

those disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with the following requirements:

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

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

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

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

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

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

them to be arbitrary and capricious or clearly erroneous.

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

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

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

(A) Refer to the notice of proposed debarment;

(B) Specify the reasons for debarment;

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

(D) Specify any limitations on the terms of the debarment.

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

[52 FR 43329, Nov. 12, 1987, as amended at 72 FR 31438, June 7, 2007]

§ 223.139 Period of debarment.

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

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

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

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

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an

additional period if that official determines that an extension is necessary to protect the Government's interest. However:

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

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

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

(1) Newly discovered material evidence;

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

(3) Bona fide change in ownership or management;

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

(5) Other reasons the debarring official deems appropriate.

(d) The debarring official shall make final disposition of a reconsideration request under paragraph (c) of this section in writing within 30 working days of receipt of the reconsideration request and supporting documentation, unless the debarring official extends this period for good cause. The notice of the decision shall set forth the reasons for granting or denying the request.

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

§ 223.140 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a purchaser constitutes debarment of all divisions or other organizational elements of the purchaser, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or classes of sales.

(2) The debarring official may extend a debarment decision to include any affiliates of the purchaser, if they are—

(i) Specifically named and

(ii) Given written notice of the proposed debarment and provided an opportunity to respond (see § 223.138(b)).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on behalf of the purchaser, or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) The fraudulent, criminal, or other seriously improper conduct of a purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or has reason to know of the purchaser's conduct.

(3) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

§ 223.141 Suspension.

(a) The suspending official may, in the public interest, suspend a purchaser on the basis of adequate evidence for any of the causes in § 223.142, using the procedures in § 223.143. However, the existence of a cause for suspension does not necessarily require that the purchaser be suspended. In making any suspension decision, the suspending official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) Suspension is a serious action to be imposed, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing