

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

- (1) The net change in energy consumption;
- (2) The net change in energy efficiency; and
- (3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a finding of no significant impact is prepared by a responsible official pursuant to

DOT's procedures implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the DOT's NEPA procedures shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by § 313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of 42 U.S.C. 6362 and this part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

[Docket No. 82, 50 FR 2425, Jan. 16, 1985, as amended at 60 FR 43528, 43529, Aug. 22, 1995]

PART 314—EMPLOYEE PROTECTION PROGRAM

Subpart A—General

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- 314.20 Regular monthly computation.
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AUTHORITY: Secs. 204, 407, Pub. L. 85-726, as amended, 72 Stat. 743, 766, 49 U.S.C. 1324, 1377; sec. 43, Pub. L. 95-504, 92 Stat. 1750 (49 U.S.C. 1552).

SOURCE: Docket No. 82, 50 FR 2426, Jan. 16, 1985, unless otherwise noted.

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EDITORIAL NOTE: The reporting requirements contained in part 314 have been approved by the Office of Management and Budget under control number 3024-0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95-504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

Bankruptcy means an adjudication of bankruptcy under Title 11 of the U.S. Code.

Carrier means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with subpart A of part 302.

Except where they are inconsistent with this part, the provisions of subpart A of part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in § 314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the

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change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT's own initiative. Proceedings that begin with an application are governed by §§ 314.11 through 314.16. DOT-initiated proceedings are governed by §§ 314.14 through 314.16.

§ 314.11 Applications.

(a) *Who may file.* An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) *Title and contents.* Applications shall be titled "Application for Determination of Qualifying Dislocation," and shall contain, with respect to at least one employee:

- (1) Name and address of the employee;
- (2) Number of years employed by carrier as of October 24, 1978;
- (3) Name and address of the applicant, if different from paragraph (b)(1);
- (4) Name of carrier-employer;
- (5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;
- (6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and
- (7) An explanation of the applicant's basis for claiming that a qualifying dislocation has occurred, including all supporting evidence available to the applicant.

(c) *Service.* The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of

Office of the Secretary, DOT

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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;

(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

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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.

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§ 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

Sec.

- 323.1 Applicability.
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- 323.4 Contents of notices.
- 323.5 Time for filing notices.
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- 323.14 Temporary suspension authority for involuntary interruption of service.
- 323.15 Report to be filed after strikes.
- 323.16 Listings in schedule publications.
- 323.17 Delays in discontinuing service.
- 323.18 Carriers' obligations when terminating, suspending, or reducing air service.
- 323.19 Withdrawal notice by exemption carriers in certain limited-entry markets.

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