

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]

**§ 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.

(b) *Agency* means executive agencies unless otherwise noted.

(c) *Consolidated list* means the list compiled, maintained, and distributed by GSA under 48 CFR 9.404 to identify Government contractors debarred or suspended. For the purpose of implementing the provisions of this subpart, the contractor listing shall also include debarred or suspended commercial carriers.

(d) *Carrier* means any individual or other legal entity authorized to transport freight or household goods under a certificate, license, or permit issued by a Federal, State, or local regulatory body.

(e) *Contract for transportation* means a GBL, commercial bill of lading, purchase order, rate tender, or any other instrument establishing binding obligations on the Government to purchase, and the carrier to provide, transportation services.

(f) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction whether entered upon a verdict or plea, and includes a conviction entered upon a plea of *nolo contendere*.

(g) *Debarment* means action taken by a debarring official under 48 CFR 9.406 to exclude a carrier for a specified period of time from receiving on a Government-wide basis any type of contract for transportation.

(h) *Debarring official* means the head of an agency or an official authorized under 48 CFR 9.403 by the head of an agency to impose debarment.

(i) *Indictment* means indictment for a criminal offense. Any information or other filing by competent authority charging criminal offense shall be given the same effect as an indictment.

(j) *Legal proceeding* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(k) *Reviewing official* generally means the transportation officer's immediate supervisor. Agencies may designate other personnel as reviewing officials for the purpose of reviewing decisions to place carriers in temporary nonuse status provided such designations are consistent with the individual's current duties and responsibilities.

(l) *Suspending official* means the head of an agency or an official authorized under 48 CFR 9.403 by the head of an agency to impose suspension.

(m) *Suspension* means action taken by a suspending official under 48 CFR 9.407 to disqualify a carrier temporarily on a Government-wide basis for receiving any contracts for transportation; a carrier so disqualified is "suspended."

(n) *Temporary nonuse* means action taken by a transportation officer under § 101-40.408 to exclude a carrier for a specified period of time from participating in shipments of freight or household goods under tariffs, rate tenders, tenders of service, commercial or Government bills of lading, and similar arrangements to or from specified transportation facilities.

(o) *Transportation facility* means an agency installation, depot, or shipping and receiving point which handles Government traffic.

(p) *Transportation officer* means agency traffic managers or other officials responsible for managing bill of lading type commitments. Agencies may designate other personnel as transportation officers for the purpose of imposing temporary nonuse status provided such designations are consistent with the individual's current duties and responsibilities.

[51 FR 24337, July 3, 1986]

**§ 101-40.404 Maintenance of a list of temporary nonuse, debarred, or suspended carriers.**

**§ 101-40.404-1 Listing temporary nonuse carriers.**

Each agency that places a carrier in temporary nonuse shall:

(a) Compile and maintain a current list of carriers placed in temporary nonuse;

(b) Direct inquiries concerning the listed carriers to the transportation officer that took the action; and

(c) Establish procedures to provide for the effective use of the list to ensure that the scope and duration of the temporary nonuse status are communicated to all affected transportation facilities.

[51 FR 24338, July 3, 1986; 51 FR 27539, Aug. 2, 1986]

**§ 101-40.404-2 Listing debarred or suspended carriers.**

(a) Carriers which have been debarred or suspended by agency debarring/suspending officials will be included on the consolidated list in accordance with the procedures established at 48 CFR 9.404.

(b) Agency transportation officers should make arrangements for access to the consolidated list through their agency's debarring and/or suspending official.

(c) Agencies shall establish effective internal procedures for the use of the consolidated list to ensure that the agency does not award contracts for transportation to debarred or suspended carriers.

[51 FR 24338, July 3, 1986]

**§§ 101-40.404-3—101-40.404-5 [Reserved]**

**§ 101-40.405 Agency records.**

(a) At a minimum, each agency's records relating to a carrier's temporary nonuse shall, in accordance with the agency's internal records retention procedures, contain the following information:

(1) The name, address, and Standard Carrier Alpha Code (SCAC) (see 41 CFR 101-41.310-2(d)) of each carrier placed in temporary nonuse status;

(2) The duration and scope of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts which demonstrate the existence of such a cause;

(4) Information and arguments in opposition to the imposition of temporary nonuse period submitted by the carrier or his/her representative; and