1961 to 4,138 MM in 1970, an increase of 39% or 1,167 MM. It is interesting to note that of this 1,167 MM additional timber made available, large business purchased 920 MM or 79% of the increased volume. During the past two years, there has been even greater expansion by large business with a tremendous surge of gobbling up small mills in a cannibalistic fashion.

Almost daily there is an article announcing purchase of one or more small businesses by large business. The trend is alarming. The pressures on the remaining small businesses are extreme.

If it were not for the Small Business Administration set-aside program today, many small operators, perhaps several that are here testifying, would no longer be in business. We are concerned on the longevity of the program. If it were not to survive, and apparently large business believes it will not indicated by their intense acquisition program, the era of small business in the Forest Products Industry will surely come to an early end.

The crunch for public timber to fulfill the needs of the existing manufacturing facilities of both large and small is at unprecedented level. The results of this are reflected in desperation bidding from \$300-\$500 per thousand board feet for stumpage prices. Prices that no mill, large or small, can realize even break-even figures with normal market outlets.

There has never been a greater need for a steady, dependable program if small business is to survive. Even though small business still does not embrace the

idea of more government intervention, they now realize it is essential that a viable set-aside program be maintained for small business to survive large business' insatiable desire for continued expansion.

My strong support for the philosophy of the program does not mean that I refuse to take off my blinders and recognize it has faults that need mending.

Normally, the faces of large and small bidders within geographic areas are fairly constant with only an occasional stranger appearing. Now, when a geographic area has triggered and set asides are established, large business not only buys all of the available open sales within the area, but in order to fulfill their needs, they invade neighboring geographic areas where set-asides have not triggered. This inserts even greater pressure on both large and small operators of that community for the limited raw material.

Obviously, the greatest pressure is placed upon the small operators within these areas. Of course this, in turn, triggers set-asides the following period within the area and the reverse cycle is then initiated by the large operators in this area searching for other open bidding areas.

I suspect this dislocation of bidders is due to several things. The Forest Service program was initiated in 1971 and it was not until January 1 of this year that the Bureau of Land Management's program became effective. Thus, the program has not been fully implemented and coordinated within geographic areas. Perhaps the geographic areas should be further examined to see if they properly fit the area, and if not adjustments made accordingly. Possibly when an area is reviewed and defined it should include both Agencies as one and have set-asides apply to both simultaneously.

There is a shortage of raw material in most areas and there are only two solutions:

1. The Forest service regularly states that through intensive forest management practices, the yield from Forest Service lands could be increased by 50 percent. Any help toward getting action instead of words from the Forest Service would be helpful, but without a continued set-aside program the bulk of the increased yields would be absorbed by large business just as they did during the 1960's.

2. Proper action needs to be taken now to assure the longevity of the set-aside program, with clearly spelled out details for the future so that both large and small operators can then recognize its permanence and adjustments can be made. By that, I mean large business will have to either trim their requirements individually, force a few out of the business, or find other sources for their additional raw material. Likewise, small business will have to trim their requirements to fit the volume available through the set-aside program. I realize that this probably means a shakedown in both large and small categories, but at least through a set-aside program the shakedown or elimination is proportional to both large and small. Without the program, I am afraid this shakedown would primarily fall upon the small business.

The Small Business Administration needs a much stronger and more thorough procedure in determining size of operators. Standards or ground rules are vague or lacking. This decision should be open for appeal should a party feel the Small Business Administration has erred in its decision.

There are some manufacturers presently classified as small business who are operating with foreign capital commitments and buying Federal timber as small business. These operations should be aggressively investigated and if they are, in fact, buying Federal timber with foreign capital they should be reclassified as large business.

The purchase of timber sales by loggers and other nonmanufacturers presently provides an opportunity for abuse of the program. Large business can and apparently has used this group to front for them in purchasing sales, thus improperly charging the sale against small business. The method of charging logger purchases needs overhauling.

Our Association has been reluctant to open the issue relating to size classification because we recognize that, once opened, large business would use their political clout to reduce the size classification as low as possible in order to cripple or kill the program.

My remarks pertaining to size standard are based upon my familiarity with operators in the Pacific Northwest and may not be appropriate for all regions of the United States. In fact, there may be a need for different size standards in various parts of the United States.

The program was developed to protect the family-type independent operators from the overwhelming financial resources of the industrial giants.

The present standard of 500 was set with this objective in mind, recognizing that coop plywoods or a combination independent sawmill-plywood operation truly small in every sense employed approximately 500 people.

Knowing that size classification would be considered at this hearing, we made an examination of mills in Western Oregon. Sizes within this industry have a broad range from 25 employees to 40,000, but it appears that there is a natural break between the industrial giants and the family independents. This break appears to be somewhere beyond the 500 bracket. In fact, to the best of our knowledge of the hundreds of operators in Western Oregon all but three or four are either within the present 500 bracket or are well over the 1,000 bracket.

I am not in a position to propose what is the proper size but any lowering of the size by even a few numbers will improperly place a considerable number of truly small operators in the same category as Georgia Pacific, Louisiana Pacific and International Paper companies. This would be disastrous.

Upon examining these few mills in Western Oregon that are presently slightly over the 500 limit, I find that they too truly fit small business classification. They are family-owned, independent operators who have been unfortunately classed as large business because they chose some years ago to do their own logging, trucking, road building and/or road crushing. With the ever increasing environmental constraints initiated in our contracts, I think you may see an even greater trend for small business to desire to do these operations with their own employees.

These operators fit the criteria of small business and the size classification should be adjusted to allow these few operators to be properly classed as small business.

In summary, I recommend legislation be developed that assures the longevity of the program. Size classification should be adjusted to include the few operators presently just above the 500 limit that truly fit in the category of small.

The Small Business Administration should be beefed up with better direction and standards for determining size of operators. Thorough, in depth examinations should be required before issuing a size determination. A method should be developed to prevent either foreign capital using small manufacturers as a front or large United States businesses using nonmanufacturers as a front to circumvent the program.

Like any new program, there may be occasional inequities requiring slight changes. However, I urge that any proposed changes be carefully analyzed to determine if they are truly constructive changes and not a device to cripple the program.

[Analysis Taken from NWTA Study Dated April 12, 1971]

ANALYSIS OF TABLES AND GRAPHS

The graph of Composite Purchases indicates a definite trend of increased Large Business purchases. The "Small & Other" categories show a steady decline over the 10-year period. We are assuming the years 1965-66 would verify this general trend.

Size class	Percent of total volume purchased		Percent change
	1961	1970	
Total volume purchased (MMBF).....	2,971.2	4,138.1	+39.3
Large.....	33.9	46.6	+12.7
Small.....	51.3	43.8	-7.5
Other.....	14.8	9.6	-5.2

The total volume of timber sold by the public agencies from 1961 to 1970 increased by 39%. The total number of purchasers in each category declined:

Size class	Number of purchasers		Percent change
	1961	1970	
Large.....	41	34	-17.0
Small.....	140	87	-37.0
Other.....	179	147	-18.0

Volume purchased by Large and Small Business increased, while purchases in the "Other" category declined. Large Business showed the greatest gain. The total volume purchased within a size category is as follows:

Size class	Volume purchased (million board feet)		Percent change
	1961	1970	
Large.....	1,007.5	1,927.5	+91.0
Small.....	1,525.4	1,813.1	+19.0
Other.....	438.3	397.5	-11.0

STATEMENT OF WILLIAM C. TARR, PLANT SUPERINTENDENT, EUGENE F. BURRILL LUMBER CO.

I am Bill Tarr, Plant Superintendent for Eugene F. Burrill Lumber Company, Medford, Oregon. My responsibilities as such are for production, quality control and maintenance of our plant operations and procurement of our raw material needs. I am a graduate professional forester from Oregon State University with experience obtained in the U.S. Forest Service, a large wood products business, and currently in my present position.

Our company is an independent small business corporation providing continuous employment for approximately 95 people, established in 1946 as a manufacturer of kiln dried white fir studs. We presently need 30 million board feet of raw material annually to sustain our operation for greatest balance and efficiency. We have no forest land base and are therefore totally dependent on public and private raw material resources. Public lands have provided us with approximately 80% of our needs to date, and the raw material available to our plant location is predominately in government ownership.

Our company embarked on improvements in our milling facilities in 1969 to utilize common quality small diameter logs. Owing to economic conditions since then, we are now finishing said improvements with completion goal of January 1975. We currently are utilizing all products from our log supply including studs, small dimension lumber, chips, bark, shavings and sawdust. We are pollution free and burn only bark under the State of Oregon's Department of Environmental Quality standards as fuel for steam production in our dry kilns.

Our company goals are to produce a quality product with the greatest efficiencies possible on a continuing basis and to sustain continuous employment. We have always emphasized quality, efficiency and continuous employment in our operation. We have no intentions of expansion as our plant at present is well balanced and expansion would involve sizeable capital investments for new balances in the wake of a raw material supply crisis.

Today, before your Committee, I would like to discuss with you three areas of importance to all small businesses in our industry and particularly my company's current involvement in same. These are as follows:

1. History and status of appeals case on three BLM set-aside sales purchased by ourselves; and Olson Lawyer Timber Company.

2. Acquisition and expansion of small businesses by large corporations since the mid 60's in the southern Oregon area.
3. The need for a permanent set-aside program.

(1) HISTORY AND STATUS OF APPEALS CASES ON THREE BLM SET-ASIDE SALES

The Bureau of Land Management along with the Small Business Administration initiated a set-aside timber sales program effective January 1, 1974. This program was undertaken pursuant to the Small Business Act of 1958 after review showed evidence of clear need for some based on history of purchases during the preceding five year period ending in 1972. Implementation was practiced as judiciously as possible and all parties to the facts, both large and small businesses, were adequately informed of the intentions of such a program if necessary as early as 1971.

Prior to this, the U.S. Forest Service and the Small Business Administration had initiated a similar program in 1972 which met with opposition from the large business sector. This is evidenced by a civil suit (Duke City) brought by large business in October 1972 against the Secretary of Agriculture seeking invalidation of the program. This suit is still pending in U.S. District Court after all arguments have been heard.

Henceforth in March, April and June of this year, two large business entities in our area protested the selling of three BLM set-aside sales for similar and additional reasons within the Duke City case. These protests were denied by the BLM, whereafter they appealed that decision to the Interior Board of Land Appeals. All reasons and answers were submitted on two of these sales with the other sale appeal needing submission of reasons filed by August 31. Two of these sales were purchased by ourselves and the other sale was purchased by Olson-Lawyer Timber Company of Medford—another independent and efficient small business concern.

On Wednesday last, August 14, the Interior Board of Land Appeals handed down their decision on two of these sales. That decision was quite favorable to the small business program and sales contracts have been signed and the sales were operational on Friday, August 16th. We certainly appreciated the decision and expediency as we can now get additional raw material for our log supply this year and next.

The third sale, as stated earlier, is still pending filing of appeal by August 31. Details of these cases are too involved to elaborate on in this testimony, but I will be more than willing to accept questions on same if desired.

Clearly, these appeals and litigations are prime examples of attempts by large businesses to hinder, delay and abolish the set-aside sales program. One in the small business community would be quite naive to think otherwise.

(2) ACQUISITION AND EXPANSION OF SMALL BUSINESSES BY LARGE CORPORATIONS SINCE THE MID 60'S IN THE SOUTHERN OREGON AREA

In the late 50's and early 60's large corporate conglomerates started becoming ever more present as a business trend in our nation. This was apparent in all industry in general and the wood products industry reacted with the same fervor. Acquisition and expansion of productive capabilities were the key goals, with emphasis on total need for the consumer. With this knowledge it seems only pertinent that the Small Business Act of 1958 was needed and the forethought of our Congress at that time is certainly apparent today.

The Southern Oregon area, where wood products are the basic sustainer of economic stability, was no exception. During the mid to late 60's, two large corporations acquired small businesses within the communities of Medford and Grants Pass. Immediately they embarked on increased capacities and set out to produce at levels significantly exceeding prior capacities.

This trend has continued in our area and today 21 wood products firms that were small business in the mid 60's, located within the communities of Medford, Klamath Falls, Grants Pass and Roseburg, Oregon, are now large business. (See table p. 139). And with these acquisitions came increased production in most cases.

Yes, several small businesses expired during this period also, due to lack of raw materials, inefficiencies or incapability of assets to provide needed

equipment for manufacture at a profit. *But*, here again what productive capacities were lost in these expirations were more than offset by increased production by others. And no large business bought and shutdown a small business in our area, but rather continued it at the then current or increased levels or built a new facility with increased capabilities. These facts can be substantiated by record if desired.

(3) THE NEED FOR A PERMANENT SETASIDE PROGRAM

Now, I ask you, "what is happening?" Is small business, which we feel fully confident can provide production, quality and efficiency, going to go the way of the buffalo and whooping crane? Without some protection it would certainly appear this could happen. And is this what the American people want? I don't think so.

We in the small business community feel we can produce at greater efficiencies and lower costs to the consumer than large businesses can. We can be competitive with any large business of similar product mix in efficiency, but do not have the large corporate dollar reserves to over-extend our businesses at the auction table as has been done in the past few months. Stumpage prices have been so high that no one can envision profits from processing of the raw material on today's market. And certainly one has to have a very optimistic outlook about the future to see profits in his crystal ball. We in small business have to look at our needs for the immediate future, not five years hence, as our raw material reserves are non-existent in most cases.

This then is why the Small Business Act was necessary. Without it many of us would accept the mounting offers of large business rather than try to sustain our businesses ourselves. And why not? It certainly would be less worry and we know we do not have large corporate dollar reserves to take to the auction table. We do not have to answer to a large group of shareholders but only to ourselves and the consumer who desires a quality product at as low cost as possible. And we can and will do this if provisions are legislated to continue our existence.

Yes, our future lies in your hands. We thank you for your support to date and ask for sustained support of the present set-aside program effected from the Small Business Act, and further legislation for a more permanent set-aside program. Without your help we can probably only tough it out so long.

We ask only equity, nothing more, as is provided in the Small Business Act for the aid, counsel, assistance and protection of Government to the interest of small business concerns in order to preserve free competitive enterprise.

Thank you for this opportunity to present my views.

WOOD PRODUCT FIRMS WHICH WERE SMALL BUSINESS AND ARE NOW LARGE BUSINESS

Area	Original firm	Acquiring firm
1. Medford.....	Elk Lumber Co.....	Boise Cascade.
	Fir Ply, Inc.....	Southwest Forest Industries.
	Cheney Forest Products.....	Louisiana Pacific.
	Rogue Valley Plywood.....	Gold Rey, Division of Canadian Hydro-carbons.
2. Grants Pass.....	Bate Plywood.....	Fibreboard.
	Southern Oregon Plywood.....	Medford Corp.
	Josephine Plywood.....	Timber Products.
	S.H. & W.....	Bate Plywood.
3. Klamath Falls.....	Klamath Lumber Co.....	D. G. Shelter.
	Modoc Lumber Co.—Bly.....	Weyerhaeuser.
	Thomas Lumber Co.....	Jeld-Wen, Inc.
	Winema Lumber Co.....	Boise Cascade.
	Vaughn Veneer.....	Do.
4. Roseburg.....	National Plywood.....	Roseburg Lumber.
	Stomar Plywood.....	Do.
	Harbor Plywood.....	Do.
	Paul B. Hult Lumber.....	Do.
	L. & H. Lumber Co.....	Do.
	Green Valley Lumber.....	Fibreboard.
	Round Prairie Lumber.....	Do.
	Little River Box.....	Continental Forest Products.

STATEMENT OF DAVID T. VINCENT, NORTH SIDE LUMBER CO.

Mr. Chairman, members of the Subcommittee on Small Business, my name is David T. Vincent of North Side Lumber Company, located in Philomath, Oregon. We are a small family owned and operated sawmill producing in excess of 70,000,000 bd. ft. of lumber annually and provide steady employment for approximately 150 employees and have an annual payroll in excess of \$1,500,000.00 for our community of 1800. We very much appreciate this opportunity to appear before your subcommittee, Mr. Chairman, and we also appreciate the fact that we are still in business today—thanks to the current Small Business Administration (SBA) timber sale set-a-side programs with both the United States Forest Service (USFS) and the Bureau of Land Management (BLM).

Our Company has personally been involved in meetings with the SBA, USFS, and BLM, both in Oregon and Washington, D.C. setting up the current SBA set-a-side programs. Most of these meetings were well represented by large businesses and their associations. The current program was formulated to be fair to both large and small businesses as a whole. No one mill or company is discriminated against, likewise protection is not for individual mills or operators, but for the small business community as a whole. It has always been the intent of small business throughout the development of the current program that it be fair and equitable to all the current program is proof of that intent.

Our company is 95% dependent on public timber for our raw material supply. Our purchases are predominately on USFS lands in the Alsea-Waldport Districts of the Siuslaw National Forest. The set-a-side program was triggered in this economic area as of June 30, 1974. Small businesses in this area were unsuccessful in purchasing their fair share by a total of 28.1 MM bd. ft. for the six month period January 1, 1974 to June 30, 1974. Small business already had a cumulative deficit of 25.9 MM bd. ft. at the beginning of this period, as a result of aggressive purchasing by large business we (small business) are down 54.0 MM bd. ft. below our historical base average share for this economic area. Needless to say large businesses are flexing their "money-muscles" and seemingly without regard to the set-a-side program. I personally believe that due to the good market conditions in all of their diversified products that large businesses have too much money and have decided to put it into timber inventory to the extent that the SBA program will allow. Their philosophy seems to be to purchase every sale that is not a set-a-side and then trigger the program for large volumes instead of purchasing discreetly within the guidelines and constraints of the program. This philosophy of large business indicates and emphasizes the extreme importance of the current SBA program. As previously mentioned, large business in our economic area has purchased 54 MM more than their historical fair share in the last 12 months. Our company records show the effect of the loss of the aforementioned 54 MM bd. ft.

TOTAL PURCHASES BY NORTH SIDE LUMBER CO.

Year:	Volume
1971 -----	33,540 M.
1972 -----	30,290 M.
1973 -----	19,363 M (4 sales—all SBA).
1974 (to date) -----	12,200 M (2 sales—all SBA).

This clearly shows the effect of the aggressive purchasing power of large business and why small business is 54 million bd. ft. behind in this economic area. This timber shortage situation exists within all of the small mills in our economic area, not just North Side Lumber Company. I might add that we have actively and aggressively tried to purchase so called open sales against large business but have been unsuccessful. I also want to say that the current size standard of 500 employees is working and effective. It is not necessary to make any changes. We, as an employer of only 150, have no qualms about competing against companies of this size, but we do need protection from the diversified giants of industry. There has been strong competition for every set-a-side sale in our economic area. The two sales on which we were declared "successful bidder" in 1974 reached stumpage prices of \$285.15/m and \$186.00/m, appraised values were \$120.00/m and \$135.00/m respectively. Needless to say

at current market levels there is not any way to break even on these sales, let alone make a profit.

Another serious threat to the small business communities of the Pacific Northwest is the acquisition of mills and/or construction of new facilities by the Japanese. They will pay whatever price is necessary to purchase public timber, manufacture it to their needs, export the total volume to their home country and again the Pacific Northwest becomes a tree farm for the Japanese. Hopefully your committee, Mr. Chairman, will monitor the activities of the Japanese and not allow the small business sawmill communities to be mangled by the "arm of the Japanese government."

As is readily apparent, the importance of the SBA set-a-side program to the small business communities throughout the United States cannot be over emphasized. A strong and viable permanent program is necessary to prohibit the lumber industry from becoming engulfed by large business and being monopolized by a few large companies like the steel and oil industries.

The current SBA set-a-side timber sale program with the USFS and the BLM should be made permanent through legislation and not left as regulations. Protection of the small business communities throughout the country necessitates this action as rapidly as possible.

I wish to commend the current SBA staff and Administration for their competence, timely development and enforcement of the current program. They have held strong and reacted swiftly and professionally to the vigorous efforts of large business to undermine and erode the SBA Administration and the timber sale set-a-side program. To the SBA Administration and their staff we are grateful.

I have one criticism or suggestion that I would like to make and it concerns the USFS. It is of absolute necessity that the USFS sell its planned volume each six month period. The USFS is grossly negligent in not selling sales evenly through out the year and in not selling planned volumes for each one-half of the fiscal year. Not only will the set-a-side program operate more efficiently, but operators, both large and small, will benefit from an even flow of timber sales based on the planned sell volume.

Thank you for this opportunity to speak before you and your subcommittee, Mr. Chairman.

SOUTH COAST LUMBER Co.,
Brookings, Oreg., August 14, 1974.

Senator BOB PACKWOOD,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR: Reference is made to the Oversight hearings held by a subcommittee of the Senate Committee on Banking and Finance, on the subject of the Small Business Administration as it pertains to the sale of government timber by the Forest Service and Bureau of Land Management.

South Coast Lumber Co. is a small business employing an average of 150 people in Brookings, Oregon. It has been under the present ownership for 24 years. We own approximately 15,000 acres of forest land, practically all of which is cutover and under a management program aimed at producing a second crop of trees as soon as possible. Nearly all our lands have been hand-planted; we have sprayed brush on about 5,400 acres over the last two years and we are beginning a pre-commercial thinning program. In other words, we intend to continue to be a source of employment and a major Curry County taxpayer for many years to come.

As you know, the imbalance between production capacity and timber supply is becoming more apparent in the Douglas fir region every month. There is certain to be some business mortality as this gap closes. The SBA setaside program was established by Congress to "aid, counsel, assist, and protect insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, . . . to insure that a fair proportion of the total sales of government property be made to such enterprises and to maintain and strengthen the overall economy of the Nation." Accordingly, a program was instituted whereby timber sales would be made following historical purchasing patterns.

The time is now upon us where the setaside program is needed to insure that these historical purchasing patterns are maintained. Local economies are based

on certain planned allowable cuts; these can be destroyed should a big business firm decide to buy all the offered timber, regardless of price. Small business would have no alternative but to shut down. Small business has little chance to "average out" or pour unlimited funds into a project with the long term effect of destroying competition. Thus, we need the timber setaside program as it now operates.

We therefore urge that you support the continuation of the SBA program insofar as it concerns the sale of federal timber.

Should you happen to be in Curry County between now and election time, we would be proud to have you visit our Brookings operation.

Yours very truly,

JIM M. IZETT,
Timber Manager.

PRODUCERS LUMBER Co.,
Boise, Idaho, August 13, 1974.

CAROLYN JORDAN,
Subcommittee on Small Business,
Committee on Banking, Housing and Urban Affairs,
Dirksen Office Building,
Washington, D.C.

Ms. JORDAN: We are a small Lumber Manufacturing Company employing approximately sixty people. We cut approximately ten million board feet of logs per year. Being a small lumber company we are having a very difficult time acquiring timber to keep our mill running. In fact, we only have one year's supply of logs at the present time.

We believe in order for the Set Aside Timber Sales Program to do the job that you want done, the number of employees should be reduced to 250 or less. As I understand, to qualify for a loan under the Set Aside Program, you are not allowed more than 250 employees. In the last few years sawmill equipment has been modernized considerably. Today a company that employs 500 people should be classified as a big business. I know of a company in our area that has between 4 and 5 hundred employees and manufactures 40-50 million board feet of logs per year. Surely this cannot be considered a small business.

There has not been but one small timber sale in the Boise National Forest area made under the Set Aside Program as I recall since the law has been enacted. Up until now there has not been a need. But now if something isn't done to relieve the pressure on small business from larger companies, they will be closing down soon.

Please give this your consideration.

Sincerely,

DALLAS H. HARRIS, President.

AUGUST 20, 1974.

Ms. CAROLYN JORDAN,
Subcommittee on Small Business,
Committee on Banking, Housing and Urban Affairs,
Dirksen Building,
Washington, D.C.

Ms. JORDAN: We are one of the few remaining "small" sawmills in this area. To be exact, there are only three of us in the Southwestern area of Idaho that are actually small. There is one other sawmill in this same area that is classified as small but employs between 400 and 500 persons and cuts between 40 and 50 million board feet of logs per year. This one mill can cut more than the total volume allotted for small business. This makes it virtually impossible for other small businesses to survive.

Last year we lost one small Lumber Company in our area and the remainder faces certain extinction unless something is done. This is why in my view that it is very important to hold the total employment of one company to 250 employees.

Our company employs 25 people. We cut approximately three million board feet of logs per year. The business was founded in 1946 and has seen some rough times but cannot survive the future without some protection from

big companys. Therefore we would sincerely appreciate any help you could give us.

Sincerely,

GUY E. HARRIS,
President and owner of Guy Harris & Son Lumber Co.

TIMBER PRODUCTS,
Midvale, Idaho, August 15, 1974.

MS. CAROLYN JORDAN,
*Subcommittee on Small Business,
Dirksen Office Building,
Washington, D.C.*

DEAR COMMITTEE MEMBERS: This is to advise that I would be in favor of changing the requirements to qualify as a small business from 500 to 250 persons.

I own and operate a small sawmill and employ approximately 20 people. It is getting very difficult for me to purchase timber due to the fact that I have to bid against much larger businesses.

KENNETH SEID.

PRAIRIE CITY TIMBER CO.
Prairie City, Oreg., August 16, 1974.

Senator ALAN CRANSTON,
*Small Business Subcommittee,
Committee on Banking, Housing and Urban Affairs,
Washington, D.C.*

DEAR SENATOR CRANSTON: Small business purchasers of small timber offerings on the Malheur National Forest have had increasing difficulties in purchasing timber offerings. Recently the small business set aside program was triggered on our Forest. A public meeting was held, and both large and small business found the basic problem to be Forest Service generated due to size of timber sale offerings, location of timber sales and species included in the timber sale offerings.

Enclosed are two documents that will readily illustrate the small business situation in our area. The first enclosure is a copy of a letter sent by Mr. Wayne Gaskins of Western Forest Industries Association to Mr. A. G. Oard, Forest Supervisor of Malheur National Forest. The second document is a Forest Service notice of a public meeting to discuss the Danish planned timber sale of almost 50 million feet. This sale is very close to our mill, however the size of the timber sale, species to be included in the sale offering and the sophisticated logging system to be required make it impossible for us to purchase this timber sale.

We do hope that your committee will urge the Forest Service to make it possible for small business to survive in our community.

Sincerely,

JOHN H. FOSSUM,
Vice President.

AN INVITATION TO ATTEND A PUBLIC INVOLVEMENT MEETING FOR THE PROPOSED DANISH TIMBER SALE

On August 14, 1974 the Prairie City Ranger District will conduct a meeting designed to hear your views regarding our proposed Danish Timber Sale. The meeting will be held at the Prairie City Office at 7:00 P.M. You are asked only to read the basic background information below and determine if you would like to discuss any aspect of this timber sale with us.

Sale date.—November 11, 1977 (proposed).

Location of Sale Area.—The area trends North-South with the John Day River-Middle Fork John Day River divide as an eastern boundary and the Forest Boundary representing the western limits of the sale. The northern boundary is the ridge separating Bridge Creek and Jeff Davis Creek with the southern boundary the ridge separating Axe Gulch and Isham Creek drainages. The sale area is approximately 8 miles northeast of Prairie City. The sale area is part of the area encompassed by the Reynolds Grazing Allotment.

Size.—We estimate that 47 million board feet of timber will be removed from the 4,700 acres of sale area. This is based on an estimate of 10,000 board feet per acre.

OBJECTIVES

1. Remove mercantile products to meet our timber commitment to industry. (Economic).
2. Convert old-growth timber stands to vigorous quality stands by controlling stocking levels. (Silvicultural).
3. Maintain important wildlife habitat. (Wildlife-Recreation).
4. Maintain visual resource. (Recreation-Aesthetic).
5. Maintain water quality standards. (Economic-Recreation).
6. Preserve areas of unique nature. (Historical, Ecological, Recreational).

PROPOSED SILVICULTURAL TREATMENTS

1. Complete overstory removal—50%.
2. Partial overstory removal—25%.
3. Shelterwood Regeneration cuts—25%.
4. Some commercial thinnings—?

INCLUDED TIMBER (ESTIMATE)

20% Associated species.
80% Ponderosa Pine.

LOGGING SYSTEM—(PROPOSED)

Undetermined—Probably Tractor and Skyline. Possibly Helicopter.

TRANSPORTATION SYSTEM

The area is currently unroaded with extensive road development needed. We project about 30 miles of roads varying in standards.

MISCELLANEOUS

Private land borders the western sale areas boundary and is scattered within the sale area.

CHARLES G. JOHNSON, JR.,
Project Coordinator.

WESTERN FOREST INDUSTRIES ASSOCIATION,
Portland, Oreg., August 9, 1974.

Mr. A. G. OARD,
Forest Supervisor,
John Day, Oreg.

DEAR AL: I have delayed my response to the John Day public meeting held July 31, hoping to offer constructive solutions to a very very bad timber offerings situation. The John Day public meeting brought out the facts that the set-aside program had triggered, the reduced timber sale offering situation and the united industry position in opposition to the excessively large timber sale size offerings.

The meeting was a good, informational meeting. Your frankness under question from the floor regarding your request for funding of Fiscal 1975 timber sale offerings at 191 MM feet, which included 20 MM salvage, was both appreciated and discouraging. It was particularly discouraging to see the apparent lack of support given your request by the Regional Office. The Regional assignment of 153 MM of which only 117 MM was to be chargeable to your allowable cut, the balance being non-chargeable and cull material, is unbelievable. The Malheur dependent communities. The forest products industry within the Malheur area is comprised basically of two very large purchasers; the balance, very small. The large purchasers, when timber supply and sale offerings are optimum, allow large and small to live side-by-side. Unfortunately, sale size offering makes it impossible for large and small to live in this fashion when sales are tailored with large volumes requiring specialized logging equipment for large business and the balance of the sales program

made up of older dead, small material, non-chargeable, etc. It was clearly brought out by industry that timber sales sizes larger than 15 to 20 million on the Malheur are unacceptable. For your small business sector, it is much better to have several sales of 3 to 8 million feet in preference to a few huge sales. Small industry indicated a desire for smaller sales and, hopefully, small sales that have a higher percentage of associated species volume. Both of us know, Al, that this associated species volume does exist in the north half of the forest.

Also, I find it particularly shocking at the attempt to include the War Canyon volume of 9.5 MM as part of your timber sale goal this fiscal year. War Canyon has been under contract. As a result of the decision by the Forest Board of Appeals, the Forest Service has been instructed to return that sale to the original contract holder. To see the attempt to take credit for the sale again by listing it as a sales offering for this fiscal year, against an already reduced sales program causes the small mills and their representatives in the community to have little confidence that the entire sales program is valid, knowing that the inclusion of War Canyon as a sales offering is a fraud.

Since the small business set-aside program has triggered and the small business share of your reduced sales program is 22 MM, it should be readily evident that there is a major problem in the sales plan when small business can only choose 1½ MM feet of offerings as suitable for set-aside designation. These small business set-aside selections are; Austin thinning, 70 M, all non-chargeable and all per acre material classification, and miscellaneous small sales of 800 M located on the Long Creek and Prairie City Ranger District, all per acre material and non-chargeable.

I recommend a thorough in-house review of this unacceptable distribution of timber sale sizes, an immediate re-orientation of timber sale sizes as indicated above, cancelation of the present wheel-spinning on the Dan Ish proposed sale of 55 MM and that Dan Ish manpower effort be reoriented to preparation of smaller sales. I recommend an all-out effort by you and your staff at the Regional level for reconsideration of your financing program to achieve the full financing requested by you of 191 MM, and a more equitable financing per thousand to allow sales size preparation to meet community and industry needs.

It is particularly significant that the large business firms on your forest have gotten along with small business people as well as they have in the past, since (a) these two large business firms both are plaintiffs in the large business attempt to invalidate the F.S./SBA agreement; and (b) considering the appearance from the small business side that all of the large sales are put up to favor large business.

Both large and small business deserve a word of congratulations as they have attempted to work together on the Malheur.

I would be glad to meet with you and small business mills on the forest to discuss their needs as they are of an immediate nature. Also, if our assistance is needed to obtain Regional attention in order to provide additional funding on a per-thousand basis to solve your problems, we would be glad to consider such action. If other assistance is needed, we would be glad to help in any way possible.

Sincerely,

WAYNE W. GASKINS.

LANDRETH TIMBER CO., INC.,
Tonasket, Wash.

Senator ALAN CRANSTON,
*Chairman, Small Business Subcommittee,
Committee on Banking, Housing and Urban Affairs,
Russell Office Building,
Washington, D.C.*

DEAR SENATOR CRANSTON: I, as representative of Landreth Timber Co., Inc., of Tonasket, Washington, have had a particular problem develop regarding the transition of San Poil Lumber Co. when it changed its size status from small business to large business. Because of our concern that our small business share will be eroded on the Okanogan National Forest, and because the officials of the Okanogan National Forest refuse to correct records regarding

size change of San Poil Lumber Co. of small to large; we, Small Business purchasers on the Okanogan National Forest, are being deprived of our fair share of the Forests Small Business timber offerings.

Since we are unable to come to Washington, D.C., we wish to submit a brief of the Okanogan situation including that Forest refusal to follow the example of the adjoining Colville National Forest in correcting the San Poil errors.

Thank you for the opportunity to call to the attention of your Committee, this potential dangerous bureaucratic determination. We hope that you will be able to resolve it and to protect our small business position.

Sincerely yours,

IVAN K. LANDRETH, *President.*

The enclosed brief is being presented in behalf of the Landreth Timber Company located in Okanogan County in the northeastern portion of the State of Washington.

We who must depend on the supply of federal timber and the ability to successfully bid for such timber when it is made available are becoming increasingly aware each day of the importance of returning and protecting the small business fair share of the federal timber set-aside sale program. We are fully cognizant that for many small business ventures to survive among giant conglomerate corporations, we must be able to do many things more economically than the giant businesses and we must be able to obtain our proportionate share of the federal timber sales.

The small business set-aside sale program agreement between SBA and U.S. Forest Service was initiated to insure that a fair proportion of the federal timber sales are made available to small business. However, we are becoming disillusioned, not with the objectives of the Congressional act nor the intent of the small business-Forest Service agreement signed December 29, 1971, but rather by the agencies administration of the agreement. Specifically, we are at a loss in trying to follow the rationale used by the Forest Service in their computations of the volume determination when a firm changes size class from small to large during the current 5-year base share period.

To understand the problem and the reasons for disillusionment, we must review the records and reconstruct the schedule of events that pertains to San Poils Lumber Company's change in size classification from small to large. We will also point out the different directives given to both the U.S. Forest Service and the SBA field offices and the adverse effects relating to the immediate log supply to the small business because of these directives. The Forest Service computations on the Colville and Okanogan National Forests not only create a loss of the small business normal share of timber during this current 5-year period, but it will erode our small business share for the upcoming 5-year analysis period. The Colville National Forest, which has a common boundary with the Okanogan National Forest and administered by the same Regional Forester, has agreed to apply the correction to their analysis to protect the small business share, whereas the latest directive from the Washington Office of the Forest Service gave a different directive for a partial correction on the Okanogan National Forest.

The following are events as they began to develop on the Okanogan-Colville National Forests:

DECEMBER 1971

Landreth Timber Company, Inc. representatives asked officials of the Okanogan National Forest about the size class of San Poil Lumber Company.

JANUARY 1972

A representative of the SBA Field Office notified the Supervisor of the Okanogan National Forest that as a result of their investigations they had determined San Poil Lumber to be small business.

MAY 1972

San Poil Lumber Company purchased an open timber sale—11.7 MM on the Okanogan National Forest. During the same six-month period, San Poil Lumber Company purchased 7.26 MM board feet on the Colville National Forest. On the calculation sheet for the cumulative set-aside sale program

analysis, both the Okanogan and Colville Forests carried these San Poil purchased volume as small business purchases.

JULY-DECEMBER 1972

San Poil purchased no timber during this six-month period.

JANUARY-JUNE 1972

During this period, San Poil Lumber Company purchased 4.8 MM board feet on the Colville National Forest, which again was charged by the Forest officer to the small business share.

JULY 1973

The U.S. Forest Service started requiring bidder declaration as to small or large business size on the bid form.

NOVEMBER 1973

The Okanogan National Forest Supervisor's Office representatives received notification from San Poil indicating that San Poil was listing itself as large business.

JANUARY 1974

Both the Colville and Okanogan National Forest small business program triggered. SBA and the Forest Service were confronted with how to resolve the problem of protecting and assuring the continuation of the small business shares on each forest.

FEBRUARY 1974

SBA Field Office representatives made an informal investigation. San Poil advised SBA that through acquisition by North Pacific Lumber Company as of March 1, 1972, that San Poil had changed size class as of that date. Immediately representatives of the small industry and SBA sought to correct the error and to designate additional set-aside timber sale volumes that were due the small business sector.

The Colville National Forest corrected its records to reflect San Poil Lumber Company's size class change to large as of March 1, 1972 and credit the San Poil purchases as large rather than small.

Under the assumption that both the Colville and Okanogan National Forest were correcting this error, SBA representatives met with Forest Service Washington Office representatives and agreed to a procedure for handling such situations *in the future*.

MARCH 25, 1974

SBA Washington Office, by a memo to "PACS", signed by Mr. Van Arsdale, advised all field forestry specialists as follows:

"3. Correction in volume due to retroactive size change of concerns

"Occasionally a concern is found to have changed size two or three periods before the current review period, and Government timber purchases by that firm have not been credited correctly. In order to be consistent in the future, SBA and the Forest Service have agreed that sales volume corrections will be made for the current review period data that has not been calculated, but volume credited in previous periods will not be changed. The small business share is thus protected for the future and numerous corrections in calculations are avoided. If set-asides have not been triggered for the period following corrections, your professional judgment is required to determine need of small business set-asides."

It should be noted that the San Poil reclassification and corrections were not a part of SBA instruction, as the instructions specifically state . . . "in the future. . ."

APRIL 10, 1974

Mr. Robert Gillespie, Washington Office, Forest Service telephoned Mr. Lou Gable, Forest Service Regional Office, Portland, regarding the proper way

to handle the San Poil situation whereupon Mr. Gable telephoned Mr. McIlhenny of the Okanogan National Forest, giving him Mr. Gillespie's telephone instructions. Mr. McIlhenny's note regarding this conversation is as follows:

"McIlhenny talked with Gabel on the meeting the W.O. Forest had with the W.O. SBA.

"Agreement was reached that the Okanogan would trigger the SBA program for the 6-month period January-June, 1974, that we would satisfy the Share plus the deficit created in the July-December, 1973 period. After this the program would trigger on its own merit.

"We would not be required to make up the retroactive deficit prior to July, 1973.

J.K.M."

JULY 1974

The Colville National Forest switched their previous position, which had been to correct the San Poil purchases, and refused to make corrections.

AUGUST 6, 1974

After a July 20 meeting with the small business industry, representatives of the Colville and Okanogan National Forests, Representative Thomas Foley's office scheduled a meeting in Washington, D.C. requesting representatives of both Forest Service and SBA Washington Office and a representative of the Western Forest Industries Association to review and resolve the apparent differences.

AUGUST 8, 1974

Mr. Worthington's letter to the Regional Forester, R-6, Subject: Small Business Program Okanogan-Colville (attachment No. 1) restating the Forest Service understanding of the agreement between SBA Washington Office and Forest Service Washington Office on recalculation of the analysis. This letter also instructs the Colville National Forest to correct the San Poil purchases from small to large, but refuses to correct the Okanogan National Forest records for the San Poil purchases.

IN SUMMARY

It is becoming apparent to us that we are becoming involved in a difference of opinion between both the U.S. Forest Service and the SBA on how the recomputation should be adjusted to compensate small business for their share of the federal timber supply that was purchased by San Poil Lumber Company in the Okanogan and Colville National Forests. The Forest Service adjustment of San Poil's timber purchases calculation on the Colville National Forest to protect the small business share and the partial adjustment on the Okanogan National Forest is unrealistic.

Also, both the SBA and the Forest Service Washington Office have instructed their field offices differently regarding the correcting of this San Poil error. Small business's share loss should be made up. According to the Forest Service telephone instructions from Mr. Gillespie to the Regional Office, it need not be made up. According to Mr. Worthington's memo of April 22, 1974, to Regional Foresters, Ref. 2430, Subject: Small Business Program, Policy and Problems, 1974, his instructions agree with SBA's instructions regarding the correction of San Poil's purchases, and gave further instructions for similar cases . . . "in the future".

Mr. Worthington's latest directive of August 8, 1974, again gave directions to the Regional Forester stating that the Colville will be corrected, but the Okanogan National Forest would only be partially corrected.

The Forest Service/SBA agreement reproduced in the Forest Service Manual 2431.19-1, 2 and 3; February, 1973, Amendment #67 4a, states:

"A base average share for small business shall be established for each National Forest, or significant marketing area, by comparing the small business purchases to total sales therefrom for a 5-year period. The base shall be recomputed on a 5-year history, ordinarily at 5-year intervals, provided that the recomputed base shall not be less than half the initial base share. Recomputation will be based on size of the firm at the time of each timber purchase during the computation period."

The Forest Service Manual further states in 2431.15-3, October, 1972; Amendment #72:

"Ordinarily the base average share will be recomputed at 5-year intervals with the next period coverage calendar years 1971-1975. In recomputing the base average share during the next 5-year period, the same principles shall be sued. For example, purchases by a firm changing size status from small to large prior to January 1, 1971, will be counted as a large business and those changing from small to large after that date until the end of the 5-year period will be counted as the size class when the sale was purchased."

The loss of our base share is the other concern becoming readily apparent if the Regional Foresters accept Mr. Worthington's August 8, 1974 directive, and evidently they have, and is followed by the Okanogan National Forest.

The directive in Mr. Worthington's letter of August 8, 1974 instructs the Okanogan National Forest as follows:

"On March 4, 1974, this situation was discussed with the Washington Office SBA representatives. It was agreed between the two agencies, that the San Poil purchases of the last half of CY 1973 (when the size change became known) would be credited to large business. It was agreed that the purchases on the Okanogan prior to that date would not be reccredited."

It appears to us that a conflict would arise between the Forest Service Manual 2431.19-1, 2 and 3, February, 1972, Amendment #67 and 2431.15-3, October, 1972, Amendment #72, which clearly points out that "For example, purchases by a firm changing size status from small to large prior to January 1, 1971, will be counted as a large business and those changing from small to large after that date until the end of the 5-year period will be counted as the size class when the sale was purchased."

The federal timber purchases between March 1972 and July 1, 1973, according to Mr. Worthington's memo, would be credited to small when in fact San Poil was large. However, the manual specifically states that this volume for computation of the base share *will be counted as a size class when the sale was purchased*. Therefore, if the National Forests abide by this latest directive, we, as small business, would not only lose our past share of volume during the period March, 1972 to July, 1973, but we would also lose our base share of the computation for the upcoming 5-year analysis period. It is our understanding that the Forest Service Manual is the binding procedure for recalculation and not some special arrangement worked out by representatives of the Forest Service and SBA. Only when the arrangement becomes a part of the Forest Service Manual is the present procedure on share recalculation in 1976 revised.

Small business firms in the area of the Okanogan National Forest request that the additional 12.8 million of shorted small business volume be designated set-aside this six months as well as the small business's normal share (9.3 MM) this period, making a total of 22.1 MM needed to make small business whole. This 22.1 MM set-aside program will redress the small business/large business balance of timber purchases on the Okanogan National Forest.

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,

August 8, 1974.

Reply to: 2430 Commercial Timber Sales.

Subject: Small Business Program, Okanogan-Colville.

To: Regional Forester, R-6.

This will confirm our telephone conversation with your Division of Timber Management of this date.

On February 6, 1974, this office became aware that the San Poil Lumber Company purchases of timber on the above forests had been credited to small business rather than large, because of a previous size determination by SBA. The purchases in question dated back to early 1972. The Okanogan Forest and your office requested authority to not change the past analysis record. We also discovered the Colville Forest had already recomputed their 6 month analysis record, at the request of SBA, reflecting a size correction.

On March 4, 1974, this situation was discussed with the Washington Office SBA representatives. It was agreed between the two agencies, that the San

Poil purchases of the last half of CY 1973 (when the size change became known) would be credited to large business. It was agreed that the purchases on the Okanogan prior to that date would not be recredited. It was also agreed that since the Colville had already made the recalculation, they would not be asked to change again to be in agreement with the Okanogan. One of the main reasons it was agreed not to request either forest to make a change, was that both forests have announced their sale program to industry. Both also had approved set-aside sales for the first half of CY 1974 based on the Okanogan not correcting and the Colville correcting their summaries.

Recently, the Colville again changed their summary to be in accord with the Okanogan. Because of our commitment to and agreement with SBA and both Forest Service Regional Offices that we would not make a change on either forest, we believe it best to stick with our early 1974 decision.

It is our understanding that you would have no serious objection to revising the Colville 6 month summaries back to their previous status of February 1974.

Therefore, we and the Washington Office representatives of SBA reaffirm our position of February 1974, that the Okanogan analysis not be revised and that the Colville revision of February 1974 be retained.

In this way the total volume involved with the San Poil size change is only about 12 MM feet.

R. E. WORTHINGTON,
Director of Timber Management.

BLUE MOUNTAIN FOREST PRODUCTS, INC.,
Pendleton, Oreg., August 16, 1974.

Senator ALLAN CRANSTON,
*Chairman, Small Business Subcommittee,
Committee on Banking, Housing and Urban Affairs,
Washington, D.C.*

DEAR SENATOR CRANSTON: We have a sawmill located at Long Creek, Oregon and are dependent for timber to operate this mill from the Malheur National Forest. We are a small business dependent on reasonably small Forest Service timber sale offerings. Unless something is done to correct the current situation on the Malheur National Forest the small business sector in our area is severely threatened. The problem is basically Forest Service generated.

I am enclosing two documents that I believe explain our situation. The first is a letter to the Malheur National Forest Supervisor, Al Oard, from Mr. Wayne Gaskins of the Western Forest Industries Associations. The second is a recent public notice from the Forest Service regarding a proposed timber sale of huge proportions.

Your help and assistance of your committee is sorely needed if we are to survive.

Sincerely,

BRUCE A. MALCOLM, *President.*

[Editors Note: The information received from Mr. Malcolm had already been inserted in the record by Mr. Fossum (see p. 143).]

STATEMENT BY SMOKEY OLSEN, TIMBER MANAGER, ASTORIA PLYWOOD CORP.

Mr. Chairman my name is Smokey Olsen, timber manager for Astoria Plywood Corporation, a worker owned co-op plywood plant at Astoria, Oregon. Our firm employs 300 people.

My comments are the result of my experience in southwestern Washington and northern Oregon operating on the Mt. Hood and Gifford Pinchot National Forests. Our firm is 90% dependent on National Forest timber for our raw material.

There are four major problem areas that need attention to make the set-aside program more effective and helpful to small business.

1. First, there should be consistency in the interpretation of the regulations among the different regions. One example of inconsistency is the manner in

which pulpwood is being handled. Generally, it is considered to be wholly outside the program because it can only be consumed by big business, it has been so excluded in the South. However, a number of Western regions have been including pulpwood in the timber offered for sale, and seeking to include pulpwood in computing the small business share. This should be stopped.

Fair share calculation should be based on net merchantable volume of the National Forest annual allowable sell volume.

At the same time the 70%-30% concept on set asides which permits 30% of the volume to be delivered to large business should be eliminated.

2. Many nonmanufacturing concerns are presently competing for the small business share. One essential need is for proper certification and a policing system to insure that material purchased by these companies is not being completely funneled into the big business community through frequent transfers of this volume, and a penalty system should be adopted to ensure compliance.

3. The process of selecting set-aside sales should be left entirely to the Small Business Administration in order to ensure that these sales are representative in quality, volume, operating area, and species.

One of the most flagrant examples of abuse of the set-aside sale selection process took place recently in the Gifford Pinchot National Forest in Washington. According to the calculated base share in this forest, the small business sector was entitled to purchase 137 million bd ft out of an allowable sell of 140 million bd ft but because some of this material was of utility grade and suited only for pulp use by large business, the small operators relinquished their right to purchase this volume of material with the expectation that it would be offered in "open" sale for large business bidding. According to regulations, this action would have triggered set-asides in the next 6 month period to allow the small business sector to catch up on their volume.

However, instead of offering the utility grade material in open sale, the Forest Service put up, in "open" sale, 24 million bd ft of high quality Douglas fir that was suitable for plywood manufacture.

To add insult to injury, the Forest Service then turned around and designated the already-rejected material as a small business set-aside. The small business operators of the area have now taken the matter to court in order to reverse what they see as a flagrant abuse of the intent of the SBA set-aside program. We believe it would be well if SBA and the Forest Service would initiate procedures to assure that such abuses are no longer tolerated.

4. With all the emphasis on the need for salvage type timber sales by Congress and The GAO and the severe mortality losses of 6 billion board feet annually the Forest Service has taken little or no action to recover this mortality through area salvage sales.

The Comptroller General of the United States report to Congress entitled, "More Usable Dead or Damaged Trees Should be Salvaged to Help Meet Timber Demand" dated October 5, 1973, has not been implemented in accordance with the Secretary of Agriculture's assurance that the Forest Service would; "Hold field officials accountable for meeting salvage sale plans and thereby provide incentives for them to use the most efficient and effective procedures."

I have included one copy of the GAO report with my prepared statement.

The above report indicates that 6 billion board feet of timber suitable in size and quality for manufacturing lumber and plywood dies each year. This is equivalent to about 50% of the total harvest of National Forest timber annually. This is enough timber to build 600,000 homes annually. Forest Service figures show that on National Forest lands in Washington, Oregon, and California, where 3.2 billion board feet of timber dies annually, only 10% is being salvaged.

We asked the Congress to urge the Forest Service to expedite the G.A.O. recommendations. This will help relieve raw material shortages, thus helping small businesses.

In closing I would like to state that the Small Business Administration and the timber sale set-aside program are vitally important to the survival of an independent small business forest products community.



REPORT TO THE CONGRESS

More Usable Dead Or Damaged Trees Should Be Salvaged To Help Meet Timber Demand

B-125053

Department of Agriculture
Department of the Interior

***BY THE COMPTROLLER GENERAL
OF THE UNITED STATES***

OCT. 5, 1973



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

XXXXXXXXXX

To the President of the Senate and the
Speaker of the House of Representatives

This is our report that, to help meet timber demand, more usable dead or damaged trees should be salvaged on Federal forest land administered by the Forest Service, Department of Agriculture, and the Bureau of Land Management, Department of the Interior.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretaries of Agriculture and the Interior.

Sincerely yours,

Comptroller General
of the United States

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ABBREVIATIONS

BLM	Bureau of Land Management
GAO	General Accounting Office

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

MORE USABLE DEAD OR DAMAGED TREES
SHOULD BE SALVAGED TO HELP MEET
TIMBER DEMAND
Department of Agriculture
Department of the Interior

XXXXXXXXXX

D I G E S T

WHY THE REVIEW WAS MADE

GAO wanted to find out whether two Federal agencies, which manage about 90 percent of the commercial forest land managed by the Federal Government, could do more to salvage usable timber.

Photos throughout the report illustrate various aspects of the salvage problem.

FINDINGS AND CONCLUSIONS

Only a small portion of trees killed or damaged annually by insects, diseases, fire, wind, and other elements on commercial forest land managed by Agriculture's Forest Service and Interior's Bureau of Land Management (BLM) are being salvaged.

Demand is growing for such wood products as lumber and plywood, especially in the housing industry. A shortage of timber is predicted also.

Although Forest Service and BLM policies place high priority on minimizing avoidable waste by harvesting usable dead or damaged timber, both agencies could more effectively use the salvageable timber on their lands.

The agencies could develop and use timber sale preparation, contracting, and contract administration procedures and practices tailored especially for promptly salvaging scattered timber which otherwise would be left to deteriorate. This would not necessarily interfere with the regular harvest of live timber.

Potential for improved Forest Service salvage program

According to Forest Service data, about 6 billion board feet of Forest Service sawtimber--timber suitable in size and quality for manufacturing lumber and plywood--dies each year. This is equivalent to about 50 percent of the total volume of timber harvested from Forest Service land in fiscal year 1972. (See p. 8.)

Only a small portion of the dead timber is salvaged. For example, Forest Service data showed that on its land in Oregon, Washington, and California, where 3.2 billion board feet of sawtimber is killed annually, only about 10 percent was harvested.

Some usable dead or damaged timber was not salvaged because of inaccessibility or environmental considerations. Large volumes, however, were not being salvaged,

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even though these problems did not apply. (See p. 9.)

Forest Service officials at a national forest in California estimated that 20 million board feet of usable dead timber could be harvested in that forest each year, compared with about 6 million board feet salvaged in 1972. Additional examples are included in the report. (See p. 9.)

The Forest Service usually obtained the salvage of dead or damaged timber with the regular harvest of live timber or through special salvage sales. However, it generally did not develop and carry out plans to salvage small, scattered volumes of such timber. (See p. 11.)

Under its sale preparation, contracting, and contract administration procedures and practices--designed primarily for competitive sale of relatively concentrated volumes of live timber--salvage sales generally required more manpower and funds per board foot than did regular sales.

Some Forest Service field offices had developed and used plans and simplified sale preparation, contracting, and contract administration procedures and practices tailored especially for salvaging dead or damaged timber. These procedures had timesaving features which allowed field managers to provide for the harvest of more dead timber than could have been harvested following regular procedures.

Forest Service field managers at one district in northern California estimated that using modified sale procedures had enabled them to annually sell an additional 2 million to 3 million board feet

of dead timber that normally would have been left to deteriorate. (See p. 15.)

The Forest Service has not directed all its field offices to take similar actions. Such direction is needed Service-wide to insure that all field offices provide for as much salvage as practicable without disrupting the regular harvest of live timber.

Some Forest Service field offices also used special contracts, such as negotiated contracts, to sell small quantities of dead or damaged timber. The law, however, limits the Forest Service's authority to negotiate contracts for selling timber to quantities having an appraised value of up to \$2,000. (See p. 19.)

The Forest Service estimated that, if this limitation were increased to \$10,000, an additional 20 million board feet of dead or damaged timber could be salvaged annually.

Legislation (H. R. 8509) to give the Forest Service this increased authority for both regular and salvage sales was introduced in the House of Representatives on June 7, 1973. (See p. 21.)

Potential for improved BLM salvage program

BLM estimated that about 280 million board feet of timber was killed each year on its land in western Oregon--where about 90 percent of its harvesting activities occur--and that, as of 1969, about 2.2 billion board feet of usable dead timber had accumulated on that land. (See p. 26.)

BLM estimated that about 35 percent of such timber was accessible and that it was salvaging about

98 million board feet a year. However, BLM field officials told GAO that additional volumes of accessible scattered dead trees could be harvested if additional personnel and funds were made available.

Although BLM had established and was implementing a planned program for salvaging dead or damaged timber, GAO believes that an opportunity may exist for BLM to salvage more such timber--within existing funding and manpower levels--by using sale preparation, contracting, and contract administration procedures and practices tailored especially for timber salvage. (See p. 26.)

RECOMMENDATIONS

The Forest Service should

- direct its field offices to develop and use (1) plans for salvaging the maximum feasible volume of scattered dead or damaged trees, (2) simplified sale preparation and contract administration procedures which would lower the cost of and reduce the time for salvaging scattered dead or damaged timber, and (3) special contracts and contract provisions which would help insure the prompt removal of scattered dead or damaged trees and
- evaluate the progress of its field offices in developing and carrying out such plans and special procedures and insure that the most effective procedures are applied whenever appropriate. (See p. 23.)

BLM should

- consider using, to the extent

feasible, timber sale preparation, contracting, and contract administration procedures and practices similar to those that have been or will be developed by the Forest Service, tailored especially for salvaging scattered volumes of timber. (See p. 26.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

Agriculture stated that this report should be helpful in its efforts to reduce the amount of unused material on forest land. It agreed that more timber could be salvaged systematically and cited actions that it would take to implement GAO's recommendations. (See p. 24.)

Interior said it would continue to seek methods to harvest dead and dying timber to the maximum extent possible and would consider using sale preparation, contracting, and contract administration procedures tailored especially for timber salvage when the Forest Service develops them successfully. (See p. 27.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

The Forest Service and BLM would be able to promptly salvage more usable dead or damaged trees and thus help meet the Nation's timber demand if:

- The Congress acted favorably on House bill 8509 to increase the Forest Service's authority to sell timber without advertisement.
- The actions recommended in this report were implemented.

CHAPTER 1INTRODUCTION

The Forest Service, Department of Agriculture, and the Bureau of Land Management (BLM), Department of the Interior, manage about 114 million acres, or about 90 percent, of the total commercial forest land managed by all Federal agencies. Of the 114 million acres, the Forest Service manages about 80 percent and BLM manages about 20 percent. This land contains about 40 percent of the Nation's commercial timber.

The agencies sell timber under contract to thousands of purchasers, ranging from large corporations to individuals, which are responsible for harvesting and removing the timber from the forests. The agencies' fiscal year 1972 gross receipts from timber sales were \$413.5 million.

Each year insects, diseases, fire, wind, and other elements kill or damage many trees on Forest Service and BLM land. According to Forest Service officials, insects and diseases generally affect overmature trees more severely than younger trees. Older trees, however, generally have higher values because of their quality and volume. If promptly salvaged, dead or damaged trees,¹ particularly older ones, are as good as or better than some live trees for making lumber, plywood, and other products.

Because of the growing demand for wood products, especially lumber and plywood for housing construction, we made this review to evaluate whether Forest Service and BLM policies, procedures, and practices were adequate to minimize avoidable waste of usable timber by promptly salvaging dead or damaged trees.

¹Damaged trees are live trees that should be salvaged to avoid loss of usable wood.

LEGISLATIVE OBJECTIVES AND REQUIREMENTS

Federal laws¹ require the agencies to manage their land for a sustained high-level output of the resources--timber, range, recreation, watershed, fish, and wildlife--to meet public demands without impairing the land's productivity. The agencies' forestry activities are also subject to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) for promoting safe, healthful, productive, and esthetically and culturally pleasing surroundings.

TIMBER SUPPLY

The President's Cabinet Committee Task Force on Softwood Lumber and Plywood reported in 1970 that the growing demand for timber in this country could produce a shortage by 1974, which could constrain achieving the Nation's housing goals unless effective programs were developed to expand timber availability. In response the President directed the Secretaries of Agriculture and the Interior to formulate plans that would permit an increased harvest of softwood timber consistent with sustained-yield and environmental-quality objectives.

The Forest Service has indicated that its lands' harvest level--11.7 billion board feet in fiscal year 1972--can be increased to about 20 billion board feet by the year 2000 if sufficient funds and manpower are available on a timely basis to carry out more intensive forestry practices designed to increase the timber growth rate. BLM has indicated that it intends to continue harvesting at about its 1972 level--1.5 billion board feet--throughout the decade.

The Congress and the public have been concerned about whether the timber output from federally managed lands can be increased or even continued at current levels without depleting the timber supply and sacrificing multiple-use and

¹The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528) governs the management of Forest Service land. The act of August 28, 1937 (43 U.S.C. 1181a), and the act of July 31, 1947 (30 U.S.C. 601), govern the management of BLM lands. In managing its land, BLM also follows multiple-use and sustained-yield objectives.

environmental-quality objectives. Officials in four Forest Service regions have indicated that the Forest Service may have difficulty in increasing the future timber harvest because of acreage reductions in commercial forest land due to growing demands to use such land for recreation, wilderness, and other purposes.

According to the 1970 task force report, a timber supply shortage could occur even if the Forest Service increased its harvest level. The report stated, in part, that:

"Even if the Forest Service is authorized to move ahead promptly with a program for greater intensity of management, with due regard to environmental objectives, the increase in the timber harvest from National forests for 1974 would not be much over 2 billion board feet. An additional 6 billion board feet might be obtained from private holdings and larger net imports. This would still leave an apparent gap of about 3 billion board feet, or more than 5 percent of indicated demand. If these forecasts are correct, the gap would presumably be closed with higher prices, accompanied by accelerated substitution, and possibly a shortfall in the number of units built. While these estimates cannot be precise, it is evident that the balance will be at best precarious."

Because of the projected shortage, it is important that the agencies make every effort to minimize avoidable waste of usable dead or damaged timber.

CHAPTER 2POTENTIAL FOR IMPROVED FORESTSERVICE SALVAGE PROGRAMLARGE VOLUMES OF ACCESSIBLE DEAD
TIMBER NOT SALVAGED

The Forest Service could more effectively use the timber supply on its land by promptly salvaging more usable dead or damaged trees. Because deterioration begins soon after a tree is killed or damaged, prompt salvage is essential to avoid waste. (See picture 1.) The Forest Service manual states that, to meet the responsibility of utilizing national forest timber without avoidable waste, an obvious responsibility is to harvest usable dead or deteriorating timber first.

On the basis of a study completed in 1972, the Forest Service estimated that insects, diseases, fire, wind, and other elements kill about 15 billion board feet of sawtimber each year on Federal, State, and private forest land. The study showed that about 40 percent of this total, or 6 billion board feet, was killed on Forest Service land. This is equivalent to about 50 percent of the total volume of timber harvested on Forest Service land in fiscal year 1972. On the basis that it takes 10,000 board feet to construct a typical one-family house, this 6 billion board feet, if harvested, would provide enough lumber to build 600,000 houses each year.

Because certain tree species remain usable for some time after they are killed, the volume of usable dead timber in the forests at any time is substantially greater than the annual volume killed. For example, the Forest Service estimated that, as of January 1970, about 50 billion board feet of usable dead sawtimber had accumulated on Federal, State, and private land. According to Forest Service data, about 25 percent of that total was on Forest Service land in Oregon, Washington, and California.

The Forest Service study showed that the annual volume of dead sawtimber salvaged on Federal, State, and private land was equivalent to only about 6 percent of the volume



1. The outer layers of this log deteriorated within 2 years after the tree died. Forest Service, California region.

killed each year. The study did not show how much of this salvage was on Forest Service land nationwide. Forest Service data showed, however, that on its land in Oregon, Washington, and California, where about 3.2 billion board feet of sawtimber is killed annually, a total of only about 340 million board feet of dead sawtimber was harvested each year. Forest Service headquarters officials told us that this estimate probably excluded substantial volumes of dead timber harvested along with live timber in regular sales but that they did not know how much.

The estimated volumes of dead sawtimber did not include (1) usable dead trees smaller than the size normally considered as sawtimber or (2) damaged live trees in need of salvaging. The dead or damaged sawtimber that is salvaged is usually harvested with regular sales of live timber or through special salvage sales. The rest remains on the land until it deteriorates. Although the data in our report primarily relates to the salvage of dead sawtimber, our findings, conclusions, and recommendations apply equally to damaged live trees that are usable and should be salvaged.

Some of the usable dead timber--agency records did not show how much--was not salvaged because of (1) inaccessibility or (2) steep slopes, highly erodible soils, or other environmental and forest-use considerations. Information from several field locations, however, indicated that large volumes of usable dead trees were not being salvaged, even though these problems did not apply. Some examples follow.

--Officials at a national forest in California estimated that 20 million board feet of usable dead timber could be harvested in that forest each year.

(Some of this material is shown in picture 2.) The officials estimated that they salvaged 6 million board feet in 1972.

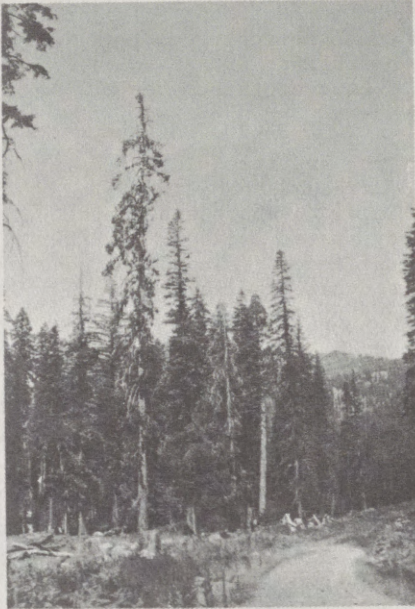
--Officials at a national forest in Oregon--where about 70 million board feet of dead timber has been harvested each year--estimated that an additional 20 million board feet of scattered dead timber could be harvested annually in that forest. (Some of this material is shown in picture 3.)

--An official at a national forest in Idaho told us that the amount of dead and damaged timber salvaged annually from that forest could be increased from 2.5 million to 12 million board feet if the salvage program were intensified. (Some of this material is shown in picture 4.)

Field officials told us that the scattered locations of individual or small groups of dead trees (see picture 5) made it difficult and time consuming to prepare and administer salvage sale contracts. They stated further that this problem made it difficult to include enough volume in a contract to offset harvesting costs and make the sale attractive to potential buyers.

According to the officials, under existing sale preparation, contracting, and contract administration procedures and practices--designed primarily for the competitive sale of relatively large concentrated volumes of live timber--developing and carrying out plans for increasing the salvage of small, scattered volumes of dead or damaged sawtimber would require more manpower and funds than are available.

As discussed in the following section, we believe the Forest Service can take certain actions to help overcome these problems.



2. Discolored or defoliated dead trees on Forest Service land in California.



3. Discolored or defoliated dead trees on Forest Service land in Oregon.

(GAO Photographs)

4. A group of dead trees on Forest Service land in Idaho.



5. Scattered dead trees on Forest Service land in California.

(GAO Photographs)

OPPORTUNITIES FOR MORE EFFECTIVELY USING
AVAILABLE MANPOWER AND FUNDS TO INCREASE
SALVAGE OF SCATTERED TREES

Although some field locations had developed plans and special procedures and practices for salvaging scattered dead timber with available manpower and funds, the Forest Service had not directed all its field offices to develop and use

- adequate plans for salvaging the maximum feasible volume of scattered dead or damaged trees,
- simplified sale preparation and contract administration procedures which would lower the cost of and reduce the time for salvaging dead or damaged timber, and
- special contracts and contract provisions which would help insure the prompt removal of dead or damaged trees.

Planning for salvage sales could be improved

The Forest Service generally has not developed specific periodic plans to salvage dead trees before they deteriorate. Its long-range and annual planning for timber sales is designed primarily for mature and overmature trees, which may or may not include some scattered dead trees in the sale areas. Officials told us, however, that large numbers of dead trees are scattered over areas where no sales are planned before they deteriorate.

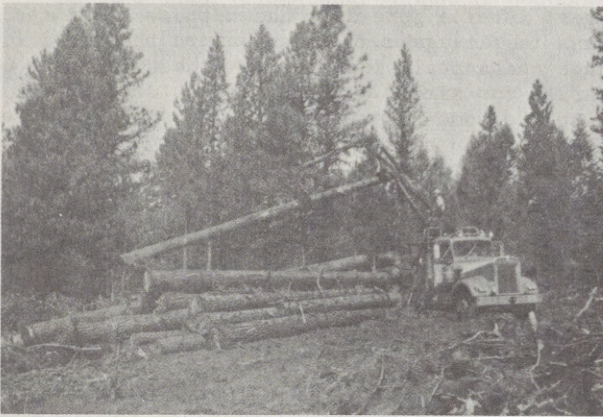
The field locations we visited salvaged some accessible scattered dead trees not included in planned live timber sale areas, but such efforts usually were not based on definite plans and were sporadic. For example, officials of one national forest in the Intermountain Region initiated a systematic salvage program during the 1973 season in two of the forest's ranger districts.¹ The officials estimated

¹The Forest Service's 155 national forests are divided into 721 ranger districts.

that, if the program were established forestwide, the forest's annual salvage harvest should increase from 2.5 million to about 12 million board feet. A forest official told us that the other districts in that forest would implement the program during the next year, if the first two districts encountered no serious problems.

The salvage program involves (1) subdividing the forest into areas large enough to include sufficient volumes of scattered dead or damaged timber to make it attractive to potential buyers, (2) assigning a harvesting priority to each area, and (3) carrying out, on the basis of the priorities, a continuous program for harvesting scattered dead or damaged trees.

Several Forest Service field managers we contacted stated that a planned, continuous timber salvage program is needed to insure that the maximum feasible volume of this material is harvested. Some representatives of timber industry firms told us that, without such a continuous program, they would be unable to recover their investment in equipment needed for salvage operations. (See picture 6.)



6. This self-loading logging truck is used in harvesting dead timber to add mobility to the logging operation.

(GAO Photograph)

Sale preparation and contract administration procedures could be improved

Existing sale preparation and contract administration procedures are designed primarily for competitively selling relatively concentrated volumes of live timber. They involve extensive fieldwork and officework, including:

- Making preliminary surveys to find and delineate sale areas; to consider transportation systems, logging methods, and multiple-use needs; to assess the economic feasibility of the sale; and to make rough estimates of the timber volume and the costs of removing and processing it.
- Preparing environmental analyses or environmental statements.
- Designating the timber to be included in the sale.
- Cruising to make more precise estimates of volumes and values and doing such other preliminary work as determining the types of logging methods to be used, the level of fire protection needed, and the level of restoration work needed after harvesting.
- Analyzing and consolidating the preliminary survey and cruise information and preparing the appraisal and timber sale contract documents.
- Administering the contract, including field checking for compliance with contract requirements and measuring the volume of timber removed from the sale area.

Several field managers who had made salvage sales told us that they had generally followed the same sale preparation and administration procedures for salvaging individual trees or small groups of trees as for harvesting a large number of trees concentrated in a relatively small area. They said that, because most salvage material was scattered and low in volume per acre, salvage sales required about twice the amount of time per board foot to prepare and administer than regular sales required, and they were therefore unable to increase the salvage of dead timber without additional funds and personnel.

According to several field managers, the additional time was required mainly for the cruising, marking, and contract administration functions, because these involved traveling through the sale areas. This difference was reflected in cost information the Forest Service reported during Senate and House appropriation hearings for fiscal year 1973. The information showed that for fiscal year 1972 the cost of preparing and administering regular harvest sales averaged \$4.41 per thousand board feet as compared to \$7.80 for thinning¹ and salvage sales.

Some field managers we contacted said that, if they followed existing procedures and concentrated their resources on harvesting more dead timber, they would not be able to prepare enough timber sales to meet their overall harvest goals. As a result, many scattered dead trees are left to deteriorate.

Field managers at some locations had either tested, or initiated on a regular basis, special timber sale preparation and administration procedures designed specifically for salvaging scattered dead timber. We also noted that a State timber management agency used special sale procedures for salvage sales. These special procedures had timesaving features which allowed the field managers to provide for the harvest of more dead timber than could have been harvested following the regular procedures.

For example, one national forest in the Pacific Northwest Region awarded a contract for salvaging an estimated 2 million board feet of widely scattered dead timber in one district. The contract covered 8,075 acres, which is considerably larger than the normal sale area. The regional office approved the sale as a test of simplified procedures to facilitate covering larger areas. Shortened cruising and appraisal procedures were used. The types of trees to be cut were designated in the contract, but individual trees were not marked. All timber removed from the sale area was to be measured.

¹Thinning is cutting selected trees in immature stands to allow the better quality trees to grow at an increased rate.

To help insure that the sale was awarded to a qualified contractor, each bidder was required to submit a certification and signed affidavits, from three reputable persons with forest management responsibility, that the bidder had performed satisfactorily on previous salvage sales. This requirement was intended to reduce the potential for contract administration problems.

The sale also required that the contractor (1) go through the entire sale area each year of the 2-year sale period, cutting dead trees meeting the contract specifications, and (2) remove from that area all dead trees containing specified net volumes and located within certain distances from a road.

In permitting simplified procedures to be used in this test case, the acting regional forester requested comments from the forest supervisor on their success and possible use in future salvage sales. At the time of our fieldwork, operations under the contract were in process.

The field managers who prepared and were administering the sale told us that the simplified procedures greatly reduced sale preparation time and that they had not experienced any increased contract administration problems. The field managers estimated that, if all potential sales of this type were made in that district, the salvage of dead trees outside the live timber sale areas could be increased from 2 million to 8 million board feet annually.

Forest Service field managers at one district in northern California also used modified sale preparation procedures to reduce the time required to prepare salvage sales. They estimated that the changes had enabled them to sell an additional 2 million to 3 million board feet annually of dead timber that normally would have been left to deteriorate to a worthless condition. (See picture 7.)



7. Truckload of timber removed from a salvage sale area set up with modified preparation procedures. Forest Service, California Region.

(GAO Photograph)

The modified procedures included making a rough estimate of the volume rather than a detailed cruise. The contracts specified the types of trees to be cut but eliminated the marking of individual trees. In addition, the sales covered large areas up to 20,000 acres to include enough volume to attract purchasers. The district's field managers told us that precise estimates of volume before harvesting were not necessary because the volume was measured as the timber was removed from the sale areas.

In another national forest in northern California, officials at one of the forest's six districts had established a 3-year salvage sale program. Under this program, the district had adopted several timesaving features, including the use of (1) rough volume estimates, small sample cruises, and volume data from completed nearby sales rather than detailed cruises, (2) a description in the contract of the types of timber to be harvested rather than individual tree marking, and (3) a standard appraisal, based on value and cost experience from past salvage sales, rather than an individual appraisal for each sale.

The field managers also determined what types of logging equipment the operators in their area were using so that sales could be planned accordingly. They obtained information on the cost and feasibility of using various types of equipment, such as mobile cable yarders, which in some instances can extend the range of salvage logging opportunities farther from existing roads. This information was then disseminated to operators in the area attending agency-sponsored meetings.

A Washington State forestry official told us that he was able to significantly reduce the time required to prepare salvage sales on State forest land by (1) marking only the trees to be harvested in a small sample unit of the sale area and leaving the remainder for the purchaser to mark according to State marking rules and (2) reducing the amount of cruise data gathered to about one-fourth of that gathered on the State's regular timber sales. The official said that sales under these procedures had resulted in the timber's being harvested satisfactorily and timely.

Local Forest Service officials initiated the special procedures tested or adopted in the above Forest Service locations. Most of the Forest Service field locations we visited or contacted had not initiated such actions, and the Forest Service had not directed all field offices to develop and use special procedures tailored for prompt and efficient salvage of scattered dead trees.

Special contracts and contract provisions could be used

Forest Service timber sale contracts usually provide for selling standing trees to the highest qualified bidder at not less than their appraised value. These contracts often do not promote the prompt salvage of dead timber because:

- The volume of usable dead timber in a potential sale area may not provide sufficient revenue to enable potential purchasers to offset the cost of cutting it, removing it from the forest, and converting it into wood products.
- The location and condition of dead or damaged timber may make it impracticable to obtain competition for a sale because of the need for prompt removal.

In the first case, service contracts under which loggers are paid to cut and remove the timber may be needed when the timber cannot be sold but would be wasted if not harvested. In the second case, a negotiated salvage sale may be desirable, but the law limits the Forest Service's authority to negotiate contracts.

Also, in some cases the Forest Service has had problems insuring that contractors cut the dead timber before it deteriorates because its contracts generally do not establish or provide for enforcing strict harvesting schedules. Such schedules and provisions for expedient actions if the contractor does not harvest on schedule could help insure timely harvesting.

Service contracts as an alternative

Several field managers told us that, in some instances, they had been unable to offer salvageable dead timber for sale because the small volume involved in individual tracts would not provide enough revenue for a prospective purchaser to recover costs. Some of the field managers told us that, in such instances, a service contract would be desirable; if necessary, a separate contract could be made with a user. This method might result in additional costs to the Government, but such costs could be offset by subsequent receipts from the sale of the timber and land management benefits,

such as greater environmental protection and improved productivity. Also, dead timber would be used instead of wasted.

Some large private timber companies use service contracts that enable them to harvest scattered dead timber on their land. For example, one company we visited contracted with loggers to remove dead timber from its land and transport it to a storage area. The timber was then processed in the company's plants or sold to another company. A company representative told us that, although the cost of using service contracts in such instances often exceeded the selling price of the timber, the company obtained the overall benefits of avoiding waste and improving the condition of its timberland.

In fiscal year 1971 the Forest Service's Pacific Northwest Region tested the feasibility of using service contracts for harvesting some dead timber to control insects and disease. The region awarded two service contracts to remove about 485,000 board feet of beetle-infested lodgepole pine. The purchasers were required to find and remove the infested trees. Under one contract, the purchaser was paid for the service and permitted to keep the logs; the other contract allowed the Forest Service to retain title to the logs. In the latter contract, the purchaser was required to haul the logs to either of two mills, which had agreed in advance to purchase them from the Forest Service.

Regional officials told us that these contracts were successful in salvaging usable dead trees and that they would like to use them in the future. One official said that the timber would have deteriorated if it had not been removed under these contracts. Another said that, although lack of funds limited the use of more service contracts, he believed the overall land management and environmental benefits that would result from removing and using the dead timber would exceed the costs.

Negotiated contracts as an alternative

The Organic Administration Act of June 4, 1897 (30 Stat. 35), authorized the Forest Service to sell, without advertisement, quantities of timber having an appraised value of up to \$50. After several subsequent increases,

the act of May 27, 1952 (16 U.S.C. 476), raised this limit from \$500 to \$2,000. The Forest Service had not requested another increase since 1952.

The House report (H. Rept. 82-1852) on the bill enacted in 1952 recognized that selling small quantities of timber at its appraised value, without competitive bidding, promotes efficiency, expediency, and good governmental relationships. According to the report,

- the sale of small quantities of timber without the expense, time, and paperwork involved in advertising and receiving competitive bids is desirable,
- small negotiated sales helped in the orderly harvesting of national forest timber and benefited the local economy, and
- purchasers could act as independent contractors if the timber sold this way was sufficient in quantity to give them a reasonable amount of income.

We believe these views are particularly appropriate for scattered volumes of usable dead or damaged trees which will be wasted unless harvested.

On the basis of the estimated average value (\$10 per thousand board feet) of national forest timber cut in 1951, the \$2,000 limit would have allowed 200,000 board feet on the average to be sold without advertising. From 1951 through fiscal year 1972, the estimated average value of sawtimber rose to \$28 per thousand board feet. Accordingly, the \$2,000 limit effectively restricted the volume that a negotiated contract could cover in 1972 to 71,000 board feet on the average.

Forest Service headquarters officials told us that, because of the increasing timber values, the limit needed to be increased to allow a greater volume of timber to be sold without advertisement.

Several of the field managers we contacted had often sold small quantities of dead timber within the \$2,000 limit without advertising. They told us, however, that more salvage sales could be made if the limit were increased. The Forest Service estimates that, if the limit were increased to

\$10,000, an additional 20 million board feet annually could be salvaged.

BLM has authority under the 1947 act cited on page 6 and implementing regulations to negotiate timber sales (1) with no volume limit if it would be impracticable to obtain competition for the sale or (2) up to 250,000 board feet if it would be in the public interest to do so.

One BLM timber manager had used this authority to sell 55,000 board feet of sawtimber and 100,000 board feet of cull log chip material with an appraised price of about \$4,000. This manager said that the sale was negotiated with a particular operator because BLM felt that the operator was capable and willing to take the extreme care necessary to remove the timber with minimum damage to the existing road. He believed the value of the material was not worth the risk of selling it by competitive bidding and having an unsatisfactory operator harvesting the timber and possibly damaging the road. This was not a salvage sale, but Forest Service field officials told us similar conditions existed on some national forest land containing dead or damaged trees and that negotiated sales would be preferable in such cases.

In April 1973 we suggested to the Department of Agriculture that the Forest Service develop and submit to the Congress a legislative proposal to (1) increase the dollar limit on the value of salvage timber that could be sold without advertisement or (2) establish a provision specifying the volume of salvage timber that could be sold without advertisement if competitive bidding were not appropriate.

The Forest Service subsequently drafted a bill to increase its authority to make both regular and salvage timber sales of up to \$10,000 in appraised value without advertising. The bill (H.R. 8509) was introduced in the House of Representatives on June 7, 1973, and referred to the Committee on Agriculture for further consideration.

The Forest Service also told us that it would seek legislative authority to use a shorter advertising period than the 30 days now required by the 1897 act so that it could salvage timber more promptly.

Strict harvesting schedules needed

The Forest Service generally did not include in its contracts for harvesting dead and damaged timber strict harvesting schedules and provisions for prompt enforcement actions when the purchaser delayed the harvest. Such schedules and provisions are needed to help insure that purchasers harvest dead or damaged timber before it deteriorates and loses value.

For example, in 1968 one national forest in the Pacific Northwest Region made four sales of timber--about 12 million board feet in total--to one purchaser to harvest trees killed or damaged by beetles. The sales were made to harvest the timber before it deteriorated and to curtail the spread of beetles to live trees.

All four contracts provided that, unless the timber was harvested by April 1970, the purchaser would be required to pay (1) an additional 25 percent of the bid price as liquidated damages and (2) an amount equal to the value of the wood lost through deterioration due to the delay.

The contracts, however, did not establish strict cutting schedules to insure that harvesting was started promptly and continued systematically throughout the contract period. Therefore, the Forest Service did not have a basis for taking prompt alternative actions, such as terminating the contract and negotiating with another purchaser to have the timber harvested before it deteriorated, if the purchaser was delayed.

As of November 1972, only about 2.5 million of the 12 million board feet had been removed. A Forest Service official stated that about 20 percent of the total timber sale volume had deteriorated and become unusable since the sales were made. Another Forest Service official said that the spread of insects was not curtailed.

Although the contract provided for the contractor to pay the Government for the value of the wood lost through deterioration, that wood was wasted.

CONCLUSIONS

The Forest Service should provide for salvaging as much dead or damaged timber as is practicable without interfering with the regular harvest of live timber. To do this, it needs to develop continuous salvage plans and develop and use timber sale preparation, contracting, and contract administration procedures and practices tailored especially for the prompt salvage of scattered volumes of timber which would otherwise be left to deteriorate. The objective of such modified procedures should be to reduce the manpower and funds needed for each salvage sale.

The actions of some Forest Service field officials to develop plans and special procedures for salvaging dead or damaged timber appear to have accomplished more salvage than would have been otherwise possible with existing manpower and funds. The Forest Service should direct all its field offices to take similar actions when appropriate, although the specific procedures may have to vary among field locations.

The legislation pending before the 93d Congress to increase the volume of timber that can be sold without advertising should, if enacted, enable the Forest Service to sell greater volumes of dead or damaged timber (1) without the expense, time, and paperwork involved in advertising and receiving competitive bids and (2) when competitive bidding is not appropriate.

RECOMMENDATIONS TO THE SECRETARY OF AGRICULTURE

We recommend that the Forest Service

- direct its field offices to develop and use (1) plans for salvaging the maximum feasible volume of scattered dead or damaged trees, (2) simplified sale preparation and contract administration procedures which would lower the cost of and reduce the time for salvaging scattered dead or damaged timber, and (3) special contracts and contract provisions which would help insure the prompt removal of scattered dead or damaged trees and

- evaluate the progress of its field offices in developing and carrying out such plans and special procedures and insure that the most effective procedures are applied whenever appropriate.

AGRICULTURE COMMENTS AND OUR EVALUATION

Agriculture (see app. I) stated that our report should be helpful in its efforts to reduce the amount of unused material on forest land. Although it stated that the salvage problem was not a simple one, Agriculture substantially agreed with our recommendations and cited actions that would be taken to implement them.

Agriculture said that salvage covered a wide range of variables in that timber values and sale preparation costs varied widely depending on tree species, size, volume, and/or location. It pointed out that these variables must be combined in acceptable sale procedures to permit offering timber promptly, with reasonable preparation costs, while protecting the public interest.

Agriculture agreed, however, that more timber could be salvaged systematically, although additional information and research was needed to accurately estimate the volume of dead or dying material that could be economically harvested in each Forest Service region. It said that substantial amounts of such material could not be used because of its location, lack of value, or damaged condition.

In response to our recommendations, Agriculture commented that the Forest Service would:

- Issue a national policy requiring each forest to develop and implement a salvage plan.
- Remind regional foresters of the flexibility they have in sale preparation and administration procedures.
- Compile and distribute to the regions a list of simplified procedures found to have been effective under certain conditions.

- Hold field officials accountable for meeting salvage sale plans and thereby provide incentives for them to use the most efficient and effective procedures.
- Evaluate these procedures during normal field inspections.

We believe that, if the above actions are implemented and if the Congress acts favorably on the proposed legislation (H.R. 8509) to increase the Forest Service's authority to make timber sales without advertising, more usable dead or damaged trees could be efficiently and effectively salvaged to help meet the Nation's timber demand.

CHAPTER 3POTENTIAL FOR IMPROVEDBLM SALVAGE PROGRAM

In its policies, BLM recognizes the need to prevent avoidable waste of timber and has established objectives to (1) promptly harvest timber damaged by storms, fires, insects, diseases, or other elements and (2) give highest possible priority to selling and removing salvage material.

In 1966, after studying the potential timber production from thinning and from dead timber salvage operations on its western Oregon land--where 90 percent of its harvesting activities occur--BLM established a salvage program with a planned annual harvest level. In July 1971 this level was set at 27.5 million board feet a year.

Officials of BLM's Oregon State office and several district offices in Oregon told us, however, that additional volumes of accessible scattered dead trees could be harvested if more personnel and funds were made available. For example, one district official estimated that his area could effectively use six more employees to find, sell, and administer sales for the harvest of scattered dead trees.

BLM has estimated that about 280 million board feet of timber is killed each year on its land in western Oregon and that, as of 1969, about 2.2 billion board feet of usable dead timber had accumulated on that land.

BLM headquarters officials estimated that about 35 percent of the total volume of dead timber--both newly killed and accumulated--on BLM land is accessible. They estimated that, under their current salvage and regular sales programs, they are harvesting about 98 million board feet of dead timber a year.

BLM personnel follow the same procedures and practices for salvaging scattered dead or damaged timber as they do for regular sales of relatively large concentrated volumes of live timber. Salvage sales generally require more time per unit of output to prepare and administer than regular sales because of the scattered locations and low volumes per acre of most salvage material.

Because of the volume of timber not being salvaged and BLM field officials' comments that they could salvage more timber if they had more personnel and funds, an opportunity may exist for BLM to salvage more dead or damaged timber--within existing funding and manpower levels--by using sale preparation, contracting, and contract administration procedures and practices tailored especially for timber salvage.

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

We recommend that BLM consider using, to the extent feasible, timber sale preparation, contracting, and contract administration procedures and practices, similar to those which have been or will be developed by the Forest Service, tailored especially for salvaging scattered volumes of timber.

INTERIOR COMMENTS

Interior (see app. II) stated that it recognized the importance of prompt salvage although BLM's policy to conserve maximum amounts of usable wood by promptly salvaging dead or dying trees had been restrained occasionally by economic, fiscal, and regulatory considerations. It stated that it would continue to seek methods to harvest dead and dying timber to the maximum extent possible within those constraints and would consider using sale preparation, contracting, and contract administration procedures tailored especially for timber salvage when they are developed successfully by the Forest Service.

CHAPTER 4SCOPE OF REVIEW

We reviewed (1) applicable legislation, (2) Forest Service and BLM policies, procedures, and practices in locating and salvaging trees killed or damaged by insects, diseases, fire, wind, and other elements, and (3) the agencies' pertinent records and reports. Also, we visited several areas, accessible by road, where dead timber was deteriorating.

We made our review at the Forest Service's experiment station and regional office in its Pacific Northwest Region; seven national forests in Oregon, Washington, Idaho, and California; BLM's Oregon State office and its five western Oregon district offices; and the two agencies' headquarters offices in Washington, D.C. More than 60 percent of the sawtimber killed annually on Forest Service land is found in the national forests in the four States we visited and about 90 percent of all BLM timber harvesting activities occur in western Oregon.

We obtained the views of (1) headquarters, regional, and local Forest Service and BLM officials, (2) representatives of several private timber associations and logging firms, and (3) an official of a State forestry department. Also, we discussed, with responsible representatives of several private timber companies, their procedures for harvesting dead trees.

APPENDIX I

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Washington, D. C. 20250

2400

JUN 21 1973

Mr. Richard J. Woods, Assistant Director
Resources and Economic Development Division
General Accounting Office
Washington, D.C. 20250



Dear Mr. Woods:

We have reviewed your draft report on "Actions Needed to Promptly Salvage More Usable Dead or Damaged Trees to Help Meet Timber Demand." The Report stresses the large volume of salvage material developed each year and the need to salvage as much as possible. Your report should be helpful in our efforts to reduce the amount of unused material.

We do believe your report oversimplifies the salvage problem. It should stress that salvage covers a wide range of variables. Sale values range from low to high depending on tree species, tree size and volume. Sale preparation costs range from low to high depending on volume and area. Some tree species deteriorate more rapidly than others. We must combine these variables in acceptable sale procedures to permit offering timber in a timely fashion, with reasonable preparation costs, and at the same time protect the public interest. Your report should also point out that substantial amounts of dead and dying material cannot be used because of isolated locations, lack of value or length of time that causal agents (ie. insects, disease) have affected the trees.

We agree that we can probably salvage more timber on a systematic basis. Figures on salvage material harvested are extremely hard to substantiate because of differing opinions over what constitutes "salvage." We do believe that substantial amounts of salvage material is removed in regular "green" sales. In addition, about 540 million board feet (Scribner decimal C) of salvage timber was sold in addition to green sales in Regions 5 and 6 in calendar year 1972. The 540 million includes both dead and dying timber. We recommend that the report state that additional statistical data should be gathered and research undertaken to estimate the current volume of dead or dying material in each Forest Service Region that can be economically harvested.

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Recommendation: "Forest Service direct its field offices to develop and use (1) adequate plans for salvaging the maximum feasible volume of scattered dead or damaged trees, (2) simplified sale preparation and contract administration procedures which would lower the cost of and reduce the time for salvaging scattered dead or damaged timber, and (3) special contracts and contract provisions which would help insure the prompt removal of scattered dead or damaged trees."

Comment: We believe most Forest Service officers recognize the need to promptly salvage dead and dying material. A major objective of managing National Forest timber is to "reduce hazards of loss by fire, wind, insect and disease through proper silvicultural practices . . ." (FSM 2402). Forest Service policy directs Forest Service officers (FSM 2403.5) "To select and budget for cutting in approximate order of priority those timber stands most urgently in need of silvicultural treatment. These include stands that are: (1) deteriorating because of advanced age or damage from climatic factors, disease or insects; (2) - - - - -."

We will issue national policy that requires each Forest to develop and implement a salvage plan. We believe forest plans should emphasize that periodic reviews of salvage potential will be the key to an effective program. Salvage opportunities and consequently plans can change dramatically in a short period (ie. blowdown, fire, insect attack). We also expect District Rangers and Forest Supervisors to maintain a strong regular sale program. Rangers and Supervisors face a continuing challenge of evaluating relative costs and benefits to create a proper balance between regular and salvage sales.

Intense competition for timber in many areas has eliminated the small independent logger. Often these operators, who only need to get out a few loads per day to make a profit, can best handle salvage sales of scattered timber. The regular offering of a reasonably constant volume of salvage sales may help to encourage small operators.

We do not believe it would be wise, because of the many variations service-wide, to prescribe procedures from this office which should be followed in sales preparation and sale administration. We intend to remind Regional Foresters of the flexibility they do have (i.e., sales at standard rates, administrative use, thumbnail appraisals and informal advertisement). We will also, compile and distribute to the Regions, a list of simplified

APPENDIX I

procedures found to have been effective under certain conditions. We must emphasize that we cannot condone unacceptable resource damage nor lack of contract compliance in the name of salvage.

We believe that new regulations and contract language on debarment and timber use will help insure prompt removal. The debarment regulation was published in final form in the May 23, 1973, Federal Register. An emergency directive incorporating the Regulation into the Forest Service Manual was approved on June 5, 1973. The use regulation was published in draft form in the Federal Register on May 15, 1973. Implementing contract language on timber use should be in final draft form by August, 1973.

We plan to increase our volume of tree measurement sales and eventually phase out scaling. This means that estimates of sale volume will have to be more accurate and more time will have to be spent on sale preparation. Increased sale preparation activity will provide more opportunity to evaluate and assess salvage conditions and possibilities. Tree measurement sales should provide more incentive to remove usable material.

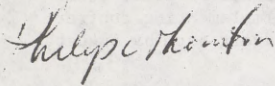
Recommendation: "Evaluate the progress of field offices in developing and carrying out plans and special procedures to salvage the maximum feasible volume of dead and damaged timber and to ensure that the most effective procedures are applied wherever appropriate."

Comment: We do plan to hold line officers accountable for meeting salvage sale plans. This will provide maximum incentive for them to use the most efficient and effective procedures. We plan to evaluate field procedures during normal functional assistance trips and inspections.

[See GAO note, p. 32.]

APPENDIX I

Sincerely,



Philip L. Thornton
ACTING CHIEF, FOREST SERVICE

GAO note: Deleted material pertained to a proposal not included as a recommendation in the final report.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 11 1973

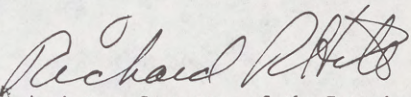
Mr. Max Hirschhorn
Deputy Director, Resources and
Economic Development Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Hirschhorn:

The Department has reviewed with interest the draft of your proposed report, "Action Needed to Promptly Salvage More Unusable Dead Trees to Help Meet Timber Demand; Department of Agriculture, Department of the Interior." **XXXXXXXX**

Although only a very small section of the report is concerned with the policies and practices of the Bureau of Land Management in this Department, we recognize the importance of the subject. The Bureau's policy to conserve maximum amounts of usable wood by promptly salvaging dead or dying trees has on occasion been restrained by economic, fiscal, and regulatory considerations. We will, however, continue to seek methods to harvest dead and dying timber to the maximum extent possible within those constraints. We will be most happy to consider the use of sale preparation, contracting, and contract administration procedures tailored especially for timber salvage when they are developed successfully by the Forest Service as recommended in the proposed report.

Sincerely yours,


Assistant Secretary of the Interior

APPENDIX III

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING
THE ACTIVITIES DISCUSSED IN THIS REPORT

		<u>Tenure of office</u>	
		<u>From</u>	<u>To</u>
<u>DEPARTMENT OF AGRICULTURE</u>			
SECRETARY OF AGRICULTURE:			
Earl L. Butz	Dec. 1971	Present	
Clifford M. Hardin	Jan. 1969	Nov. 1971	
ASSISTANT SECRETARY, CONSERVATION, RESEARCH, AND EDUCATION (note a):			
Robert W. Long	Mar. 1973	Present	
Thomas K. Cowden	May 1969	Mar. 1973	
John A. Baker	Aug. 1962	Jan. 1969	
CHIEF, FOREST SERVICE:			
John R. McGuire	Apr. 1972	Present	
Edward P. Cliff	Mar. 1962	Apr. 1972	
<u>DEPARTMENT OF THE INTERIOR</u>			
SECRETARY OF THE INTERIOR:			
Rogers C. B. Morton	Jan. 1971	Present	
Walter J. Hickel	Jan. 1969	Nov. 1970	
ASSISTANT SECRETARY, LAND AND WATER RESOURCES (note b):			
Jack O. Horton	Mar. 1973	Present	
Harrison Loesch	Apr. 1969	Jan. 1973	
Harry Anderson	Aug. 1965	Jan. 1969	

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	Tenure of office	
	From	To

DEPARTMENT OF THE INTERIOR (continued)

DIRECTOR, BUREAU OF LAND

MANAGEMENT:

Curtis J. Berklund	July 1973	Present
Burton W. Silcock	July 1971	Mar. 1973
Boyd Rasmussen	July 1966	June 1971

^aTitle changed from Assistant Secretary, Rural Development and Conservation, in January 1973.

^bTitle changed from Assistant Secretary, Public Lands Management, in March 1973.

STATEMENT OF HAROLD KELLER, MANAGER, BLACK MOUNTAIN SPRUCE, INC.
CRAIG, COLO.

Mr. Chairman and members of the Sub-Committee on Small Business of the Committee on Banking, Housing and Urban Affairs of the United States Senate my name is Harold Keller, manager of Black Mountain Spruce, Inc. of Craig, Colorado. Prior to this I was President of Craig Lumber Co. which was destroyed by fire in December, 1973. Both companies operate a small business sawmill for an annual production of 12 million board feet. We are nearly 100% dependent on National Forest timber for our raw material supply of logs. We have been operating in the Craig area since 1962.

The S.B.A.-U.S.D.A. agreement signed December 29, 1971 has been an important agreement under the Small Business Act to maintain a small business community in the forest products industry. It is necessary for our survival. Without the vigorous strengthening of this Act and this agreement the attrition of small business in our industry will accelerate and in 5 to 10 years the forest products industry will be comparable in makeup to the oil & gas industry. It will be an industry of giants with all the problems of a monopolistic industry which will dictate policy to the Forest Service. Gentlemen, you are in a position to recommend and alert Congress in this time of need to protect and strengthen the small business community across the width and breadth of our great country. I urge you to strengthen the small businesses and be their guardians. Strengthen the S.B.A. and the timber sale set aside program. It is vital to our survival.

The Forest Service Regional Foresters office in Denver and the Supervisors Office in Steamboat Springs, Colorado, have by design or otherwise frustrated and obstructed the Small Business Act and S.B.A.-U.S.D.A. agreement from being administered in spirit and intent of the law. I am the first to recognize the serious charge in this statement and I along with others are prepared to support it. Let me relate some facts about the timber set aside program on the Routt National Forest.

BASE SHARE PERCENTAGE

Presently the S.B.A. Washington Office is appealing to the Chief of the Forest Service and action of the Regional Forester in Denver of attempting to establish a base average share percentage for set aside timber sales far below the need of the small business sawmills or their historical use.

I am attaching a copy of a letter for the record from Mr. R. F. McDermott, S.B.A. to Mr. John McGuire, Chief of the Forest Service regarding this appeal. The following is a quote from his letter "In his letter of June 4, 1974, Mr. Lucas makes no reference to the verbal appeal. The 34 percent share that he unilaterally decided upon is not computed in accordance with the provisions of our USDA-SBA Timber Agreement or the Forest Service Regulations."

Mr. Lucas is the Regional Director of Region 2 Forest Service, Denver, Colorado.

WHISKEY PARK #3

The S.B.A. is appealing a decision made by the Routt National Forest Supervisor in February, 1974 to change the status of Whiskey Park #3 timber sale from a set aside basis to an open sale status.

The Supervisor took this action at a time when small business had 8 million board feet or 6 months of timber back log and large business had 58 million board feet or 2 years of timber back log. In addition the timber set aside sales were already 22 million to 31 million board feet in deficit, depending on what small business base share percentage is recognized.

The Supervisor stated that to leave Whiskey Park #3 as a set aside would hurt large business. It is difficult for small business operators to give validity to the Supervisor's reasoning. In my personal view the Supervisor is yielding to the voices of big business and accelerating the demise of small business.

QUALITY OF SET ASIDES

Rock Creek #2, which previously had been offered as an open sale but had received no bids because of the low quality of the timber, was then offered as a set aside sale in June, 1974. It was appraised to Kremmling, 27 miles

from the sale and the home of a large business sawmill. The nearest small business mill cutting green logs was 111 miles from the sale site.

For these reasons the S.B.A. did not agree with the Routt National Forest Supervisor that Rock Creek #2 should be set aside and therefore did not sign form 441 which is a requirement of the Forest Service regulations to officially designate a set aside timber sale. The Supervisor proceeded to advertise the sale as a set aside and no small business operator could bid the sale because of the quality and location of the timber. Large business at Kremmling then purchased the sale in an attempt to increase their base share percentage and reduce the set aside deficit.

Low quality, highly defective timber being offered as timber sale set asides is a common occurrence on the Routt National Forest. By contrast Whiskey Park #2 and Whiskey Park #3 are large volume sales of some of the highest quality timber on the Routt National Forest and both my and the S.B.A.'s requests for set asides were refused. Small business is further precluded from bidding competitively on these sales by the Forest Service designing the specified roads to haul the timber to the large business sawmills. I bid competitively on Whiskey Park #2 but failed to acquire either of them.

DEFICITS

As of July 1, 1974, the Routt National Forest small business timber sale set aside deficit is 26 million board feet. Routt National Forest Supervisor Metcalf proposes to eliminate this deficit at a rate of 2 to 3 million board feet annually. At this rate it will take 8 to 12 years to give small business an opportunity to recover the deficit. This is neither practical or in accordance with Forest Service regulations.

The Forest Supervisor and the Regional Forester have never recognized the requirement in the S.B.A.-U.S.D.A. agreement that deficits shall be eliminated each six months period, but then neither of them have ever recognized the Small Business Act or the S.B.A.-U.S.D.A. Agreement of Dec., 1971.

In 1976 a new base average share percentage will be computed for all National Forests based on the small business purchases for the period 1971 to 1975. With the history on the Routt National Forest of obstruction, frustration, and denial of the set aside program intent and goals, how does one compute the new base average share for small business operators? Does the Forest Service ignore the history of deficits and merely state the "needs" of small business and a set aside program are minimal, since most of the small business sawmills have been eliminated.

My appearance here today is an effort to stop this eventuality and I sincerely hope this Committee will hear my plea for equity, justice, and even handed administration of the set aside program.

Senator CRANSTON. Thank you very much. You have been very, very helpful.

Our next witness is E. M. Stoddard of the Sawtooth Lumber Company in Mountain Home, Idaho. Mr. Stoddard, I understand you have one particular viewpoint you want to present to us and if you could do it very briefly we would be grateful.

STATEMENT OF E. M. STODDARD, OWNER AND OPERATOR, SAWTOOTH LUMBER CO., MOUNTAIN HOME, IDAHO

Mr. STODDARD. Thank you, Mr. Chairman, and Senator Packwood.

I am Max Stoddard, owner and operator of the Sawtooth Lumber Co. in Mountain Home, Idaho. I am a fourth generation lumberman and have been working in timber all my life. Our mill in Mountain Home employs approximately 100 men at the mill and in the woods, 65 men in the mill and 35 in the woods. I notice in the SBA criteria that chipper loggers are not counted in the number.

had been overcut under present environmental guidelines. However, again in my opinion, the reduction was too drastic and came too fast for an orderly absorption of the reduced cut by the local operators. I think the allowable cut in these forests might again be gradually increased through intensified reforestation requiring additional funding particularly if there is any lessening in the environmental pressure on timber harvesting.

Aside from Hoff Lumber Company at Horseshoe Bend which still has a sizeable holding of private timber, all the other mill operators in our area were dependent upon Forest Service timber for survival. There isn't any question in my mind but that our area has too much mill capacity for the available timber. If the remaining mills are to survive, then all the mills should go to a one shift basis and all the mills should curtail production proportionately to the reduced timber offering. If the operators could agree to such a course then the remaining mills could survive and the communities they support would continue to receive the economic sustenance they need. Unfortunately the operators have not been able to agree upon such a course and some program such as Federal timber set-asides appears to be the only solution for the small mills' survival.

Until recently Sawtooth Lumber Company had been able to buy sufficient timber competitively to survive. During the past couple of years the two large operators have purchased the majority of the timber in the area at prices, in most instances, more than double the Forest Service appraised price. A small operator such as Sawtooth Lumber with no timber backlog to average out the higher priced timber has been unable to compete at the bidding table without courting bankruptcy. For example, the 12½ million foot Feather River timber sale which our company lost in oral bidding to Boise-Cascade last year had been appraised at \$1,100,000.00 by the Forest Service. We bid \$700,000.00 over the appraisal price but could not continue to match Boise-Cascade's higher bids. In my opinion, I have found the Forest Service appraisals very fair and reflect a true value of the timber being sold. By no stretch of the imagination is timber appraised at \$86 per M worth \$155 per M. Our Company, in my opinion, would face heavy losses in trying to operate on timber at this figure today.

This was the second large sale we needed and lost under similar circumstances in the last two years. In our business, because of road building requirements, a company should have a minimum of two to three years ahead in timber to operate efficiently and plan its logging. Right now we have just enough timber for this year and part of next. In a desperate attempt to get enough timber to finish out next year's operation we recently outbid Boise-Cascade on a small 2½ million foot sale. This was the Alta Creek Timber sale sold by the Sawtooth Forest, but now being administered by the Boise Forest. We were forced to pay \$175 per M on the pine and \$175 per M on the fir. The Forest Service appraisal on the sale was \$94.05 on the pine and \$77.23 on the Doug fir. We stand to lose over \$100,000 on this small sale and could certainly not go on bidding on more sales in this manner and remain in business. There are a couple of small state sales and two large Forest Service sales coming up within the next 10 months that we plan to bid on, but under present bidding practices can see no hope of purchasing them. Under the circumstances our present plan to close down at the end of next year would appear to be our only alternative unless there is a change in the bidding procedure.

A close friend of mine, Ed Lemon, who owned and operated the Meridian Pine Mill at Cambridge and Meridian, was not able to buy timber in the Payette Forest because of the severe competition and was forced to close his mill this year. His mill was similar in size to our mill and the basic industry in the town of Cambridge, Idaho, and also strongly supported the economy of the town of Meridian. Two other small mills in Boise, Producers Lumber Company and Guy Harris Lumber Company, also face closure next year because of their inability to purchase competitively Federal timber.

The present timber set-aside program simply has not worked in our area. As far as I know there have not been any set-asides in the Boise, Payette, or Sawtooth Forests in the past 12 years. If a timber operator wishes to borrow money under SBA rules the criterion on size is 250 employees. If he wishes to bid on timber then the limit is raised to 500 employees. In our

area this simply does not work. One so-called small mill nearing the 500 employee limit effectively nullified the set-aside provision by purchasing a large percentage of the available timber the past few years in the area. Only by having a large backlog of low priced private and public timber could this operator consistently overbid on every sale. This action in turn forced the other large operator in the area to overbid on every sale. The small mills with no timber backlog were left out of the bidding. I have heard rumors that the small mill that purchased the large quantity of timber in recent years may possibly become big business under present SBA guidelines in the near future. Under present market conditions and present SBA rules such a course does not seem logical to me and we are not counting on such action to change our present timber situation.

If the small mill operators are going to survive and continue to support their communities, then some method must be devised for them to get an equitable share of Forest Service timber. It would appear to me that reducing the number of employees from 500 to 250 employees to coincide with the borrowing limitation on size would be one logical solution to preventing such an occurrence as has happened in our area occurring again in the future. If reducing the number of employees is not a satisfactory answer, then conceivably some sales rotation might be worked out among the mills in a designated area. Perhaps some emergency authority might be given to the Forest Service and the SBA to meet a problem such as has arisen in our area. I am certain that the closure of the Meridian Pine Mill was not in the best interests of either community it served and that it might have been avoided if set-asides using different size criterion had been made in the area. Perhaps giving SBA and the Forest Service authority to change the size criterion where an emergency exists might be one method they could use to forestall future closures by small mills. It would appear to me there must be a viable alternative to ensure the survival of these small mills and the communities they support.

Senator CRANSTON. Senator Packwood and I felt it would be most appropriate if we combined the last two panels now and asked the Small Business Administration representatives and the U.S. Agriculture representatives to come forward together.

Mr. McGuire, since we already had a statement from the SBA, if you wish very briefly to state whatever you wish now. The prime purpose of this is to give us a chance to ask questions of all of you and your full statement will appear in the record.

STATEMENT OF JOHN R. McGUIRE, CHIEF OF FOREST SERVICE, ACCOMPANIED BY RICHARD WORTHINGTON, DIRECTOR OF TIMBER MANAGEMENT; JOHN E. TODD, LEADER, TIMBER SALES GROUP; AND ROBERT E. GILLESPIE, CHIEF OF CONTRACT ADMINISTRATION; AND REPRESENTING THE SMALL BUSINESS ADMINISTRATION: GENE F. VAN ARSDALE, CHIEF, PRIME CONTRACTS AND PROPERTY SALES, PARKS WALKER, INDUSTRIAL SPECIALIST, AND JAN J. SAGETT, LEGISLATIVE COUNSEL

Mr. McGUIRE. Thank you very much, Mr. Chairman.

With me are Richard Worthington, the Director of our forest management staff and two of his assistants, Jack Todd and Bob Gillespie.

[See p. 204 for complete statement.]

Very briefly I might say the broad view of the Department and the Forest Service with respect to the current timber sale set-aside program is essentially this: We think the program is very relevant

and has proven effective for protecting the interest of the small business sector of the timber industry, but we also believe that the interest of large business must similarly be recognized in order to maintain the full productive capacity of the Nation's timber industry and its forest resources. The national forests must supply timber to both in an equitable manner. We believe that the present system embodies in the 1971 agreement between this Department and the Small Business Administration is a reasonable and workable system, and follows the intent of the Small Business Act.

In integrating the set-aside program within the national forest timber sales program, we have striven to develop operational procedures that would be fair and uniform, and that would provide the Forest Service with sufficient flexibility to accommodate other national forest management considerations. We are not yet completely satisfied with all of these operational procedures and will continually seek to improve them. Undoubtedly, it will be necessary in the future to modify the procedures and perhaps the agreement itself to adapt to changing resource, demand, and business situations. I am sure today's hearing will be very helpful to us in evaluating whether any changes are needed at this time. The development of any changes will of course be done in close cooperation with the Small Business Administration, with whom we have had a very good working relationship. We plan soon to meet with the Small Business Administration to review procedures and consider the need for changes in the set-aside program for the next 5-year period. If a need for changes is apparent, we will also seek to involve, as we have in the past, representatives of both the large and small business sectors of the timber industry.

Mr. Chairman, this completes my prepared statement. I will be happy to respond to any questions you may have.

Senator CRANSTON. Thank you very much.

I will start with a couple of questions, mainly for the Agriculture representatives, whoever feels it's appropriate to answer or wishes to present a different point of view if you disagree with the answer, don't hesitate to state it.

First of all, in cases where large companies own their own timber, are there any cases in your opinion where they purchase large amounts of Government timber so they can export their privately owned timber instead of trade-off?

Mr. McGUIRE. The situation at present, Mr. Chairman, is that the Appropriation Acts this year and last year have prohibited the sale of national forest timber for export. Before this recent period, it's possible that there were some cases. However, even then, going back to the days of the Morse amendment and before, there was a limitation on the total amount of Federal timber that could be sold for export. So I don't think this has been a problem in recent years.

Senator CRANSTON. Do you have any information on whether the larger companies purchase Federal timber to satisfy their actual current needs or is there any overbuying just of stockpiling purposes?

Mr. McGUIRE. We think the entire industry tends to buy for stockpiling purposes. In fact, on the average, there is a 2 or 3 year supply of sold timber under contract to the industry.

Now we haven't detected any great difference in relation to size of firm.

Senator CRANSTON. Mr. McGuire, do you support the 500 employee size standard?

Mr. McGUIRE. I wish I could be neutral on that. We have been looking at this for a long time and every once in a while it does seem to be rather a high threshold when you think of the small firm as being a very small one. On the other hand, the industry has been changing over the years.

Back in the 1940's, there were a large number of firms in this industry. Since then the number of firms has been declining. So I'm uncertain as to whether 500 is a good figure or not. In fact, I'm uncertain as to whether the number of employees is the proper criterion.

Senator CRANSTON. What might be a better criterion?

Mr. McGUIRE. You could use volume of raw material purchases, value of final product sales, or perhaps you could periodically re-examine the structure of the industry and simply arbitrarily divide it on the median between the large and small firms on that basis.

Senator CRANSTON. Do you think there's a logical breaking point between the giant and the smaller business?

Mr. McGUIRE. I don't think I'm qualified to answer that, Mr. Chairman.

Senator CRANSTON. Does anybody else want to venture into that?

[No response.]

Senator CRANSTON. Do you think the small business shares should be reduced when small businesses are purchased?

Mr. McGUIRE. No, we do not. In fact, our policy worked out in cooperation with the SBA is to hold the share constant in this situation.

Senator CRANSTON. How many small companies are there that are just under the 500 mark? Do you have any idea?

Mr. McGUIRE. We do not have that information.

Senator CRANSTON. None of you have that?

Mr. VAN ARSDALE. We don't have that, either.

Senator CRANSTON. Is it possible to acquire that information?

Mr. VAN ARSDALE. This type of information would be developed when we go into the review of the size standards that Mr. Kleppe mentioned this morning, sir. It wouldn't be likely that we could develop it in time to submit it for this record. We could try if you wish us to.

Senator CRANSTON. Do any of you think it would make any sense to do what has been suggested, that there be a rule requiring SBA to periodically determine if companies between 250 and 500 are competitive and should be removed from participating in the set-aside program?

Mr. VAN ARSDALE. If I understand correctly sir you're saying that we would examine the individual firms within a given size range and then select them out, so to speak?

Senator CRANSTON. Yes, to see if it was felt that some companies that were in the 250 to 500 range were actually large in their abilities and capabilities and should be considered large business.

Mr. VAN ARSDALE. I think to review them selectively and individually would undermine and deteriorate any sort of definitive size standards, sir.

Senator CRANSTON. Are you aware of situations where large companies have sponsored small business purchases of lumber for resale to them?

Mr. VAN ARSDALE. We are aware of a case where this has been alleged. Where this can be established, of course, there would be an affiliation and therefore the small bidder would actually be a large company by affiliation.

When this is alleged, we institute a size determination which is carried out by our regional offices.

Senator CRANSTON. Do you think any further steps are required or procedures to reduce the danger that that does occur?

Mr. VAN ARSDALE. Based upon the views of the industry, I think that we certainly would like to assure a more complete and more thorough study than may have been done if, in fact, this problem continues.

Senator CRANSTON. What measures do you take to assure there's no relationship, legal or financial, between small businesses participating in the set-aside and the large lumber company?

Mr. VAN ARSDALE. Well, the initial step is the request to the protesting firm to fill out forms giving certain financial and corporate organization data. This is provided, and then based on that data, we will either pursue it further or, if it seems definitive on its face, we can make a determination then.

Senator CRANSTON. Do you subpoena company records to ascertain what's happening?

Mr. VAN ARSDALE. No, we do not.

Senator CRANSTON. Do you need the power to do that?

Mr. VAN ARSDALE. That would be a legislative matter that I'm not prepared to address, sir.

Senator CRANSTON. Well, do you feel that you have access to the records you need to enforce the law and exercise your responsibilities?

Mr. VAN ARSDALE. Counsel informs me that there is subpoena power in a new bill which is presently before the President.

Senator CRANSTON. Is it ever used?

Mr. VAN ARSDALE. We do not yet have the power, until the President signs the bill.

Senator CRANSTON. Do you expect to use it or have occasion to use it?

Mr. VAN ARSDALE. I couldn't answer that, sir. I don't know.

Senator CRANSTON. Has the Forest Service ever offered set-asides that are too large a quantity or not of a quality suitable for small business needs?

Mr. McGUIRE. We try to avoid doing that, Mr. Chairman. I'm sure that small business doesn't always agree with us, but our intention is to avoid doing that.

Senator CRANSTON. Each time a set-aside comes up for bid do you have a method to determine that all of those that are bidding are actually small businesses?

Mr. McGUIRE. We require them to certify and that's about as far as we go. Like SBA, we rely mainly on protests from competitors to initiate some kind of action.

Senator CRANSTON. Is there certification upon each occasion of a bid?

Mr. McGUIRE. That is correct.

Senator CRANSTON. Do you have any method whereby a company has to advise you when it passes the 500 mark? This would happen at the next bid?

Mr. McGUIRE. That's right, but only on set-aside sales and through the certification procedure.

Senator CRANSTON. Is there a penalty if a company becomes large and continues to bid on set-asides and doesn't report accurately on its status?

Mr. McGUIRE. We could disbar that company from bidding at all.

Senator CRANSTON. Have you ever had to do that?

Mr. McGUIRE. No, we have not.

Senator CRANSTON. What's the Forest Service policy on counting pulp wood as part of the small business share?

Mr. TODD. Part of the problem is the definition of what constitutes pulp wood. In the Southeast where most sales have a sawlog component and a small log or pulp wood component, the utilization of that small log component has historically been by big business, and that volume has not been included in the program.

Some of the questions arising in other parts of the country are increasingly complex because there are several possible utilizations of that small log material and it's going to get more complex.

Senator CRANSTON. I gather that there are different procedures and standards in different regions. Have you taken any action or do you feel any action is necessary to see to it that decisions are standardized in the various regions?

Mr. TODD. The intent is to have the general format of the procedures consistent among the regions, but we have deliberately allowed a great deal of flexibility to the regional foresters to accommodate local differences which we are not prepared to deal with at the Washington level.

Senator CRANSTON. Do you feel it's equitable to have difference in procedure for different parts of the country?

Mr. TODD. I don't think there's a general answer to that. There are some situations in which it may become obvious it's not and others in which it's well to have the difference.

Senator CRANSTON. Bob, do you have any questions?

Senator PACKWOOD. I only have a couple questions.

John, you indicated that you require all the small businesses to be certified by SBA before they are entitled to bid on the set-aside.

I take that to mean that you would not change your policy as to what a small business is without the agreement of SBA.

Mr. McGUIRE. Senator, we require the bidder to certify that he is indeed a small business and, second, we would not change our policy, of course, without full concurrence of SBA.

Senator PACKWOOD. How much more in appropriations did you get for reforestation this year?

Mr. McGUIRE. About \$14 million.

Senator PACKWOOD. And that will be the start of a reforestation program of about 3 million acres if the appropriations continue year by year?

Mr. McGUIRE. That is correct.

Senator PACKWOOD. John, with that in mind, assuming that the appropriations do continue, can you look forward to an increased yield from the national forests?

Mr. McGUIRE. We certainly can. In fact, last week we put out a draft program for the next 10 years in which we laid out the possibilities, depending on the amount of financing, not only for timber but for other resources.

Senator PACKWOOD. Thank you. I have no other questions.

Senator CRANSTON. A number of firms in the 250 to 500 range have stated they couldn't survive without the set-aside. Do you share that opinion?

Mr. VAN ARSDALE. Yes, I do.

Senator CRANSTON. Mr. McGuire, how about your answer to that question?

Mr. McGUIRE. I don't think we have any basis for responding to that question, Mr. Chairman. I think some would have trouble. Others, however, might not. So I don't know what the answer might be.

Senator CRANSTON. Why has no set-aside been put up for the Routt National Forest?

Mr. McGUIRE. The Routt National Forest in Colorado has a very complex problem because of some changes in the industry during the base period. We had reached an agreement—that is, the Forest Supervisor had reached an agreement with the SBA representatives on the percentage of set-aside sales. The regional forester did not agree with that choice and the whole matter now is on appeal to me. I'm looking at the various aspects of the controversy and I hope to make a decision very soon.

Senator CRANSTON. Good. I'd like to urge that whatever steps should be taken are taken to resolve that matter.

Are loggers who have no mills allowed to bid and purchase set-asides?

Mr. McGUIRE. Yes, they are.

Senator CRANSTON. What do these loggers do with the set-asides since they don't have mills?

Mr. McGUIRE. They are able to sell the logs to manufacturing segments of the industry. If they buy a set-aside sale, they have

to sell 70 percent of the volume to small business. If they buy a sale in the open category, of course, there's no restriction.

Senator CRANSTON. How do you make sure that's going to small business?

Mr. McGUIRE. Well, we have pretty good access to the purchaser's records, for one thing. Second, we rely on protests from his competitors if there's any symptom that it isn't working out the way it's supposed to.

Senator CRANSTON. Do you believe that that's working out properly?

Mr. McGUIRE. Generally, we think it's working pretty well.

Senator CRANSTON. By regulation the SBA is required to approve the quantity and quality of a set-aside sale. Are there any circumstances where the Forest Service has not abided by the SBA designation?

Mr. McGUIRE. There have been circumstances when there has not been agreement on individual sale selections. The Routt is one case. Another case right now is on the Gifford Pinchot National Forest in the State of Washington where SBA would prefer a different distribution than the Forest Service has suggested.

Senator CRANSTON. How close is the Gifford Pinchot incident to being resolved?

Mr. McGUIRE. As I recall, this was appealed to the Secretary of Agriculture and a decision issued this last month.

Senator CRANSTON. What's the general procedure for resolving this kind of a difference?

Mr. McGUIRE. In case of difference, the agreement provides that the parties may appeal to the Secretary of Agriculture and he makes the final decision.

Senator CRANSTON. Present regulations allow 30 percent of a set-aside sale to be sold to large business. Do you feel that the USDA or SBA should approve this resale rather than have it automatically allowable?

Mr. McGUIRE. My personal opinion is while this is a rather arbitrarily break, 30 and 70 percent, it's not working too badly. We are open to suggestions on a change, but I would hate to see us get into more supervision of the details. I think each purchaser needs some of this flexibility. One could question whether 30 percent is too much or too little.

Senator CRANSTON. That concludes the questions that I have. Do you have any?

Senator PACKWOOD. No more questions, thank you.

Senator CRANSTON. Thank you all very much. I appreciate that so many of you have been here and your interest.

That concludes this hearing and thank you all very much.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

[Complete statement of Mr. McGuire and additional material ordered inserted in the record follow:]

STATEMENT OF JOHN R. MCGUIRE, CHIEF, FOREST SERVICE,
DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee, we welcome the opportunity to participate in this oversight hearing on the National Forest timber set-aside program for small business.

The Department of Agriculture, through the Forest Service is responsible for the administration of the National Forests. The basic law relating to the establishment and administration of the National Forests is the Organic Administration Act of 1897. This Act directs, in part, that National Forests are to furnish a continuous supply of timber for the use and necessities of citizens of the United States. Also under the Act, authority has been granted for the Secretary of Agriculture to sell timber from these lands. Another principal law relating to the administration of the National Forests is the Multiple Use-Sustained Yield Act of 1960, which directed that the National Forests be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. It further directed that these lands are to be developed and administered for multiple use and sustained-yield of the several products and services.

Within the framework of these and other laws, the Forest Service has established policies for determining the allowable timber harvest on each National Forest. Timber harvest is accomplished through the sale of standing timber (stumpage) to individuals and corporations. The sales are made through the solicitation of bids. No timber may be sold for less than appraised value. Such timber constitutes Government property within the meaning of the Small Business Act, consequently, we participate with the Small Business Administration in insuring that fair proportion of the sales of National Forest timber be made available to small business concerns. The amount of timber sold and harvested from the National Forests is a very significant portion of the total amount harvested within the United States. Approximately one-fourth of the annual harvest of softwood sawtimber and veneer (the major components used in the framing and general construction of single-family owner-built homes), comes from National Forest lands. Also significant is the fact that over 52 percent of the Nation's inventory of softwood sawtimber is located on the National Forest lands.

Because the National Forests are a major source of essential timber products, such as softwood sawtimber, their timber sales programs are critical to the stability of forest industry as a whole—to both large and small business concerns. Likewise, the sale programs are often critical to the stability of communities where large or small business concerns are located. Because of the supply-demand situation, the competition for sales of sawtimber is strong on most National Forests.

Pursuant to the Small Business Act, the Department of Agriculture on December 2, 1958, signed an agreement with the Small Business Administration to implement a program for insuring that a fair proportion of the total sales of timber be made to small business, thereby intending to preserve and foster the growth of the small business sector of the timber industry. The program is referred to as the "timber sale set-aside program," because in situations where small business concerns are unsuccessful in purchasing a fair share of the timber in open competition a designated amount of sales are "set-aside" for preferential award to small business concerns.

Under the 1958 Agreement, individual Supervisors of the various National Forests were responsible for maintaining set-aside programs, subject to the broad directions in the Agreement and consultation with field representatives of the Small Business Administration.

During the period of operations under the 1958 Agreement a number of problems were identified. The program was not being implemented in a uniform and consistent manner by field units. Set-aside sales were frequently being made too late to be of benefit to small business concerns in need of them. There was also a noticeable attrition of small business concerns.

Because of these problems, the Forest Service and the Small Business Administration entered into discussions and agreed in 1969 to review the original program with the view to establishing new procedures. The present Agreement, signed on December 29, 1971, is the result of nearly 2-years' effort in this regard. In formulating the 1971 Agreement, efforts were made to involve interested members of the public and of the timber industry. A number of meetings were held that included various industry groups representing both large and small business. All had a chance to present their views to the Agencies and a number of changes in the program were made as a result of industry suggestions.

The new Agreement and the directive relating to it provide specific procedures for the field units to follow in implementing the program. For example, specific procedures have been established for determining the fair proportion of timber for small business, reviewing the trend of purchases on a periodic basis, providing timely offerings of set-aside sales, and providing for the timely recovery of deficits in the small business share. Additionally, the new procedures are strengthened with respect to the involvement of Forest Service and Small Business Administration field people in problem solving at the local level.

The new set-aside program has been in effect for 3½-years. During the first 3 years of the new program the Forest Service has sold approximately 27.3 billion board feet of sawtimber falling within the scope of the Agreement. Small business concerns have purchased 13.3 billion board feet (48.6 percent) of this. However, only about 2.4 billion (18 percent) of the 13.3 billion board feet was purchased as set-aside sales. It has not been necessary to institute set-aside sales to a large degree in order to maintain the fair share proportions. A summary showing the ratios of small and large business purchases regionally and nationally is attached at the end of my statement.

Mr. Chairman, the broad view of the Department and the Forest Service with respect to the current timber sale set-aside program is essentially this. We think the program is very relevant and has proven effective for protecting the interest of the small business sector of the timber industry. As the Federal agency responsible for providing National leadership in forestry and concerned with the growth and development of all forestry-based enterprises, we also believe that the interest of large business must similarly be recognized in order to maintain the full productive capacity of the Nation's timber industry and its forest resources. The National Forests must supply timber to both in an equitable manner. We believe that the present system embodied in the 1971 Agreement between this Department and the Small Business Administration is a reasonable and workable system, and follows the intent of the Small Business Act.

In integrating the set-aside program within the National Forest timber sales program, we have strived to develop operational procedures that would be fair and uniform, and that would provide the Forest Service with sufficient flexibility to accommodate other National Forest management considerations. We are not yet completely satisfied with all of these operational procedures and will continually seek to improve them. Undoubtedly, it will be necessary in the future to modify the procedures and perhaps the Agreement itself to adapt to changing resource, demand, and business situations. I am sure today's hearing will be very helpful to us in evaluating whether any changes are needed at this time. The development of any changes will of course be done in close cooperation with the Small Business Administration, with whom we have had a very good working relationship. We plan soon to meet with the Small Business Administration to review procedures and consider the need for changes in the set-aside program for the next 5-year period. If a need for changes is apparent, we will also seek to involve, as we have in the past, representatives of both the large and small business sectors of the timber industry.

Mr. Chairman, this completes my prepared statement. I will be happy to respond to any questions you may have.

SUMMARY OF SMALL BUSINESS SAWTIMBER PURCHASES—JAN. 1, 1971, THROUGH JUNE 30, 1974 (3½ YEARS)

[In millions of board feet]

Region	Total sales	Total small business share	Total small business purchases	Surplus or deficit	Total set-aside volume
1 (Montana-Idaho).....	3,588.3	1,122.9	1,157.8	+34.9	394.8
5 (California).....	6,150.1	1,877.6	2,083.3	+205.7	505.3
6 (Washington-Oregon).....	16,362.7	8,449.5	8,395.8	-53.7	1,590.7
Subtotal.....	26,101.1	11,450.0	11,636.9	+186.9	2,490.8
JAN. 1, 1971, THROUGH DEC. 31, 1973 (3 YEARS)					
2 (Colorado-Wyoming).....	655.1	319.2	290.7	-28.5	50.5
3 (New Mexico-Arizona).....	691.2	227.4	246.9	+19.5	64.4
4 (Southern Idaho-Utah).....	1,318.4	590.8	787.0	+196.2	3.7
8 (Southern States).....	1,741.0	1,335.9	1,251.8	-84.1	344.4
9 (Eastern States).....	429.4	370.1	378.1	+8.0	42.1
10 (Alaska).....	185.9	23.1	63.8	+40.7	
Total.....	31,122.1	14,316.5	14,655.2	+338.7	2,995.9
Percent.....		46.0	47.1	+1.1	20.4

THE ALASKA TIMBER SITUATION AS IT AFFECTS THE SMALL BUSINESS SECTOR

Two memoranda prepared in 1971 are possibly the most descriptive of the Alaska situation regarding small business. It should be noted that three of the small companies referred to in the following excerpts are no longer small in the sense of the SBA definition. Afognak Timber Company is large, currently 50% owned by Mitsui; Annette Timber Corp. has been acquired by Ketchikan Pulp Corporation; and Alaska Forest Products (owned by Dant & Russell) recently declared themselves as over 500 employees and thus are large business. The Alaska Timber Corp. at Klawock, built by Ed Head, was purchased from him in 1973 by Ketchikan Pulp Co. and leased back to Mr. Head. Also, according to the Louisiana-Pacific Corp. S.E.C. 10-K report, the "leased sawmill" was loaned \$1,170,000. Furthermore, it is reported Ketchikan Pulp also has exclusive sale control of all timber (cant production of that leased mill.)

Thus, the mill capacity of Alaska in the Tongass National Forest area breaks down as follows:

Large business	Long term sale volume guarantee per year (millions)	Historic round log use per year from USFS (millions)	Chip use per year million board feet equivalent	Round log use per year other sources
Alaska Lumber & Pulp (and affiliated companies):				
1. Pulp mill, Sitka.....	110	110	70	0
2. Wrangell Lumber Co., Wrangell.....	0	100	0	0
3. Alaska Wood Products, Wrangell.....	27	60	0	0
		(270)		
Ketchikan Pulp Co. ¹ (and affiliated companies):				
4. Pulp mill, Ketchikan.....	194	180	40	0
5. Ward Cove hemlock mill, Ketchikan.....	0	50	0	0
6. Ketchikan spruce mill, Ketchikan.....	0	80	0	0
7. Annette hemlock mill, ² Metlakatla.....	0	60	0	0
8. Alaska Timber Corp., Klawock.....	0	40	0	0
Louisiana-Pacific Corp. ³				
9. Kenai Lumber Co. (Seward-1973).....	0	5±	0	0
10. Evans Lumber Co. (1973).....	0	1	0	0
		³ (416)		

Large business	Long term sale volume guaran- tee per year (millions)	Historic round log use per year from USFS (millions)	Chip use per year million board feet equivalent	Round log use per year other sources
Other large businesses:				
11. Champion-International, Juneau.....	175	175	0	0
12. Alaska Forest Products, Haines.....	0	15	0	15
13. Kodiak Lumber Mills (formerly Afognak Timber Co.).....	(*)	0	0	0
Large business subtotals.....	506	876	110	15
Small business:				
14. Mitkof Co., Petersburg.....	0	3	0	0
15. Herring Bay Lumber, Ketchikan.....	0	1	0	0
16. S.E. Cedar Products, Ketchikan.....	0	1	0	0
17. Schnabel Lumber Co., Haines.....	0	17	0	17
Small business subtotals.....	None	22	None	17
Totals large and small.....	506	898	110	32
Allowable annual cut:				
Ketchikan W.C.....		291		
Yakutat W.C.....		50		
N. Tongass W.C.....		482		
824 + 67.5 (Chugach N.F.)=991.5 MM Total.				

¹ Ketchikan Pulp is 50 percent Louisiana-Pacific and 50 percent FMC Corp. ownership.

² Small company during 1966-70 SBA base period.

³ Installed capacity exceeds AAC by 118 MBF in this W.C. Now bringing logs from "other" W.C.s.

⁴ 15-year timber sale w/volume 525MM.

⁵ Installed capacity (or obligated in the case of the Juneau Unit) 892 VS 824 AAC on the Ketchikan, Yakutat and N. Tongass W.C.s only, 898 incl. some on Chugach N.F.

On February 4, 1971, the Regional Forester (Alaska) wrote the Chief of the Forest Service as follows:

"Sales in Alaska must be larger than in the "lower 48" because we still operate in a developing area where remoteness due to lack of roads affects all levels of business. For this reason, entries into the market are periodic by a small number of firms. Proportional shares based on short term periods thus fluctuates widely. Traditionally, this region has planned sales programs for successive 5-year plans on new estimates of logger demand related to mill consumption. Small mills have usually been lumped as a single demand. This still appears feasible.

"Until Iwakura-Gumi becomes active and Afognak Timber Company becomes established, all purchasers are small businesses on the Chugach. Basically the Tongass timber industry is concentrated in two, to be joined by a third, companies. These big businesses consume or control all but a very small share of the total cut. Before World War II, Region 10 cut was low, but each town had a small mill. The large companies have now assimilated most of these mills and now control all but a small 'upper' lumber market and a very small veneer outlet. The base period 1966-1970 is probably the historical low point of small business consumption in Alaska. Recently, small business has invested in new mills and mill renovations. The present activity is largely due to three firms. Schnabel Lumber Company, Annette Timber Corporation and Alaska Forest Products, all of whom become significant factors late in the period. Mitkof Lumber now completing a modernization and expansion program has recently purchased an A-frame sale.

"Undoubtedly our problems are not shared to the same extent by other regions. For this reason, we rely on our ability to utilize and to establish an agreeable operating procedure which will maintain the spirit if not the letter of the basic national understanding. Our particular concern is that guidelines do not become so rigid and inflexible that it will prevent our use of a small, but politically important, tool to reduce the effect of oligopoly (sic)."

On March 24, 1971 the Chief of Timber Management (Alaska) wrote for the new Regional Forester in Alaska an in-depth summary of the timber purchaser situation in Alaska, detailing the big timber industry situation as affecting the Forest Service (Alaskan) small business program, as follows:

"Prior to 1951 all timber business in Alaska was small. It had existed primarily on local lumber use together with a small volume market in Puget

Sound which demanded very high quality and paid a lucrative price. The heyday of sawmills coincided with that of the high salmon packs of the 30s as canned salmon was shipped in wooden boxes.

The intent of the large pulptimber contracts was to provide a generous basic timber supply to encourage mill installation of pulp making plants. This was considered necessary to obtain financing by both companies and the Forest Service. There is evidence that this was a major consideration. However, each contract excluded varying amounts of timber for sale to others. All contracts prior to the Juneau Unit contained a clause committing the company, unless waived by the Forest Service, to obtain a high proportion of the requirements of the contemplated mill from the sale area. Through the above requirement two side effects were expected (a) the company could expand plant capacity if they chose based upon their ability to obtain logs from "independent" area (areas not included in any pulp sale) and, (b) to provide an area where the rugged individualism of pioneer loggers could assert itself under competitive situations to supply timber to the mills. This worked with fair success until 1963 when a GAO auditor loudly chastised the Forest Service for a gentlemen's agreement under which the mills had been refraining from bidding in their own names in "independent" area. This on the theory that the agreement was in restraint of competition which, of course, was exactly the opposite to the desired effect. At that time, financial control of loggers was not stringent. Although the recommendation never came out in writing, it was generally known within the industry. The pulp companies gradually increased financial controls and in 1968 and 1969 began forming dummy corporations to bid upon and obtain timber from "independent" area.

"The Region had offered several choice and sizeable sales during 1965, to 1967 to entice a veneer plant or sawmill. This met with preclusive bidding by satellite outfits. They succeeded in keeping all such bidders out except Ed Head, Dant & Russell, (who got in through purchase of an Alaskan corporation) and John Schnabel . . . In 1970 Ketchikan Pulp Company bid for and obtained several small to very small sales in an obvious attempt to harass all competitors (except ALP) on the South Tongass.

"We began working with the SBA in 1968 to get them to relax their requirement for manufacture of 70 percent of the set-aside volume. In the past it has been generally recognized that about 50 percent of timber volume is a saw-timber quality. The 70 percent requirement would have meant that a small operator would be required to mill uneconomic logs. It also would have given the pulp mills an opportunity to circumvent the intent of the program through market control. In 1969 we succeeded in getting the requirement relaxed to 50 percent for Alaska. . . .

(Note: Federal Register Vol. 33 No. 204, Friday, Oct. 18, 1968.)

"The Small Business Set-aside Program has historically been directed toward preserving the historical share of small business in the timber market. We have an artificial situation in Alaska under which large business has been assured a very substantial part of their requirements by the Forest Service through past sales action. Small business has no present assurance. We strongly feel that competition among all classes of operators is the best way to assure a realistic stumpage return and to provide incentives for improvement of techniques of operation and management. Our experience over the years in Alaska has convinced us that small business will need periodic assistance in obtaining timber supplies to avoid the effect of preclusive bidding which is presently possible because of the wide divergence of economic bases.

"The program to my knowledge, has never been directed toward establishing new small business. Some of this is inevitable, however, because competition within the size classification is open to all who qualify financially and by size classification. Once established a new mill acquires a political clientele and begins to establish a market share. Under the restrictions of allowable cut and political realism, it is possible that this could develop to a point where a sizeable share of "independent" volume could be designated set-aside. However, it would appear that market demand for the various levels of manufactured quality and product diversification will largely control the small business share rather than the conduct of the Forest Service sales program. However, if the Forest Service confined itself to set-aside program continuity as above, one of the chief benefits could be an alternate source of appraisal data independent of representation by the large mills."

FOREST SERVICE TIMBER SITUATION

According to the Regional Handbook 2121.4 Amendment No. 1 (July, 1971) and the recently circulated Draft Environmental Statement for the Chugach National Forest Land Use Plan, the Alaskan National Forests are summarized as:

Total national forest area	-----acres-----	21, 000, 000
Total forested	-----do-----	12, 000, 000
Commercial forest area	-----do-----	5, 200, 000
Operable, forested	-----do-----	3, 100, 000
Inoperable, forested	-----do-----	2, 100, 000
Current annual wood using capacity	-----board feet-----	731, 000, 000
Current annual allowable cut:		
Chugach National Forest	-----million-----	67.5
Tongass National Forest	-----do-----	824.0
Total	-----do-----	991.5

(Note: Of this annual volume, 506 million is committed to three extremely large giants of industry dominating Alaska [Ketchikan Pulp (50% Louisiana-Pacific) Alaska Lumber & Pulp (owned by a consortium of the biggest names of Japan's industrial and banking circles) and Champion-International Paper Company].

In a summary of the Alaska timber situation prepared in April, 1974, by the Regional Forester for Senator Stevens, the Regional Forester points out:

(1) The tremendous delays in annual sales offerings caused by the Roadless Area (Sierra Club) lawsuit.

(2) Steps being taken by the Forest Service to offer its full allowable cut (excluding the Juneau Sale volume)—Champion International, the Forest Service and The Sierra Club currently are involved in litigation over this contract, and

(3) Approximately a billion feet of salvage blowdown is available for immediate sale offerings if it could be prepared for sale and sold.

(4) That many of the captive logging companies supplying the industrial giants (Ketchikan Pulp/Louisiana-Pacific and Alaska Lumber & Pulp) have timber supplies under contract varying from substantial to very short. (The long-term contracts of Ketchikan Pulp and Alaska Lumber & Pulp continue to supply an annual volume for harvest of 331 million board feet log scale.

(5) Of the truly independent small business defined mills, Schnabel Lumber Co. is in the most precarious timber supply situation.

THE SMALL BUSINESS SECTOR

Schnabel Lumber Company is the largest of the Small Business Sector in Alaska. The mill, located at Haines, needs a genuine opportunity to bid on and purchase not less than 80 million feet of log supply per year. Schnabel Lumber Company is a cant mill producing cants for export most economically on a two-shift basis. It also has a new 8 foot veneer plant sitting idle after only a break in run of 300,000 feet log scale. Log supply permits the mill only to currently operate the sawmill one shift on cull pulp logs purchased from Alaska Lumber & Pulp. The mill is the major provider of employment in the Haines area. It was first in arranging an export chip market of wood waste to Japan, second in developing the export cant market to Japan—first in introducing helicopter logging to Alaska.

With Ketchikan Pulp and Louisiana-Pacific expanding production, buy out mills, and building new sawmill facilities, including recent Chugach National Forest purchases (now making that forest with a 100% Small Business history re "Set-aside" to a forest with manufacturing facilities owned 100% by large business) the delays in Forest Service timber sale offerings due to environmental and legal action aborting the non-guaranteed timber sale offerings has substantially worsened the Small Business Sector's outlook.

RECOMMENDATIONS

In order to carry out both" . . . the spirit it not the letter of the basic national understanding" of the SBA timber set-aside program as stated by the

Regional Forester to the Chief (see page 3, paragraph 2 for context) we believe the Forest Service in conjunction with the SBA must:

A. Correct the numerous errors in the calculation of Base Shares (1966-1970).

B. Make proper offsetting allowances for the modification from the national 70% small business manufacturing requirement to 50% in Alaska or return to the national standard of 70%.¹

C. Combine all National Forests in Alaska for purposes of SBA to avoid a permanent trigger in Chugach National Forest.

D. Adjustment needed to remove Pulp contract sale impacts, Regional Forester recognized "low point" in small business activity in the base period (1966-1970). See quote of Regional Forester memo of February 4, 1971, on page 3, paragraph 1, this brief.

E. With combined Region 10 (Alaska) SBA program, designate not less than 35% of non-guaranteed annual "independent" volume offerings to SBA set-aside designation through F.Y. 1978.

F. Take necessary steps to ease incredible pressure currently being applied by the forest industry "giants," specifically Ketchikan Pulp Company, in Alaska to deprive small business forest products manufacturers of their needs to survive in Alaska (See Regional Forester memorandum of March 25, 1971—page 4, paragraph 1).

G. Blowdown sales should be prepared for big business. Current very low cost stumpage paid on long-term contract timber should make it easily possible for giants to harvest a substantial salvage volume, thus leaving green sale volume share for small business. A proportionate share of blowdown (suggest Hetta Inlet and Basket Bay, 7.1 MM and 5.5 MM respectively) be designated set-aside.

This solves only immediate short-term need. It is essential long-term set-aside program should include volume and value timber such as Portage Bay, Twelve Mile, 80 MM, to be advertised in April, 1975.

H. Some additional quality green timber sale volume with small development requirements must be designated set-aside for bidding in C.Y. 1974. Schnabel Lumber Co. has no volume upon which to operate in the Spring/Summer of 1975.

WELCOME TO KETCHIKAN PULP COMPANY . . .

This mill is leading producer of dissolving pulp, the raw material used for the manufacture of cellophane and rayon. FMC Corporation is our major customer, but pulp is an international business. We have exported our product to Mexico, Belgium, Canada, Germany, Brazil, Switzerland, Argentina, India, Greece, Japan, Colombia, Chile, Denmark, England, France, Italy, Spain, Holland, Korea, Iraq and the Philippines.

Ketchikan Pulp Company is the largest Forest Products industrial complex in Alaska. It is composed of the Pulp and Sawmill at Ward Cove; the Ketchikan Spruce Mill in Ketchikan; the Annette Hemlock Mill in Metlakatla; the Sawmill in Klawock; and the Logging Camp at Thorne Bay. Approximately 1,300 people are employed in these operations. There are an additional 750 loggers employed in 30 independent logging operations that supply logs for the entire operation. This highly integrated operating complex insures total utilization of the log for lumber, pulp, and fuel. This industry returns over \$3,000,000 monthly into the local economy in wages, purchases, and taxes.

GENERAL INFORMATION

Ketchikan Pulp Company was formed as a joint venture of American Viscose Corporation and Puget Sound Pulp and Timber Company. Ketchikan Pulp Company is now jointly owned by the Louisiana-Pacific Corporation and the FMC Corporation. On July 26, 1951, the company entered into a timber purchase agreement with the Forest Service, United States of America, Department of Agriculture, for cutting rights on approximately 786,455 acres of forest

¹ On May 1, 1974, Assistant Regional Forester Frank Price and his assistant, Lee Cromley, visited the Schnabel mill at Haines. They witnessed the mill actually utilizing pulp (cull) logs of the lowest quality being sawn—recovering substantial cant volumes and the waste being made into chips.

lands containing an estimated one and one-half billion cubic feet or eight and one-quarter billion feet board measure, mainly on the north half of Prince of Wales Island and the northwest portion of Revillagigado Island on which Ketchikan is located. This cutting contract extends to the year 2004 or a total of 50 years after the completion of the mill.

Construction of the mill required two years and a cost some \$54,000,000. Pulp operations commenced in May of the year 1954 with an initial daily productive capacity of 300 tons of dissolving pulp which was proposed to be increased to not less than 525 tons by July 1, 1964. This productive capacity rate was surpassed in 1959. The current mill capacity is approaching 650 tons of high quality dissolving pulp daily and 225,000 board feet of lumber daily.

Since 1957 eleven major projects to install additional equipment and facilities have been completed. During 1972-73 construction of log handling, sawmill, and primary waste treatment facilities were completed. The total expenditures for plant construction and capital improvements at Ward Cove is now in excess of \$91,000,000.00.

The MgO recovery system is employed in our process wherein the liquor containing organic materials extracted during the cooking operation is evaporated to a prescribed density, then burned in recovery furnaces in the Power House following which the chemicals are recovered from the flue gases for re-use in the cooking operation in a cyclic fashion.

Logs for our operation are obtained primarily from three sources: logs produced at our own camps from our timber allotment in Tongass National Forest; logs cut by contractors working in our timber allotment; and logs purchased from independent operators logging on their own timber resources. These logs are towed to our mill in large rafts from distances of up to 200 miles. The rafts are then broken down and sorted to obtain maximum economic utilization of the wood, and to provide our mill with the correct wood mixture according to species. Generally speaking, we use a mixture of about 80% hemlock and 20% spruce.

The mill operates on a continuous round-the-clock schedule with a minimum of downtime for repairs in conjunction with certain holidays during which production must be curtailed in accordance with our labor contracts.

DEPARTMENTAL INFORMATION

WOOD SUPPLY

Log pond

Here bundle rafts are broken and bundles (actually truck loads banded in the woods) fed to the log deck.

Log deck

Here log bundles are broken down and sorted according to species and grade. High grade saw logs and cedar go back to the pond to be rafted and sent to sawmills. Approximately 1,000 pulp logs are chipped each day.

Sawmill

A sawmill to produce cants and lumber is integrated with both wood rooms. The slabs and scraps from this mill are chipped. This mill enables better use of wood formerly made into chips.

Barge chips

About 8 percent of the chips used are made from sawmill scraps and shipped here in barges. These are unloaded by the large crane on the dock and blown to storage.

WOOD PREPARATION

No. 1 Wood room

The 108" diameter cut-off saw cuts the logs into 20 ft. lengths. Normal sized logs are completely "barked" in 15 seconds using 1,200 gallons of water per minute at a pressure of 1,400 pounds per square inch. More than one-half million board feet of logs are handled daily.

Chipper

Logs up to 20 inches in diameter are cut into $\frac{3}{4}$ inch chips in about ten seconds by a chipper disc containing six sets of knives. The 153 inch chipper

disc driven by a 1,500 HP electric motor, revolves at 277 RPM. Uniformity of chips is assured by chip screens. Fines and sawdust are conveyed to the Boiler House to be used as fuel.

No. 2 Wood room

This modern plant, built in 1971, barks and chips logs up to 30 inches in diameter in one continuous straight line. The chips then join those from No. 1 Wood Room and purchased chips from sawmills.

PULP PREPARATION

Acid plant

Here the combustion gases and ash from the recovery boilers are compounded to make cooking acid. To produce "makeup" sulfur dioxide, sulfur is burned in a rotating burner. Gases from the burner pass into a combustion chamber where the temperature rises to about 1800 degrees F. then into a cooling pond where the temperature drops to 75 degrees F. in a few seconds. Makeup MgO is drawn from two steel storage tanks.

Digesters

There are nine digesters. Each is filled with 110 tons of chips and about 55,000 gallons of cooking liquor. The temperature in a digester during the cooking process rises to a maximum of 300 degrees F. under a pressure of 115 pounds per square inch. Each cook takes nearly five hours. Fillings are spaced about one hour apart.

Wash plant

Cooked pulp is pumped to de-knotters which remove uncooked knots and chips. Then the pulp is washed. The four rotary bed liquor washers are constructed of stainless steel and are 11½ feet in diameter by 16 feet long.

Screen room

Pulp is directed over screens to remove particles of dirt that have remained in the pulp to this stage. Lindblad Screens, which rotate and vibrate simultaneously, remove small pieces of bark and uncooked wood.

Bleach plant

The continuous bleaching process takes five hours and is done in six stages using varying quantities of chlorine, caustic and bleach liquor according to the type of pulp produced. Between stages, pulp process over bleach washers identical to those in the Wash Plant.

Pulp machine

Slurried pulp is evenly distributed on a moving wire screen at the head of the machine. As the pulp moves through the machine, water is removed first by gravity, next by suction, then by pressure, and finally by passing over 140 steam heated dryer rolls.

Roll storage

Here the "jumbo" rolls, weighing from 17 to 20 tons each, are stored while each is thoroughly tested for quality. Pulp quality is controlled to some extent by matching or blending pulp during the cutting process.

PULP FINISHING, STORAGE, AND SHIPPING

Rewinder, cutter, and layboy

Here the pulp is rewound into smaller rolls or cut into stacks and arranged in stacks suitable for wrapping and shipping as bales. Each bale weighs approximately 500 pounds, each roll about 1000 pounds.

Baling and tying

After the bales of pulp have been weighed they are placed in a hydraulic press where pressure up to 1000 tons is applied to compress them and keep the shipping volume down. The bales are then tied with wire and sent to the pulp storage area directly below. Many new employees start work as Stackers on the "Baling Line."

Pulp storage

The pulp bales are identified by number and stored until shipped. If shipped by railcar through Seattle the pulps is loaded into boxcars inside the Storage Building. Storage on the dock is provided for pulp to be loaded aboard ships.

Ferry slip

Rail cars are loaded off and on car barges over the Ferry Slip. A weekly barge service from Seatette brings chemicals, oil, general supplies and boxcars. The boxcars are filled with pulp for delivering to the various rayon and cellophane mills in the Eastern United States and Mexico.

SERVICE DEPARTMENTS

Powerhouse

Two Power Boilers burning bark and oil, and four Chemical Recovery Boilers, produce steam for process heating and driving two 10,000 KWH turbine generators and one 25,000 turbine generator. This output of power is more than adequate for a community twice the size of Ketchikan.

Environment

The log deck—chemical recovery system—waste water clarifier—plus constant vigilance by our employees and highly sophisticated controls, ensure minimum contamination to air and water and compliance with State and Federal standards.

Dam and filter plant

Water drawn from our 35 ft. high re-inforced concrete dam flows to the Filter Plant through a wood-stave pipeline 5 feet in diameter and 3 miles long at a rate of forty million gallons daily. In the Filter Plant water is filtered and chemically treated prior to use for pulp processing and domestic service.

Yard crew

This crew is composed of a group of regular Yard Men and a Yard Labor Pool, the starting point for most new men in the mill. Yard men load and unload car barges, unload mill freight and supplies, and supply temporary help to other departments. While working in the Yard a new man has an opportunity to learn about the functions of other departments. This can help him decide which part of the mill offers him the most suitable work.

Maintenance

Most of the mechanical trades are represented in our Maintenance Department. They have the knowledge, skill and tools required to restore any part of the mill to production in case of a breakdown. Preventative maintenance is an important factor in economical and safe operation. During major shut-downs the entire maintenance force is busy replacing and repairing equipment to minimize the chance of breakdown when the mill is operating.

Stores

The Stores Department has charge of receiving, storing, and issuing all supplies used in the mill. All repair and maintenance materials are received stored and "stock-carded" for future reference. The stock-card shows the inventory and location of the item for quick access and delivery when needed.

Clarifier

About 20 million gallons of dirty waste water from barking, pulp washing, and floor drains has the settleable solids removed in our 100 foot diameter clarifier. The solids are raked to the center, pumped to the hog house, filtered pressed and burned with the hog fuel.

Laboratory

Samples are taken at all stores of production, sent to the laboratory, and tested to ensure the production of high quality cellulose. Other samples come from the lake, the wood, the air, and the sewers to ensure maximum efficiency and use of raw materials.

MEMORANDUM

To: John Davenport.

From: Leonard B. Netzorg, Legal Counsel.

Subject: Some small business problems in the SBA—Forest Service Timber Sale Set-aside Program.

BACKGROUND

The Small Business Act declares as a national policy that the Federal—
"Government should aid, counsel, assist and protect, insofar as possible, the

interests of small business concerns in order to * * * insure that a fair proportion of the total sales of government property be made to such enterprises * * * (15 USC 631)

The Act further provides that:

"To effectuate the purposes of [that national policy], small business concerns * * * shall be awarded any contract for the sale of government property, as to which it is determined by the [Small Business] Administration and the contracting disposal agency * * * to be in the interest of assuring that a fair proportion of the total sales of government property be made to small business concerns * * * (15 USC 644)

To effectuate the cited provisions of the Small Business Act, as of December 29, 1971, the Small Business Administration and the Department of Agriculture entered into an interagency agreement. Pursuant to that agreement, SBA and the Forest Service jointly determined the fair share of the timber supply in each customary market area of the national Forest Service system that ought to be available to small business entities. This determination was made on the basis of historic buying and manufacturing patterns existing during the five years preceding the agreement. It was further agreed by the two agencies that whenever it should appear during the years 1972-1976 that small business had failed by 10% or more to acquire its fair share of the timber sold on any national forest market area, during the immediately ensuing six months period there would be "set aside" for small business bidding a volume of timber equal to the fair share of small business for that six months period plus the accumulated deficiency so that by the end of that six months period small business would have procured on the basis cumulative since the inception of the program its fair share of the national forest timber sold in that market area. Sales so earmarked for small business bidding are known in the federal agencies and in the industry as "set asides."

Bidding on set aside sales is not restricted to small businesses. If one or more responsible small business entities bids on a set aside sale, the award will normally be made to the qualified small business that enters the highest bid. If, however, no small business enters a bid at a set aside sale, then the sale may be awarded to the highest responsible bidder without regard to the size of that entity or subsequently sold without further bidding and without regard for the size classification of the purchaser.

PROBLEMS

In the determination of the size class of purchasers of national forest timber, SBA adheres to an administrative routine that permits startling circumvention of the Small Business Act. For example, one company was operating and classified as a small business entity even though its operations were almost 100% economically integrated into dependent upon the activities of one of the largest of the huge Japanese trading companies.

When a size determination is to be made because requested by the Forest Service, by an SBA timber staff specialist or by an affected party outside the government, the matter is turned over to a branch of an SBA field office that is expected to make the necessary investigation, assemble the material facts and then make a determination which is appealable to an SBA size board in Washington, D.C.

Too often the field investigation is shallow and even cursory. Generally, it consists only of asking the entity involved to fill out a form that calls for minimal information. Information in public records of the government—the SEC, for example—is not checked to determine the extent to which, because of interlocking or common interests, a seemingly small entity does in fact bear something less than an arm's length relationship to an admittedly large entity. Not all formal legal ties are checked out. And the numerous factual, economic ties which a large business may regularly exert its will upon and in fact dominate and control a seemingly small business seem not to be considered.

Inquiry is not normally made as to financial relationships. Are there loans—not made in the regular course of business—by big business to small business? Are the loans secured? Has the large business acted as a surety on or otherwise guaranteed payment of direct or contingent obligations of the small business? Do the big and small businesses use the same lawyers? The same accountants? The same banking facilities? What access does the big business have of right or in practice to any of the books and records of the small

business? What are the relationships of the directors, officers, principal shareholders and management employees (and the spouses and immediate families) of the small business with any large business entity? Such real life indicators of domination or shared control or veto power are asked for, if at all, only in the exceptional case. And the exceptional case, if there is one, comes about because a competitor has been able by rumor or perhaps even by impropriety to know more than is customary about the business affairs of another. It seems absurd for an agency to expect one businessman to furnish information of the kind that is normally confidential about his competitor when the agency, itself, has the means of getting such information in every instance directly and with complete propriety.

A truly small business that is hurt by such a cursory SBA field determination respecting its competitor is expected to appeal to SBA's Size Board in Washington, D.C. At this point, so far as we can learn, SBA's Size Board contents itself with reviewing whatever information the field office has included in its file plus whatever the appellant might furnish. The Size Board, which is composed of the SBA personnel who are seemingly the most sophisticated in this field, then functions only like a reviewing court, content to issue its opinion on the basis of whatever record is presented to it.

What is needed is an active, rather than a passive, role for the Size Board. With its supposed sophistication in the area of obvious or subtle interrelationships between seemingly separate entities, these people ought to assure themselves that all material facts have been gathered as a basis for decision. Where all the material facts have not been gathered, the SBA Size Board ought to be aggressive either in itself gathering the additional facts or directing with specificity the kind of information to be gathered by the appropriate SBA field office. We emphasize "specificity."

Consider an example from Northern California. One company was simultaneously considered big business on five national forests and small business on five other national forests. A Forest Service request to the local SBA field office for a size determination brought a prompt decision that the company was small. When a competitor later suggested that the Washington SBA office check into the confidential SBA field file, the request was treated by SBA as an "appeal." The competitor was so informed and asked to furnish information. From industry publications and SEC records, some data was furnished and SBA was asked on the basis thereof to use its leverage to assemble all the relevant data and then probe deeply into the interrelationships between the company in question, including particularly its dominant officers, and one of the nation's largest corporations. After a number of weeks, the Size Board dismissed what it has labelled the "appeal" on the ground that there was nothing to appeal from because, the Size Board said, there was not enough information in the field office file to justify a size decision of any sort. And so the whole matter was dumped back into the lap of the identical field office personnel who had already demonstrated a total lack of understanding of the problem. Faced with this situation, the appellant quit the fight. So far as the appellant could discover, neither SBA's field office nor SBA's Size Board gathered any information from the SEC files. Thoroughness was not a characteristic of this investigation. Nor was it characterized by any purposeful effort to protect small business.

Against the foregoing background, it is disturbing to find that Region 6 (Oregon and Washington) of the Forest Service—which controls a bit more than 40% of all national forest timber sales—has announced that where there is a formal challenge of the size classification of the high bidder at a set-aside sale, an SBA field office determination that the high bidder is small will be followed by immediate award of the contract without regard to whether the field office determination is appealed to the SBA Size Board. Except in the rare case where immediate and speedy logging is essential to save the timber from immediate destruction by fungus or insect attack, there can be no reason for this policy and, what is more, no reason has been offered. In this instance, even though the Size Appeals Board may declare the company to be big, this Forest Service Region relies on the Comptroller General's Dynaterra case to validate the award of a set-aside to big business.

In addition to those situations where the general control of a small business rests in or is shared by a big business, there is a further problem where a

small business shares with a big business the control of a particular national forest set-aside timber sale, including the price to be bid, the source of the funds, arrangements with bonding companies, the selection of and terms of agreements with logging and trucking subcontractors, which logs shall be delivered to each of one or more destinations, etc. Weakness in the size determination program and in eradication of dubious devices to thwart the basic program is widely apparent.

* * * * *

The Forest Service has refused to set aside for small business certain scheduled timber sales that it prefers be bought by big business. In one such instance, the Forest Service, with astonishing frankness, has even announced the name of the particular large business whose interest it wishes to protect. It is all the more astonishing because the small business concerns involved are five small plywood companies, each of which is organized as a cooperative and is wholly owned by its own workers. The interest that is being protected—and the Forest Service frankly and openly names it—is International Paper Company.

Small business set-asides of national forest timber occur only after small business has been able to buy at open competition substantially less than its fair share of the timber. The "fair share" is a precise figure that has been established jointly by SBA and the Forest Service. And the set-aside program is applied only until small business is able to catch up to its fair share.

In the International Paper episode, the species composition of the timber sale makes it ideal, as the Forest Service agrees, for the small business cooperatives. But the Forest Service also states that International Paper has a "similar need" for the timber. So the Forest Service, from the local office through the Assistant Secretary of Agriculture, flatly has refused SBA's demand for a set-aside of this timber.

The matter is complicated by a "contribution" of \$49,800 from International Paper to the Forest Service. The funds are to be used for paving a segment of a Forest Service road on which International Paper has a special and legitimate right of many years standing to haul its own timber—not national forest timber—in loads that are far heavier than permitted to any others. International Paper, of course, pays its share of the maintenance on the road.

In return for payment of the \$49,800, International Paper's road maintenance costs are to be substantially reduced. The formal agreement between the Forest Service and International Paper recites that such reduction in International Paper's maintenance costs is the consideration for International negotiations insists that throughout the negotiations there was no mention by any party of the matter of whether this particular timber sale would be a set-aside. Nevertheless, the Supervisor insists that in his opinion International Paper must have assumed, even though it never mentioned, that this timber sale would be open for big business bidding. No record supports the Supervisor's intuition in this regard.

In any event, for its contribution of \$49,800 either International Paper will get its money's worth out of road maintenance savings or it will not. If International Paper does get its money's worth out of road maintenance savings, then it is fully compensated for its contribution and the fact of the contribution should be irrelevant to whether the particular timber sale involved is to be a set-aside for small business. On the other hand, if the maintenance savings will not compensate International Paper for its contribution, then we are brought to the astounding proposition that the Forest Service proposes to treat part of the contribution as a purchase by International Paper Company of an exemption from the Small Business Act.

In one sense, the arrangement is reminiscent of the transaction by which former Interior Secretary Albert Fall sought to procure the construction of oil storage facilities at Pearl Harbor by funneling to the contractor some oil leases on the Teapot Dome Naval Petroleum Reserve. It is necessary to add that, unlike the notorious Teapot Dome arrangement, there is absolutely no basis for any suspicion whatsoever that any employee of the Forest Service

or the Department of Agriculture would personnel profit directly or indirectly from this strange arrangement with International Paper. A copy of a letter of July 12, 1974, to the Regional Forester that recounts the history of this episode is attached.

While the International Paper episode is graphic, it is not the sole example of Forest Service activity to protect certain timber sales for large business.

* * * * *

SBA regulations require that 70% of the timber included in a set-aside timber sale must be manufactured in facilities of a small business enterprise. This raises a series of problems. First, there has been no definition of what constitutes manufacture. Those who wish to defeat the set-aside program would simply slice a log lengthwise into slices that are slightly greater than 8" and treat the pieces so sliced as having been manufactured and thereby available for disposal for genuine manufacture by large business or for sale to the gigantic Japanese trading companies for export to the Orient where wood products would be manufactured.

Second, there appears to be no administrative check on whether 70% of the timber in a set-aside sale is manufactured in fact in facilities of a small business concern. Bear in mind that a good deal of national forest timber is bought by small business entities that perform merely the logging function. These loggers then sell the logs to others who will manufacture the logs into wood products suitable for consumption without further processing. But whether logs derived from set-aside sales are actually manufactured in the facilities of small business concerns—the test applied by SBA's regulations—seems not to be checked even by sampling by either SBA or the Forest Service.

* * * * *

In some areas, the Department of Defense is a significant seller of timber. To date, the federal agencies have extended the small business, timber set-aside program to only Forest Service and Bureau of Land Management sales. The program should be extended to the other federal timber selling agencies. In the localities where they operate, they are often significant factors in the timber supply picture.

* * * * *

Where a business once small has grown to a large status, the timber purchased by that company will continue to be charged to the small business share until such time as SBA discovers that the size status has changed from small to big. The time lag in the discovery will be ignored. Thus, on at least one national forest, millions of board feet of timber bought by such a big company over a two-year period will be deemed to have been bought by small business even though the company was large—a fact not in dispute.

* * * * *

In 1971 the U.S. Forest Service and SBA publicly announced that for each national forest market area (normally a national forest) a base share or percentage of the timber was designated for small business. If small business failed to purchase its designated share in open competition, then timber would be set aside to as to protect the established fair share.

In the 1971 agreement it was agreed that the Forest Service and SBA would look at and possibly revise the base shares every five years. The handbooks, instructions and manuals published by SBA and the Forest Service are vague on this procedure, but indicate that up to 75% of the original share could be lost. Large business will try directly to get the small business shares lowered. They may try to do this indirectly by forcing a redefinition of small business. Small businesses approach this problem with fears engendered by the antipathy toward this program that is manifested in so many parts of the Forest Service.

Intense competition for a limited supply of timber will force mills to close in some areas. Small business should not suffer at the hands of big business in this process. Small businesses need to know the rules for revising the small business fair share before they are confronted with administratively imposed deadlines or a fait accompli.

The Forest Service has given to its field offices instructions as to when a set-aside program will be triggered. The purpose of having these set-aside sales is stated in the interagency agreement of 1971:

"Small business will be assured its base average share is available by the application of set asides."

In general terms, there are supposed to be set asides whenever small business accumulates a deficiency of 10% or more in the volume of timber it purchases as compared to its established fair share. When that deficiency point is reached, the program triggers, and in the next six months there should be set aside the small business base share for that period plus the amount of the deficiency. Thus, by the end of that six months period, small business would have been "assured" of buying, on a cumulative basis, its fair share.

If the 10% deficiency accrues in a single six months period, the set-aside program triggers for the ensuing six months. If the triggering deficiency of 10% accumulates over two successive six months periods, the set-aside program triggers for the ensuing six months.

But if the 10% deficiency does not accrue in successive six months periods, then the Forest Service insists that the program does not trigger. As an example, suppose that in the first six months period there is a substantial small business deficiency; in the second six months period small business buys only its fair share of the timber and does not make up any of the deficiency; and then in the third six months period small business again sustains a substantial deficiency. Further suppose that the deficiency so accumulated is of such a volume that if it had accrued in the first and second six months periods (rather than in the first and third six months periods), that the set-aside program would automatically trigger. The Forest Service insists that because of this suppositional example the deficiency did not accrue in successive periods, the program will not trigger. What the rationale is for the Forest Service position has not been explained.

The deficiencies in timber supply suffered by the small businesses are the same, of course, regardless of whether those deficiencies accumulated in the first and second six months periods or whether they accumulated in the first and third six months periods. In either event, the cumulative deficiency is identical. Small business cannot understand the flat refusal of the Forest Service to recognize this simple fact.

Moreover, this affords to large business a mechanism by which large business over a period of years can get far more than its fair share of the timber without triggering the set asides needed to assure small business its base average share.

* * * * *

On some national forests there is persuasive evidence of antipathy for the program and its purposes. For example, on the Routt National Forest in Colorado, over the protests of the small business community, the Supervisor attempted to satisfy the set-aside requirement by offering a sale of timber that was of such inferior quality that despite the desperate need of small business for timber supply, no small business even entered a bid for that timber.

When small business fails to bid for and buy a set-aside sale, that sale is then available for purchase by big business at the minimum appraised price theretofore established for it by the Forest Service. In such circumstances, the sale may be purchased by big business at the price without the necessity for any bidding. In this instance, no big business would buy the timber, either.

Under the set-aside program it has been agreed that where a set-aside sale is offered for sale and not purchased by small business, nevertheless, for the purpose of satisfying the set-aside requirement, the mere offer of a sale is treated as though the sale had actually been purchased by small business. Hence, in this situation the national forest went through the motions of purporting to satisfy the program's requirements while in fact leaving small business just as badly off as though there had been no program whatsoever.

Other national forests have employed other similar devices for frustrating the program. For example, under SBA rules 70% of the volume of timber on a set aside sale must be manufactured in the facilities of a small business enterprise. The remaining 30% may be disposed of to big business. So another

national forest pretended to satisfy the set aside requirement by putting up a sale of timber of which 50% could not physically be manufactured by a small business but was suitable only for the manufacture of pulp. However, there is no such thing as a small pulp company; every pulp plant is part of a big business complex. By such means, Forest Service officers who are unsympathetic or hostile to the program seek to defeat its intent.

* * * * *

The fair share of small business is determined on the basis of buying history in the particular national forest area involved. For the purposes of this program, the national forest system is divided into market areas. Normally, a market area is coterminous with a national forest. On occasion, however, historic buying patterns and transportation routes will indicate that a national forest ought to be broken into two market areas, and this has been done where appropriate. It is also possible to combine two or more national forests into a single market area where buying patterns and transportation routes show this to be appropriate.

But in the Denver, Colorado Region of the Forest Service, the Regional Office insisted upon combining the Medicine Bow, Routt and Arapaho National forest ought to be broken into two market areas, and this has been done from the vicinity of Casper, Wyoming, to a point south of Denver. No buying habits or patterns and no customary transportation patterns could possibly justify this. Nor were there any other factors to justify this arrangement. Mills in the Casper area, whether big business or small business, cannot reach down into the Denver area for timber. It is economically prohibitive.

After many months of discussion with SBA, the Denver Regional Office of the Forest Service agreed that each of the three national forests would be a separate market area. The small business fair share for two of these three market areas was established.

On the third area, however, the Routt National Forest, there has been constant controversy. Neither the Forest Supervisor nor the Regional Forester seems inclined to follow any known standard for determining the small business fair share. Rather, they have arbitrarily set the small business fair share at a figure that outrages the small business community and has forced the Small Business Administration to appeal to the Secretary of Agriculture. Two and a half years after the start of this program, on the Routt National Forest in Colorado the small business fair share is still not finally established.

It is appropriate to note that it is the same Routt National Forest that put up as a set-aside sale for small business a tract of timber so inferior that neither small business nor large business would buy it, as mentioned above.

LEONARD B. NETZORG,
Portland, Oreg., July 12, 1974.

MR. THEODORE A. SCHLAPFER,
Regional Forester,
U.S. Department of Agriculture, Forest Service,
Portland, Oreg.

DEAR MR. SCHLAPFER: On Friday, June 28, 1974, I was informed by Assistant Regional Forester Jorgensen, as well as by Mr. Reifenberg of the Office of General Counsel, and Mr. Craig Casey, Assistant United States Attorney, that the Gifford Pinchot National Forest and your office had jointly determined to withdraw from the market during the last half of calendar year 1974 the First Sale on the South half of the Gifford Pinchot National Forest. The Forest Service and the Secretary had theretofore denied an SBA request that the First Sale, long scheduled for sale in 1974 and first listed by the Supervisor for the first half of that year and thereafter for the second half, be offered as a set-aside. At the time of the withdrawal of the sale, six buyers of timber on the South half of the Gifford Pinchot had filed in the Federal Court a petition for review of that denial.

From Assistant Regional Forester Jorgensen I gathered that the First Sale would be withheld from the market until at least the first half of calendar year 1975 or such other time as would enable it to be offered at open bid.

In the light of these communications I was asked whether the plaintiffs would further pursue the action entitled *Astoria Plywood Corporation v. Butz*, Civil No. 74-500, in the United States District Court for the District of Oregon. I replied that I would consult with my clients as soon as practicable and then inform your office, the office of the General Counsel, and the Assistant United States Attorney with respect to their decision. I have now consulted with my clients and it is their decision, as I informed your lawyers on July 3, to pursue the litigation.

The plaintiffs are five worker-owned plywood manufacturers and one lumber manufacturer, all small businesses.

All are well established companies that have been doing business with the Forest Service for many years. Your records reflect their long history of reliability.

These companies are not land owners. They cannot draw on any timber they own to make up for deficiencies in their purchases of public timber.

Their decision to pursue the litigation was not casual. The First Sale is important to them. But the totality of the situation involves much more than the First Sale. The circumstances of the entire First Sale episode pose fundamental problems. It is these more fundamental problems that ultimately motivate their decision. Let me state for you some of these fundamental problems.

FUNDAMENTAL PROBLEMS

First, the governmental agencies that have the power of economic life and death over these plaintiffs must exercise such discretion as they possess in accordance with published standards. It is not enough that a decision is made on the basis of what seems "practical" to one decisionmaker, "logical" to another, or "illogical" to a third. Where there are published standards and where, as here, the intended beneficiaries of a nationally enacted policy have fully shared in the shaping of those standards, discretion must be exercised and decisions must be made within the limits defined by those standards. Unless this is done, the current small business program will bog down in the same morass that sank the 1958 program. And while that fatal process goes on, each small business will find itself aided or harmed according to the economic and social nations of whichever one of some thousands of Forest Service employees happens to be assigned to any specific decisionmaking job on any particular day.

Second, it is a declared national policy that every affected agency, including the Forest Service, has an obligation to—

"* * * aid, * * * assist and protect small business concerns in order * * * to insure that a fair proportion of the total sales of government property be made to such enterprises * * *."

To carry out this program, the government has created the Small Business Administration. It is staffed with employees who are intended to have a special expertise in the field of small business.

On occasion small business manufacturing concerns have failed by more than 10% to get their fair share of national forest timber. Obviously, this occurs only because large business entities have already got considerably more than their fair share of the national forest timber. In this event, it is the function of SBA's experts to select for set-asides those timber sales that they believe in the exercise of their expertise will fulfill the national mandate to "aid" and "assist" the deprived small business concerns. Unless the sales so selected will, if made as set-asides, defeat the purposes of the statutes under which the national forest timber is to be sold, it is our view that the Forest Service should defer to the SBA request as a matter of both policy and conformance with the interagency agreement. Failure of the Forest Service to do so involves the Forest Service in substituting its judgments as foresters for the judgments of the federal government's experts in the precise area of the controversy. And at the root of the controversy is the fact, bear in mind, that large business has already used its economic power to acquire substantially more than its fair share of the national forest timber.

Third, as the federal government is structured there seems to be no way for SBA, either directly or through the Department of Justice, now to submit its position *vis a vis* the Forest Service to judicial review. We believe strongly that the SBA position is sound. Partly in their own interests and partly in

the role of private attorneys general, the plaintiffs believe that they should seek judicial review in which they will represent what they are convinced is an overriding public interest.

In one sense the litigation involves a legal dispute between two agencies. Neither agency has submitted the matter to the Attorney General. By submitting the case to the courts, the plaintiffs necessarily involve the Attorney General. He is not bound to defend an agency if he believes it to be acting contrary to law. Particularly is this the case where the issue may be which of two contending federal agencies is acting contrary to law. Perhaps an examination of the positions of the two agencies, necessitated by the fact of the litigation, may indirectly adduce from the Attorney General a conclusion favorable to the SBA position.

Fourth, the plaintiffs are vitally concerned as to whether a large business, by agreeing to do some relatively minor thing that the Forest Service strongly desires, can thereby so influence the administration of the set-aside program as to insulate from the program particular timber sales that for its own purposes that large company desires to buy. This is especially important where the particular timber sales are so located and contain such species and sizes of timber as makes them preeminently suited to the exact needs of the affected small business concerns.

BACKGROUND

An understanding of how these fundamental problems arise requires, first, a review of the genesis of the timber set-aside program and then a chronological analysis of the episode of the First Sale.

SBA began as a division added to the Reconstruction Finance Corporation, a federal agency initially assigned the task during the Depression of providing financial assistance to the rail carriers and then to other major businesses. A Small Business Division was added to assist small businesses with their financial problems. After World War II, RFC was essentially abolished but the Small Business Division was continued in existence as a separate entity, given the new name of Small Business Administration and, after a few years of existence under temporary legislation, received its permanent legislative charter.

During and following World War II, public concern was deepening over federal procurement policies. Huge procurement contracts were awarded—sometimes competitively but often by negotiation—to the largest business complexes in the United States. Procurement officials responded to criticisms with the assertion that these mighty complexes would in turn award sub-contracts to thousands of small businesses. Because this committed the survival of any particular small business to the beneficence of large business, SBA was given the mission of dealing with the procurement agencies to assure that there was federal procurement directly from small business of a fair share of the government's purchases.

The new procurement program did work. Small businesses could survive on their own merits in a competitive context where big business could not use its vastly greater financial power to dominate or destroy. The aspect of the public interest that is manifested in such legislation as the Sherman Antitrust Act, the Clayton Act and the Robinson-Patman Act was served through the partial arrest of a disturbing trend toward a centralization of economic power that boded ill for an economic system geared to the concept that a fluid economy based on competition among its countless units and the ingenuity of millions of individual participants will help to keep the nation both strong and free.

While all this was going on, in 1955 committees of the Senate and House joined in an extensive exploration of federal timber policies. One of the items of concern was the ability of small businesses dependent on federal timber to survive. Not too long thereafter, Senator Morse offered on the floor of the Senate an amendment to an SBA bill and had already cleared the House. For the direct purpose of affording protection to small businesses dependent on federal timber, he proposed that the SBA procurement authority be expanded to include authority respecting the disposal of federal property. The proposal was enacted into law.

On December 2, 1958, the Department of Agriculture and SBA signed an agreement which provided:

"The Department and SBA agree that in certain instances, it will be in the interest of assuring the accomplishment of this objective to set aside appropriate sales for small business competition only when consistent with the program requirements of the Department and the purposes of the Act."

Under that agreement the Forest Service would make set-asides recommended by SBA unless the Forest Service determined that such action was inconsistent with its program requirements. SBA was obligated by other parts of the agreement to consider forest management and other pertinent factors involved in such a program.

The program was not successful. This was due, in large measure, to the vagueness of the criteria set forth to govern the decisions of Forest Service officers. The Forest Service has explained:

"During the period of operations under the 1958 agreement, use of the program varied between Regions and even between forests within a Region because of the very general directions provided the Regions. * * * Requests were made that more uniformity be developed in the program nationwide and that use of the set-asides be applied nationwide. Because of the need for uniform standards and the growing economic concentration in the timber industry caused by mergers and acquisitions, the Forest Service and SBA agreed in 1969 to review the original program with a view to establishing new procedures. The present program is the result of nearly 2-years' effort in this regard. * * *

Environmental Analysis Report, Small Business Administration Set-Asides for National Forest Timber Sales, accepted by the Chief, January 30, 1974.

The 1958 program was, in truth, no program at all. Where a Supervisor or Regional Forester was personally unsympathetic to or unable to comprehend the policy declared in the Small Business Act, small businesses were at the mercy of any large business concern in the neighborhood that might decide to pursue an economically predatory course of action.

The small plywood entity, for example, has a limited capital base. A succession of lean years at its one operation drains off its essential capital. The choice then becomes whether to sell out or be ruined. But a predatory or merely thoughtless neighbor—a single unit in an economic complex of national or even international proportions—can well afford an extended, relatively minor local loss if it decides to starve out the local small business. That local loss is made up elsewhere. But in a real sense, it is not a loss at all. It is an investment that can provide excellent returns when the irritating competition of small business for raw materials is removed. As a matter of fact, such a large business does not even need to take more than its share of the available federal timber. All it must do is acquire the limited species and types of timber essential to the small plywood plant.

The 1958 program was a program only in name and not in substance. Whether there were to be set-asides and, if so, which sales were to be set aside depended upon the propensities of each local forest officer. Even locally there was apt to be no program because the officer who was here today retired or transferred and was replaced tomorrow with a successor who had different notions. The absence of firm standards, known to and understood by both federal forest officers and purchasers of federal timber, was fatal.

THE 1971 INTERAGENCY AGREEMENT

To cure this situation, to discover and define firm, known and understood standards became the chore undertaken in 1969 by the Forest Service, SBA and purchasers of federal timber. Several of the men in the top management posts of the plaintiffs were among the most active of the participants from the private sector. They attended meetings, presented new views, discussed broad issues and narrow details with government officials, with representatives of large business and with their small business compatriots. In effect, they assumed positions of national leadership in the formulation of the new SBA program. With all the time and energy they devoted to the creation of the new program, with all that they and their small business colleagues have at stake for the future—they are unwilling to see the new program collapsed after only two and a half years.

The new program was formalized in the SBA-Agriculture interagency agreement of December 29, 1971. Firm standards were devised for determining the

base average share of small business with exceptions permitted only to accommodate exceptional situations. Thereafter, set-asides were to be triggered on the basis of mathematical formulae that all could understand and all could apply. On the South half of the Gifford Pinchot, there has been adherence to these formulae. The set-aside program, all agree, has triggered.

The question is which sales shall be set aside. All the sales announced for 1974, bear in mind, have been in the Forest's action plan for four or five years—scheduled for sale in 1974. Sales are not specially prepared for small business nor do sales have any special clauses as to harvesting or transportation operations merely because they may be set aside for small business. A set-aside sale differs from an open sale in only two respects. First, small business has a preference in the bidding. Second, 70% of the log volume must receive primary processing in the manufacturing facility of a small business entity.

When the program triggers, which sales shall be set aside? For one thing, they ought to be sales that, like the First Sale, are in economic proximity to the affected small businesses. Second, they ought to have the species and size composition that, like the First Sale, meet any particular manufacturing requirements of the affected small businesses. Third, they ought to be of a size that, like the First Sale, the affected small businesses have the physical and financial capability to handle. Such sales, like the First Sale, will precisely meet the needs of the affected small businesses and, therefore, meet the goals of the national policy declared in the Small Business Act. Failure to adhere to these three considerations is a disservice to small business and a subversion of the declared national policy. To guard against such a possibility, the selection of individual set-asides ought to rest primarily in SBA, which employs experts whose essential function is to know and truly understand the problems and the needs of small business.

The new interagency agreement does leave the selection of individual set-asides to the discretion of SBA subject, of course, to ultimate review by the Secretary of Agriculture for the limited purpose of assuring that the individual sale selection meets the criteria of the new interagency agreement. In this regard, Section 5 of the interagency agreement states:

"USDA will afford SBA the opportunity to review prior to public announcement all proposed sale programs involving sales with an estimated value of \$2000 or more, including set-asides proposed by USDA. SBA will then concur in proposed set-asides or will make recommendations for other set-aside action. If such action is not contrary to the purposes established under the Acts respecting the sale of National Forest timber, USDA will make the set-aside. If the representatives are unable to agree on specific set-asides, they will document their views for referral to higher authority within the two agencies. In accordance with the Small Business Act, the Secretary of Agriculture has authority to make the final determination."

This 1971 interagency agreement in effect says that the Forest Service will adhere to SBA's selection of set-asides unless the SBA selection runs counter "to the purposes established under the Act respecting the sale of National Forest timber." This statement of standards contrasts sharply with the vagueness of the 1958 agreement which said that only such set-asides would be made as were "consistent with the program requirements of the Department [of Agriculture] and the purposes of the [Small Business] Act."

ACTS RESPECTING SALE OF NATIONAL FOREST TIMBER

What are " * * * the Acts respecting the sale of National Forest timber" and, second, what are their purposes? There are only three Acts respecting the sale of national forest timber: The basic 1897 Act (16 USC 475-476); the 1944 Cooperative Sustained Yield Agreement Act (16 USC 583-583i); and the Multiple Use-Sustained Yield Act of 1960 (16 USC 528-531). The 1944 Act is irrelevant because we are not dealing here with either a federal unit or a cooperative sustained yield agreement. The 1960 Act is not material because the sustained yield that it commands will be accomplished whether the First Sale is awarded at open bidding or at bidding having a preference for small business. And except for a requirement that 70% of the logs cut under a set-aside sale must ultimately be manufactured in a small business facility, the First Timber Sale Contract will not vary regardless of bidding

and award limitations. Sustained yield, therefore, is as well served by a set-aside as by an open sale.

The 1897 Act has two stated purposes: (1) the securing of favorable conditions of water flows, and (2) the furnishing of a continuous supply of timber for the use and necessities of the citizens of the United States.

As for water flows, the First Timber Sale Contract will have the same operational requirements and the actual operations will receive the same administrative surveillance whether the sale is bought by big or small business, whether the bidding is open or with a small business preference. The Forest Service's Environmental Analysis Report on the current small business program concurs.

The other purpose of the 1897 Act has to do with furnishing a continuous supply of timber for the use and necessities of citizens of the United States. All the plaintiffs are American corporations with no foreign branches or affiliates. The products they manufacture invariably flow to the domestic American market where they are purchased for ultimate consumption in the United States. Their ability to export any logs is restricted by regulations of the Department of Agriculture that apply to both big and small business without distinction between them.

It is manifest to the plaintiffs that if the First Sale were to be a set-aside, it would not be contrary to but would in fact be wholly consistent with the purposes of the Acts respecting the sale of national forest timber and, therefore, consistent with the current interagency agreement.

Neither the Supervisor nor the Regional Forester nor the Secretary has denied this or—what is especially disturbing to my clients—even addressed himself to this. Look at the decisions that were issued.

THE SUPERVISOR'S DECISION

The Supervisor said he had entered into an agreement with International Paper Company to share in the cost of paving an existing road, such paving to be done by the purchaser of the First Sale if he elects to use the road involved. He says that in the negotiations with International Paper, there was no mention of whether the First Sale would be a set-aside. But, he says, " * * * we feel, by implication alone, that International Paper Co. assumed the sale would be open for their bidding."

Unrelated as this is to " * * * the purposes of the Acts respecting the sale of National Forest timber," nevertheless it is interesting to track through the Forest Service's records as to (1) why International Paper made such a contribution and (2) the dollar amount of the contribution in relation to the probable contract price of the First Sale.

Some years ago the road belonged to International Paper. In 1960, for adequate consideration, it conveyed the road by easement deed to the Forest Service. In the deed, International Paper reserved the right to haul other than national forest logs over the road in loads substantially heavier than normally permitted on national forest roads. In the parlance of the industry, such overloading is known as "off-highway" loads. For such hauling of non-Forest Service timber, International Paper contracted to pay its proportionate share of the road maintenance according to a formula that was later revised from time to time.

In January 1974 the Forest Service and International Paper in a formal instrument agreed that a segment of the road should be paved; that the paving would produce maintenance savings; and that it would be advantageous to both parties to have the Forest Service contract for and supervise the work. International Paper agreed, therefore, to contribute \$49,800 to the work within 30 days of the work contract award. Upon the making of the payment, International Paper's road maintenance fees for the use of the road would be reduced.

Apparently the prospect of reduced maintenance charges gave International Paper its money's worth. If it did not, then we would be brought to the unthinkable conclusion that International Paper overpaid and that with the amount of the overpayment, it bought from the Forest Service an exemption from the Small Business Act.

But there is no record that International Paper negotiated or bargained for an exemption from the Small Business Act. Instead, we are asked to rely here on the Supervisor's intuition. Reliance on intuition as a basis for denying

a set-aside of the First Sale would be unacceptable even if the intuition related, as it does not, to a standard set forth in the current interagency agreement. In effect, the Supervisor applied to his intuition the vague "program requirements" of the outmoded and discarded 1958 agreement—a pact that did not work simply because it lacked adequate standards.

Next there is the matter of the \$49,800 that International Paper will pay toward the paving work in consideration of the savings International Paper will receive in road maintenance costs. According to the proposed First Timber Sale Contract, the Supervisor calculates that the paving of the segment of the road involved will cost \$146,511 without allowance for profit on the paving operation. Thus, International Paper, in consideration of maintenance savings, will bear about 34% of the paving cost. Presumably, this is somehow related to International Paper's proportionate share of the use of the road for hauling non-Federal timber.

In the context of the values in the First Sale, International Paper's payment of \$49,800 is nominal. The Forest Service has appraised the fair market value of the First Sale timber. It is the minimum price that may be bid for the timber. To this the purchaser must add a payment for slash disposal. The minimum permissible bids, therefore, whether the bidding is open or set-aside, are as follows:

Species	Volume	Unit price	Slash per thousand	Total
Douglas fir.....	14, 900, 000, 000	\$154. 46	\$2. 20	\$2, 334, 234. 00
Hemlock, etc.....	3, 900, 000, 000	92. 15	2. 20	367, 965. 00
Cedar.....	90, 000, 000	120. 96	2. 20	110, 844. 00
PAM.....	1 295	74. 63		22, 015. 85
Total.....				2, 835, 058. 85

¹ Acres.

Of these four items, no further bids will be allowed on the cedar or PAM. The bidding may continue, however, on the Douglas fir and Hemlock. The aggregate minimum payable for these two items is \$2,702,199.00. During the first six months in 1974, bidding on the Gifford Pinchot National Forest has run contract prices up well more than 75% over appraised prices.¹ Applying only a 75% overbid factor to the Douglas fir and Hemlock would increase the price bid for those two items by \$2,026,649.25, for an aggregate bid on these two items of \$4,728,848.25. Then adding in the non-biddable items, one arrives at a grand total for the entire sale of \$110,844.00 + \$22,015.85 + \$4,728,848.25 = \$4,861,708.10. International Paper's road contribution is barely over 1% of that total, probable price. Even if International Paper were to realize no road maintenance savings, the price is cheap if it buys exemption from the national policy declared in the Small Business Act.

Viewed in another light, the \$49,800.00 contribution would equal a bid experience indicated that the bidding for the Douglas fir is likely to exceed the increased of less than \$3 per M on the Douglas fir and hemlock; current appraised price by more than $(.75 \times \$156.66 =)$ \$117.50 per M and that the bidding for the hemlock is likely to exceed the appraised price by more than $(.75 \times \$94.35 =)$ \$69.76. By way of contrast, a bid of only \$3 per M over the appraised price for the Douglas fir and hemlock would equal considerably more than the \$49,800 that International Paper is to put into the paving of Road 125. In context, then, the \$49,800 is not a significant reason for exempting the First Sale from the Small Business Act. So much for the reasons advanced by the Supervisor. They are questionable in any event and total strangers to the criteria of the interagency agreement.

THE REGIONAL FORESTER'S DECISION

The Regional Forester's decision has a whole array of propositions—not one of which is related to the standards of the 1971 interagency agreement.

¹ In the first quarter of 1974, bid prices exceeded appraised prices by 88%. Final figures are unavailable for the second quarter, but it appears that the bid prices exceeded appraised prices by more than 88%. To be unrealistically conservative, we use in this letter an assumed 75% overbid.

First, he says that no small business is as close to the First Sale as is one large business. Although he does not say so, that is the Chelatchie Prairie plant of International Paper. All the plaintiffs have been bidding on and buying national forest timber in the First Sale area for many years. If now no sale may be set-aside in the area because an International Paper plant is closer to it, then we have a whole new ball game based on a standard that nobody has heretofore considered. And nobody knows what would be the consequences of such a proximity standard if it were to be applied on the more than 150 national forests. Conceivably, it could eliminate most of the national forest timber from the set-aside program. Nobody knows. It is a standard unique to this case, is applied only by the Regional Forester, is wholly unrelated to the interagency agreement of 1971 and, we note, is unrelated even to the discarded interagency agreement.

Second, he says that International Paper had a need for the Douglas fir on the First Sale that compares to the small business need for that same timber. The national policy declared in the Small Business Act, however, is just as applicable to the Forest Service as it is to SBA. In this circumstance, one would think that if the small business need for this particular timber is similar to International Paper's need, then the sale ought to be a set-aside. But by some intellectual process that is not explained, the Regional Forester arrives at the contrary conclusion. Again, the reasoning does not refer to and cannot possibly be related to the standards of the interagency agreement.

Third, he says that there are other smaller, equally accessible sales available to small business. With commendable frankness, he acknowledges that the species composition of the other sales is not as "ideal" as the First Sale. This core of this concept has already been discussed under the Regional Forester's second point.

Fourth, he says that small businesses would be better off with several small sales rather than the 24 million board feet in the First Sale. This point is neither related to the interagency agreement of 1971 nor valid in any event.

There are six plaintiffs. Six small sales, instead of the 24 million board feet First Sale, would give each company 4 million board feet. But the annual needs of each company range from 30 million to 60 million board feet—essentially Douglas fir—per year. Four million feet would be a drop in the bucket for each compared with the needs of each. So they would be right back at every sale, forced to bid to levels inordinately above the fair market price determined by the Forest Service. On the other hand, if one of them is awarded the First Sale, the immediate needs of that company would be somewhat relieved. And the pressure exerted by that company for more timber would be relaxed. In other words, the Regional Forester's set-aside gives no significant relief to any small business. But if the First Sale is set aside, then one small business does obtain significant relief. In any event, as we have noted, none of this is related to the standards set forth in the 1971 interagency agreement. And it obviously disagrees with the views of SBA—the federal government's experts in the small business field.

It is interesting to look at the other side of the Regional Forester's reasoning. There are several big businesses that bid in this area. Besides International Paper, there are Boise Cascade, Crown Zellerbach, Louisiana-Pacific and Cascade Locks. These companies are large because they operate numerous plants scattered through many domestic areas and, in some cases, internationally. The particular plants they operate in the First Sale area are not necessarily *per se* large in terms of their individual raw material needs. In any event, here are five large companies. Would they be better served if, instead of making the First Sale available to them, they were afforded the opportunity to bid on a number of smaller sales? The Regional Forester does not consider this application of his reasoning. But if he had so applied his reasoning, then presumably large business would be happy and the disagreement that the Forest Service has with SBA and the small businesses would be at an end.

Fifth, the Regional Forester says that if International Paper cannot buy the First Sale, it might be forced to bid in other area to the detriment of other small businesses in those areas. Again, this is unrelated to the interagency agreement. Equally to the point is the fact that Forest Service records show that International Paper is bidding in the other areas. And still to the point, why force these needy plaintiffs to bid in these other areas? Apparently, it is all

right if these six plaintiffs are sent off to bid against other small businesses in other areas but all wrong if one large business is identically inconvenienced.

Sixth, the Regional Forester alludes to the right of International Paper to "special off-highway road use on part of the appraised route to the sale." This road use right, he says, carries with it an obligation to contribute substantially toward the paving in connection with the First Sale. Here the Regional Forester has misstated the facts.

The special road use right is limited to non-federal timber and is unrelated to the obligation to contribute to the paving. There is an obligation to pay proportionate maintenance which is to be reduced under the January 1974 agreement in consideration of the paving contribution. Moreover, the formal instrument makes no mention of the First or of any other timber sale. So far as the agreement is concerned, International Paper is to pay its money whenever the Forest Service lets a contract for the road paving, regardless of whether the contract work will use appropriated funds or is part of the First or any other timber sale contract.

Seventh, the Regional Forester says that the fact of the International Paper contribution " * * * makes the First Sale a rather illogical candidate for set-aside treatment." Considering that the contribution is nominal in amount, that International Paper is to make the contribution in order to get maintenance savings and that, as the Supervisor says, the First Sale at no time entered into the negotiations with International Paper, we cannot follow an intellectual process that concludes that the First Sale is an "illogical" candidate for a set-aside. It would seem that the contribution is irrelevant to both the immediate issue and the 1971 interagency agreement. Otherwise, it must be deemed to be a cash payment for which the Forest Service sells an exemption from the set-aside program.

Eighth, the Regional Forester concedes, and we agree, that such small businesses as the plaintiffs can operate the sale. But he returns to the notion that the one large sale would benefit only one small business whereas a series of smaller sales would benefit several of them. As pointed out in connection with the Regional Forester's fourth point, this is not a valid conclusion. All will benefit if the pressure of one of these small businesses is taken out of the market place because it has acquired the First Sale. If the Regional Forester's reasoning is valid in concept, why not apply it to big business and leave the First Sale for a small business set-aside?

Ninth, the Regional Forester says that it is his opinion—an opinion shared by neither the plaintiffs nor SBA—that the plaintiffs are better off if they can avoid competing against big business on several smaller sales rather than on one large sale. As we have already demonstrated, this is not valid.

Tenth and finally, the Regional Forester indicates that if the First Sale is not a set-aside, then the White, Pike and Lost sales may be offered as set-asides. But Pike and White are disadvantageously located in relation to most of these plaintiffs as compared with the First Sale. And, as the Regional Forester concedes in his paragraph numbered 4, the species composition of the First Sale is superior to the composition of these other sales in terms of the needs of these worker-owned plywood plants. Like all the rest of the reasons advanced by the Regional Forester, this is irrelevant to the standards fixed in the interagency agreement.

Thus, neither the Regional Forester nor the Supervisor adhered or even paid lip service to the interagency agreement. There remains to examine the decision assigned by the Assistant Secretary.

THE ASSISTANT SECRETARY'S DECISION

The Assistant Secretary's decision, in one sense, is certainly candid. He frankly abandons any consideration of " * * * the narrow issue of how Forest Service program requirements are to be interpreted." Instead, the decision looks at two issues that are labeled "practical consequences." Neither of the issues is related to the standards of the interagency agreement.

First, the Assistant Secretary says, is the matter of sale size. Because SBA and the Forest Service contemplated offering about 40 million board feet as open sales on the South half of the Gifford Pinchot, the First Sale as the largest sale in the program is " * * * more logically offered as an open sale than a set-aside." Why this seems "more logical" is not explained. Hence, there is no

explanation as to why the First Sale with almost the ideal species and size composition needed by the worker-owned plywood cooperatives should be offered as an open sale while other, more remote sales with inferior species and size composition should be the set-asides. In view of the declared policy of the Small Business Act, which is as binding on the Forest Service as on SBA, and the standards of the interagency agreement, the plaintiffs simply do not follow the logic of the author of the letter than the Assistant Secretary signed.

Second, and stated by the decision to be more important, is the assertion that if the First Sale were offered as a set-aside, small business would have had 130 million board feet in set-asides while large business would be precluded from purchasing more than 9 million board feet. These digits merit examination.

The small business fair share for the first six months plus the accumulated deficiency in their prior efforts to purchase their fair share at open bidding totaled 137 million board feet. Therefore, even if 130 million board feet had been offered as set-asides, small business would still not have caught up. And the only reason why the fair share plus the catch-up volume was so relatively large is because small business had received substantially less than its fair share in prior open sales.

Even so, is it a fact that large business would get only 9 million board feet? Bear in mind that the Assistant Secretary signed the decision on May 21, 1974. That is 40 calendar days or 27 working days prior to July 1, 1974, when a whole new timber sale program would be underway on the forest involved. Bearing in mind that almost every national forest timber sale runs for several years and that it is relatively unusual for any company to plunge into the operation of a sale within a month or two of the sale auction date, one should not be misled into thinking that only 9 million board feet of timber sales appeared in the offering for large business. If the Assistant Secretary's figures were accurate, then this 9 million feet was all that would come up for open auction in the ensuing 40 calendar days.

What about the 9 million feet? During the first six months of calendar year 1974, on the South half of the Gifford Pinchot National Forest there were three open timber sales. The Flying Dog Timber Sale on the Mt. Adams District, with 11,700M feet b.m. of timber, was auctioned on March 6. It was awarded to the high bidder, Evergreen Helicopter Company; Evergreen is a logger, not a manufacturer of wood products, and presumably will sell the logs to whatever manufacturing company in the area makes it the best offer.

The Gemini Timber Sale on the Wind River District, with 2,000M feet b.m. of old growth Douglas fir and 500M feet b.m. of PAM, was auctioned as an open sale on March 27. It drew three large business bidders and seven small business bidders, including four of the plaintiffs. Appraised at \$286,960.00, it was sold for \$823,830.00.² *International Paper* was the second high bidder. The high bidder to whom the sale was awarded was Fort Vancouver Plywood, a worker-owned plywood cooperative and a plaintiff.

The third open sale was the Lost Sale on the St. Helens District. It included 3,800M feet b.m. of old growth Douglas fir, 2700M feet b.m. of hemlock, 250M feet b.m. of cedar and 2050 feet b.m. of PAM—a total of 8,100M feet b.m. The auction on May 8 attracted seven small business bidders (including four of the plaintiffs) and four large business bidders. Appraised by the Forest Service at \$753,980.50, it was sold to the high bidder, *International Paper*, for \$2,240,156.50.³

Thus, large business had three open sales available to it with a total of 24,000M feet b.m. of timber. Of this volume, it was the high bidder for 8,100M feet b.m. And as of the date when the Assistant Secretary signed the decision, May 21, no more open sales were scheduled until after July 1, when a new program with more millions of feet of open bidding sales would come on the market.

We have now examined each and every reason advanced or even hinted at by the officers of the Forest Service and the Department for rejecting the SBA request that the First Sale be a set-aside. In that entire array of reasons, none appears valid in any even. Certainly, not one of that multiplicity of asserted reasons relates to any standard in the interagency agreement.

² Contrast this overbid of 290% with the assumption, *supra*, of an overbid of only 75% if the first sale were to be sold at open bidding.

³ Contrast this overbid of 300% with the assumption, *supra*, of an overbid of only 75% if the First Sale were to be sold at open bidding.

CANCELLATION OF FIRST SALE

On May 23, two days after the date of the Secretary's decision, the Supervisor advertised the First Sale as an open sale with bid opening scheduled for June 27. The plaintiffs immediately notified the office of the General Counsel of the Department of Agriculture and the United States Attorney that they intended to seek judicial review and affirmative injunctive relief. They also delivered to the United States Attorney copies of all relevant documents in their litigation file even though all such documents were already in the files of the government. The Forest Service then declined informal requests for a delay of 30 or 60 days in the sale date in order to permit more orderly and thorough litigation of the basic issues. Such a delay, the Forest Service explained, would put the sale date into a new fiscal year. When it appeared that the Forest Service had breached its own regulations by failing to have the proposed timber sale contract—145 pages—prepared and available for examination by prospective purchasers, the plaintiffs filed a formal protest, asking the full 30 days provided by law for examination of the contract. Thereupon, the sale date was rescheduled but still as an open sale for July 10. This put it into the next fiscal year when more sales, both open and set-aside, would be offered in the first six months.

Section 5 of the interagency agreement requires the Forest Service to afford SBA the opportunity to review prior to public announcement *all proposed sale programs*. Because the program for the first six months of fiscal 1975 had now been materially altered by the publicly announced addition of the First Sale without prior consultation with SBA as to this program alteration, SBA on June 24 renewed its request that the First Sale be set aside for small business bidding. Communication with the Forest Service indicated to plaintiffs that this SBA request would not be honored and that the sale would proceed as scheduled for July 10. On the next day, Tuesday, June 25, the plaintiffs filed their Complaint and informally delivered copies of it to the United States Attorney.

Again, there were requests to the Forest Service to postpone the sale date for 30 or 60 days to accommodate the lawyers for both parties and the Court. The Forest Service said that it would consider its position and advise the parties on Friday, June 28. On that day, the Forest Service told plaintiffs that the First Sale would be withdrawn for reoffer probably in the last six months of fiscal 1975 when, presumably, there would be no set-asides.

Plaintiffs were then asked whether they would withdraw the litigation. On Wednesday, July 3, plaintiffs informed the Forest Service and the United States Attorney that they would not withdraw the litigation. Instead, they would file an Amended Complaint setting forth newest development and charging that the withdrawal of the sale was simply the culmination of a series of arbitrary actions that contravene the Small Business Act and the interagency agreement. And, because the Supervisor, the Regional Forester and the Assistant Secretary had advanced the whole array of their reasons for insisting that the First Sale be made available for bidding by International Paper and because not one of these reasons was legally valid as measured by the applicable legal standards, plaintiffs advised that they would ask the Court for an affirmative order. The plaintiffs again referred the government's attorneys to the action entitled *Nut-Ola Food Products Co., Inc. v. Earl L. Butz, Secretary of Agriculture of the United States*, Civil Action No. 2366-72, in the United States District Court for the District of Columbia.

CONCLUSION

From the foregoing, perhaps you will understand that from the point of view of these six plaintiffs, the series of events that constitute the First Sale episode, presents issues that are vital to small business.

First, the 1958 interagency agreement collapsed for lack of definite standards. The 1971 interagency agreement that was preceded by almost two years of discussion and negotiation does have a definite standard. Small business cannot allow the present program to collapse through inattention to that standard.

When the Forest Service schedules a timber sale, it has implicitly determined that the sale is consistent " * * * with the purposes established under the Acts respecting the sale of National Forest timber * * * ." When SBA requests that

such a scheduled sale be offered as a set-aside, the Forest Service is bound to accede to that request unless the Forest Service determines in good faith that *the sole fact* of a preference for small business in the bidding for that sale is *** contrary to the purposes established under the Acts respecting the sale of National Forest timber ***."

Second, the SBA is charged with having expertise in the field of small business. It is questionable whether it is sound policy for the Forest Service to insist on substituting its judgment for the judgment of SBA as to what course of action best aids, assists and protects small business.

Third, the litigation affords the Department of Justice an opportunity to review a disagreement between SBA and the Forest Service where the disagreement is founded upon conduct of the Forest Service that the plaintiffs believe is "arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law" and that may involve "action unlawfully withheld [and] unreasonably delayed."

Finally, the plaintiffs are deeply disturbed at the implication that any one large business, by performin for adequate consideration what the Forest Service considers a favor, can thereby also procure an exemption from the Small Business Act, the set-aside program devised and intended to effectuate that Act and the national policy that the Act declares.

In the circumstances, I hope the Forest Service will understand that the position of these six small business entities is important to them, to the entire small business community in the forest products industry and, we believe, to the programmatic achievement of a policy that the Congress has mandated just as fully for the Forest Service as for SBA.

Sincerely yours,

LEONARD B. NETZORG.

United States District Court for the District of Columbia

DUKE CITY LUMBER CO. ET AL., PLAINTIFFS

v.

EARL L. BUTZ, SECRETARY OF AGRICULTURE ET AL., DEFENDANTS AND BENNETT LUMBER PRODUCERS, INC. ET AL., ALSEA LUMBER CO. ET AL., NATIONAL INDEPENDENT FOREST INDUSTRIES COMMITTEE, SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION ET AL., INTERVENING DEFENDANTS

(Civil Action No. 2152-72)

ORDER

Upon consideration of the Parties' Cross-Motions for Summary Judgment and the respective memoranda filed in support thereof, the arguments of counsel and in accordance with the Court's Memorandum Opinion of even date herewith, it is this 28th day of August, 1974.

Ordered, that the Plaintiffs' Motion for Summary Judgment be and the same is hereby denied; and it is

Further Ordered, that the Defendants' Motion for Summary Judgment be and the same is hereby granted;

CHARLES R. RICHEY,
United States District Judge.

United States District Court for the District of Columbia

DUKE CITY LUMBER CO. ET AL., PLAINTIFFS

v.

EARL L. BUTZ, SECRETARY OF AGRICULTURE ET AL., DEFENDANTS AND BENNETT LUMBER PRODUCERS, INC. ET AL., ALSEA LUMBER CO. ET AL., NATIONAL INDEPENDENT FOREST INDUSTRIES COMMITTEE, SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION ET AL., INTERVENING DEFENDANTS

(Civil Action No. 2152-72)

Appearances:

On behalf of the plaintiffs: *Angelo A. Iadarola, Esq., Pierre J. LaForce, Esq., of counsel; Wilkinson, Cragun & Barker, Philip A. Nacke, Esq., Jerry R. Goldstein, Esq., attorneys at law.*

On behalf of the defendants: *Earl J. Silbert*, Esq., U.S. attorney, *Arnold T. Aikens*, Esq., *Ann S. DuRoss*, Esq., *Paul M. Tschirhardt*, Esq., Assistant U.S. attorneys of counsel; *Eric S. Benderson*, Esq., Attorney for Small Business Administration; *Robert Simmons*, Esq., attorney for Department of Agriculture.

On behalf of intervening defendants: *Mark P. Schlefer*, Esq., *Richard S. Salzman*, Esq., *William H. Fort*, Esq., attorneys for intervening defendants, Bennett Lumber Products, Inc., et al., and Alsea Lumber Co. et al., *H. Robert Halper*, Esq., *Philip R. Hochberg*, Esq., *Terence N. Boyle*, Esq., attorneys for intervening defendants, National Independent Forest Industries Committee, Southeastern Lumber Manufacturers Association et al., of counsel, *Kominers, Fort, Schlefer & Boyer, O'Connor & Hannan*.

MEMORANDUM OPINION OF UNITED STATES DISTRICT JUDGE CHARLES R. RICHEY

These parties are before the Court on Cross-Motions for Summary Judgment. At issue in this suit is the legality of the 1971 small business timber set-aside program as established by the Memorandum of Understanding¹ between the Small Business Administration (SBA) and the United States Department of Agriculture (USDA).

The Plaintiffs, twelve forest product manufacturing companies, who are ineligible for the program because of their size,² have asked the Court to declare the program illegal and enjoin its further implementation by the U.S. Forest Service. The Plaintiffs attack the program as an example of an agency's arbitrary and capricious rulemaking overriding considerations of statutory authority, rational decisionmaking, administrative due process, as well as the applicability of environmental statutes, national forest administration statutes and other federal laws.³

The Defendants in this case are the Secretary of Agriculture, the Chief of the U.S. Forest Service, and the Small Business Administrator. A number of independent small forest products manufacturers and several associations have been permitted to intervene as Defendants having demonstrated that they have a direct interest in the continuation of the 1971 set-aside program.

Upon careful consideration of the voluminous pleadings and exhibits filed in this action, as well as the able arguments of counsel, and there being no material fact in issue, the Court will grant the Defendants' Motion for Summary Judgment for the reasons set forth below.

I. BACKGROUND

The 1971 set-aside program and its 1958 predecessor have their roots in the Small Business Act, 16 U.S.C. § 631 *et seq.* Congress considered small businesses to be the backbone of the American system of private enterprise and free competition. Finding that the nation's economic security and well-being depended upon the continued existence of small business, Congress created the Small Business Administration to assist and protect small businesses in so far as possible. In particular, SBA was directed to work with other agencies to insure that small businesses received a "fair proportion" of the total sales of government property. 15 U.S.C. § 644(4).

¹ The agreement was signed December 29, 1971. The 1971 program supplants an earlier set-aside program established December 2, 1958 and amended in 1966. The procedure for implementing the 1971 program is contained in the Forest Service Manual Amendment No. 67, Paragraphs 2431.11-2431.19. The SBA and the USDA administer the program jointly.

² 13 C.F.R. 121.3-9(h) provides a standard of 500 employees or less to measure a business' eligibility for the program.

³ Specifically, the Plaintiffs allege the SBA-USDA action falls outside the statutory authority of the Small Business Act, 15 U.S.C. §§ 631(a) and 644; that it has no rational basis in fact; and that it is violative, (1) of the 5th Amendment as deprivation of property without due process or just compensation; (2) of the rule-making requirements of Sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553; (3) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321-47, and Executive Order No. 11514 for failing to file an environmental impact statement; (4) of federal statutes governing the administration of the National Forests, namely, 16 U.S.C. §§ 581, 582(a), 583, 475-6, 528-31, 590(a), 594-1, and 594(a); (5) of the Employment Act of 1946, 15 U.S.C. § 1021; and (6) of the Economic Stabilization Act Amendments of 1971, 15 U.S.C. § 1026(a).

Pursuant to this directive, in 1958 the SBA and USDA established the mechanism of the first timber set-aside program.⁴ The program was administered however, on an *ad hoc* basis. The Forest Service would reserve a timber sale solely for small business competition, only if a "need" could be factually demonstrated. This proof was often difficult to establish, as any evidence submitted could be rebutted by other interested parties who would not necessarily benefit from a set-aside.

With the decline in the number of timber purchases by small businesses⁵ and the increase in the number of acquisitions of small concerns by large companies⁶ (including the Plaintiffs) the SBA re-examined the set-aside program. The SBA found the 1958 set-aside program to be too ineffective to insure small business a "fair proportion" of national forest timber sales. The procedure for instituting a set-aside sale was cumbersome.⁷ The program had no definite guidelines for determining either when a timber set-aside was necessary or the volume of timber needed to be set aside.⁸

The present set-aside program modifies the 1958 program in three aspects. There is an historical approach for determining "fair share", a five-year time period for determining base coverage shares of timber purchases, and a triggering mechanism for initiating set-asides.

The SBA has taken the timber sales of 1966-70 and has computed the percentages of the total volume of timber sold to large and small business respectively in each market area.⁹ This ratio, based upon a history of actual purchases, sets the framework for the SBA definition of "fair proportion" and it is used in subsequent computations. Every five years,¹⁰ the base period percentages in each market area are revised to provide flexibility and reflect current sales. The Agreement, Paragraph 4a, provides, however, that the recomputed percentages cannot be reduced to more than 50% of the original based period of 1966-70.

⁴ Under the 1958 program in some regions the Forest Service used a three year "rolling" base average to determine small business' share of the timber market when calculating set-aside needs. The "rolling" concept meant a three-year average, which was revised every year to reflect a new three-year period. Deposition of Gene F. VanArsdale, Chief Prime Contracts and Property Sales Division, Office of Procurement Assistance, Small Business Administration, taken January 25, 1974 (hereinafter, *VanArsdale Deposition*) at 16-17.

⁵ A survey of six Forest Service Western Regions showed small businesses had purchased 75% of the National Forest timber in 1958 and 44% in 1966-70. USDA, Forest Service, *Environmental Analysis Report*, Small Business Administration Set-Asides for National Forest Timber Sales dated January 30, 1974, filed February 5, 1974 as a supplemental answer to Plaintiffs' Interrogatory No. 6e (hereinafter, *Report*) at 6.

⁶ The SBA received reports that high bids by larger timber companies precluded small business from competing in unrestricted sales because they could not process the timber at a profit. *VanArsdale Deposition* at 170, 182, 209. The SBA had further reports of successful higher bidding by large companies who had not previously competed in a particular forest. *Id.* at 179.

⁷ See Government's Answers to Plaintiffs' Interrogatories, Exhibits A-1 through A-5 for an indication of large business' significant increases in national forest timber purchases.

⁸ Affidavit of Mr. VanArsdale attached to the Defendants' Motion for Summary Judgment filed August 30, 1973 (hereinafter, *VanArsdale Affidavit*) at par. 7&8. See also, Exhibit 4 of VanArsdale Affidavit, which is a memorandum of November 19, 1970 indicating the mergers of small companies into large ones in California for the two previous years. See also, *VanArsdale Deposition* at 152.

⁹ To institute a set-aside, a small business had to submit a complaint. There then had to be finding of "need" by the SBA timber specialist. The proof of need was then submitted to the regional Forest Service supervisor for his finding. If the two agreed a set-aside sale was instituted. Deposition of Mr. Paul E. Neff, Retired Director of Timber Management, Forest Service, USDA, taken January 18, 1974 (hereinafter, *Neff Deposition*) at 12-14, 24, 24 (*VanArsdale Deposition* at 11, 12-24).

¹⁰ *VanArsdale Affidavit*, at par. 6.

¹¹ The SBA administers the program in a manner which provides for regional differences such as competition, manufacturing facilities, timber species, marketing characteristics. The local geographical unit, if used for base shares and other tabulations, is called a market area. This area usually coincides with a national forest. However, there are examples of one national forest being divided into several market areas and vice versa. *Id.* at par. 17.

¹² A five-year period was chosen: (1) to average out some periodic fluctuations and inequities; and (2) to provide a period of time which would give the most recent yet historically accurate picture of timber purchases by large and small concerns. *Id.* at par. 16.

Every six months there is a review of the timber purchases in each market area for the previous six months. If the review shows that the small business purchases equal an accumulated net deficit of ten or more percent than the base period percentage, a set-aside sale is triggered. Had small business purchased a volume of timber above this trigger point but below the base period percentage, there would be no set-aside sale in the following six months. Any surplus above the small business share is carried over from period to period to offset any deficit. Likewise, any deficiency less than 10 percent is carried over from period to period until the accumulated deficit reaches 10%, at which point the set-aside program is triggered.

The 1971 program retains the 1958 restrictions on small business' resale of timber purchased in a set-aside sale to large business. Forest Service Manual § 2431.12.¹¹ The program does permit large concerns to purchase any set-aside timber which small business fails to purchase. 36 C.F.R. § 221.8. Furthermore, under Paragraph 4b of the 1971 agreement, any such set-aside timber large business purchases is counted toward the base share of small business.

Despite the agreement's precise triggering mechanism, if a proposed set-aside sale would be inappropriate or work an undue hardship, the sale can be eliminated or triggered upon a different percentage deficiency.¹² As a final safety catch, Paragraph 6 of the Agreement permits a set-aside to be withdrawn after it has been programmed, if subsequent events indicate a set-aside sale would not be in the public interest.

Small business purchases a major portion of its national forest timber in unrestricted sales. In fact, only five percent of the total volume of national forest timber has been sold as set-aside sales. During the 2½ years that the program has been in effect (January 1971-June 1973), the Forest Service has sold approximately 23 billion feet of saw-timber which falls within the set-aside program. Small business has purchased 11.2 billion feet. However, only 1.3 billion of the 11.2 billion feet was purchased in set-aside sales.¹³

II. THE PLAINTIFFS HAVE STANDING TO BRING THIS ACTION UNDER THE BALLERINA PEN STANDARD

The threshold issue before the Court is the question of standing. The Plaintiffs predicate their standing on Sec. 10 of the Administrative Procedure Act. 5 U.S.C. § 702.¹⁴

This Circuit has adopted a liberal position regarding a party's standing to challenge administrative action. *E.g.*, *Ballerina Pen Company v. Kunzig*, 140 U.S. App. D.C. 98, 433 F.2d 1204, (1970), *cert. dismissed* 401 U.S. 950 (1971); *Scamcell Laboratories, Inc., v. Shaffer*, 137 U.S. App. D.C. 371, 424 F.2d 859 (1970). This position stems from a combination of the Court's experience that a person who brings an action challenging agency activity is one who most invariably has been injured either directly or indirectly by that action, and the crucial need to insure that agency action, ostensibly taken to promote the public good, is founded upon the proper basis of Congressional authority rather than mere good intention, personal insight, prejudice or predeliction. *Ballerina Pen Co.*, *supra* at 102, 433 F.2d at 1208-9.

¹¹ Small business must agree that it will not sell more than 30 per cent of the timber acquired in a set-aside sale. The 30 per cent restriction can be changed in those geographical areas where it is appropriate due to the nature of the industry (i.e., the 50 per cent restriction in Alaska). The restriction applies only to a resale to a large business. It does not apply to timber exchanges with large businesses, nor does it apply to a resale to a small business. The restriction in no way affects a small business' resale of timber purchased in an unrestricted (i.e., non set-aside) sale of national forest timber.

¹² Paragraph 4c of the 1971 Agreement provides:

"The above provisions do not preclude USDA and SBA from taking other factors into consideration in specific cases when computing base average share, nor from otherwise establishing or eliminating set-asides which they deem appropriate under the Small Business Act. USDA and SBA may make allowance for such factors as past long-term sales, large salvage sales, or other unusual considerations, when computing the base average share." (emphasis added).

¹³ Report at 12. Thus, small business has purchased approximately 89 per cent of its national forest timber purchases through unrestricted sales.

¹⁴ Section 10 of the Administrative Procedure Act provides:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

In *Ballerina Pen*, the Court of Appeals adopted a three-part standard to test a party's standing in challenges to administrative action.¹⁵ Under it, a plaintiff has standing if (s)he alleges (1) that the challenged action has caused or will cause the plaintiff injury in fact, so as to insure that (s)he has a personal stake in the outcome of the controversy; (2) that the agency action was arbitrary, capricious, and in excess of statutory authority so as to injure an interest "arguably" within the zone of interests to be protected or regulated by the statute in question; and (3) that there must be no "clear and convincing" indication of a legislative intent to withhold judicial review. 140 U.S. App. D.C. at 101, 433 F.2d at 1207, citing *Association of Data Processing Service Organizations v. Camp* (ADPSO), 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed. 2d 184 (1970); *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832, 25 L.Ed. 2d 192 (1970); *Scanwell Laboratories, supra*, at 381, 424 F.2d at 869, 875 n. 10, 19.

The Plaintiffs meet the three requirements of the *Ballerina Pen* standard. The crux of the Plaintiffs' complaint is that the implementation of the 1971 set-aside program penalizes their natural growth, freezes, in perpetuity, their size, location and relationships within the industry at the 1966-70 level, and interferes with their prospective beneficial business relationships. The Court is of the opinion that this allegation is sufficient to meet the injury in fact requirement. *Cf. Assoc. Data Proc. Ser. Org., supra*; *Scanwell Laboratories, supra*; *Gonzalez v. Freeman*, 118 U.S. App. D.C. 180, 334 F.2d 570 (1964); *see also, Superior Oil Co. v. Udall*, 133 U.S. App. D.C. 198, 409 F.2d 1115 (1969).

As to the second criteria, the Plaintiffs argue that the SBA has irrevocably imposed an arbitrary market structure upon the industry—a structure contrived without consideration of economic realities, the natural changes in the industry structure or who is the actual purchaser of the national timber. It would appear that the Plaintiffs' interest in achieving its maximum economic potential within the American system of private enterprise is "arguably" within the zone of interests sought to be protected by the Small Business Act. The Act seeks to promote a continuation of free competition. The Act attempts to realize this goal by assisting small businesses to achieve their maximum potential. The purposes of the Act would not be achieved, however, if the aid to small business consisted of a structure which undermined the vitality of other businesses within the industry. Inherent in such action are the seeds of destruction of the same free system the Act is intended to protect.

In considering the last requirement, it is quite plain that the Small Business Act does not contain any clear and convincing provision indicating that the SBA Administrator's discretionary actions are precluded from judicial review.¹⁶ Therefore, the Plaintiffs have standing to pursue this action.

¹⁵ This standard is applicable even in the absence of specific "person aggrieved" language in the statute under which the action is brought.

It must be remembered that a correct analysis of the question of standing requires the Court to look at the party's status and not at the merits of the case, *Blackhawk Heating & Plumbing Co. v. Driver*, 140 U.S. App. D.C. 31, 35, 433 F.2d 1137, 1141 (1970). *Scanwell Laboratories, Inc., supra*, at 383-84, 424 F.2d at 873. A summary judgment proceeding under Rule 56 of the Federal Rules of Civil Procedure is a prime vehicle with which to eliminate frivolous lawsuits parties can bring under this liberal test for standing.

¹⁶ Section 643(b)(1) of the Small Business Act, which prohibits the issuance of an injunction against the Small Business Administrator "in the performance of, and with respect to, the functions, powers and duties vested in him by the chapter," is not clear and convincing evidence that the Administrator's action in this instance is precluded from judicial review. Despite the wide discretion and broad powers with which the Administrator is vested, it would appear from the language of § 634 that there is a limitation. Thus, the Court would have the power to review the action and declare it illegal if it was beyond the Administrator's statutory authority. In the instant case, any injunction would issue against the Director of the Forest Service as the implementor of the action, rather than the SBA Administrator.

III. THE DECISION TO INSTITUTE THE 1971 SET-ASIDE HAD A RATIONAL BASIS AND WAS WITHIN THE ADMINISTRATOR'S STATUTORY AUTHORITY

The real bone of contention in this suit is the Administrator's decision to change the 1958 program.¹⁷ The Plaintiffs take umbrage with the implementation scheme of the 1971 program because it effectively protects the existence of small timber businesses at the expense of Plaintiffs increasing quasi-monopoly of the industry.¹⁸ It is apparent from the factual record in this case that the policy of the Act motivated if not mandated the change in the program.

The Small Business Act clearly grants the Administrator wide discretion to effectuate the purposes of the Act. 15 U.S.C. § 634. This fact the Plaintiffs do not contest. Rather, they argue that the Administrator's substantive decision in this matter was arbitrary, capricious, and beyond the scope of his statutory authority.

The scope of this Court's review in the instant case has been delimited by the standard set forth in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971). This Court must examine whether the administrative decision was based upon a consideration of the relevant facts and law, and determine whether there has been a clear error of judgment. It is not the Court's duty to weigh the alternatives available to the Administrator and to determine which is the more reasonable. *Ray Baillie Trash Hauling, Inc., v. Kleppe*, 477 F.2d 696, 703-4 (5th Cir. 1973); see, *Allen M. Campbell Co., Gen. Con., Inc., v. Lloyd Wood Construction Co.*, 446 F.2d 261, 265 (5th Cir. 1971).

The Plaintiffs argue that the Administrator's decision has no rational basis on two counts. First, they claim there was no "proven need" for a uniform, objective triggering apparatus. Second, they allege the computations and formula upon which the program rests are an irrational determination of the statutory "fair proportion".

As a matter of clarification, it should be stated that small business' "need" is not a factor which the Administrator must take into consideration. The "need" has already been established by the Act.

The Plaintiffs' other points regarding the basis of the Administrator's decision consist of unsupported allegations. They offer no evidence contradicting the Administrator's factual determination that small businesses were on the decline at the expense of large business' significant growth. (See a discussion of the Administrator's findings, *supra*, at 4-5.) The Plaintiffs, furthermore,

¹⁷ Despite their protests to the contrary, the Plaintiffs do not attack the principle of a set-aside program. It is obvious that Section 644 of the Small Business Act commands the Administrator and the proposal agency to set aside a fair proportion of government property for the exclusive benefit of small business. *E.g., Allen M. Campbell Co. v. Lloyd Wood Const. Co.*, 446 F.2d 261, 264-5 (5th Cir. 1971); *Mid-West Construction Ltd. v. United States*, 387 F.2d 957 (Ct. Cl. 1963); *Massey Service, Inc. v. Fletcher*, 348 F.Supp. 171 (N.D. Ca. 1972); *American Electric Company v. United States*, 270 F.Supp. 689 (D.Hawaii 1967); see 41 Comp. Gen. 306, 311 (1961).

Section 644 explicitly states that small business: "[S]hall . . . be awarded a contract for the sale of government property, as to which it is determined by the Small Business Administrator and the contracting, procurement or disposal agency . . . to be in the interest of assuring that a fair proportion of the total sales of government property be made to small business concerns." (emphasis added)

It is also clear that Congress contemplated the use of set-aside sales for small in the timber industry. See the remarks of Senators James Murphy (D., Mont.) and Wayne Morse (D., Ore.) during the debate on the amendment to extend the coverage of the Small Business Act to include the sales of government property.

¹⁸ The Plaintiffs contend that the set-aside program precludes them from substantial amounts of federal timber and thereby impairs their ability to operate at present levels. Upon examining the Plaintiffs' Answers to the Intervening Defendants' Interrogatories, it appears that under the set-aside program, the Plaintiffs have purchased not only their average 1962-1970 share of the national forest, but in several cases have doubled this average. See Intervening Defendants Motion for Summary Judgment, Exhibit E.

The Plaintiffs have downplayed the facts that often the larger companies have access to private timber held in fee or obtained through timber exchanges to which small companies do not have access. Nor do they emphasize that their revenues and profits continue to increase and that they also grow through acquisitions, despite the "freeze" placed upon the industry by this program.

have made no showing that the Administrator's choice of 1971 program was a clear error of judgment in light of other alternatives.¹⁹

The Administrator adopted the 1971 program after examining the historical position of small business within the timber industry and the problems inherent in the 1958 set-aside program and after listening to the suggestions of members of the industry and weighing the proposed alternatives. The program appears to be the reasonable, precise yet flexible, means of insuring that small businesses receive a "fair proportion" of government timber sales. The ratio of timber sales which the program seeks to preserve is based upon the competitive history within the industry. Small business is guaranteed no more than an opportunity to bid on that proportion of the market which it has purchased in the past.

The Plaintiffs' tangential argument regarding possible Congressional limitations upon the Administrator's admittedly wide discretion is without merit. The Plaintiffs maintain that there is a strong inference that Congress does not approve of a set-aside scheme of the type of the 1971 program. To support this inference the Plaintiffs argue that Congress defeated a Resolution²⁰ which would have brought to the floor of the House a Bill²¹ containing a subsection legislating mandatory set-asides similar to the Administrator's 1971 program.²² The Plaintiffs also point to the Bill's accompanying report which contains a clause saying the 1968 set-asides were satisfactory.²³ Any conceivable limitation of the Administrator's discretion which could be inferred from this tenuous evidence is rebutted by other Congressional statements which unequivocally lauds the 1971 timber set-aside program.²⁴

Based upon the evidence in the record, the Court can only conclude that the Administrator acted within the scope of his statutory duty, in a rational manner, after full consideration of the relevant factors.

IV. THE PLAINTIFFS WERE NOT DENIED ADMINISTRATIVE DUE PROCESS

One of this Court's long-standing concerns has been the enforcement of the Administrative Procedure Act's procedural rulemaking provisions. 5 U.S.C. § 553. The Court's concern is embedded in the belief that administrative agencies have a fundamental responsibility to insure that any rules and regulations which affect the day-to-day existence of our citizens be conceived in an atmosphere immune from prejudice. Upon examination of the facts in this case, however, the Court fails to see how the Plaintiffs can seriously complain that they were prejudiced because the agency did not comply literally with the notice and hearing requirements under Section 4 of the Administrative Procedure Act. 5 U.S.C. § 553.

¹⁹ See, *VanArsdale Deposition* at 75-9; Exhibits B-1 through 65 and D-1 through D-5 attached to the Government's Answers to the Plaintiffs' Interrogatories.

²⁰ H.R. Res. 799. Debate on the resolution, 116 Cong. Rec. Part 4 pp. 5099-5177 (Feb. 26, 1970). Several members of the House voted to defeat the resolution as they felt consideration of H.R. 12025 should be postponed until after the issuance of the Report of the Public Land Law Review Commission on June 30, 1970.

²¹ The National Forest Timber Conservation and Management Act of 1969 (H.R. 12025, 91st Cong., 1st Sess.). The Bill's initial emphasis was to increase the timber supply in the face of soaring timber and plywood prices. The Bill was never voted upon. 115 Cong. Rec., Index, Part 31, page 1937 (1969); 116 Cong. Rec., Index, part 34, page 1329 (1970).

²² Section 7(5) of the Bill directed the Secretary of Agriculture to establish policies which would assure that small business collectively would obtain a fair proportion of the total timber sold in each year from each national forest.

The accompanying House Report stated that this provision was added to increase the cooperation between the Small Business Administration and the Forest Service to assure small businesses who had suffered along with the rest of the forest industry from the general shortage of timber, could obtain that proportion of the total timber sold annually which represented their collective average percentage of timber from each national forest over the preceding 3 calendar years. H.R. Rep. No. 91-655, 91st Cong., 1st Sess. 10 (1969).

²³ Id. The remark in context is:

"An agreement between the Department of Agriculture and the Small Business Administration pursuant to the 1958 Small Business Act requires that a fair proportion of national forest timber sales be reserved for small business. *The system apparently has worked well* although the small producer, along with the rest of the industry, has suffered from the general shortage of timber, as documented in the March 1969 hearings before the Banking and Currency Committee".

²⁴ H.R. Rep. No. 92-1006, 92nd Cong., 2nd Sess. (April 1972) at 17-18.

Overlooking for the moment that matters relating to government contracts and property are specifically exempted from the notice and hearing requirements of Section 4,²⁵ the facts indicate that the Plaintiffs not only had actual notice of the proposed change,²⁶ but they also attended several industry-wide meetings at which the proposed program was discussed in depth.²⁷ Furthermore, the Plaintiffs' representatives met privately with agency officials,²⁸ and submitted an in-depth analysis of the program.²⁹ As a result of this industry input, the SBA-USDA received and considered many suggested alternatives. Some were adopted. For example, a triggering procedure was incorporated, supplanting an automatic set-aside procedure which had been previously proposed.³⁰ In light of these facts, the Court is compelled to find that the Plaintiffs were neither prejudiced nor denied due process. They had sufficient opportunity to participate in the development of the 1971 program. The Plaintiffs can not now claim, in spite of their active participation, that they were prejudiced because the Defendants failed to comply with the formalistic requirements of Section 553. *See, United States v. Elof Hanson, Inc.*, 296 F.2d 779 (C.C.Pa. 19760); *see also, Florida Citrus Comm. v. United States*, 144 F.Supp. 517, 521 (N.D. Fla. 1956).

Nevertheless, the fact remains that Section 553(a) specifically exempts an agency when making rules regarding public property³¹ or contracts. When the government is dealing with these matters, Congress affords the government complete discretion to decide what, if any, public rulemaking procedures it should adopt and follow.³² The Senate Committee on the Judiciary, in its report on the exception to the APA stated:

"The exception of proprietary matters is included because the principal consideration in most such cases relate to mechanics and interpretation of policy and it is deemed wise to encourage and facilitate the issuance of rules by dispensing with all mandatory procedural requirements. . . ."³³

This statement succinctly characterizes the program in issue. The program merely establishes the mechanics through which the SBA has implemented its interpretation of the declared policy of the Small Business Act. Therefore, due to the type of program in question, the SBA was not obligated to give the Plaintiffs either formal notice or a hearing.³⁴

²⁵ 5 U.S.C. § 553 provides: "(a) This section applies, according to the provisions thereof, except to the extent that there is involved . . . (2) a matter relating to Agency management or personnel or to public property, loans, grants, benefits, or contracts."

²⁶ 5 U.S.C. § 553(b) provides: "general notice of proposed rule-making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." (Emphasis added)

²⁷ Meetings were held in Phoenix, Arizona on Feb. 16-18, 1971; Washington, D.C. on March 2, April 22 and July 27-28, 1971, and Portland, Oregon on June 10, 1971. See Exhibit D-1 of the Government's Answers to Plaintiffs' Interrogatories for the minutes of the Phoenix meeting. The minutes consist of a 21 page single-spaced typed report. See also, Exhibits B-1, through B-56 and D-2 through D-5 attached to the Government's answers to the Plaintiffs' Interrogatories for an indication of the extent to which industry participated in the evolution of the program.

²⁸ The Ad Hoc Committee of Federal Timber Purchasers representing the Plaintiffs met with representatives of the SBA and the Forest Service in late July 1971.

²⁹ On June 1, 1971 Plaintiffs' counsel submitted a 76 page memorandum in opposition to the then proposed timber set-aside agreement.

³⁰ See *Van Arsdale Deposition* at 74.

³¹ See Attorney General's Manual on the Administrative Procedure Act, p. 27 (1947) defining public property under the Section 4 exemption:

"Public Property. This embraces rules issued by any agency with respect to real or personal property owned by the United States or by any agency of the United States. Thus, the making of rules relating to the public domain, i.e., the sale or lease of public lands or of mineral, timber or grazing rights in such lands, is exempt from the requirements of Section 4."

³² Senate Comm. on the Judiciary, Administrative Procedure Act, S. Rep. No. 752, 79th Cong., 1st Sess. 199 (1945). See also in The Congressional Record, the proceedings in the House of Representatives regarding the APA on May 24, 1946.

³³ S. Rep. No. 752, 79th Cong., 1st Sess. 199 (1945).

³⁴ Subsequent to the adoption of this program, the SBA has waived its exemption under § 553(a). The 1971 set-aside program was adopted August 19, 1971 and the official agreement was signed December 29, 1971. The SBA published its notice of waiver on August 25, 1971. 36 Fed. Reg. 16716-17.

IV. THE SET-ASIDE PROGRAM IS NOT MAJOR FEDERAL ACTION SIGNIFICANTLY AFFECTING THE ENVIRONMENT SO AS TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT UNDER NEPA 42 U.S.C. § 4321, ET SEQ.

On November 7, 1973 the Court permitted the Plaintiffs to amend their complaint to include a violation of the National Environmental Policy Act of 1969 (NEPA).³⁵ 42 U.S.C. § 4321 et seq. The Plaintiffs contended that the set-aside program is a major federal action³⁶ which "may" have damaging impacts upon the environment in that it may cause the waste of timber resources and possible air and water pollution.³⁷ Therefore, the Plaintiffs maintain, the Defendants have violated NEPA in failing to file an environmental impact statement as required by Section 4332(C).

NEPA requires each federal agency to file an environmental impact statement if it determines a contemplated program constitutes a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). Each agency, then, must make the initial determination regarding the size and effect of the contemplated program upon the environment. The Forest Service decided the set-aside program was not a major federal action affecting the quality of the environment and, therefore, did not require an environmental impact statement. They did not, however, articulate the reasons for this conclusion until two years after the implementation of the program.³⁸

The Court is now presented with the question of whether the agency's threshold decision was arbitrary, capricious or otherwise clearly erroneous. In its review of the agency's decision, the Court is obligated to consider the substantive decision on the merits to see if it is in accord with NEPA's requirements, *E.g.*, *Environmental Defense Fund v. Froehlke*, 4 E.R.C. 1829 (8th Cir. December 14, 1972); *Environmental Defense Fund, Inc. v. Corps of Engineers of the United States Army*, 4 E.R.C. 1721 (8th Cir., November 1972); *Committee for Nuclear Responsibility v. Seaborg*, — U.S. App.D.C. —, 463 F.2d 783, [3 E.R.C.

³⁵ Whether the Plaintiffs have standing to raise the NEPA issues has been the cause of considerable discussion in the parties' papers. The crux of the discussion is whether the Plaintiffs' primary concern with protecting their economic interests rather than tangential environmental interests precludes them from raising the issue. *Zlotnick v. Land Development Agency*, 2 E.L.R. 20235 (No. 1700-71, D.D.C. March 3, 1972); *Clinton Community Hospital v. Southern Maryland Medical Center*, 6 E.R.C. 1505 (No. 73-981-HM; D.Md. April 16, 1974); *Pizitz v. Volpe*, 2 E.L.R. 20378 (No. 3595-N, M.D. Ala. May 1, 1972). No group has a monopoly on advancing the public good. Therefore, any plaintiff who can "arguably" meet the *Ballerina Pen* standard, *supra*, cannot be denied the right to challenge agency non-compliance with NEPA. The Plaintiffs have alleged an injury in fact, namely, damage to the environment in which they work and upon which they depend for their livelihood and continued maintenance of the quality of their lives. This interest is arguably within the zone of interest sought to be protected by this intentionally broad protective statute.

³⁶ The terms "major federal action" within the meaning of the statute, has an exceptionally broad meaning reflecting the law's intention "to promote an across-the-board adjustment in federal agency decision-making so as to make the quality of the environment a concern of every federal agency." *Scientists' Inst. for Public Info., Inc. v. A.E.C.*, 156 U.S.App.D.C. 395, 404, 481 F.2d 1079, 1088 (1973); (see reference to legislative history and judicial interpretations therein). *Hanley I* applies an objective standard to distinguish between a major and minor federal action such as: cost of the project, the amount of planning preceding it, the time required to complete it, etc. *Hanley v. Mitchell* 460 F.2d 640, 644 (2d Cir. 1972) (*Hanley I*).

³⁷ The specific impact which the Plaintiffs claim is under-utilization of our natural resources. The Plaintiffs' thesis is that larger companies are more capable of using the timber to its full potential because they are better integrated and have financial resources to procure expensive, technologically advanced equipment to achieve the greater integration. The Plaintiffs see any limitation on small business' resale of set-aside timber to large companies as underscoring the under-utilization syndrome.

The Plaintiffs support their argument that small business concerns do contribute to greater air and water pollution by citing several bills which would have assisted small operations financially to meet new pollution regulation requirements.

³⁸ On February 5, 1974, the Defendants filed, as a supplemental answer to the Plaintiffs' Interrogatories, an 18 page "Environmental Analysis Report" which sets out the Forest Service's reasons for concluding that this federal action did not require an environmental impact statement.

1126] (1971); *Mowry v. Central Electric Power*, 5 E.R.C. 1978 (D.S.C. Nos. 72-1469 and 73-35, August 1, 1973). The Court's review, however, is a limited one for the purpose of determining whether the agency reached its decision after full, good faith consideration of the environmental factors under the standards set forth in §§101 and 102 of NEPA; and whether the actual balance of costs and benefits struck by the agency according to these standards was arbitrary or clearly gave insufficient weight to environmental factors. *E.D.F. v. Froehlike*, *supra* at 1833.

The Forest Service's environmental report has analyzed each factor the agency is required to examine in drafting an impact statement. See *Forest Service Manual*, Section 8411. The Court has considered both this report and the Plaintiff's lengthy analysis of the environmental factors and is compelled to conclude that the 1971 set-aside program is neither a major federal action nor one that significantly affects the quality of the human environment. The agency's decision gave good faith consideration to the environmental factors and came to a reasonable conclusion. The 1971 set-aside program is merely a technical change in the earlier set-aside program. It does not change either the manner or volume of timber harvested each year. Nor does it suspend the Forest Service's strict environmental and harvesting regulations for any bidder, large or small. The program simply guarantees small concerns a continued opportunity to bid on the national forests. The question is not whether the tree will fall, but who will fell it.

V. THE SET-ASIDE PROGRAM DOES NOT VIOLATE THE FIFTH AMENDMENT AND OTHER FEDERAL STATUTES

As final points, the Plaintiffs contend that the timber set-aside program violates the 5th Amendment, the Employment Act of 1946, the Economic Stabilization Act Amendments of 1971 and certain statutory provisions relating to the administration of the national forests. The Court also finds these objections to be without merit.

Examining first the Plaintiff's charge regarding a violation of the 5th Amendment, the Court finds the Plaintiffs have not been deprived of property without just compensation. The Plaintiffs have no vested proprietary right in the government's contracts or property, *Gonzales v. Freeman*, 118 U.S.App.D.C. 180, 184, 334 F.2d 570, 574 (1964). The "right" the Plaintiffs do have under the Fifth Amendment is the right to due process. This means that in the event of arbitrary, capricious or illegal administrative action affecting one's opportunity to bid on the contracts or property, the party who can show an injury due to allegedly illegal action can bring a suit to set it aside. *Scanwell Laboratories, Inc., v. Shaffer*, 137 U.S. App. D.C. 371, 424 F.2d 859 (1970). In the instant case, the Court has found that the SBA administrator acted within the bounds of his statutory authority and has devised this program to implement his statutory duty with the Plaintiffs' full participation.

As to the other federal statutes the set-aside program is alleged to have violated, suffice it to say, that the Plaintiffs' allegations have no basis in fact, have no basis in law or are not relevant. Despite the two and one half years the program has been in operation, the Plaintiffs have been unable to produce any evidence that the program defeats the policies of maximum employment or maximum economic productivity as declared in the Employment Act of 1946, 15 U.S.C. §1021, and the Economic Stabilization Act Amendments of 1971, 15 U.S.C. §1026(a), respectively. To the contrary, the timber set-aside program appears quite consistent with these national policies in that it is part of the aid to small business which Congress has declared will preserve the freedom of competition basis to the economic well-being and security of this country.⁴⁰

⁴⁰ Furthermore, employment in this industry is determined by the demand for timber and the volume of logs cut, and not by the size of the concern who does the logging.

Nor has the Plaintiff been able to offer any proof of violations of the statutes governing the administration of the national forests. The statutes which the Plaintiffs claim have been violated are irrelevant to the establishment of timber set-aside sales. Instead, they pertain to forest technology and agriculture.⁴¹ In any event, there has been no showing, other than Plaintiffs' allegations, that the set-aside program contradicts the general, overall purpose of these statutes—the efficient administration and management of the national forests. The program does not increase the volume of timber harvested. Nor does it relieve any timber bidder from complying with the environmental and harvesting regulations imposed by each contract irrespective of the size of the bidder.

VI. CONCLUSION

At the expense of being repetitive, the Court finds the 1971 set-aside program pertains solely to the opportunity to submit *bids* on a certain percentage of national forest timber *when*, and only *when*, the timber purchases of small forest products manufacturers has declined more than ten per cent of their historic share of the timber market. The program is small business' bulwark against their shut out from bidding on government timber. It does not reduce large business' historical share of the timber market nor does it increase that of small concerns. It does not increase the volume of logs cut, nor does it cast past harvesting and environmental regulations to the wind. The Defendants have acted within the scope of their authority and have developed, with the Plaintiffs' assistance, a reasonable program to effectuate the Defendant's statutory responsibilities. Since the program is reasonable in substance and in its adoption, the Court will pay due deference to the agencies' expertise in this area. Thus, for the reasons stated above, the Court will grant the Defendant's Motion for Summary Judgment and deny the Plaintiffs' Motion for Summary Judgment. An Order of even date will be entered in accordance with this Opinion.

CHARLES R. RICHEY,
U.S. District Judge.

Dated August 28, 1974.

STATEMENT OF MEL BRANDT, OWNER AND GENERAL MANAGER, BRANDT AND WICKLUND FOREST PRODUCTS CO.

Mr. Chairman and subcommittee members, My name is Mel Brandt of Fox Park, Wyoming. I own and operate Brandt and Wicklund Forest Products Company, a small business sawmill cutting six to eight million board feet of lumber annually.

⁴¹ The Plaintiff cites sections which (1) directs the administration of the national forests shall be toward the goal of water control and a continuous timber supply, 16 U.S.C. 475; (2) authorizes the sale of dead, matured or large growth trees, providing it is for the appraised value, to preserve younger growth, 16 U.S.C. 476. The sale of timber to small concerns cannot be at less than the appraised value, 36 C.F.R. 221.7 and 221.8; (3) Sections 16 U.S.C. § 528-531 are to supplement the purposes for which the national forests were established as set out in § 475, by adding that the national forests are established and administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes, and that the Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom; and in effectuation of these sections the Secretary is to cooperate with state and local governmental agencies; (4) the Secretary of Agriculture is authorized to conduct technical agricultural experiments and tests, whether alone or in conjunction with private individuals or public agencies which he deems necessary to foster the growth and development of the national forests, 16 U.S.C. 581; (5) recognizes the relationship between the advances in forest technology and forest research efforts conducted by state colleges and universities and the federal government and the realization of full effectiveness if these efforts are conducted in close cooperation, 16 U.S.C. § 582(a); and (6) severally authorize the Secretaries of Agriculture and Interior to establish by formal declaration, when in their discretion such action would be in the public interest, cooperative agreements with private landholders for the purpose of developing "cooperative sustained-yield units," 16 U.S.C. 583; (7) authorizes the Secretary of Agriculture to direct all activities with relation to the prevention of soil erosion including surveys and investigations, and various preventive measures, to cooperate with other agencies and persons as he deems necessary and acquire lands whenever necessary for the purposes of the Act, 16 U.S.C. § 590(a); (8) declares as national policy that the U.S. government independently and through cooperation with other state and local governments and private timber owners to prevent outbreaks of destructive insects and diseases threatening all forest lands, 16 U.S.C. § 594-1; (9) authorizes the Secretary of Agriculture to cooperate with other agencies as he deems necessary to eradicate white-pine blister rust; to appropriate matching funds for such blister control if on non-federal property; and requires that any blister control program on Indian territory be subject to approval of the agency or Indian tribe with jurisdiction over such lands.

I have operated the present sawmill at Fox Park since 1946 for twenty-eight years. I have operated sawmills in the Fox Park Area for thirty-eight years.

The company has grown to an annual sales of over \$1,000,000 with permanent employment for approximately fifty people. Our annual payroll is \$300,000. Tax payments to state and county governments are \$12,000 annually and a federal income tax average for the past five years of \$100,000.

The Fox Park sawmill is a vitally important asset to its community, county and state.

We are 100% dependent on Medicine Bow National Forest timber sales.

Small business sawmills need the protection of timber sales set-asides to remain in business and be competitive. I would like to make the following points:

Set-Aside Sale Selection: to date the Forest Service has arbitrarily made the set-aside sale selections from the announced timber sale program. This has been done without consultation with the small business operators or, to my knowledge, the S.B.A.

This arbitrary selection by the Forest Service has resulted in a hardship on the Fox Park Sawmill. For the calendar year 1974, of 23.7 million board feet of set-aside sale volume, 17 million board feet is in our immediate working area. This forces small business competition in close vicinity to the Fox Park sawmill. Further, this 17 million board feet of set-aside timber in four sales requires 18 miles of specified road construction and/or gravelling.

This forces me to bid competitively against strong competition of other small business sawmills who need timber badly and it forces me into the road construction business for the great majority of my operating time in the woods. I will spend more time constructing roads than I will harvesting trees. I will be forced to tie up large amounts of capital at high interest rates for one to two years in advance of harvesting any trees.

This hardship on the Fox Park sawmill could have been prevented by planning set-aside sales over a wider area. The S.B.A. should select set-aside sales after consultant with the small business sector to fit operating needs.

The set-aside program should not be used as a threat to small business existence but as a help to maintain it's healthy existence.

The Fox Park sawmill location was selected as an advantage to harvest the immediate surrounding timber which there is sufficient volume to sustain operation. The Forest Service encouraged and was instrumental in selecting the Fox Park site.

Forcing the Fox Park sawmill to purchase timber in distant areas will result in adverse log hauls and uneconomic harvesting operation.

And this will result if set-aside sale selections are not made to stabilize small business sawmills in their present locations rather than the present disruptive policy.

Roads: The Medicine Bow National Forest is a well roaded Forest giving good access to most all timber growing areas. The existing roads have been used for years to harvest timber. They are minimum standard roads that "rest easy on the land", with minimum disturbance to the environment. These roads with minimal improvement can very well serve present day timber harvesting needs and all other forest uses to the great advantage of the environment and the resources.

The Forest Service is for the most part abandoning these existing roads to construct an all new high standard road system upon the land that duplicates the existing system.

This un-needed new road system is not only a hardship on small business but it is a waste of taxpayer dollars, a loss to counties 25% receipts fund and adverse to the environment.

For example, a 1.5 million board foot timber sale I have under contract will take me three months to harvest the timber and six months to construct the road required laid on top of an existing road well suited to harvest the 1.5 million board feet of timber.

There is a great need to return sound perspective to Forest Service road construction and timber harvesting.

Thank you.

STATEMENT OF J. G. RALSTON, PRESIDENT OF DELTIC FARM & TIMBER CO., INC.

Deltic Farm & Timber Co., Inc. ("Deltic") was not informed of the August 22, 1974 hearings of the Subcommittee sufficiently in advance of such hearings to

present an oral statement. Accordingly, Deltic respectfully requests that this statement be included in the hearing record.

Initially it goes without saying that Deltic's "ox is being gored" and this statement is a direct result of such goring.

Deltic is an Arkansas corporation whose stock is wholly owned by Murphy Oil Corporation. The latter company and Deltic are an outgrowth of the activities of Mr. C. H. Murphy of Eldorado, Arkansas, who acquired substantial land holdings prior to 1930, and was fortunate enough to acquire fee land that was underlain by reserves of crude oil, which led him to engage in the oil business. Long before the Small Business Act was envisioned, for convenience of administration, Mr. Murphy's timber and farm land holdings were put in Deltic and his oil and gas holding were vested in Murphy Oil Corporation. Murphy Oil Corporation, through its producing, refining marketing, drilling and other divisions, and its affiliate companies, has more than 3,000 employees, of which number approximately 250 are engaged in the forestry and lumber manufacturing portion of Deltic's activities. In addition to those 250 employees Deltic employs approximately 60 other employees in its general corporate and farming activities, giving Deltic a total of approximately 310 employees.

The above somewhat rambling discussion leads to the first "gore" suffered by Deltic, that being the arbitrary and discriminatory definition of a small business as an entity which, together with all affiliates, has less than 500 employees. Because of Deltic's affiliation with Murphy Oil Corporation Deltic is denied the classification of a small business, and as a consequence in its timber procurement activities it is forced to compete with such companies as Weyerhaeuser Co., Georgia-Pacific Corp. and other giants of the lumber industry. To illustrate the unfairness of this competition required by the definition, the following statistics of 1973 mill production of Deltic, Weyerhaeuser and Georgia-Pacific are submitted:

Company:	1973 fbm milled
Weyerhaeuser -----	2,405,000,000
Georgia Pacific -----	1,146,800,000
Deltic -----	37,755,000

The foregoing were published in Forest Industries, edition of May 20, 1974.

Deltic suggests that a fairer and more meaningful definition of a small business should be adopted. This is particularly appropriate since the evolution of computer science and automation has eliminated the lumber industry from the labor intensive category of industries.

Deltic is also being "gored" by certain aspects of the Regulations and by interpretations of the Regulations, and the remainder of this statement is directed to those administrative aspects of the forestry set-aside program.

(1) Prior to July 26, 1974 under the Regulations as then interpreted, a legitimate small business lumber operator, whose location from an economic standpoint was geographically remote from a national forest, could still participate in the set-aside program by exchanging his set-aside timber purchases for timber of equal value which was within an economic distance of his sawmill. However, by an interpretation of the Acting Administrator dated July 12, 1974 and published in the Federal Register on Friday, July 26, 1974, such exchanges are prohibited except for exchanges between small businesses. In Deltic's view, this interpretation will ultimately result in the destruction of the geographically remote small business as a viable competitive force, and in addition will increase the consumer prices of lumber products to the extent that unnecessary transportation costs of non-small businesses, as well as small businesses, must be recouped. Deltic is unable to perceive the logic of such interpretation but we suspect that perhaps the administrators are taking the easy way out.

(2) In calculating the quantity of timber purchased by small businesses, small roundwood should be included. Forest Service cutting practice requires that such small roundwood be purchased at set-aside sales even though that product is not covered by the SBA regulations. Nevertheless, non-small businesses are being deprived of the opportunity to purchase such small roundwood and this preferential treatment to small business even exceeds the preferences contemplated by Congress in the Small Business Act.