

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 2409.18a – Timber Sale Debarment and Suspension Procedures
Handbook**

Zero Code

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01 - Authority

1. Title 2 CFR Part 180 - OMB Guidelines to Agencies on Government-wide Debarment and Suspension (non-procurement) provides a Government-wide system of debarment and suspension for non-procurement programs and activities.
2. Title 2 CFR Part 417 - Non-procurement Debarment and Suspension, supplements 2 CFR 180 as the policies and procedures for non-procurement debarment and suspension specific to United States Department of Agriculture (USDA) and the Forest Service.
3. Title 36 CFR part 223, Subpart C - Suspension and Debarment of Timber Purchasers, is used to debar persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*).

02 - Objectives

Debarments and/or suspensions are serious administrative actions taken to ensure that the Government only conducts business with responsible persons. The non-procurement Suspending and Debarring Official may take debarment and/or suspension actions only to protect the public's interest and to protect the Government in future business dealings. Debarment and suspension actions are not used to punish persons lacking business integrity or honesty or as a means of penalizing a person for illegal activity or for failure to comply with contract terms.

03 - Policy

When information concerning the existence of a cause for debarment and/or suspension becomes known, such information must be referred to the Suspending and Debarring Official.

04 - Roles and Responsibilities

FSM 2404 sets out the general responsibilities of line officers related to debarment and suspension. Other responsibilities specific to this section follow:

04.1 - Chief

1. Has authority to act as a Suspending and Debarring Official as follows:
 - a. Pursuant to 36 CFR part 223, subpart C, is responsible for debarring individuals, organizations, or other entities for causes specified at 36 CFR 223.137 (FSM 2404.11).
 - b. To impose debarment (2 CFR 180.930 and 2 CFR 417.930), and/or suspension (2 CFR 180.1010 and 2 CFR 417.1010).
2. May redelegate the authority to serve as a Forest Service Suspending and Debarring Official to the Deputy Chief, or an Associate Deputy Chief, National Forest System (2 CFR 417.930(b) and .1010(b)).

04.2 - Deputy Chief for National Forest System

Serve as Suspending and Debarring Official when designated by the Chief.

04.3 - Associate Deputy Chief for National Forest System

Serve as Suspending and Debarring Official when designated by the Chief.

04.4 - Regional Forester

1. Promptly review cases submitted from Forest Supervisors to determine whether the referral records are complete and whether the Forest Supervisor's letter of transmittal is complete and accurate (FSM 2402.15c and FSH 2409.18a, sec. 13).
2. Contact adjacent Regions to determine if related activities or information is available to include in the referral record.
3. Coordinate referral cases with the Regional Special Agent-in-Charge to determine whether the respondent is under investigation and to ensure that all the appropriate law enforcement documentation is included in the referral record (FSH 2409.18a, sec. 13).
4. Upon completion of the responsibilities in the preceding paragraphs of this section, promptly refer all cases to the Suspending and Debarring Official by transmittal letter with a recommendation (FSH 2409.18a, section 13.2).
5. Notify the Suspending and Debarring Official of ongoing investigations or legal proceedings as soon as possible to facilitate the appropriate administrative action and to alert the Office of the General Counsel (OGC) to coordinate with the prosecuting attorneys.

04.5 - Forest Supervisor

1. Promptly review cases submitted from District Rangers or Contracting Officers to determine whether the referral records are complete and whether the letter of transmittal is complete and accurate (FSM 2404.16c and FSH 2409.18a, sec. 13).
2. Contact adjacent Forests to determine if related activities or information is available to include in the referral record.
3. Coordinate referral cases with the Special Agent serving the area to determine whether the respondent is under investigation and to ensure that all the appropriate law enforcement documentation is included in the referral record (FSH 2409.18a, sec. 13).
4. Upon completion of steps 1, 2, and 3, promptly refer all cases through the Regional Forester to the Suspending and Debarring Official by transmittal letter with a recommendation (FSH 2409.18a, sec. 13.2).

04.6 - District Ranger

1. Promptly refer all cases through the Forest Supervisor to the Suspending and Debarring Official for debarment and/or suspension when information concerning the existence of a cause for debarment or suspension becomes known (FSM 2404.17c and 2409.18a, sec. 19).
2. Review cases before submitting to the Forest Supervisor to determine whether the referral record is complete and prepare a letter of transmittal (FSM 2404.17c and FSH 2409.18a, section 19).
3. Coordinate referral cases with the Law Enforcement Officer or Special Agent serving the area to determine whether the respondent is under investigation and to ensure that all the appropriate law enforcement documentation is included in the referral record (FSM 2404.17c and FSH 2409.18a, section 19).

04.7 - Special Assistant to Suspending and Debarring Official

A Special Assistant to the non-procurement Suspending and Debarring Official reports only to the Suspending and Debarring Official on debarment and suspension matters. The Special Assistant shall collect necessary information and assemble the official record, based on the referral record from a Regional Forester, so that the Suspending and Debarring Official may make an informed decision.

04.8 - Contracting Officer

The Contracting Officer is responsible for checking the System for Award Management (SAM) (www.sam.gov) (formerly EPLS) prior to awarding a timber sale contract (2 CFR 180.430) and to ensure that individuals appearing as an “exclusion” on SAM are removed from mailing lists for new sales during the period of their debarment or suspension. A SAM User’s Guide is available on the Suspension and Debarment page of the Forest Management website at: [Non-procurement Suspension and Debarment \(fs.fed.us\)](http://Non-procurement%20Suspension%20and%20Debarment/fs.fed.us).

The Contracting Officer may not enter into a covered transaction with an excluded or disqualified person (2 CFR 180.400). This includes not awarding timber sale contracts to or approving a third-party agreement with a person who is suspended, debarred, ineligible, or voluntarily excluded. Only the Suspending and Debarring Official may make exceptions to this treatment (2 CFR 417.137 as provided under 2 CFR 180.135).

The Contracting Officer may, but is not required to, continue an existing contract with a person that is subsequently excluded. The Contracting Officer should make a determination about whether to terminate an existing contract only after a thorough review to ensure the action is proper (2 CFR 180.415(a)). Such termination would be pursuant to contract provision B/BT9.31 and require concurrence of the Regional Forester.

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Existing contracts may only be extended pursuant to the terms of a no cost time extension, for example a force majeure contract term adjustment or a market-related contract term addition (2 CFR 180.415(b)), unless the Chief of the Forest Service or the Chief's authorized representative determines, in writing, that there is a compelling reason for such action and an exception is granted pursuant to 2 CFR 180.135.

04.9 - Law Enforcement

Upon issuing a violation notice, obtaining an indictment on a timber theft case, initiating an investigation for unnecessary damage or cutting of undesignated timber, or any other instance that may constitute cause for debarment or suspension, law enforcement personnel have the responsibility to notify, in writing or verbally, as appropriate, the District Ranger or Forest Supervisor and provide the following information:

1. Case number;
2. Defendant or respondent information (name, address, and so forth);
3. The timber sale associated with the criminal or civil violation or the legal description of the area involved, if not associated with a timber sale contract;
4. The statute violated, if applicable; and
5. A brief narrative of the criminal or civil activity.

Law Enforcement Officers, if requested, also have the responsibility to assist line officers in conducting a debarment or suspension investigation and provide or assist in developing the documentation needed for a referral. The investigation may consist of a search of public records at a courthouse or Secretary of State's office, obtaining declarations from agency personnel, or other investigative procedures, as needed.

04.10 - Office of the General Counsel

The U.S. Department of Agriculture Office of the General Counsel (OGC), Washington Office, acts as legal advisor to the Suspending and Debarring Official. The OGC attorney assigned to a particular case reviews the official record and notices for legal sufficiency and informs the Suspending and Debarring Official of legal positions that should be taken and of risks that may be involved in a particular case. The assigned OGC attorney facilitates contact and coordination with the Department of Justice attorney, the Assistant United States Attorney, or local prosecutor who may be handling a criminal or civil suit involving a person who is being considered for debarment or suspension.

The Regional OGC attorneys are available to advise Forest Supervisors and Regional Foresters in assembling a complete referral record. However, Regional OGC attorneys do not handle debarment or suspension matters once they are referred to the Suspending and Debarring Official.

04.11 - Forest Service Suspending and Debarring Official

The non-procurement Suspending and Debarring Official is an unbiased, objective decision maker. The Official must have no contact with outside parties or Forest Officers, or staff involved in a proceeding, except legal counsel or the Special Assistant to the Official, prior to any informal or factfinding hearings. The Suspending and Debarring Official may have such contacts if hearings are requested, or if contacts are required to obtain other information needed to make an appropriate decision concerning debarment or suspension. Disclosure of such contacts may be required in order to allow a person who is suspended or proposed for debarment to provide information in response to such contacts. Only the Suspending and Debarring Official has the authority to:

1. Decide whether to debar or suspend based solely on the information contained in the official record.
2. Decide whether it is in the interest of the Government not to pursue a debarment or suspension action when a cause for such action exists, or in spite of the existence of a cause.
3. Consider and accept, in coordination with prosecuting attorneys, settlement offers, which include debarments or suspension