shall preclude such person from entering into any contract to purchase unprocessed timber originating from Federal lands, and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.137 Causes for debarment.

The debarring official may debar a purchaser for any of the following causes:

(a) Conviction of or civil judgment for:

(1) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.

(3) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the purchaser.

(b) A purchaser's debarment from the purchase of timber by another Federal agency which sells timber.

(c) Cutting and/or removal of more than incidental volumes of timber not designated for the purchaser's cutting from a national forest.

(d) Substantial violation of the terms of one or more Forest Service timber sale contracts so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with contract; or

(2) A history of failure to perform contract terms; or of unsatisfactory performance of contract terms.

(e) Among actions the Forest Service regards as so serious as to justify debarment under paragraph (d) of this section are willful violation or repeated failure to perform National Forest System timber sale contract provisions relating to the following:

(1) Fire suppression, fire prevention, and the disposal of slash;

(2) Protection of soil, water, wildlife, range, cultural, and timber resources and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(3) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(4) Observance of restrictions on exportation of timber;

(5) Observance of restrictions on the disposal of timber from small business set-aside sales;

(6) Providing access to the Forest Service upon its request to purchaser's books and accounts;

(7) Payment of monies due under terms of a Forest Service timber sale contract, including payment of damages relating to failure to cut designated timber by the contract termination date;

(8) Performance of contract by the contract termination date.

(f) Any other cause so serious or compelling that if affects the present responsibility of a purchaser of Government timber.

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) or any regulation or contract issued under the Act.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

### § 223.138 Procedures for debarment.

(a) *Investigation and referral.* Information which may be sufficient cause for debarment of a timber sale purchaser and affiliates shall be reported to the Forest Service Debarring Official. Generally, such information should be referred through the Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the debarring official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the debarring official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process*—(1) *Notice of proposal to debar.* The debarring official shall initiate debarment by advising the purchaser and any specifically named affiliate, by certified mail, return receipt requested. The notice document shall include the following information:

(i) That debarment is being considered.

(ii) The reasons for the proposed debarment in terms sufficient to put the recipient on notice of the conduct or transaction(s) upon which it is based.

(iii) The cause(s) relied upon under § 223.137 for proposing debarment.

(iv) The specific procedures governing debarment decisionmaking in § 223.138 (b)(1) through (b)(8).

(v) The effect of the issuance of the notice of proposed debarment pending a final debarment decision (see § 223.136(b)).

(vi) The potential effect of a debarment.

(2) *Submission in opposition.* Within 30 calendar days after receipt of the notice of proposed debarment, the respondent my submit, in person, in writing, or through a representative, information and argument in opposition to and/or in mitigation of the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(3) *Informal hearing.* Pursuant to paragraph (b)(2) of this section, a respondent may request an informal hearing with the debarring offical. The informal hearing shall be held within 20 calendar days from the date the request is received. The debarring official may postpone the date of the hearing if the respondent requests a postponement in writing. At the hearing, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of proposed debarment or debarment. A transcript of the informal hearing shall not be required.

(4) *Additional proceedings as to disputed material facts.* In actions not based upon a conviction or civil judgment, if the debarring official finds that and gives notice that the submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) may request a fact-finding conference on those disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with the following requirements:

(i) At least 10 days before the fact-finding conference, the debarring official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(ii) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Debarring official's decision*—(i) *No additional proceedings necessary.* In actions based upon a conviction or civil judgement or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the purchaser or any specifically named affiliate. The decision shall be made within 30 working days after receipt of any information and argument submitted, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, the debarring official shall promptly prepare written findings of fact. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the purchaser or any specifically named affiliate and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(6) *Standard of evidence.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence. In any action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(7) *Notice of debarring official's decision.* (i) The purchaser and any affiliates involved shall be given prompt notice of the debarring official's decision by certified mail, return receipt requested. If the debarring official decides to impose debarment, the notice shall:

(A) Refer to the notice of proposed debarment:

(B) Specify the reasons for debarment;

(C) State the period of debarment, including effective dates (see § 223.139);

(D) Specify any limitations on the terms of the debarment; and

(E) State that any decision to debar is appealable to the Agriculture Board of Contract Appeals pursuant to paragraph (b)(8) of this section.

(ii) The debarring official shall also promptly notify Regional Foresters and Forest Supervisors of the decision.

(8) *Review of debarring official's decision.* The purchaser and any affiliates involved may appeal a Forest Service debarring official's decision to debar within 30 days from receipt of the decision. To appeal, a purchaser and any affiliates involved must furnish a written notice to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250, and a copy of the appeal to the debarring official from whose decision the appeal is taken. The rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR part 24, govern debarment appeals.

**§ 223.139 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s):

(1) The debarring official shall consider any suspension period or period since issuance of the notice of proposed debarment in determining the debarment period.

(2) Generally, a debarment for those causes listed at § 223.137 (a)–(f) of this subpart should not exceed three (3) years, except as otherwise provided by law.

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

(c) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the purchaser's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(d) The debarring official shall make final disposition of a reconsideration request under paragraph (c) of this section in writing within 30 working days of receipt of the reconsideration request and supporting documentation, unless the debarring official extends