

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

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

Chapter 10 - Nonprocurement Debarment and Suspension

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Digest: Following is an explanation of the changes throughout the directive by section.

New chapter with updates throughout of material formerly in FSM 2433.

11.3: Updates definitions.

17: Removes references to obsolete Excluded Parties List website and replaces with the current System for Award Management (SAM) website.

18: Adds information regarding AD-1047 and AD-1048 form requirements for bidder and subcontractor certification.

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11 - Non-Procurement Debarment and Suspension

Non-procurement debarments and/or suspensions are implemented under three different regulations:

1. 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.). The procedures for debarment under these regulations are found in ch. 20 of this handbook.
2. 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.
3. Title 2 CFR Part 417 - Non-procurement Debarment and Suspension, supplements 2 CFR 180 as the (USDA) policies and procedures for non-procurement debarment and suspension specific to USDA and the Forest Service.

11.1 - Debarment Policy

General policy for debarment and suspension under these regulations includes the following:

1. Forest Service debarments and/or suspensions under 2 CFR parts 180 and 417 preclude a person from entering into future timber sales.
2. Purchasers who have been suspended, debarred, or proposed for debarment under 48 CFR part 9.4; declared ineligible; or voluntarily excluded may continue to operate existing sales they have under contract unless the Contracting Officer determines the existing contracts should be terminated (2 CFR 180.415(a)). Termination should occur only after thorough review to ensure such action is proper. The Contracting Officer should coordinate with the Office of the General Counsel
3. 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. In granting a no cost time extension, it must include a condition making the Rate Redetermination for Market Change (B/BT3.33) and Emergency Rate Redetermination (B/BT3.34,) contract provisions inapplicable.
4. Persons debarred and/or suspended pursuant to 2 CFR parts 180 and 417, and their affiliates are excluded from entering into covered transactions with the Federal Government either at the primary or lower tier level, or acting as a principal of a person participating in one of those covered transactions, for the period of the debarment or

suspension (2 CFR 180.130). This includes bidding on or being awarded Forest Service timber sale contracts.

5. The Forest Service must not knowingly solicit or consider bids from, award contracts to, or approve a third-party agreement with suspended or debarred persons.
6. Generally, debarred or suspended persons may be employed by another purchaser, but they may not act as a principal for another purchaser under a covered transaction (2 CFR 180.315(b)).
7. In accordance with Executive Order 12689, and the Federal Acquisition Streamlining Act (31 U.S.C. 6101 note), any debarment, suspension, or proposed debarment under 48 CFR part 9.4, or other Government-wide exclusion initiated under the Federal Acquisition Regulation (FAR) must be recognized by and be in effect for Executive Branch agencies and participants in programs administered by those agencies, as an exclusion under 2 CFR 180 and 417. Similarly, any debarment and/or suspension or other Government-wide exclusion initiated under 2 CFR 180 and 417 must be recognized by and be effective for those agencies as a debarment or suspension under the FAR. Suspension and/or debarment of a participant in a program by one agency has a Government-wide effect.
8. Line officers shall refer a case for possible debarment and/or suspension as soon as:
 - a. They become aware of information concerning the existence of a cause for debarment and/or suspension as listed at 2 CFR 180.800, 180.700, and 417.800; and
 - b. The person has been, is, or may reasonably be expected to be a participant in a covered transaction (2 CFR part 180.120).

Neither the regulations nor this policy offer any discretion about whether to refer a case or not.

11.2 - Roles and Responsibilities

FSM 2404 sets out the general responsibilities related to suspension and debarment. Other responsibilities specific to this section are set out in the Zero Code of this handbook.

11.3 - Definitions

Adequate evidence (2 CFR 180.900). Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate (2 CFR 180.905). Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both.

Agent or Representative (2 CFR 180.910). Any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

Civil judgment (2 CFR 180.915). The disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

Conviction (2 CFR 180.920).

1. A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
2. Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Covered transaction. A non-procurement or procurement transaction subject to the prohibitions of 2 CFR 180.200. All non-procurement transactions as defined in 2 CFR 180.970 and 417.970 are covered transactions unless listed in the exemptions under 2 CFR 180.215 or 417.215 respectively.

Debarment (2 CFR 180.925). An action taken by a Debarring Official under subpart H of 2 CFR part 180 to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

Debarring Official (2 CFR 417.930).

1. An agency official who is authorized to impose debarment. The Debarring Official is either:
 - a. The agency head; or
 - b. An official designated by the agency head.
2. The head of an organizational unit within USDA (for example, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the Debarring Official in connection with such transaction. This authority to act as a Debarring Official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may re-delegate the authority to act as a Debarring Official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

Disqualified (2 CFR 180.935). A person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive Order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under:

1. The Davis-Bacon Act (40 U.S.C. 276(a));
2. The Equal Employment Opportunity Acts and Executive Orders; or
3. The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

Excluded or Exclusion (2 CFR 180.940).

1. That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
2. The act of excluding a person.

Federal Agency (2 CFR 180.950). Any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the government wide Debarment and Suspension system under Executive Orders 12549 and 12689.

Indictment (2 CFR 180.955). An indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible or Ineligibility (2 CFR 180.960). A person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

Legal proceedings (2 CFR 180.965). Any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

Non-procurement Transaction (2 CFR 180.970).

1. Any transaction, regardless of type (except procurement contracts), including, but not limited to the following:
 - a. Grants.
 - b. Cooperative agreements.
 - c. Scholarships.
 - d. Fellowships.
 - e. Contracts of assistance.

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- f. Loans.
 - g. Loan guarantees.
 - h. Subsidies.
 - i. Insurances.
 - j. Payments for specified uses.
 - k. Donation agreements.
2. A non-procurement transaction at any tier does not require the transfer of Federal funds.

Not Covered Transaction (2 CFR 180.215). A non-procurement transaction that is not a covered transaction.

Notice (2 CFR 180.975). A written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 180. 615.)

Official record. The complete written file that provides the Debarring or Suspending Official with the information necessary to determine what, if any, administrative action is needed.

Participant (2 CFR 180.980). Any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

Person. Any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

Preponderance of the evidence (2 CFR 180.990). Proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal (2 CFR 180.995).

- 1. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- 2. A consultant or other person, whether or not employed by the participant or paid with Federal funds, who:
 - a. Is in a position to handle Federal funds;
 - b. Is in a position to influence or control the use of those funds; or,

- c. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Respondent (2 CFR 180.1000). A person against whom an agency has initiated a debarment or suspension action.

State (2 CFR 180.1005).

1. Any of the States of the United States;
2. The District of Columbia;
3. The Commonwealth of Puerto Rico;
4. Any territory or possession of the United States; or
5. Any agency or instrumentality of a state.

For purposes of this part, State does not include institutions of higher education, hospitals, or units of local government.

Suspending Official (2 CFR 417.1010).

1. An agency official who is authorized to impose suspension. The Suspending Official is either:
 - a. The agency head; or
 - b. An official designated by the agency head.
2. The head of an organizational unit within USDA (for example, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the Suspending Official in connection with such transaction. This authority to act as a Suspending Official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a Suspending Official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

Suspension (2 CFR 180.1015). An action taken by a Suspending Official under subpart G of 2 CFR 180 that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

System for Award Management Exclusions (SAM Exclusions) (2 CFR 180.945). The list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

Voluntary exclusion or voluntarily excluded (2 CFR 180.1020).

1. A person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have government-wide effect.
2. The status of a person who has agreed to a voluntary exclusion.

11.4 - Covered and Not Covered Transactions

Covered transactions are classified as either primary tier or lower tier (2 CFR 180.200).

1. Primary tier. The transaction is between a Federal Agency and a person.
2. Lower tier. The transaction is between a participant (2 CFR 180.980) in a covered transaction and another person.

All non-procurement transactions, as defined in 2 CFR 180.970 are covered transactions unless listed in 2 CFR 180.215 or 417.215. The following transactions, specific to Forest Management activities, are not covered transactions (that is, the transactions are exempt from the government-wide rules in 2 CFR parts 180 and 417):

1. The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The "Export Act"), provides separate statutory authority to debar. The Export Act prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands (2 CFR 417.215(a)(2)).
2. The receipt of permits, licenses, exchanges, and other acquisitions of real property, rights of way, and easements under natural resource management programs (2 CFR 417.215 (a)(7)).
3. However,
 - a. A cause for suspension and/or debarment may be based on the actions of a person with respect to a transaction under a Forest Service program even if the transaction has been excluded or exempt from covered transaction status (2 CFR 417.215(c)). If an individual's actions are a cause for debarment or suspension, even though they are not participating in a covered transaction, the individual shall be referred for suspension and/or debarment.
 - b. The Forest Service and other Federal agencies may continue to enter into not covered or exempt transactions with a suspended and/or debarred person; but cannot enter into covered transactions during the period of the person's suspension or debarment.

- c. For example, Christmas tree and firewood cutting permits are not covered transactions. But a conviction for violating the terms of the permit may be a cause for debarment (for example, cutting more trees than authorized by the permit). Upon conviction, the person shall be referred to the Suspending and Debarring Official. If the person is then debarred, they could still participate in exempt transactions (for example, obtain Christmas tree or firewood permits); but cannot be a participant in a covered transaction (for example, a timber sale contract) for the duration of the debarment.

12 - Causes for Debarment or Suspension

12.1 - Causes for Debarment

1. Debarment may be imposed for any of the causes listed at 2 CFR 180.800 and/or 2 CFR 417.800.
2. Causes for debarment must be established by a preponderance of the evidence as the standard of proof; that is, it is more likely than not that the alleged act or violation occurred (2 CFR 180.850).
 - a. A conviction or civil judgment for any of the causes for debarment meets this standard of evidence for initiating a debarment action (2 CFR 180.850(b)). Where causes for debarment is not based upon a conviction or civil judgment, ensure the referral is comprehensive, complete, and provides documentation sufficient to demonstrate the cause(s) for debarment by a preponderance of the evidence.
 - b. Violation notices (VN) that result in a court conviction of a participant in either a covered transaction (for example, timber sale contract) or an exempt transaction (for example, forest products permit) for causes listed in this section constitute cause for debarment.
 - c. Violation Notices (VN) that result only in forfeiture of collateral by a participant in either a covered or an exempt transaction are not considered convictions if the fine was not imposed by a court. In such cases a referral to the Debarring Official is not required. However, if forest personnel determine the facts and evidence leading to the issuance of the VN constitute the existence of a cause for debarment, the matter must be referred to the Debarring Official.
3. A cause for debarment does not require a referral if the person has not been and is not expected to be a participant in a covered transaction (2 CFR 180.120).
 - a. For example, if a person is convicted of illegally cutting “personal use” firewood from a National Forest in violation of 36 CFR part 261.6(a), and that person has not and is not reasonably likely to be a participant in a covered transaction, the person should not be referred to the Debarring Official for consideration. But, if the conviction was for illegally cutting timber for commercial purposes, the person could

reasonably be expected to be a participant in a covered transaction and must be referred.

- b. Also, if a person is convicted of an offense that falls outside the causes listed in paragraph 2 above, no debarment referral is needed.

12.2 - Causes for Suspension

Suspension is a serious action. The Suspending Official may impose this immediate action to protect the public interest when either of the following situations exists:

1. An indictment for or other adequate evidence to suspect an offense listed as a cause under 2 CFR 180.800(a) or 2 CFR 417.800(a), or
2. There is adequate evidence to suspect any other cause for debarment as listed under 2 CFR 180.800 (b) through (d) or 2 CFR 417.800(b) through (d).

13 - Investigation and Referral Process

Information concerning the existence of a cause for debarment from any source must be promptly reported, investigated, and referred, when appropriate, to the Suspending and Debarring Official (FSH 2409.18a, sec. 04.4, 04.5 and 04.6 for consideration (2 CFR 180.600).

The Regional Forester or Forest Supervisor, in consultation with the Regional Special Agent-in-Charge, may decide to utilize agency personnel, the Office of Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required for the referral.

Follow the procedures outlined in section 19 to make referrals to the Suspending and Debarring Official.

13.1 - Referral Record

Assemble the referral record in reverse chronological order, with the most current information first. A comprehensive referral record is essential for the Suspending and Debarring Official to make a decision. The referral record includes, but is not limited to:

1. An index of the documents as ordered in the record.
2. The name and address of the specific respondent(s) against whom the action is being proposed or taken;
3. The specific cause(s) for proposing debarment (2 CFR 180.800 and 2 CFR 417.800), and if suspension is recommended, why immediate action is needed to protect the public interest (2 CFR 180.700);

4. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar, and if appropriate, the need to suspend;
5. The recommended time period for the debarment (2 CFR 180.865 and 2 CFR 417.865), including the rationale for the time period recommended;
6. Mitigating and/or aggravating factors that may affect the decisions to debar, and length of debarment (2 CFR 180.860);
7. Copies of any relevant supporting documentation including but not limited to:
 - a. Detailed evidence of specific cause(s) warranting a debarment.
 - b. Lists of affiliates and evidence documenting the affiliation including, if applicable, bid form(s), information received from state inquiries, information provided by respondent as a part of purchaser responsibility determination pursuant to 36 CFR 223.101, correspondence showing power to control, interest among family members, or shared address (2 CFR 180.905).
 - c. Relevant facts showing the person's responsibility with respect to future dealings with the Forest Service.
 - d. Timber sale inspection reports documenting deficient or exemplary performance if needed to support the identified cause.
 - e. Timber sale contract signature pages and, as applicable, other relevant contract provisions.
 - f. Correspondence between Forest Service personnel and the respondent documenting deficient or exemplary performance.
 - g. If failure to make payments or to make timely payments is cited as a cause, include copies of unpaid bills, late payments, demand letters, and a summary of the current status of payments including the most recent statement of account and synopsis.
 - h. The Contracting Officer's decision on such items as default sales or contract termination. Include any claims submitted by the purchaser.
 - i. Business records of the respondent obtained from the State, such as Articles of Incorporation, or Statement of Officers.
 - j. Copies of any indictments, court settlements, court convictions, and/or violation notices.
 - k. Copies of law enforcement investigative reports (such reports may be redacted, in coordination with the Office of the General Counsel to protect privileged material or Personally Identifiable Information (PII)).

- l. Copies of declarations by sale administration and/or law enforcement personnel, if applicable.
- m. Correspondence showing delegation of authority to an affiliate.
- n. Other documentation relevant to the referral (2 CFR 180.860).

13.2 - Transmittal Letter

The Forest Supervisor shall forward the referral record to the Regional Forester via transmittal letter (FSH 2409.18a sec. 04.5). The Regional Forester then forwards the referral to the Suspending and Debarring Official with a transmittal letter (FSH 2409.18a sec 04.4).

Follow direction for transmittal, filing and personnel access recommendations for documents containing personally identifiable information (PII) or that are sensitive in nature.

The transmittal letter must:

1. Detail the specific causes, believed to be supported by the evidence, for debarment or suspension.
2. Recommend an action and the scope of the action.
3. Note relevant facts regarding respondent's previous actions and perceived responsibility with respect to future dealings with the Forest Service.
4. Include a statement concerning whether or not the respondent has been a purchaser in the past, or has the capability to bid on timber sales, or otherwise enter into contracts or agreements with the Government if the referral is not based on actions in a timber sale contract.
5. Address mitigating factors and any other information the Line Officer deems relevant to the case 2 CFR 180.860.
6. Refrain from making any remarks indicating intent to punish.
7. Refrain from referencing activities unrelated to the specific cause(s) for debarment.
8. State that the case has been coordinated with law enforcement personnel.
9. Be signed by a Line Officer.

14 - Notice of Suspension and/or Notice of Proposed Debarment

The Suspending and Debarring Official shall determine the best way to protect the interest of the Government, determine a person's present responsibility to do business with the Government, consider the seriousness of the person's acts or omissions, consider any mitigating factors, and

decide whether to impose suspension and/or debarment based on the factual information in the official record. The following actions may be taken:

1. Suspension. If the decision is to suspend the respondent pending completion of criminal, civil, or debarment proceedings, the Suspending Official shall send a Notice of Suspension and a copy of the official record to the respondent and all named affiliates. The suspension is effective when the Suspending Official signs the decision to suspend (2 CFR 180.710). 2 CFR 180.715 identifies the information provided to the respondent in the Notice of Suspension (NOS).
2. Proposed Debarment. If the decision is to propose debarment without imposing suspension, the Debarring Official shall send a Notice of Proposed Debarment (NOPD), pursuant to 2 CFR 180.615, and a copy of the official record to the respondent and all named affiliates. The NOPD provides information to the respondent as described in 2 CFR 180.805.
3. Proposed debarment and immediate suspension. If the official record demonstrates cause(s) for debarment and need for immediate suspension to protect the Government's interest, the NOS and NOPD are combined into one notice following the procedures described above for each action.

The NOS and/or NOPD to the respondent must be signed by the Suspending and Debarring Official. The notice is sent to the last known street address, facsimile number, or e-mail address of respondent, respondent's identified counsel, or agent for service process, or any partners, officers, directors, owners, or joint ventures (2 CFR 180.615). The Forest Service considers the Notice of Suspension received by the respondent as described in 2 CFR 180.725(b) and the Notice of Proposed Debarment received by the respondent as described in 2 CFR 180.820(b).

4. Decision not to pursue action. If the Suspending and Debarring Official decides not to pursue administrative action, the Suspending and Debarring Official shall send a decision letter to the Regional Forester providing information and reasons for the decision.

14.1 - Opportunity to Contest Suspension and/or Proposed Debarment

1. Respondent's opposition. 2 CFR 180.720 through .730 and 2 CFR 180.815 through .825 describe the process when the respondent opposes the suspension and/or proposed debarment respectively.
2. Additional proceedings. If the Suspending and Debarring Official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension and/or proposed debarment, 2 CFR 180.735(b) through .745 and 2 CFR 180.830(b) through .840 detail the process for conducting additional proceedings and conducting a fact-finding hearing if necessary. In cases where a transcribed record is not requested, notes should be taken and included in the official record.

The Suspending and Debarring Official may refer disputed material facts to another official for findings of fact. The Suspending and 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 (2 CFR 180.750(b) and 180.845(c)).

3. No additional proceedings necessary. If the Notice of Suspension and/or proposed debarment is based on a conviction or civil judgment, or there is no genuine dispute over material facts, the Suspending and Debarring Official shall make a decision on the basis of all the information in the official record, including any submission made by the respondent. No additional proceedings are necessary (2 CFR 180.735(a) and 180.830(a)).

14.2 - Suspending and Debarring Official's Decision

The Suspending and Debarring Official may suspend and/or debar for any of the causes in 2 CFR 180.800 or 417.800. However, the Official need not suspend or debar even if a cause for suspension or debarment exists. The Suspending and Debarring Official may consider the seriousness of the acts or omissions (2 CFR 180.705 and .845) and the mitigating or aggravating factors (2 CFR 180.860). The Suspending and Debarring Official shall make a written decision whether to continue, modify, or terminate a suspension; or impose debarment within 45 days of closing the official record, unless extended for good cause. The official record closes upon the Suspending and Debarring Official's receipt of final submissions, information, and findings of fact, if any (2 CFR 180.755 and 180.870).

The Forest Service has the burden to prove that a cause for suspension and/or debarment exists (2 CFR 180.705(c) and .855(a)). Once a cause for suspension and/or debarment has been established, the respondent has the burden of demonstrating to the satisfaction of the Suspending and Debarring Official that it is presently responsible and that suspension and/or debarment is not necessary (2 CFR 180.720 and 180.855).

The notice advises the respondent that the suspension and/or debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR Chapter 9.4) throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

If the Suspending and Debarring Official decides to modify or terminate the suspension, or to not impose debarment, the respondent shall be given prompt notice of that decision (2 CFR 180.615 and 180.870). A decision not to impose debarment must be without prejudice to a subsequent imposition of debarment and/or suspension by any other agency.

The USDA, Washington Office, Office of the General Counsel must be consulted on all debarment and suspension actions prior to notices being sent to the respondent.

14.3 - Settlement and Voluntary Exclusion

The Suspending and Debarring Official may, at any time, settle a debarment and/or suspension action when it is in the best interest of the Government (2 CFR 180.635).

Only the Suspending and Debarring Official has the authority to consider and accept, in coordination with prosecuting attorneys, settlement offers, which include debarment, suspension, or voluntary exclusion.

15 - Term and Scope of Administrative Action

15.1 - Term of Debarment

Debarment must be for a period commensurate with the seriousness of the cause(s) and generally not exceed 3 years. If a suspension precedes a debarment, the suspension period must be considered in determining the debarment period. Where circumstances warrant, a longer period of debarment may be imposed (2 CFR 180.865 and 417.865).

The Debarring Official may extend an existing debarment for an additional period, if that Official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 2 CFR 180.885, subparts F and H, must be followed to extend the debarment (2 CFR 180.885).

15.2 - Term of Suspension

2 CFR 180.760 describes how long a suspension may last and under what conditions a suspension may be extended.

15.3 - Scope of Debarment or Suspension

Debarment and/or suspension of a person or business constitutes debarment and/or suspension of all its divisions and other organizational elements from all covered transactions, unless the debarment or suspension decision is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements, or to specific types of transactions (2 CFR 180.625(a)).

The debarment and/or suspension action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and/or suspension and an opportunity to respond to the action (2 CFR 180.625(b)). For purposes of determining the scope of debarment and/or suspension, refer to 2 CFR 180.630(a) for conduct imputed from an individual to an organization; to 2 CFR 180.630(b) for conduct imputed from an organization to an individual, or between individuals; and 2 CFR 180.630(c) for conduct imputed from one organization to another organization.

16 - Request for Reconsideration

The respondent may request that the Debarring Official reconsider the debarment decision or reduce the period or scope of debarment. All requests must be in writing and supported by documentation of the reasons to revise the debarment (2 CFR 180.875). 2 CFR 180.880 provides the factors that may influence the Debarring Official to reduce or terminate a debarment.

16.1 - Appeal Rights

Persons may appeal a decision by the agency to suspend and/or debar in accordance with the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

17 - System for Award Management (SAM)

17.1 - Role of the General Services Administration and the USDA Office of the Chief Financial Officer (OCFO)

The General Services Administration (GSA) maintains System for Award Management Exclusions (SAM), which lists persons that are currently suspended, debarred, ineligible, or voluntarily excluded from participating in covered transactions (2 CFR 180.510). When the Suspending and Debarring Official excludes a person or entity, the relevant information is sent to the USDA Office of Chief Financial Officer (OCFO) to be entered into the system (2 CFR 180.515 and .520). The Internet address for SAM is <http://www.sam.gov>.

17.2 - Forest Service Responsibilities

1. The Special Assistant to the Suspending and Debarring Official shall provide the USDA OCFO with current information concerning debarments, suspensions, determinations of ineligibility, voluntary exclusions, exceptions granted by the agency, and any debarment or suspension decisions overturned on appeal within 5 working days of the decision (2 CFR 180.520).
2. Contracting Officers shall check the SAM website (section 17.1) before entering into covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (2 CFR 180.425).

18 - Bidder and Subcontractor Certification

1. By signing bid form FS-2400-14UR, FS-2400-14TV, or FS-2400-14WA as appropriate (available electronically on the Forest Service Web/Intranet at [Timber Sale Preparation \(fs.fed.us\)](http://fs.fed.us)), each bidder certifies that to the best of the bidder's knowledge, the bidder and its principals are not presently debarred, suspended, proposed for debarment under 48 CFR 9.4, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency (2 CFR 180.335). Bidders who cannot make this certification, in whole or in part, are required to submit an explanation with their bid.

The bidder further agrees by submitting their bid that Form AD-1047 Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions shall be completed by the purchaser and provided to the Contracting Officer upon request and that Form AD-1048 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions shall be completed by the Purchaser and provided to the Contracting Officer upon request for each subcontractor.

2. By signing Solicitation and Offer for Integrated Resource Contract form FS-2400-14BV, or FS-2400-14BVU as appropriate (available electronically on the Forest Service Web/Intranet at [Timber Sale Preparation \(fs.fed.us\)](https://fs.fed.us)), each offeror certifies that to the best of the offeror's knowledge, the offeror and its principals are not presently debarred, suspended, proposed for debarment under 48 CFR 9.4, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency (2 CFR 180.335). Offerors who cannot make this certification, in whole or in part, are required to submit an explanation with their offer. The Bidder further agrees by submitting their bid that Form AD-1047 Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions shall be completed by the Purchaser and provided to the Contracting Officer upon request and that Form AD-1048 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions shall be completed by the Purchaser and provided to the Contracting Officer upon request for each subcontractor.
3. By signing and submitting bids on form FS-2400-42a (available electronically on the Forest Service Web/Intranet at [Timber Sale Preparation \(fs.fed.us\)](https://fs.fed.us)), bidders certify that to the best of the bidder's knowledge, the bidder and its principals are not presently debarred, suspended, proposed for debarment under 48 CFR 9.4, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency (2 CFR 180.335). Bidders who cannot certify, in whole or in part, are required to submit an explanation with their bid (FSH 2409.18, sec. 55.4). The Bidder further agrees by submitting their bid that Form AD-1047 Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions shall be completed by the purchaser and provided to the Contracting Officer upon request and that Form AD-1048 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions shall be completed by the Purchaser and provided to the Contracting Officer upon request for each subcontractor.
4. Pursuant to 2 CFR 180.330 and 417.332 each timber sale purchaser shall require subcontractors to provide a certification to the Purchaser, or to otherwise document in accordance with the regulations, that to the best of the subcontractor's knowledge, the subcontractor and its principals are not presently debarred, suspended, proposed for debarment under 48 CFR 9.4, or declared ineligible, or voluntary excluded from covered transactions by any Federal department or agency. Subcontractors, who cannot certify, in whole or in part, shall submit an explanation to the bidder. When soliciting bids on forms FS-2400-14UR, FS-2400-14TV, FS-2400-14WA or FS-2400-42a, bidders agree that form AD-1047 Certification Regarding Debarment, Suspension and Other Responsibility

Matters – Primary Covered Transactions shall be completed by the Purchaser and provided to the Contracting Officer upon request (FSH 2409.18, sec. 55.35). Bidders are not required to submit the lower-tier certifications with the bid, but Form AD-1048 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions shall be completed by the purchaser and provided to the Contracting Officer upon request. Purchasers shall keep the subcontractor certifications or other documentation on file until the termination date of the contract for review by the Contracting Officer, if requested. Purchasers are required to obtain certifications or other documentation from subcontractors engaged after award of the contract pursuant to contract provisions.

5. Require any bidder or purchaser to provide immediate written notice to the Forest Service if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances (2 CFR 180.350). Require subcontractors to lower-tier covered transactions to provide the same updated notice to the bidder or purchaser (2 CFR 180.365).

19 - Debarment and Suspension Procedures

Exhibit 01 summarizes the debarment and suspension procedures.

Forest Service Handbook 2409.18a – Timber sale Debarment and Suspension Procedures Handbook
Chapter 10 - Nonprocurement Debarment and Suspension
Amendment: 2409.18a-2021-2
Effective date: October 29, 2021
19 - Exhibit 01

Debarment and Suspension Procedures

Action by	Action
Contracting Officer	<p>1. Establish cause(s) for debarment and/or suspension (FSH 2409.18a sec 12.</p> <p class="margin-left: 40px;">a. A VN which results only in forfeiture of collateral is not required to be referred to the Debarring Official on the basis of a conviction. However, these shall be promptly investigated and referred if underlying causes for debarment are found.</p> <p class="margin-left: 40px;">b. If a cause for debarment will be established by a conviction or civil judgment, initiate referral for suspension as soon as possible after law enforcement personnel begin an investigation, but not later than immediately following an indictment.</p> <p class="margin-left: 40px;">c. If a cause for debarment will be established based on contract violations such as a contract termination or default, initiate a referral as soon as possible following the action, but not later than the Contracting Officer's decision.</p> <p>2. Promptly inform the responsible line officer of the existence of cause(s) for debarment and/or suspension.</p> <p>3. Assemble a referral record documenting the cause(s) identified. FSH 2409.18a sec 13.1 provides guidance for assembling the referral record.</p> <p>4. Transmit the referral record to the District Ranger.</p>
District Ranger	<p>5. Notify the Forest Supervisor of the pending case, coordinate the case with the Law Enforcement Officer or Special Agent serving the area, prepare the transmittal letter, and send the referral record to the Forest Supervisor.</p> <p>6. Update information relevant to the proposed action as it becomes available.</p>
Forest Supervisor	<p>7. Coordinate the case with the Special Agent serving the area and review the District Ranger's referral letter transmitting the referral record to the Regional Forester.</p>

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Action by	Action
Forest Supervisor	<p>8. Add any other relevant information to the referral record detailing specific causes believed to be supported by the evidence.</p> <p>9. Forward the referral record by transmittal letter to the Regional Forester with as little delay as possible.</p>
Regional Forester	<p>10. Coordinate the case with the Regional Special Agent-in-Charge and add other relevant information to the referral record.</p> <p>11. Review the Forest Supervisor's and District Ranger's transmittal letter and referral record and forward the referral record to the Suspending and Debarring Official.</p>
Special Assistant to Suspending and Debarring Official	<p>12. Review the referral package.</p> <p>13. Contact the Regional office, if needed, to obtain additional information for the official record or to clarify references in the referral package.</p> <p>14. Contact Office of the General Counsel (OGC) attorney to review and analyze the circumstances of the case.</p>
USDA WO-Office of the General Counsel Attorney	<p>15. Contact any prosecuting attorneys who may be involved to:</p> <ul style="list-style-type: none"> a. Ensure that any debarment and/or suspension action will not affect any ongoing criminal or civil proceedings. b. Coordinate any plea bargain agreements. <p>16. Notify the Suspending and Debarring Official immediately of such information above.</p>
Special Assistant to Suspending and Debarring Official and USDA WO-Office of the General Counsel Attorney	<p>17. Discuss the facts of the case with the Suspending and Debarring Official and discuss any requests to refrain from taking administrative action that have been received.</p>

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Action by	Action
Special Assistant to Suspending and Debarring Official	<p>18. Assemble the official record from the referral package.</p> <p>19. Draft a decision notice(s) for the Suspending and Debarring Official, such as a Notice of Suspension, Notice of Proposed Debarment, Notice of Suspension and Proposed Debarment, or other appropriate notice; or draft a letter of transmittal to the Regional Forester if the decision is not to pursue action.</p> <p>20. Forward a copy of the official record and decision documents to the assigned OGC attorney for review and concurrence.</p>
USDA WO-Office of the General Counsel Attorney	21. Review official record for legal sufficiency and concur, as appropriate, on the decision notice(s) or letter of transmittal.
Suspending and Debarring Official	<p>22. Based on the review of the official record, decide whether it is in the best interest of the Government to pursue a debarment and/or suspension action.</p> <p>23. Consider and accept when appropriate, in coordination with prosecuting attorneys, settlement offers which include debarment, suspension, or voluntary exclusion.</p> <p>24. Maintain responsibility for communications with the respondent concerning debarment and/or suspension.</p> <p>25. Approve and sign the decision notice or letter of transmittal.</p>
Special Assistant to Suspending and Debarring Official	26. Transmit the decision notice to the respondent by certified, return receipt requested mail, or send the letter of transmittal to the Regional Forester. In cases where suspension action has been taken, provide the USDA Office of the Chief Financial Officer (OCFO) with current information to include in the SAM list within 5 working days of issuance of the notice.
Respondent	27. The Suspending and Debarring Official shall receive any information that the respondent or any specifically named affiliate(s) may wish to provide within 30 days from receipt of the notice. (2 CFR 180.725 or .820)

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Action by	Action
Suspending and Debarring Official	28. The Suspending and Debarring Official shall make a decision within 45 days of closing the official record, unless the Suspending and Debarring Official extends this period for good cause (2 CFR 180.755 and .870 and 2 CFR 417.755).
Special Assistant to Suspending and Debarring Official	29. Draft decision notice for the Suspending and Debarring Official.
USDA WO-Office of the General Counsel Attorney	30. Review and concur on decision notice.
Suspending and Debarring Official	31. Approve and sign decision notice.
Special Assistant to Suspending and Debarring Official	32. Transmit the notice to the respondent certified mail, return receipt requested. 33. Provide OCFO with current information to update or include in SAM within 5 working days of the notice.
Respondent	34. The respondent may request that the Debarring Official reverse the debarment decision or reduce the period or scope of debarment. Such a request must be in writing and supported by documentation. This request can be made at any time prior to termination of the debarment period.