

§ 223.137

36 CFR Ch. II (7-1-14 Edition)

debarred. In making any debarment decision, the debarring official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

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

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under §223.137(g) shall preclude such person from entering into any contract to purchase unprocessed timber originating from Federal lands, and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

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§ 223.137 Causes for debarment.

The debarring official may debar a purchaser for any of the following causes:

(a) Conviction of or civil judgment for:

(1) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.

(3) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the purchaser.

(b) A purchaser's debarment from the purchase of timber by another Federal agency which sells timber.

(c) Cutting and/or removal of more than incidental volumes of timber not designated for the purchaser's cutting from a national forest.

(d) Substantial violation of the terms of one or more Forest Service timber sale contracts so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with contract; or

(2) A history of failure to perform contract terms; or of unsatisfactory performance of contract terms.

(e) Among actions the Forest Service regards as so serious as to justify debarment under paragraph (d) of this section are willful violation or repeated failure to perform National Forest System timber sale contract provisions relating to the following:

(1) Fire suppression, fire prevention, and the disposal of slash;

(2) Protection of soil, water, wildlife, range, cultural, and timber resources and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(3) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(4) Observance of restrictions on exportation of timber;

(5) Observance of restrictions on the disposal of timber from small business set-aside sales;

(6) Providing access to the Forest Service upon its request to purchaser's books and accounts;

(7) Payment of monies due under terms of a Forest Service timber sale contract, including payment of damages relating to failure to cut designated timber by the contract termination date;

(8) Performance of contract by the contract termination date.

(f) Any other cause so serious or compelling that it affects the present responsibility of a purchaser of Government timber.

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) or any regulation or contract issued under the Act.

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