

(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

(5) The reviewing official's determination regarding maintaining or removing the temporary nonuse status.

(b) Records concerning debarment or suspension of carriers shall be maintained in accordance with 48 CFR 9.406-3 and 9.407-3.

[51 FR 24338, July 3, 1986]

**§ 101-40.406 Treatment to be accorded debarred or suspended carriers.**

(a) Carriers debarred or suspended by an agency in accordance with 48 CFR subpart 9.4 shall be excluded from receiving awards of contracts for transportation. Debarment and suspension shall be applied on a Governmentwide basis on the named carriers and their named affiliates.

(b) Prior to requesting transportation services, agencies shall review the consolidated list for debarred or suspended carriers. If a carrier is listed, the carrier shall receive such treatment as specified therein.

[51 FR 24338, July 3, 1986]

**§ 101-40.407 Agency coordination.**

When more than one agency has an interest in debarring or suspending a carrier, consideration shall be given to designating one agency as the lead agency for making a decision. Similarly, when the cause for considering placing a carrier in temporary nonuse status involves more than one transportation facility, consideration should be given to designating one transportation officer as the lead official for the decision.

[51 FR 24339, July 3, 1986]

**§ 101-40.408 Temporary nonuse.**

**§ 101-40.408-1 General.**

The agency's authorized transportation officer may, in the best interest of the Government, place a carrier in temporary nonuse for a period not to exceed 90 consecutive days for any of the causes contained in § 101-40.408-2 using the procedures in § 101-40.408-3, except that if a carrier fails within the period specified to correct the cause(s) for which temporary nonuse was imposed, the period of nonuse will be extended an additional 30 days for debarment referral. The existence of a cause

for temporary nonuse under § 101-40.408-2 does not necessarily require that a carrier be placed in temporary nonuse; the seriousness of the carrier's acts or omissions and any mitigating factors should be considered in making a temporary nonuse decision. A carrier placed in temporary nonuse is excluded from participating in the agency's transportation activities and programs to the extent and for the period specified. The extent or scope of temporary nonuse may be limited to those agency transportation facilities which have experienced the problems leading to the imposition of temporary nonuse on which may be reasonably expected to experience similar problems. Temporary nonuse shall not be extended to unaffected facilities solely for punitive reasons or to damage the carrier's operations.

[51 FR 24339, July 3, 1986]

**§ 101-40.408-2 Causes for temporary nonuse.**

A carrier may be placed in temporary nonuse for the causes listed in paragraphs (a) through (n) of this section.

(a) Willful violations of the terms of the tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties;

(b) Persistent and/or willful failure to meet requested packing/pickup service requirements;

(c) Deliveries exceeding time-in-transit standards when established by the Government; e.g., the GSA household goods tender of service and transit times established for shipments from agencies or the GSA Federal Supply Service distribution centers;

(d) Failure to meet required delivery dates on commercial or Government bills of lading;

(e) Failure to furnish and use clean and safe vehicles and freight handling equipment;

(f) Violation of Department of Transportation (DOT) hazardous materials regulations;

(g) Mishandling of freight; e.g., damaged or missing transportation seals, or improper loading, blocking, packing, or bracing of property;

(h) Excessive damage or loss to material transported;