

§ 861.4

32 CFR Ch. VII (7-1-01 Edition)

company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) *Maintenance manuals.* Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) *Maintenance facilities.* Well maintained, clean maintenance facilities adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, etc., and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) *Quality and safety requirements—security.* Company personnel are schooled in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the CAA, is required for all DOD missions.

(6) *Quality and safety requirements—specific equipment requirements.* Air carriers satisfy DOD equipment and other requirements as specified in Air Mobility Command contracts or Military Traffic Management Command Military Air Transportation Agreements.

[57 FR 44683, Sept. 29, 1992, as amended at 61 FR 17841, Apr. 23, 1996]

§ 861.4 DOD Commercial Airlift Review Board procedures.

(a) This part establishes the procedures to be used by the United States Air Force Air Mobility Command (AMC) and the United States Army Military Traffic Management Command (MTMC) when, in accordance with references § 861.1 (a) through (d):

(1) A commercial air carrier is subject to review or other action by the DOD Commercial Airlift Review Board (hereinafter referred to as the CARB),

(2) A warning, suspension, temporary nonuse, or reinstatement action is taken against a carrier by the CARB, or

(3) Review or other CARB action is escalated to a higher authority.

These procedures apply to all commercial air carriers providing DOD passenger or cargo airlift through charter, individual ticket movements, contracts, or other transportation agreements. They also apply to carriers providing air transportation purchased by DOD individuals for which government reimbursement will be made in whole or in part.

(b) Safety or airworthiness issues, per reference § 861.1(b) must be referred to the CARB. AMC and MTMC may each take independent corrective action in accordance with their respective procedures on standards of service issues when safety and airworthiness issues are not involved. The DOD Air Carrier Survey and Analysis Directorate will be informed of all actions taken independently by AMC or MTMC.

(c) Except as otherwise provided herein, the rights and remedies of the government and commercial air carriers outlined in these procedures are not exclusive and are in addition to any other rights and remedies provided for by law, regulation, contract, or agreement.

(d) *Definitions.* (1) Letter of warning is a notice to a carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension. The issuance of a letter of warning is not a prerequisite to a suspension or other action.

(2) Temporary nonuse is the immediate exclusion of a carrier from any flight activities in the DOD airlift transportation program, pending a decision on suspension, taken under the conditions outlined in paragraph (h)(1) of this section. By mutual agreement of the CARB and the air carrier involved, a suspension hearing or decision may be delayed and the air carrier

continued in a temporary nonuse status for an extended period of time.

(3) Suspension is the exclusion of an air carrier from participating in the DOD airlift transportation program. The period of suspension will normally:

(i) Remain in effect until the carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied or

(ii) Be for a fixed period of time as determined at the discretion of the CARB.

(4) The procedures for commercial airlift safety review include five possible levels with increasing authority:

(i) DOD Air Carrier Survey and Analysis Directorate.

(ii) DOD Commercial Airlift Review Committee.

(iii) DOD Commercial Airlift Review Board.

(iv) Commanders MTMC and AMC.

(v) DOD Commercial Airlift Review Authority.

These levels are described in reference § 861.1(b), with the exception of the DOD Commercial Airlift Review Committee, which is described in reference § 861.1(c). The Committee provides multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Directorate, including approval or disapproval of carriers initially seeking DOD business, and offers advice to the higher authorities when appropriate.

(e) *Causes and conditions for suspension.* (1) Carrier shall be subject to suspension for good cause, including:

(i) Failing to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures.

(ii) Failing to satisfy DOD quality and safety requirements as described in § 861.3.

(iii) Failing to comply with all provisions of applicable statutes, agreements, and contract terms, as such may affect flight safety, as well as with all applicable Federal Aviation Administration regulations, airworthiness directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958 as amended.

(iv) Involvement of one of the carrier's aircraft in a serious or fatal accident, incident, or operational occur-

rence (regardless of whether or not such aircraft is being used in the performance of government procured transportation).

(v) Any other condition which affects the safe operation of the carrier's flights hereunder.

(vi) Compliance with published standards does not, standing alone, constitute compliance with generally accepted standards or airmanship, training, or maintenance practices.

(f) *Reinstatement considerations.* In no event shall reinstatement occur unless and until the carrier shows to the satisfaction of the CARB that deficiencies that led to suspension have been corrected and that actions have been implemented to preclude the recurrence of similar deficiencies.

(g) *CARB membership.* (1) Four voting members will constitute the CARB; two senior, knowledgeable individuals appointed by Commander, AMC; one similarly knowledgeable individual appointed by USCINCTRANS; and one appointed by Commander, MTMC. At least one of the voting HQ AMC members and the MTMC member will be of general/flag officer or civilian equivalent rank. Other non-voting CARB members will be appointed as necessary to facilitate the CARB deliberative process. A non-voting recorder will also be appointed.

(2) The HQ AMC senior member will act as the CARB chairperson. A voting member who will not be present at any meeting of the CARB, may be represented by a knowledgeable alternate empowered with the voting responsibilities of the voting member. Three voting members (or their alternate) shall constitute a quorum. Decisions shall be by majority vote. In the case of a tie vote, the chairperson will have the deciding vote.

(3) The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Teleconferencing, if utilized, will be specified in the notice to the carrier.

(4) Minutes of CARB hearings may be recorded or summarized and will be maintained with all other records pertaining to the CARB proceeding.

(5) The CARB recorder shall ensure that the air carrier and appropriate

§ 861.4

32 CFR Ch. VII (7-1-01 Edition)

DOD agencies are notified of the CARB's decision and reasons therefor.

(h) *CARB operating procedures—(1) Temporary nonuse.* (i) In case of a fatal aircraft accident or for other good cause, the two senior members of the CARB (see paragraph (g)(1) of this section) will jointly make an immediate determination whether to place the carrier involved in a temporary nonuse status pending suspension proceedings. Prior notice to the carrier is not required.

(ii) Such determination shall include consideration of the advice of the DOD Commercial Airlift Review Committee, if reasonably available, but will not await such advice.

(iii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iv) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (h)(2)(ii) of this section, within 30 days of inception, unless otherwise agreed to per paragraph (d)(2) of this section.

(2) *Suspension:* (i) On a recommendation of the DOD Air Carrier Survey and Analysis Directorate, the DOD Commercial Airlift Review Committee, or any individual member of the CARB, the CARB shall consider whether or not to suspend a carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the carrier that suspension action is under consideration and of the basis for such consideration and offer the carrier a hearing thereon within 15 days of the date of the notice, or such other period as granted by the CARB, at which the carrier may be present and may offer evidence. The presiding member of the CARB shall establish procedures for such hearing as may be appropriate which shall be as informal as practicable, consistent with administrative due process.

(iii) Types of evidence which may be considered, if appropriate, shall include, but not be limited to, the following:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Directorate.

(B) Carrier's written/oral evidence.

(C) Corrective actions that may have been taken by the carrier to:

(1) Correct the specific deficiencies that led the CARB to consider suspension, and

(2) Preclude recurring similar deficiencies.

(D) Such other matters as the CARB deems relevant.

(E) The CARB's decisions on the reception or exclusion of evidence shall be final.

(iv) Carriers shall have the burden of proving their suitability to safely perform DOD airlift services by clear and convincing evidence.

(v) After the conclusion of such hearing, or if no hearing is requested and attended by the carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the carrier or to impose such lesser sanction as is appropriate. The carrier shall be notified of the CARB's decision.

(3) *Reinstatement:* (i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that the reinstatement considerations in paragraph (f) of this section have been satisfied.

(iii) Carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the carrier.

(i) *Decision by others.* In the event the CARB is unable to decide an issue properly before it, or if the issue in the judgment of the CARB requires review at a DOD organizational level higher than the CARB, the issue will be referred to the Commander, AMC, and Commander, MTMC, for appropriate disposition. In such event, the decision will be made upon the written record only, no hearing will be held.

(j) *Appeal of a determination.* (1) A carrier placed in suspension may administratively appeal this action to the authorities shown in paragraph (j)(3) of this section. An appeal, if any, must be

Department of the Air Force, DoD

§ 861.4

filed within 15 work days after receipt of the decision of the CARB or Commander, AMC, and Commander, MTMC. The suspension will not be stayed pending appeal unless for good cause, as determined by the CARB. The decision of the appellate authority designated herein is final and is not subject to further administrative review or appeal.

(2) An appeal will be in writing only and carriers shall not be entitled to a de novo hearing before the administrative appellate authorities.

(3) The following administrative appellate authorities will review and make decisions on appeals:

(i) When the decision being appealed was made by the CARB, the appellate authorities are Commander, AMC, and Commander, MTMC. They will jointly decide the appeal.

(ii) When Commander, AMC, and Commander, MTMC, are unable to jointly agree on an appeal, they shall refer the matter to the DOD Commercial Airlift Review Authority (CARA) for its decision.

(iii) When the decision being appealed was made by Commander, AMC, and Commander, MTMC, the appellate authority is the DOD CARA.

[57 FR 44683, Sept. 29, 1992, as amended at 61 FR 17841, Apr. 23, 1996]