

**§ 101-40.401**

transporting freight or household goods for the account of civilian executive agencies;

(b) Provisions for the listing of temporary nonuse, debarred, or suspended carriers; and

(c) Treatment to be accorded carriers which are placed in temporary nonuse, debarred, or suspended status.

[51 FR 24337, July 3, 1986]

**§ 101-40.401 Policy.**

(a) Executive agencies shall obtain transportation services from responsible commercial carriers providing consistent and satisfactory service to meet an agency's needs. Temporary nonuse, debarment, and suspension are discretionary actions which, when taken in accordance with this subpart, are appropriate means to implement this policy.

(b) The Federal Acquisition Regulation (FAR), codified at 48 CFR subpart 9.4, implements on a Government-wide basis the uniform policies and procedures governing the debarment and suspension of Government contractors, promulgated by the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, in Policy Letter 82-1, issued June 24, 1982 (47 FR 28854, July 1, 1982), and shall apply to contracts for transportation (including bills of lading). A Government bill of lading (GBL) is a contract for transportation services. (See 41 CFR 101-41.302-2(a)(1).) A commercial bill of lading is also a contract for transportation services.

(c) Temporary nonuse is not governed by OFPP Policy Letter 82-1 since temporary nonuse does not have Government-wide effect and may be initiated by agency transportation officers. Debarment and suspension, however, shall only be imposed by the designated official specified in this subpart.

(d) Debarment or suspension of a carrier precludes the executive agency, including the Department of Defense, from awarding such carrier a contract for transportation.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

[51 FR 24337, July 3, 1986]

**41 CFR Ch. 101 (7-1-00 Edition)**

**§ 101-40.402 General.**

(a) Temporary nonuse may be imposed by an authorized agency transportation officer for the causes set forth in §101-40.408-2. This action should be taken when a carrier's failure to provide adequate service indicates that the carrier's continued participation poses a risk to effective operation of agency transportation programs. Temporary nonuse is a localized program response to service failures which the carrier can readily correct during a period of limited exclusion.

(b) Debarment is designed to protect the Government by excluding a carrier for a specified period of time following completion of an investigation or legal proceeding. A carrier may be debarred for willful and/or persistent service failures or if the agency's debarring official determines that a Government-wide exclusion of the carrier is necessary to ensure the integrity of Government transportation programs. The agency's transportation officer shall refer carriers to the agency's debarring official in accordance with 48 CFR 9.406, if the carrier has willfully and/or persistently failed to comply with its contractual obligations under the terms and conditions of any contract for transportation. Referrals for criminal and/or civil fraud prosecutions should be made by the agency's Inspector General or an equivalent official.

(c) Suspension is designed to protect the Government pending the outcome of a legal proceeding or investigation concerning criminal activity, civil fraud, or antitrust violations concerning contractual relations with the Government. When the agency transportation officer suspects that a carrier has engaged in such conduct, the matter should be referred to the agency's Inspector General or an equivalent official.

[51 FR 24337, July 3, 1986, as amended at 52 FR 21034, June 4, 1987]

**§ 101-40.403 Definitions.**

(a) *Affiliates* means carriers or individuals if, directly or indirectly—

(1) Either one controls or can control the other, or

(2) A third party controls or can control both.