

(c) *Decision-making process.* (1) Agencies shall prescribe procedures governing the temporary nonuse decision-making process, which shall be as informal as practicable, consistent with principles of fundamental fairness. The procedures shall afford the carrier an opportunity to submit in person, in writing, or through a representative, information and argument in opposition to a temporary nonuse status.

(2) If the carrier requests a review of the transportation officer's decision, the transportation officer shall afford the carrier an opportunity to make a presentation, orally or in writing, or through a representative, to a designated agency reviewing official. This presentation shall be held within 5 workdays of the transportation officer's receipt of the carrier's request for a review of his/her decision. The reviewing official shall:

(i) Consider the carrier's submission, investigate the contentions made, and make written findings of fact concerning the matters in dispute;

(ii) Assess mitigating factors and corrective measures proposed by the carrier;

(iii) Determine whether the facts, as found during his/her review, support a cause for imposition of the period of temporary nonuse proposed by the transportation officer; and

(iv) Inform the carrier of the result of his/her review within 5 workdays of receiving the carrier's submission or presentation.

(3) The effective date of the period of temporary nonuse may be delayed if there is a review by a designated agency reviewing official. Should a period of temporary nonuse be imposed following such a review, the period of temporary nonuse shall be adjusted to reflect the period proposed by the transportation officer unless a different period is recommended by the reviewing official.

(d) *Decision to impose temporary nonuse.* In actions in which a carrier does not request a review of the transportation officer's decision, the transportation officer shall make a decision on the basis of all the information contained in the administrative record, including any submission by the carrier. The Transportation officer shall inform

the carrier of his/her decision within 5 workdays of the closing of the period for evaluating the carrier's information and arguments or his/her receipt of the reviewing officer's report. This decision shall be communicated in writing, by return receipt mail, and shall include notice of:

(1) The extent or scope of the period of nonuse including the specific transportation facilities affected by the period of temporary nonuse;

(2) The effective dates of the period of temporary nonuse;

(3) The corrective action, if any, necessary to be removed from temporary nonuse status;

(4) An additional period of 30 calendar days for debarment referral if the conduct leading to the imposition of the period of temporary nonuse continues; and

(5) Procedures for the carrier to obtain a review of the transportation officer's decision by a designated reviewing official.

[51 FR 24339, July 3, 1986; 51 FR 27539, Aug. 2, 1986]

**§ 101-40.408-4 Period of temporary nonuse.**

Temporary nonuse shall be for a period commensurate with the seriousness of the cause(s) for temporary nonuse, but not for more than 90 consecutive days, except that the period of temporary nonuse may be extended an additional 30 calendar days for debarment referral when the carrier fails to correct the cause(s) for which temporary nonuse was imposed. The transportation officer, for good cause, may impose temporary nonuse beginning the same day that the notice of proposed temporary nonuse is given when continued use of the carrier's services would place the Government at risk. The transportation officer may consider terminating the temporary nonuse or reducing the period of temporary nonuse, upon the carrier's application, supported by documentation, for reasons deemed appropriate by the transportation officer, such as:

(a) Newly discovered material evidence;

(b) Bona fide change in the carrier's ownership or management; or

## Federal Property Management Regulations

## § 101-40.410-1

(c) Elimination of the cause(s) for which temporary nonuse was imposed.

[51 FR 24340, July 3, 1986]

### § 101-40.409 Debarment.

#### § 101-40.409-1 General.

(a) The debarring official may, in the best interest of the Government, debar a carrier for any of the causes contained in § 101-40.409-2, using the procedures provided in 48 CFR 9.406-3. The existence of a cause for debarment under § 101-40.409-2 does not necessarily require that a carrier be debarred; the seriousness of the carrier's acts or omissions and the mitigating factors should be considered in making any debarment decision.

(b) Debarment of a carrier constitutes debarment of all divisions or other organizational elements of the carrier, unless the debarment decision is limited by its terms to specific divisions or organizational elements. The debarring official may extend the debarment decision to include any affiliates of the carrier, if the affiliates are—

(1) Specifically named and

(2) Given written notice of the proposed debarment and an opportunity to respond.

(c) A carrier's debarment shall apply to all agencies including the Department of Defense unless the head of the agency requiring transportation services, or an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the carrier.

[51 FR 24340, July 3, 1986; 51 FR 27539, Aug. 2, 1986]

#### § 101-40.409-2 Causes for debarment.

The debarring official may debar a carrier for any of the following reasons:

(a) Failure of a carrier, within the prescribed period of temporary nonuse, to correct any of the causes listed in § 101-40.408-2;

(b) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining,

attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State anti-trust statutes;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of the carrier as a transporter of the Government's property or the household goods of its employees relocated in the interest of the Government.

(c) Violation of the terms of a contract for transportation so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with the terms of one or more contracts for transportation, or

(2) A history of failure to perform, or of unsatisfactory performance of, one or more contracts for transportation;

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of the carrier; or

(e) Debarment for any of the causes stated in paragraphs (a) through (d) of this section by another agency where the original debarment did not have Governmentwide effect.

[51 FR 24340, July 3, 1986]

### § 101-40.410 Suspension.

#### § 101-40.410-1 General.

(a) The suspending official may, in the Government's best interest, suspend a carrier for any of the causes stated in § 101-40.410-2, using the procedures provided in 48 CFR 9.407-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set forth in § 101-40.410-2, 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 the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what