

contract to purchase unprocessed timber from Federal lands and shall also be precluded from taking delivery of Federal timber purchased by another person for the period of debarment.

[60 FR 46921, Sept. 8, 1995]

§ 223.136 Debarment.

(a) *General.* In accordance with the procedures in § 223.138, the debarring official may in the public interest, debar a purchaser for any of the causes listed in § 223.137. However, the existence of a cause for debarment does not necessarily require that the purchaser be debarred. In making any debarment decision, the debarring official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) *Effect of proposed debarment.* (1) Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a contract term adjustment, any contract with that purchaser. The Chief of the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons to continue doing business with that purchaser pending completion of debarment proceedings.

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under § 223.137(g) 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

§ 223.138

36 CFR Ch. II (7-1-05 Edition)

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 it 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 may 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 official. 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