

§ 314.12

Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024-0053)

§ 314.12 Answers.

Any person may file an answer to an application within 15 days after the application is served.

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the FEDERAL REGISTER and serve a copy of the order on each of the following:

- (a) The applicant and the applicant's representative, if any;
- (b) The affected carrier;

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(c) The collective bargaining representatives of the carrier's employees; and

(d) The Secretary of Labor;

(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the FEDERAL REGISTER and served on the persons listed in § 314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the FEDERAL REGISTER a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in § 314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as reported monthly by carriers in accordance with part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier's current reported full-time employment level is 92 percent or less of any of the carrier's preceding 12 monthly levels, DOT will find

that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier's preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month is 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§ 314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in § 314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled "Application for Advance Determination of Major Contraction." It shall contain the information set forth in § 314.11 (b)(1) through (b)(6) and an explanation of the applicant's basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under § 314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§ 314.22 Notice of major contraction.

Upon finding a major contraction under § 314.20, or making or terminating an advance determination under § 314.21, the Department will publish the finding in the FEDERAL REGISTER and send written notice of it to the persons listed in § 314.14.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

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AUTHORITY: 49 U.S.C. Chapters 401, 411, 417.

SOURCE: Docket No. 82, 50 FR 2430, Jan. 16, 1985, unless otherwise noted.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air service under 49 U.S.C. 41731-41742.

[Docket No. 82, 50 FR 2430, Jan. 16, 1985, as amended by Doc. No. OST-96-1269, 61 FR 19165, May 1, 1996]

§ 323.2 Definitions.

As used in this part:

Certificated carrier means a direct air carrier holding authority to provide air transportation granted by the Department of Transportation ("DOT") or the