

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

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

Chapter 20 - Debarment and Export Violations

Amendment: 2409.18a-2021-3

Effective date: October 29, 2021

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Approved by: Tina Terrell, Associate Deputy Chief, NFS

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Responsible Staff:

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

New chapter in its entirety related to debarment and export violations and the procedures thereto.

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21 - Debarment for Export Violations

This section applies only to debarment for export violations under the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620 et seq.) (Export Act). Direction for debarment for any other cause is contained in FSH 2409.18a, Chapter 10.

Title 36 CFR part 223, Subpart C - Suspension and Debarment of Timber Purchasers, is used to debar persons who violate the Export Act.

The Debarring Official must use debarment only to protect the public interest, to protect the Government in future business dealings, and to assure that the Government only conducts business with responsible persons. Do not use debarment to punish persons for alleged illegal activity or a failure to comply with contract terms.

21.1 - Debarment Policy

1. Forest Service debarment for export violations precludes persons from entering into future timber sales. Debarment excludes such persons and their affiliates from bidding or being awarded new Forest Service timber sale contracts for the period of debarment.
2. Persons proposed for debarment or presently debarred may continue to operate any existing sales under contract prior to debarment. However, under rare circumstances, a Contracting Officer may terminate existing contracts after thorough review to ensure such action is proper. The Contracting Officer should coordinate with the Office of the General Counsel before terminating any existing contracts.
3. The Contracting Officer must not knowingly solicit or consider bids from, award contracts to, approve a third-party agreement with, or renew or otherwise extend the duration of a timber sale contract with a debarred individual, with two exceptions:
 - a. Pursuant to the terms of a force majeure contract term adjustment (FSM 2453.11.
 - b. The Chief of the Forest Service or his authorized representative determines, in writing, that there is a compelling reason for such action.
4. Forest Service officials should be aware that under 36 CFR 223.135(b) and 36 CFR 223.136(b), persons who are proposed for debarment or who are debarred are precluded from taking delivery of Federal timber purchased by another person for the period of the debarment. Debarment generally does not prohibit debarred persons from being employed by another purchaser.
5. Line officers must refer a case for debarment consideration as soon as they become aware of a cause for debarment, as described in section 21.3. No discretion of whether or not to refer a case is allowed.

21.2 - Roles and Responsibilities

FSM 2404 sets out the general responsibilities related to debarment. Other responsibilities specific to debarment for export violations are set out in the Zero Code of this handbook.

21.3 - Cause for Debarment

Debarment may be imposed for causes that include:

1. Violation of the Forest Resources Conservation Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*), or any regulation or contract issued under the Act.
2. Conviction of, or civil judgment for, falsification or destruction of records or making false statements, related to the Forest Resources Conservation Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*), or any regulation or contract issued under the Act.
3. Debarment by another Federal agency related to the Forest Resources Conservation Shortage Relief Act of 1990, as amended (16 U.S.C. 620, *et seq.*), or any regulation or contract issued under the Act.

Causes for debarment must be established by a preponderance of evidence; that is, it is more likely than not that the alleged act or violation occurred. A conviction or civil judgment for any of the causes for debarment meets this standard of evidence for initiating a debarment action. Where a cause for debarment is not based upon a conviction or civil judgment, ensure the referral to the Debarring Official is comprehensive, complete, and provides documentation sufficient to demonstrate the cause(s) for debarment by a preponderance of the evidence.

Violation notices that result in a court conviction of a person for causes listed in this section constitute cause for debarment. Referral in these cases is mandatory.

22 - Debarment Procedure

22.1 - 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 Debarring Official for consideration (sec. 21.2). Follow direction for transmittal, filing and personnel access recommendations for documents containing personally identifiable information (PII) or that are sensitive in nature.

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

1. Referral Record. Assemble the record in chronological order, with the most current information first. Include an index of the documents as ordered in the record. The referral record includes, but is not limited to:
 - a. The name of the specific respondent(s) against whom the action is being proposed or taken;
 - b. The reason(s) for proposing the debarment;
 - c. The specific cause(s) for debarment;
 - d. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;
 - e. The recommended time period for the debarment, including the rationale for the time period recommended;
 - f. The potential effect and/or consequences that the debarment will have on the respondent(s); and
 - g. Copies of any relevant support documentation:
 - (1) Documentation must include, but is not limited to:
 - (a) Detailed evidence of specific cause(s) warranting debarment.
 - (b) Lists of affiliates and evidence documenting the affiliation of individuals to a respondent.
 - (c) Relevant facts showing the respondent's responsibility with respect to future dealings with the Forest Service.
 - (2) Examples of documentation are:
 - (a) Timber sale inspection reports.
 - (b) Timber sale contract signature pages.
 - (c) Correspondence between Forest Service personnel and the respondent.
 - (d) The Contracting Officer's decision(s) and any purchaser's claims.
 - (e) Business records of the respondent obtained from the State, such as Articles of Incorporation or Statement of Officers.
 - (f) Copies of any indictments, court settlements, court convictions, and/or violation notice.

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- (g) Copies of law enforcement investigative reports (such reports may be redacted in coordination with the Office of the General Counsel to protect privileged material.)
 - (h) Copies of declarations by sale administration and/or law enforcement personnel, if applicable.
 - (i) Correspondence showing delegation of authority to an affiliate.
 - (j) Other documentation showing affiliation, such as bid forms.
 - (k) Other documentation relevant to the referral.
2. Transmittal Letter. Follow the procedures outlined in exhibit 01 to make referrals to the Debarring Official. The referral transmittal letter must:
- a. Recommend an action and the scope of the action.
 - b. Note relevant facts regarding the respondent's responsibility with respect to future dealings with Forest Service.
 - c. 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.
 - d. Detail the specific causes, believed to be supported by the evidence, for debarment.
 - e. Refrain from making any remarks indicating intent to punish.
 - f. Refrain from referencing activities unrelated to the specific cause(s) for debarment.
 - g. State that the case has been coordinated with law enforcement personnel.
 - h. Be signed by a line officer.

22.1 - Exhibit 01

Debarment Procedures

Action by	Action
Contracting Officer	<ol style="list-style-type: none">1. Establish cause(s) for debarment (sec. 21.3).<ol style="list-style-type: none">a. If a cause is based on a violation notice pertaining to the Forest Resources Conservation Shortage Relief Act of 1990, initiate referral of the case to the Debarring Official when the violation notice is issued, but not later than the entry of a conviction or issuance of a civil judgment.b. If a cause for debarment will be established by a conviction or civil judgment, initiate referral for debarment as soon as possible after law enforcement personnel begin an investigation, but not later than immediately following an indictment.c. If a cause for debarment will be established based on a person's debarment by another Federal agency for export violations, refer the case as soon as possible after the action becomes known.2. Promptly inform the responsible line officer of the existence of a cause(s) for debarment.3. Assemble a referral record documenting the cause(s) identified.4. Transmit the referral record to the District Ranger.
District Ranger	<ol style="list-style-type: none">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.6. Update information relevant to the proposed action as it becomes available.
Forest Supervisor	<ol style="list-style-type: none">7. Coordinate the case with the Special Agent serving the area and review the District Ranger's letter transmitting the referral record to the Regional Forester.8. Add any other relevant information to the referral record detailing specific causes believed to be supported by the evidence.

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Action by	Action
Forest Supervisor	9. Forward the referral record by transmittal letter to the Regional Forester with as little delay as possible.
Regional Forester	10. Coordinate the case with the Regional Special Agent-in-Charge and add other relevant information to the referral record. 11. Review the Forest Supervisor's and District Ranger's transmittal letter and referral record and forward the referral record to the Debarring Official.
Special Assistant to Debarring Official	12. Review the referral package. 13. Assemble the administrative record from the referral package. 14. Contact the Regional Office, if needed, to obtain additional information for the administrative record or to clarify references in the referral package. 15. Forward a copy of the administrative record to the assigned Office of the General Counsel (OGC) attorney for review.
USDA WO-Office of the General Counsel Attorney	16. Contact any prosecuting attorneys who may be involved to: a. Ensure that a debarment action will not affect any ongoing criminal or civil proceedings. b. Coordinate any plea-bargaining agreements. 17. Notify the Debarring Official immediately of such information above.
Special Assistant to Debarring Official and USDA WO-Office of the General Counsel Attorney	18. Analyze the circumstances of the case. 19. Discuss the case with the Debarring Official as well as any requests to refrain from taking administrative action that have been received.
Special Assistant to Debarring Official	20. Draft a Decision Notice for the Debarring Official, such as a Notice of Proposed Debarment, Notice of Debarment, or other appropriate notice; or draft a letter of transmittal to the Regional Forester if the decision is not to pursue action.

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Action by	Action
USDA WO-Office of the General Counsel Attorney	21. Review and, as appropriate, concur on the Decision Notice or letter of transmittal.
Debarring Official	<p>22. Review the referral record and decide whether it is in the interest of the Government to pursue a debarment action, based on the information contained in the administrative record.</p> <p>23. Consider, and accept when appropriate, in coordination with prosecuting attorneys, settlement offers which include debarments.</p> <p>24. Maintain responsibility for communications with the respondent concerning debarment.</p> <p>25. Approve and sign either the Decision Notice or letter of transmittal.</p>
Special Assistant to Debarring Official	26. Transmit the Decision Notice to the respondent by certified, return receipt requested mail, or send the transmittal letter to the Regional Forester.
Debarring Official	<p>27. The Debarring Official must receive any information that the respondent or any specifically named affiliate(s) may wish to provide within working 30 days from receipt of the notice. Information received may be by a written submission, by an appearance in person, or by phone. The information may include an argument in opposition to the imposition of debarment, or to the scope of debarment.</p> <p>28. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Debarring Official must make a decision within 30 working days after receipt of any information and argument submitted by the respondent, unless the Debarring Official extends this period for good cause.</p> <p>29. In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact must be prepared. The Debarring Official must base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.</p>

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Action by	Action
Special Assistant to Debarring Official	30. Draft the Decision Notice for the Debarring Official.
USDA WO-Office of the General Counsel Attorney	31. Review and concur on Decision Notice.
Debarring Official	32. Approve and sign Decision Notice.
Special Assistant	33. Transmit the Notice to the respondent by certified mail, return receipt requested. 34. Provide the Office of the Chief Financial Officer (OCFO) with current information to update or include in SAM within 5 working days of the Notice.
Debarring Official	35. 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.

22.2 - Notice of Proposed Debarment

The Debarring Official must determine the best way to protect the interests of the Government, determine a respondent's present responsibility to do business with the Government, consider the seriousness of the respondent's acts or omissions, and consider any mitigating factors, when deciding whether to impose debarment.

If the decision is to propose debarment, the Debarring Official must send a Notice of Proposed Debarment, a copy of the administrative record, and a copy of 36 CFR part 223, subpart C, to the named person and all named affiliates.

The Notice of Proposed Debarment must advise the respondent that debarment is being considered and include:

1. The reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or contract(s) upon which it is based;
2. The cause(s) relied upon for proposing debarment;
3. The procedures governing debarment decision-making; and
4. The potential effect of a debarment.

The notice to the respondent must be signed by the Debarring Official and transmitted by certified mail, return receipt requested.

If the Debarring Official decides not to pursue debarment, a decision letter must be sent to the Regional Forester providing information and reasons for the decision.

22.3 - Opportunity to Contest Proposed Debarment

1. Respondent Opposition and Informal Hearing. 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 the proposed debarment.

If requested, an informal hearing must 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 makes a written request for postponement. At the hearing, allow the respondent, an attorney, or other authorized representative to informally present and explain evidence. Evidence may be presented to show that causes for debarment do not exist, may include mitigating factors, or may give arguments concerning the imposition, scope, duration, or effects of debarment. At the respondent's request and at cost to the respondent, the hearing may be transcribed.

2. Fact Finding Hearing. In actions not based upon a conviction or civil judgment, if the Debarring Official finds and gives notice that the submission in opposition raises a dispute over facts material to the proposed debarment, respondent(s) may request a fact-finding conference on those disputed material facts. Such a conference must be held within 20 calendar days from the date the request is received, unless mutually agreed otherwise. The fact-finding conference must conform to the following requirements:
 - a. At least 10 days before the fact-finding conference, the Debarring Official must send the respondent a copy of all documents in the administrative record, on the date of transmittal, if release of the documents is not objected to by the Department of Justice.
 - b. The respondent(s) must be afforded the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.
 - c. A transcribed record of any additional proceedings must be made available at cost to the respondent, upon request, unless the respondent and the Debarring Official, by mutual agreement, waive the requirement for a transcript.

If the Notice of Proposed Debarment is based on a conviction or civil judgment, a fact-finding hearing is not required.

22.4 - Debarring Official's Decision

In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Debarring Official must make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The Debarring Officer must make a decision within 30 working days after receipt of any information and argument submitted by the respondent, unless the Debarring Official extends this period for good cause.

In actions in which additional proceedings are necessary to determine disputed material facts, written finding of fact must be prepared. The Debarring Official may refer disputed material facts to another official for a finding of facts. The Debarring Official may reject any findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

The Debarring Official's decision must be made after the conclusion of the proceedings with respect to disputed facts. The cause(s) for debarment must be established by a preponderance of the evidence as the standard of proof. Where the proposed debarment is based upon a conviction or civil judgment, the standard of proof has been met. The burden of proof is on the Forest Service.

If the Debarring Official decides to impose debarment, the respondent must be given prompt notice:

1. Referencing the Notice of Proposed Debarment;
2. Specifying the reasons for debarment;
3. Stating the period of debarment, including effective dates; and
4. Identifying any limitations on the terms of the debarment. The Debarring Official must notify the Regional Forester and Forest Supervisor of the decision.

If the Debarring Official decides not to impose debarment, the respondent must be given prompt notice of that decision. Notice to the respondent in writing must be signed by the Debarring Official and transmitted by certified mail, return receipt requested. The Office of the General Counsel must be consulted on all debarment actions prior to the notice being sent to the respondent.

23.5 - Settlement and Voluntary Exclusion

The Debarring Official may, at any time, settle a debarment action when it is in the best interest of the Government.

Only the Debarring Official has the authority to consider and accept, in coordination with prosecuting attorneys, settlement offers, which include debarments.

23.6 - Term and Scope of Administrative Action

1. Term of Debarment. Debarment must be for a period commensurate with the seriousness of the cause(s) and must not exceed 5 years.

The Debarring Official may extend an existing debarment for an additional period, which added to the initial debarment must not exceed 5 years, 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 at 36 CFR part 223, subpart C, must be followed to extend the debarment.

2. Scope of Debarment. Debarment of a person or business constitutes debarment of all its divisions and other organizational elements, unless the debarment decision is limited by its terms to specific individuals, divisions, or other organizational elements or to specific types of transactions.

The debarment action may include any affiliate of the respondent that is specifically named, given notice of the proposed debarment, and an opportunity to respond. For purposes of determining the scope of debarment, conduct may be imputed as follows:

- a. Conduct imputed to respondent. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a respondent may be imputed to the respondent when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the respondent, or with the respondent's knowledge, approval, or acquiescence. The respondent's acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.
- b. Conduct imputed to individuals associated with respondent. The fraudulent, criminal, or other seriously improper conduct of a respondent may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the respondent who participated in, knew of, or had reason to know of, the respondent's conduct.
- c. Conduct of one person imputed to other persons in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one person in a joint venture, granted pursuant to a joint application, or in a similar arrangement or with the knowledge, approval, or acquiescence of those parties may be imputed to those parties. Acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.

23.7 - Request for Reconsideration and Appeal

The respondent may request that the Debarring Official reverse 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. The Debarring Official may grant such a request for reasons including, but not limited to:

1. Newly discovered material evidence;
2. Reversal of the conviction or civil judgment upon which the debarment was based;
3. Bona fide change in ownership or management;
4. Mitigation or elimination of other causes for which the debarment was imposed; or
5. Other reasons the Debarring Official deems appropriate.

The Debarring Official must make a final disposition of a reconsideration request, in writing, within 30 working days of receipt of the reconsideration request and supporting documentation, unless the Debarring Official decides to extend this time period. The notice of the Debarring Officer's decision must set forth the reasons for granting or denying the reconsideration request.

The respondent may appeal the Debarring Official's decision in accordance with the Administrative Procedure Act, 5 U.S.C. 551, et seq.

23.8 - List of Debarred Persons

The General Services Administration (GSA) maintains the 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 about an excluded person is sent within 5 working days of the decision 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>.