Part II

Department of Labor

Employment and Training Administration

20 CFR Part 617
29 CFR Part 91
Trade Adjustment Assistance for Workers; Final Rules
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20 CFR Part 617

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Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations for implementing the program of trade adjustment assistance for workers provided under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93-618). The final regulations implement the amendments to the Trade Act of 1974 made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) and by section 2 of Pub. L. 98-120 made no further changes in the benefit provisions of the TAA Program but extended the termination date of the TAA Program to September 30, 1985. The amended TAA provisions are designed to assist adversely affected workers to return to work in equivalent or better employment as quickly as possible. The Act provides for TAA in the form of weekly trade readjustment allowances (TRA), reemployment services, training, and job search and relocation allowances. The 1981 amendments change the TAA Program to strengthen the emphasis of getting workers reemployed as soon as possible, and to modify the TRA provisions as to the qualifying requirements, the weekly and maximum amounts of TRA payable, and the eligibility periods in which TRA is payable. Most of the 1981 amendments were effective on October 1, 1981. Under the 1981 amendments, workers separated from employment adversely affected by imports are eligible for reemployment services, training, and job search and relocation allowances immediately after the Department of Labor issues a certification of eligibility to apply for TAA. They are not eligible for weekly TRA payments until after they have exhausted all rights to State or Federal unemployment insurance (UI). In addition, the 1981 amendments increase the amount of subsistence and transportation allowances payable to a worker in training approved under the Act, and the amounts of job search and relocation allowances. They also reduce the weekly and maximum amounts of TRA payments and the eligibility periods for receipt of TRA payments. The amount of the weekly TRA payment will be equal to the UI weekly benefit amount. Generally, workers are now eligible to receive a combination of UI (including Extended Benefits (EB) and (until 1985) Federal Supplemental Compensation (FSC)) and TRA not to exceed an amount derived by multiplying the TRA weekly benefit amount by 82. In addition, workers receiving TRA are required to apply for and accept offers of work and actively seek work in accordance with the work test provisions of State law which apply to EB claimants, except when the workers are engaged in training approved under the Trade Act or training approved under State law. Workers in training approved under the Act may receive up to 26 additional weeks of TRA to complete such training. Additional weeks of TRA, previously payable to workers solely because they reached age 60 on or before their separation from adversely affected employment, are no longer payable for any weeks beginning after September 30, 1981.

Note.—The Deficit Reduction Act of 1984, Pub. L. 98-369, §§ 2071 and 2672, contained amendments to the Trade Act of 1974, to specify an alternative eligibility period for payment of additional weeks of TRA to workers in approved training (Section 233), and to increase the aggregate amount of job search allowances payable and the lump sum portion of a relocation allowance (Sections 237 and 238). These changes are not reflected in these final regulations, but are being implemented effective from their enactment on July 18, 1984. The amended sections will take precedence over the counterpart sections in these final regulations in accordance with their effective dates as prescribed by the amended Act. The Department thus is proceeding to put these final regulations in place, and concurrently publishing final amendments to the regulations to incorporate the amendments made in the Deficit Reduction Act of 1984.

Note.—The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, signed by the President April 7, 1986, contained further amendments to the Trade Act of 1974. Sections 221 and 222 are changed to include agricultural firms in the definition of a firm. Section 231 is changed to reflect that a worker must participate in a job search program to be eligible to receive TRA. Section 231 is further modified to allow the use of more weeks of specified types of leave to make up the 26 qualifying weeks of employment needed to qualify for TRA. Section 233 is changed to extend the 52-week eligibility period for receiving basic TRA to 104 weeks and to provide that no TRA may be paid to a worker for a week in which the worker received on-the-job training. Section 236 is changed with respect to the Secretary’s approval of training and to provide that no training costs may be paid by the Secretary if they have been paid under any other Federal law. Also, various types of training programs which may be approved are specified and certain restrictions are placed on on-the-job training under this revised section 236.

Section 237 is changed to permit a worker to be reimbursed for necessary expenses for
Subpart A—General

1. The proposed regulation at § 635.3(c) defines an "adversely affected worker." The UAW suggests that the definition should include a reference to a "bumped" worker and one who has been transferred less than six months to non-adversely affected employment prior to being laid off. The definition used in the proposed regulation is quoted verbatim from section 247(2) of the Act, and includes a worker bumped by a worker who transfers from adversely affected employment. 19 U.S.C. 2319(2). To include in this definition a worker transferred less than six months previously would require a change in the law. Therefore, no change is made in the final regulations.

2. The proposed regulation at § 635.3(h) defines a "benefit period." The UAW suggests that the definition should be clarified to indicate that the "52-week TRA, benefit period" commences with the first week following exhaustion of regular UI benefits. However, in accordance with the 1981 amendments to section 247(19) of the Act, the definition of "benefit period" applies only to a UI benefit period, not a TRA eligibility period. 19 U.S.C. 2319(19). The latter is defined separately under the proposed regulation at § 635.3(m). Therefore, no change is made in the final regulations.

3. Although not related to a specific comment received, the proposed regulation at § 635.3(j) which defines "first separation" has been expanded to include "first qualifying separation." This expansion of the definition was made to reflect a recognition that a worker may not necessarily qualify for TRA on the "first separation" from adversely affected employment.

4. Although not related to a specific comment received, the proposed definition of "State agency" at § 635.3(e) has been amended to include the following language: "and any other agency or authority with which the Secretary has an agreement to carry out any of the provisions of the Act." The reason for modifying the definition of "State agency" is to reflect the function of State Employment Services under amendments to the Wagner-Peyser Act (Pub. L. 97-300) and the discretion afforded Governors in the selection of service delivery area grant recipients under the Job Training Partnership Act (Pub. L. 97-300).

5. Although not related to a specific comment received, the proposed definition of "unemployment insurance" at § 635.3(kk) has been amended to include "federal supplemental compensation." Also, "federal supplemental compensation" has been defined.

6. Although not related to a specific comment received, a new § 617.4 has been added to cover benefit information to workers, in accordance with the requirements of new section 225 of the Act added by section 2502 of the Omnibus Budget Reconciliation Act of 1981. 19 U.S.C. 2275.

Subpart B—Trade Readjustment Allowances [TRA]

7. The proposed regulation at § 635.10(b) describes "good cause" for late filing of initial TRA claims. The UAW objects on the grounds that there is no statutory time limit for filing such claims. However, this requirement accords with the Act and administrative practice since the beginning of the TRA Program, and this practice was left undisturbed by the Omnibus Budget Reconciliation Act of 1981. Section 234 of the Act provides that the availability and disqualification provisions of a State law shall apply to a worker filing claims for TRA unless inconsistent with the provisions of the Act. 19 U.S.C. 2319. Section 234 also applies to the filing of claims and payments of TRA. Thus, State time limits on the filing of initial claims for unemployment benefits apply to the filing of initial claims for TRA except where the result would be inconsistent with the Act. Those State time limits can reasonably be applied to workers separated after a certification covering them has been published, but to apply such time limits to workers separated prior to publication of a certification would result in disqualification for TRA in a great many cases. Therefore, the administrative practice of allowing late filing of initial claims for TRA was instituted and was followed by all States. This practice was followed until one State departed from it and disqualified a worker who had filed a late initial claim for TRA. This case resulted in a Department ruling, on June 11, 1976, in Louis Signoretto Decision No. 75-TRA-4, that individuals must be provided a reasonable period of time following publication of a certification to become aware of the certification and to file an initial claim for TRA. This ruling established the precedent rule followed to this day, which did no more than formalize the administrative practice followed before the beginning of the program. The current regulations at 29 CFR Part 91 were published on April 11, 1975. The promulgation of new regulations affords the Department the opportunity to set forth in the regulations the long-standing administrative practice and precedent.
This section has also been revised to further clarify the rights of claimants. Therefore, the Department does not concur with the UAW comment that applicants should have an unlimited time to file an initial claim for TRA, and therefore does not change the basic thrust of § 635.10(b).

8. The proposed regulation at § 635.11(a)(2) provides that to qualify for TRA, a worker's separation must be on or after the impact date of the certification. The UAW comments that workers should be allowed to qualify even though they were separated before the impact date. The 1981 amendments did not have any effect on establishing the impact date of a certification. The impact date has always been and continues to be a date not more than one year before the date the petition was filed. Section 232(b) of the Act, 19 U.S.C. 2273(b). The statute was unchanged in not permitting an individual whose separation occurred before the impact date to be eligible for TRA as a result of unemployment. Therefore, no change is made in the final regulations.

9. The proposed regulation at § 635.11(a)(3)(ii) provides that, for purposes of the 26 weeks of employment qualifying requirement for TRA, any week a worker: (a) Is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training; (ii) has not work because of a disability that is insurable under a State or Federal workers' compensation law or plan; or (c) has had employment interrupted to serve as a full-time representative of a labor organization in the firm or subdivision; shall be treated as a week of employment at wages of $30 or more. The Amalgamated Clothing and Textile Workers Union suggests that an additional exemption should be added to this section to include involuntary layoff weeks because this requirement will unfairly harm workers who have already suffered from long unemployment.

The 1981 amendments to section 231 of the Act added a listing of non-work weeks which may be counted as qualifying weeks for TRA purposes, which were incorporated in the proposed rule as noted above. 19 U.S.C. 2291. Weeks of involuntary layoff were not included among the weeks that may be counted and thus were not listed in § 635.11(a)(3)(ii). There is no indication in the legislative history that this circumstance was omitted by inadvertence or because it was overlooked or unforeseen. Exception-like provisions are narrowly construed: where, as here, Congress made specific mention of exemptions all independent of the employee's economic circumstance, it is a reasonable inference that Congress intended to exclude the proposed exemption. Accordingly, to add such weeks to qualifying weeks would require a further change in the law. Therefore, no change is made in the final regulations.

10. The proposed regulation at § 635.13(c)(2) provides that an amount of TRA payable for any week shall be reduced by the amount of a training allowance under any Federal law other than for the training of workers that the worker receives for such week. The Ohio Bureau of Employment Services requests an interpretation and example of such a training allowance. Section 232(a)(1) of the Act provides that TRA payable to a worker for a week shall be reduced by any training allowance deductible under section 232(c) (formerly 232(d)) of the Act. 19 U.S.C. 2292(c). Section 232(d) has not been interpreted to mean a training allowance other than for the training of workers. Examples of training allowances under Federal laws other than for the training of workers are listed in § 635.13(c)(2). They include Veterans Education Assistance, Basic Educational Opportunity Grants, and Supplemental Educational Opportunity Grants. Basic Educational Opportunity Grants and Pell Grants and this change is reflected in the final regulations.

11. The proposed regulation at § 635.14(a) provides that the maximum amount of TRA payable to an individual is the amount determined by multiplying by 52 the weekly amount of TRA payable and subtracting from such product the total sum of UI to which the individual was entitled in the individual's first UI benefit period. While no comment was received regarding this provision, the Department feels there is a need to ensure that its position on the "total sum of UI entitlement" to be subtracted from the product of 52 times the TRA weekly amount is clearly understood.

The Department's position requires all the UI which to which the individual was entitled in the first benefit period to be subtracted regardless of when the individual first exhausts UI (regular, additional, EB or FSC). Reduction of UI entitlement from the maximum amount of TRA payable should be made initially at the point the individual first exhausts entitlement to UI benefits and establishes entitlement to TRA. After the individual's entitlement to TRA is established, the maximum amount of TRA payable should be further reduced by any subsequent entitlement to UI in the individual's first UI benefit period. This position is consistent with the legislative intent to limit an individual's maximum TRA entitlement including UI to 52 weeks.

12. The proposed regulation at § 635.14(b)(1) provides that the maximum amount of TRA payable to an individual under § 635.14(a) will not include the amount of dependents' allowances paid as a supplement to the base weekly amount (in a State which calculates weekly UI benefits in this manner). The Ohio Bureau of Employment Services comments that this provision is contrary to § 635.13(a) which provides that where a State calculates a base amount of UI and calculates dependents' allowances on a weekly supplemental basis, TRA weekly benefits shall be calculated on the same basis. This confusion is understandable because of the above language in § 635.14(b) that "The maximum amount of TRA payable to an individual under paragraph (a) of this section will not include ..." (emphasis added), although the last sentence in paragraph (b) clearly intends that such payment will be made "but nothing in this paragraph (b) shall affect an individual's eligibility for such supplemental ... allowances." This section is clarified in renumbered § 617.14(b) by substituting the word "determined" for "payable to an individual" (emphasis added).

13. The proposed regulation at § 635.15(b)(1) provides that additional weeks of TRA to assist a worker to complete training approved under the Act are payable during the 26-week eligibility period following the last week of the worker's entitlement to basic TRA. The United Steelworkers of America suggests that the proposed rule should be revised to permit workers in approved training to be eligible for up to an additional 26 weeks of benefits beginning with the week the approved training program commences. The Amalgamated Clothing and Textile Workers Union suggests that the additional 26-week period of benefits for training purposes should not begin immediately following the basic TRA entitlement period if training funds or programs are not available at the time of additional entitlement.

While the Department recognizes that the additional 26-week eligibility period for receiving TRA during training may expire before a worker has an opportunity to apply for training, the
limitation in § 635.15(b)(1) is compelled by legislative judgment set-forth in the 1981 amendments to Section 233(a)(3) of the Act, 19 U.S.C. 2293. Any modification to § 635.15(b)(1) would require a change in the law. Therefore, no change is made in the final regulations. However, as noted above, the Deficit Reduction Act of 1984 amended section 233(a)(3) in this respect, effective July 16, 1984, and the regulation will be amended.

14. The proposed regulation at § 635.18(b)(2) provides that a worker who, without good cause, refuses to accept or continue or fails to make satisfactory progress in approved training shall not be entitled to any payment under the Act for the week of such occurrence and any week thereafter until the week the worker enters or resumes and makes satisfactory progress in such training. "Good cause" is defined as such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to make satisfactory progress in or continue training. The Michigan Employment Security Commission comments that this definition introduces the concept of what a reasonable person might do in terms of not making satisfactory progress in training (to include reasons beyond the person's control and capability). The Michigan agency comments further that the State could no longer use its unconditional standard of full time attendance (2.0 grade point average) for continuation of training. The definition of "good cause" has not changed from such definition in the regulations published on April 11, 1975. (Refer to 29 CFR 91.3(a)(17).) States must apply the national standard for determining "good cause" established in the existing regulations and continued in these final regulations. Therefore, no change is made in the final regulations.

15. Section 231(b) of the Act, as amended by the Omnibus Budget Reconciliation Act of 1981, provides that if the Secretary determines that in a particular labor market area a high level of unemployment exists, suitable employment opportunities are not available, and there are facilities available for training in new or related job classifications, then the Secretary may require all adversely affected workers in that area to accept training under section 236 or to search actively for work outside the area after the first 8 weeks of their eligibility for TRA. 19 U.S.C. 2291(b). No mention of this statutory provision was made in the proposed regulations. However, since this section is discretionary, and not mandatory, the Department chose not to prescribe regulations because it believes that implementation of the "8-week" test will not be effective in promptly returning most TRA recipients to work. Also, the test will be expensive and cumbersome to administer. Therefore, since these discretionary regulations were not prescribed, the "8-week" test is not applicable to TRA recipients.

Subpart C—Reemployment Services

16. Although not related to a specific comment received, all references in this regulation to the Comprehensive Employment and Training Act (CETA), other than those for reason of historical perspective, have been deleted and replaced by the Job Training Partnership Act (JTPA), since CETA has been repealed. See Pub. L. 97-300, §§ 193 and 194(a).

17. Although not related to a specific comment received, the proposed regulation at § 635.22(c), which provides that no reimbursement shall be authorized for any costs of training incurred for any period prior to the approval of training, has been amended to provide "except in the case of a determination or decision reversing a determination denying approval of training." When fraud or misrepresentation does not exist, an individual initially denied eligibility for TAA benefits who later is determined eligible, either by a redetermination or a decision reversing the determination denying eligibility, should be treated as if the initial determination had been correct in approving training.

18. The proposed regulation at § 635.22(e) provides that selection for, approval of, or referral of an individual to training under Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 635.50 (determinations of entitlement) and 635.51 (appeals and hearings) apply. The Ohio Bureau of Employment Services recommends the deletion of this section because the issuance of determinations concerning non-selection, non-referral or non-approval of training would provide the worker with appeal rights. The Ohio agency argues that the Trade Act language has always utilized the term "may" as it relates to the provision of training, establishing such as a benefit and not a right.

While the term "may" establishes the noncontractual nature of the training language in the statute and establishes no right to training, this factor does not remove training from the category of a benefit to be considered for potentially eligible workers. The contractual or noncontractual nature of a program benefit cannot serve as the determinative which governs a worker's right to a notice of determination in contrast with an appropriately filed application for the program benefit. While training is not a contractual entitlement, it is, nevertheless, a program benefit under the Trade Act of 1974 and, as such, is subject to the statutory provisions of section 239(d) of the Act which provides that: "A determination by a cooperating State agency with respect to entitlement to program benefits under any agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and in that manner and to that extent." 19 U.S.C. 2311(d).

Therefore, no change is made in the final regulations.

19. The proposed regulation at § 635.22(h) provides that no training shall be approved for which the individual is required to pay a fee. The UAW suggests that self-financed training should be approved when Federal funding is not available with the possibility of future Federal reimbursement. The 1981 amendments to section 236(a) of the Act: however, do not permit self-financed training to be approved, and funds must be available before training can be approved. Section 236(a) states in the preamble part: "The Secretary may approve such training for the worker. Upon such approval, the worker shall be entitled to have, payment of the costs of such training paid on his behalf by the Secretary." 19 U.S.C. 2291(a). The Secretary may not do by regulation what Congress has failed to authorize by statute. Therefore, no change is made in the final regulation.

20. The proposed regulation at § 635.23(b) provides that a State agency shall consult with an individual's adversely affected firm for the purpose of developing a retraining program. The UAW suggests that this provision should be clarified to permit firms to provide retraining and restrict such training to their own workforce. Since the language in the proposed regulation does not put a requirement on the firm to open its retraining program to individuals outside its workforce, a change in wording is not necessary. Therefore, no change is made in the final regulation.

21. The proposed regulation at § 635.23(d) refers to standards and procedures which a State agency may
use to approve training. The UAW suggests that a qualification should be added to reflect that a reasonable expectation of employment does not mean a guarantee of employment. The Department accepts this suggestion. The final regulation is modified to reflect this change.

22. The proposed regulation at § 635.23(d)(1) describes standards for approving training. The UAW suggests that the standards are too restrictive. These standards, however, reflect the full flexibility allowed by the provisions of section 236(a)(1) of the Act. 19 U.S.C. 2296(a)(1). Therefore, no change is made in the final regulation.

23. The proposed regulation at § 635.23(d)(3)(iii) excludes self-employment and commission-paid occupations from approved training programs. The UAW contends that there is no public policy rationale for this exclusion and that if an unemployed worker can be gainfully reemployed in any occupation the public purpose is served. The Department agrees and has deleted the exclusionary provision pertaining to self-employment and commission-paid occupations.

24. The proposed regulation at § 635.28(a) provides that no transportation payment shall be made to a worker for any day of unexcused absence from training as certified by the responsible training facility. The Michigan Employment Security Commission points out that the above language implies that, while transportation payments could not be made for unexcused absences, such payments could be made for excused absences. The Michigan agency's point is well made. The eligibility conditions covering the payment of transportation expenses defined in renumbered § 617.26 and need not be further clarified under an "unexcused absences" addendum. Consequently, paragraph (e) in § 635.28 covering "unexcused absences" is deleted from the final regulations. Note: Paragraph (d) in § 635.27 remains unchanged to permit payment of subsistence allowances where such expenses are incurred when the individual had an excused absence from training.

Subpart D—Job Search Allowances

25. The proposed regulation at § 635.32(a)(3) provides that for an individual to be eligible for a job search allowance, the State agency shall determine that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has a reasonable expectation of obtaining suitable employment of long-term duration outside the commuting area and in the area where the job search will be conducted. The Ohio Bureau of Employment Services suggests that a clause be added requiring that an individual receive a "bona fide referral" to suitable employment in order to be eligible for the job search. To adopt this suggestion may preclude a worker from seeking employment on the worker's own initiative outside the commuting area so long as the job search can meet the approval criteria of the regulation. Therefore, no change is made in the final regulation.

Subpart E—Relocation Allowances

26. The proposed regulation at § 635.43(b) provides that a reasonable time for beginning a relocation shall be 182 days after the date of application or after conclusion of approved training. The Michigan Employment Security Commission suggests that because of this provision there should be a definition of when relocation begins. The beginning of a relocation should be readily identifiable by the individual or a member of the individual's family leaving for the place of relocation or the beginning date of the movement of household goods. Therefore, the Department sees no necessity for further elaboration on this issue in the final regulation.

27. The proposed regulation at § 635.44(b)(2) provides that the State agency of the State of intended relocation make the determination that suitable employment has been obtained or a bona fide offer of suitable employment has been extended to the individual. The California Employment Development Department suggests that the State pay for a relocation allowance verify directly with the employer regarding the obtaining of suitable employment, or a bona fide offer thereof, where the State has effective procedures for such direct verification. The Department agrees with this suggestion and this section is modified accordingly.

28. The proposed regulation at § 635.45(a)(2) provides for payment of 90 percent of the expenses for moving household goods and personal effects not to exceed 11,000 pounds for an individual and family and not to exceed 5,000 pounds for an individual without a family. The Michigan Employment Security Commission suggests that the 11,000 pound limit apply to an individual whether or not the individual has a family. This was the provision under the regulations for the Trade Act of 1974 before the 1981 amendments. The current Federal travel regulations, after undergoing a change on which the proposal was based, provide for movement of 11,000 pounds regardless of whether the individual has a family. This limit has subsequently been raised to 16,000 pounds. Rather than specify a pound limit for moving household goods and personal effects which is subject to change, Subpart E is modified to provide for the pound limit not to exceed the maximum number of pounds for weight authorized under the Federal travel regulations. See 41 CFR Part 101-7.

29. The proposed regulation at § 635.45(b) provides that a relocation allowance otherwise payable shall be reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source. The California Employment Development Department questions the application of this provision in the case in which an employer has a provision for paying a relocation allowance but provides that it will not be paid when the allowance is payable under the TAA or other similar programs. The Department's intention in providing for the reduction of the relocation allowance by any other relocation allowance payable for the same move is to prevent duplicate payments for the same relocation expenses. If an individual is not entitled to receive an employer's relocation allowance, then the full TAA relocation allowance is payable. Therefore, no change is made in the final regulations.

30. The proposed regulation at § 635.47 provides the guidelines for payment of moving allowances. The California Employment Development Department requests that additional guidelines be provided on allowable costs covering crating, specialized packing and shipment of pets. Costs involving such things as specialized packing which are normally associated with the moving of household goods are covered, but the Department does not feel it is necessary to itemize each of the accessorial charges which are allowed under this section. There is, however, no provision for the payment of special allowances for moving pets under this section, since it covers only moving household goods and personal effects. Therefore, no change is made in the final regulations.

31. The proposed regulation at § 635.47(a) provides for payment of 90 percent of the costs allowable for (a) a commercial carrier, (b) a trailer or rental truck, or (c) a house trailer. The California Employment Development Department comments that this section is unclear as to whether an individual must choose one method of moving, either a commercial carrier, rental truck,
or house trailer, or could use a combination of these. This wording could be interpreted as meaning that an individual could receive reimbursement for a combination of commercial carriers and rental equipment, but that if the individual moved by house trailer or mobile home, then such a move would preclude payment to a commercial carrier or a rental firm. It is the Department's intention that an individual should be reimbursed for one method of moving household goods and personal effects, either by commercial carrier, by truck or trailer rental, or by house trailer. This is clarified in the final regulations.

32. The proposed regulation at § 635.50(f) provides for the reimbursement for costs of disconnecting and connecting utilities for a house trailer which is moved. The Ohio Bureau of Employment Services contends that this expense should not be reimbursed since individuals who have other homes or apartments are not covered for this expense except under the lump sum payment covering miscellaneous expenses. Federal travel regulations which cover movement of house trailers do not allow an additional expense for disconnecting and connecting utilities. The Department agrees with the suggestion that disconnecting and connecting utilities should not be separately covered and the paragraph pertaining to this is deleted from the final regulations.

33. The proposed regulation at § 635.48(c) provides that payment of the lump sum payment may not be made more than 10 days before the anticipated date of shipment of household goods and personal effects. The California Employment Development Department comments that this could inconvenience someone who moved but delayed shipment of household goods. The Department agrees that more flexibility is needed here. The final regulations are modified to allow the lump sum payment to be made no earlier than 10 days before the anticipated date of the beginning of travel to the new location by the individual or a member of the individual’s family or the anticipated date of the shipment of household goods and personal effects.

Subpart F—Administration by Applicable State Agencies

34. The proposed regulation at § 635.50(f) provides that full payment of TAA when due may be made with the greatest promptness that is administratively feasible. The UAW comments that this definition of promptness with respect to issuing determinations is too amorphous and that an outside time limit of 30 days should be added to the definition. As stated above, promptness in § 635.50(f) refers to making payments of TAA and not to issuing determinations. The regulations governing the TAA program have always provided that a State agency shall make full payment of TAA when due with the greatest promptness that is administratively feasible. A specific time limit, such as 30 days, for making payments or for issuing determinations might be practicable for recurring types of TAA payments, such as weekly TRA and transportation and subsistence payments while in training. It would be impracticable for nonrecurring types of TAA payments, such as job search and relocation allowances, because of the differences in the eligibility requirements and supporting statements for the various types of TAA payments. Therefore, no change is made in the final regulations.

35. The proposed regulation at § 635.52 provides the procedures for ensuring uniform interpretation and application of the Act and regulations. The UAW comments that the Secretary should acknowledge that guidelines and instructions issued by the Secretary (and intended to be implemented by the States under threat of loss of contract) are subject to review in the appropriate Federal court. The primary purpose of this section is to assure that the State agencies are interpreting and applying the Act and regulations uniformly throughout the United States as reflected in their determinations, redeterminations, and appeal decisions ruling on entitlement of individuals to TAA. Section 239(d) of the Act provides that an eligibility determination by the State agency to program benefits is “subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.” 19 U.S.C. 2311(d). The proper forum for review of a State agency’s interpretation and application of the Act and regulations is through the State administrative and judicial system. Therefore, no change is made in the final regulations.

36. The Michigan Employment Security Commission requests that the regulations at §§ 635.52(c)(iv) and 635.52(c)(v) be more definitive regarding a State agency’s right to reconsideration and the mechanism for providing such reconsideration in cases where the State is required to restore funds to the Federal Treasury because of the payment of benefits under conditions which were contrary to Federal law. The Department agrees that clarification would be useful and, accordingly, a proviso has been added in the final regulations for reconsideration as outlined in renumbered § 617.52(c)(5).

37. The proposed regulation at § 635.55(a)(2)(i)(A) provides factors which shall be considered in determining whether fault exists for the purpose of waiver of recovery of a TAA overpayment. Note—Section 635.55(a)(1) tracks section 239(a)(1), 19 U.S.C. 2313(a)(1), of the Act in providing that a State agency may waive a TAA overpayment. It has been determined that the word “may” leaves to each State’s decision the election whether or not to waive overpayments. This is clarified by the addition of a phrase at the end of § 635.55(a)(2). Any State which elects to waive TAA overpayments must strictly follow the guidelines in § 635.55 which are adopted under the authority of section 233(a)(1). 19 U.S.C. 2329(a)(1).

One of the factors concerns whether a statement or representation of a material nature was made by the individual in connection with the application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate. While no comment was received regarding this factor, the Department feels that the phrase “material nature” is unclear and would be difficult to apply. Its impreciseness would provide State agencies a broad latitude in determining whether or not to waive recovery of an overpayment. Therefore, this factor has been revised by deleting the phrase “material nature” and modifying “statement or representation” by the word “material.” This revision will provide State agencies flexibility in determining whether the statement or representation played an important or significant role in the payment of TAA, without having to be concerned with the meaning of “nature” or excluding representations that occur from the omission of the statement.

Two other factors concern (a) whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the fact was material, and (b) whether the individual knew or should have been expected to know that the individual was not entitled to the TAA payment. The UAW questions how the Secretary possibly intends to establish when an individual should have known an undisclosed fact was material or when an individual should have known that he or she was not
entitled to a TAA payment. State agencies through the regular methods they follow for prevention and detection of overpayments of UI under State law should be able to establish that an individual failed to disclose a material fact and that the individual should have known that the fact was material, or that an individual should have known that he or she was not entitled to a TAA payment.

A fourth factor concerns whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any action or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong. The Amalgamated Clothing and Textile Workers Union comments that this statement is overly broad and can lead to abuses by State agencies and the AUA questions how an overpayment might result indirectly or partially from any action or omission of the individual. It is true that the factors preceding the one in question, in most instances, would be adequate for determining whether or not fault exists. However, the Department is concerned about those possible situations where fault, in fact, did exist but was not recovered by the other factors. The Department's position is that, in any case where fault exists, recovery of the overpayment should not be waived. With few exceptions the State agencies administering the State unemployment insurance laws have traditionally not allowed for waiver of overpayments when fault exists. Not allowing waiver of overpayments when fault exists is a deterrent to fraudulent claims. The Department's position is consistent with the Department's overall effort to improve UI program quality and reduce errors in the payment of UI program benefits. Therefore, no change is made in the final regulations.

38. The proposed regulation at § 635.55(a)(2)(iii)(C) provides factors which shall be considered in determining whether equity and good conscience exists for the purpose of waiver of recovery of a TAA overpayment. One of the factors concerns whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual. The AUA comments that the requirement of "extraordinary and lasting financial hardship" goes far beyond any fair or humane definition of "equity and good conscience." If the income and cash resources of the individual and the individual's family are such that to repay the overpayment would not cause the individual extraordinary and lasting financial hardship, then requiring such repayment is fully consistent with the statutory equity and good conscience provision. Therefore, no change is made in the final regulations.

39. The proposed regulation at § 635.55(a)(2)(iii)(C), regarding whether equity and good conscience exists for the purpose of waiver of recovery of a TAA overpayment, provides that: "In making financial hardship determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available or potentially available to the individual and the individual's family in the time period being considered." The California Employment Development Department comments that the wording is extremely general (no relationship between the number of family members and amounts of income or what financial and cash resources are to be included) and that the phrases "potential income" and "cash resources" are vague (very difficult to estimate). The California agency states that its waiver guidelines contain specific items about family members and their incomes and assets and that its waiver determinations are based on past, rather than potential, income. The California agency suggests that a clause be added to the provision cited above to permit State agencies to use their own guidelines and procedures in determining financial hardship. The Department rejects the California agency comments and retains the existing wording for the guidelines for determining financial hardship to ensure uniformity among all State agencies. State guidelines used for the TAA Program; national rules must be applied uniformly by all States as set out in the final regulations. Therefore, no change is made in the final regulations.

40. The proposed regulation at § 635.55(a)(3) provides that a request for waiver of recovery of a TAA overpayment shall be made on a form approved by the Secretary, which shall be furnished to the worker by the State agency. The California Employment Development Department suggests that no new form be created for this purpose and that existing State agency procedure, if applicable, be used. The Ohio Bureau of Employment Services suggests that the proposed form include information concerning the waiver provisions in the regulations so that States can use the form as an attachment to overpayment notices. The Department agrees to delete the proposed form and permit State agencies to prescribe their own forms for handling waiver determinations. Thus, the final regulation at § 617.55(a)(3) no longer requires a form approved by the Secretary for requesting a waiver determination. However, it is essential that a uniform, national rule be applied in making waiver determinations; so in this regard the regulations are unchanged in requiring that information be provided to workers about the waiver provisions.

41. The proposed regulation at § 635.55(a)(4) forecloses recovery of TAA overpayments from State UI benefits. Although the 1981 amendments to section 243 of the Act provide the Secretary the option to require State agencies to recover TAA overpayments from such benefits, the Secretary chose not to do so. The California Employment Development Department suggests that § 635.55(a)(4) be clarified to at least include a statement naming State UI benefits as a source of TAA overpayment recovery. Accordingly, the Department agrees and has incorporated a statement in the final regulations to the effect that State agencies may recover a TAA overpayment from State UI benefits payable to a worker.

42. The proposed regulation at § 635.62(b)(3) provides that individuals who have had self-financed training approved prior to October 1, 1981, shall not be reimbursed for training and related expenses incurred while in such training, unless such training is approved under the amended law and Part 635. The Michigan Employment Security Commission suggests that this section is unclear and asks "Under what conditions shall an agency approve such training?" This section has a "two-fold" meaning and is clarified in renumbered § 617.62(b) to accurately reflect both meanings. First, this section recognizes the fact that the 1981 amendments to the Act impose no legal obligation on the Secretary to finance tuition and other training expenses resulting from training approvals issued prior to October 1, 1981. Second, this section means that the prior approval of training under the provisions of the Act does not constitute an automatic approval under the 1981 amendments for the purpose of paying tuition and other training related expenses since the approval criteria are different. Workers whose training was approved prior to October 1, 1981, can have their requests for training considered under the criteria in section 238 of the amended Act, and if approved, training costs incurred after such approval will be paid. 19 U.S.C. 2296.
43. The proposed regulation at § 635.64(c) provides that no training under the Act shall be approved unless a determination regarding the approval of such training was made, and such training commenced, on or before September 30, 1983, and that no payment shall be authorized for any training costs incurred after September 30, 1983. The California Employment Development Department, the Michigan Employment Security Commission, and the West Virginia Department of Employment Security express concern with the above language which could have an effect of prematurely terminating training contracts for workers in approved training. To insure clarity and adherence to the statutory requirement of section 236(a)(1) of the Act and the reauthorization of the program under Pub. L. 99–120, renumbered § 617.64(c) is modified to reflect the proper treatment of workers who enter approved training prior to the termination of the program.

Section 236(a)(1) of the amended Act provides that, upon approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary. 19 U.S.C. 2298(a)(1). This means that a worker whose training is approved and who enters training and the termination date specified in the Act should have appropriate tuition related training expenses set aside as resources—on order to cover the costs of the approved training. However, there is no statutory or other authority to obligate funds or pay for costs of tuition or other training expenses where the obligation to pay such costs arises after the termination date specified in the Act. Similarly, no trade readjustment allowance (basic or additional) or transportation or subsistence expenses may be obligated or paid for any period beginning after the termination date specified in the Act, irrespective of the worker’s continuation in training approved on or before such termination date.

44. The Amalgamated Clothing and Textile Workers Union makes a general comment that the regulations should clearly specify that they take precedence over any relevant State regulations which may be contrary to or in conflict with these regulations. This concern was adequately covered in §§ 635.5(d), 635.52 and 635.54, which will remain unchanged in the final regulations except for a minor clarification in renumbered § 617.52. Therefore, no change is made in the final regulations.

45. The Michigan Employment Security Commission requested that "when adopted, the regulations not be made retroactive" on the premise that to do so "would cause numerous administrative problems and negatively impact on the rights of TRA recipients." The provisions of Title XXV of the Omnibus Budget Reconciliation Act of 1981 were, for the most part, implemented on October 1, 1981, as required by the amendments. The final regulations merely support that implementation and take effect as provided in the statute. Retroactivity should present no problem because the States should have been operating in accordance with the implementing instructions. The only operational change in the final regulations is in regard to waiver of recovery of overpayments, and there is no flexibility in this area.

46. The proposed regulations require that all applications for TAA Program benefits shall be made in accordance with instructions and on forms approved by the Secretary, which shall be furnished to the individual by the State agency. (See §§ 635.10(c), 635.22(d), 635.27(c), 635.28(d), 635.31(a) and 635.41(a).) In all instances, the words approved by the Secretary have been deleted. Although no comment was received on this point, with these changes the Secretary’s approval of State agency forms designed for these purposes is not required in the final regulations.

47. In addition to the comments and changes discussed above, a few minor proofing and technical errors were made in the proposed document as published in the Federal Register on March 4, 1983. These errors have been corrected.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 “D” Street, NW., Washington, DC 20213; telephone: (202) 370–6632 (this is not a toll-free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a “major rule” under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While several of the provisions may entail some costs, for example, the work test provisions, they will be more than offset by the budgetary savings that result from the lower weekly and maximum benefits and tightened eligibility requirements. In addition, any added costs, to the extent that they exist, do not represent new burdens imposed by the final regulations, but rather are direct statutory obligations.

Accordingly, no regulatory impact analysis is required.

Trade Sensitive Activity

The Department believes that the final regulations do not involve trade sensitive activities. This determination is predicated upon the fact that the TAA Program is a domestic program designed to provide assistance to workers adversely affected by import competition and, as such, does not fall within the scope of the Office of Management and Budget’s definition of a trade sensitive activity.

Paperwork Reduction Act

The Department has complied with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. Approval of the recordkeeping requirement contained at § 617.57 is under OMB control number 1205–0016, which is for the reporting form ETA 563. OMB control number 1205–0222 applies to §§ 617.52(c) and 617.54 under a previous approval.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. This rule will affect those agencies in small States that administer the TAA Program. However, current TAA Program recipients are concentrated in larger industrial States, where jobs have been "hardest hit" by foreign import competition. States may find some increased administrative costs as a result of the provisions to implement work tests in accordance with State provisions applicable to extended benefit claimants. However, most of the operating mechanisms needed for the TAA Program are in place through the UI system, including benefit payments, appeals, work search and work test procedures and relocation and training assistance. This will assure that any additional administrative costs are minimal. Moreover, these costs will
decline over time as adversely affected workers find reemployment in substantially equivalent jobs. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.245, “Trade Adjustment Assistance—Workers.”

List of Subjects in 29 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade adjustment assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

For the reasons set out in the preamble, Part 91 of Title 29, Code of Federal Regulations, is redesignated as Part 617 of Title 20, Code of Federal Regulations, and is revised as set forth below.

Signed at Washington, D.C., on December 15, 1986.

Roger D. Semerad,
Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

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Appendix A—Standard for Claim Determinations—Separation Information

Appendix B—Standard for Fraud and Overpayment Detection

Authority: 19 U.S.C. 2320; Secretary’s Order No. 3–81, 46 FR 5117.

Subpart A—General

§ 617.1 Scope.

The regulations in this Part 617 pertain to:

(a) Adjustment assistance, such as counseling, testing, training, placement, and other supportive services for workers adversely affected under the terms of Chapter 2 of Title II of the Trade Act of 1974, as amended (hereafter referred to as the Act);
(b) Trade readjustment allowances (hereafter referred to as TRA) and other allowances such as allowances while in training, job search and relocation allowances; and
(c) Administrative requirements applicable to State agencies to which such individuals may apply.

§ 617.2 Purpose.

The Act created a program of trade adjustment assistance (hereafter referred to as TAA) to assist individuals, who became unemployed as a result of increased imports, return to suitable employment. The TAA program provides for reemployment services and allowances for eligible individuals. The regulations in this Part 617 are issued to implement the Act.

§ 617.3 Definitions.

For the purposes of the Act and this Part 617:

2322), as amended.
(b) "Adversely affected employment" means employment in a firm or appropriate subdivision of a firm if workers of such firm or appropriate subdivision are certified under the Act as eligible to apply for TAA.
(c) "Adversely affected worker" means an individual who, because of lack of work in adversely affected employment:

(1) Has been totally or partially separated from such employment; or
(2) Has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.
(d) "Appropriate week" means the week in which the individual's first separation occurred.
(e) "Average weekly hours" means a figure obtained by dividing:

(1) Total hours worked (excluding overtime) by a partially separated individual in adversely affected employment in the 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the individual's first qualifying separation, by
(2) The number of weeks in such 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in such employment.
(f) "Average weekly wage" means one-thirteenth of the total wages paid to an individual in the individual's high quarter. The high quarter for an individual is the quarter in which the total wages paid to the individual were highest among the first four of the last five completed calendar quarters preceding the individual's appropriate week.
(g) "Average weekly wage in adversely affected employment" means a figure obtained by dividing:

(1) Total wages earned by a partially separated individual in adversely affected employment in the 52 weeks (excluding the weeks in that period the individual was sick or on vacation)
preceiding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding the weeks in that period the individual was sick or on vacation) the individual actually worked in such employment.

(h) "Benefit period" means, with respect to an individual:

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the individual is eligible for regular compensation, additional compensation, extended compensation, or federal supplemental compensation as these terms are defined by paragraph (kk) of this section; or

(2) The equivalent to such a benefit year or ensuing period provided for under the Federal unemployment insurance law.

(i) "Bona fide application for training" means an individual's signed and dated application for training filed with the State agency administering the TAA training program, on a form necessarily containing the individual's name, petition number, local office number, and specific occupational training. This form shall be signed and dated by a State agency representative upon receipt.

(j) "Certification" means a certification of eligibility to apply for TAA issued under the Act with respect to a group of workers.

(k) "Commuting area" means the area in which an individual would be expected to travel to and from work on a daily basis as determined under the applicable State law.

(l) "Date of separation" means:

(1) With respect to a total separation—

(i) For an individual in employment status, the last day worked; and

(ii) For an individual on employer-authorized leave, the last day the individual would have worked had the individual been working; and

(2) With respect to a partial separation, the last day of the week in which the partial separation occurred.

(m) "Eligibility period" means, for purposes of paying TAA:

(1) Basic weeks. The 52-week period beginning with the first week following the week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (kk)(1) of this section); and

(2) Additional weeks. The 26-week period immediately following the last week of entitlement to basic TAA, to assist an individual, to complete training approved under Subpart C of this Part 617.

(n) "Employer" means any individual or type of organization, including the Federal government, a State government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

(o) "Employment" means any service performed for an employer by an officer of a corporation or an individual for wages.

(p) "Exhaustion of UI" means exhaustion of all rights to UI in a benefit period by reason of:

(1) Having received all UI to which an individual was entitled under the applicable State law or Federal unemployment compensation law with respect to such benefit period; or

(2) The expiration of such benefit period.

(q) "Family" means the following members of an individual's household whose principal place of abode is with the individual in the home the individual maintains or would maintain but for unemployment:

(1) A spouse;

(2) An unmarried child, including a stepchild, adopted child, or foster child, under age 21 or of any age if incapable of self-support because of mental or physical incapacity; and

(3) Any other person whom the individual would be entitled to claim as a dependent for income tax purposes under the Internal Revenue Code of 1954.

(r) "First benefit period" means the benefit period established for the individual's first qualifying separation or in which such separation occurs.

(s) "First exhaustion of UI" means the first time in an individual's first benefit period that the individual exhausts all rights to UI; first exhaustion shall be deemed to be complete at the end of the week the exhaustion occurs.

(t) "First separation" means an individual's first total or partial separation from adversely affected employment on or most closely following the impact date of the certification under which the individual is covered, and occurs before or within the individual's first benefit period. For purposes of TAA entitlement, "first qualifying separation" means an individual’s first total or partial separation from adversely affected employment on the basis of which the individual qualifies for TAA.

(u) "Head of family" means an individual who maintains a home for a family. An individual maintains a home if over half the cost of maintenance is furnished by the individual or would be furnished but for unemployment.

(v) "Impact date" means the date stated in a certification issued under the Act on which total or partial separations began or threatened to begin in a firm or a subdivision of a firm.

(w) "Layoff" means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of not less than seven consecutive days.

(x) "Liabilities" means the State against which an interstate claim is filed.

(y) "Partial separation" means that during a week ending on or after the impact date specified in the certification under which an adversely affected worker is covered, the individual had:

(1) Hours of work reduced to 80 percent or less of the individual's average weekly hours in adversely affected employment; and

(2) Wages reduced to 80 percent or less of the individual’s average weekly wage in such adversely affected employment.

(z) "Regional Administrator" means the appropriate Regional Administrator of the Employment and Training Administration, United States Department of Labor (hereafter Department).

(aa) "Remuneration" means remuneration as defined in the applicable State law.

(bb) "Secretary" means the Secretary of Labor of the United States.

(cc) "Separate maintenance" means maintaining another (second) residence, in addition to the individual's regular place of residence, while attending a training facility outside the individual's commuting area.

(dd) "State" means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the term "United States" when used in a geographical sense includes such Commonwealth.

(ee) "State agency" means the State Employment Security Agency of a State which administers the State law, and any other agency or authority with which the Secretary has an agreement to carry out any of the provisions of the Act.

(ff) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(gg) "Suitable work" means, with respect to an individual:

(1) Suitable work as defined in the applicable State law for claimants for
regular compensation (as defined in paragraph (kk)(1) of this section); or
(2) Suitable work as defined in the applicable State law provisions
consistent with section 202(a)(3) of the Federal-State Extended Unemployment
Compensation Act of 1970; whichever is applicable, but does not in any case
include self-employment or employment as an independent contractor.

(bh) "Total separation" means a layoff or severance of an individual from
employment with a firm in which, or in a division of which, adversely affected
employment exists.

(ii) "Trade adjustment assistance" ("TAA") means the services and
allowances provided for achieving reemployment of adversely affected
workers, including TRA, training and other reemployment services, and job
search allowances and relocation allowances.

(jj) "Trade readjustment allowance" ("TRA") means a weekly allowance
payable to an adversely affected worker
with respect to such worker's
employment under Subpart B of this
Part 617.

(kk) "Unemployment insurance" ("UI") means the unemployment
compensation payable to an individual
under any State law or Federal
unemployment compensation law,
including chapter 85, title 5 of the United States Code, and the Railroad
Unemployment Insurance Act. "UI" includes "regular compensation," "additional compensation," "extended compensation," and "federal supplemental compensation," defined as follows:

(1) "Regular compensation" means unemployment compensation payable to an individual under any State law, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include extended compensation, additional compensation, or federal supplemental compensation;

(2) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code; and

(3) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 and regulations governing the payment of extended unemployment compensation.


§ 617.4 Benefit information to workers.
(a) Providing information to workers. State agencies shall provide full information to workers about the benefit allowances, training, and other employment services available under Subparts B through E of this Part 617 and about the petition and application procedures, and the appropriate filing
dates, for such allowances, training and services.

(b) Providing assistance to workers. State agencies shall provide whatever assistance is necessary to enable groups of workers, including unorganized workers, to prepare petitions or applications for program benefits.

(c) Providing information to State vocational education agencies. State agencies shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 of the Act and of projections, if available, of the needs for training under section 236 of the Act as a result of such certification.

Subpart B—Trade Readjustment Allowances (TRA)

§ 617.10 Applications for TRA.
(a) Before and after certification. An individual covered under a certification
or a petition for certification may apply to a State agency for TRA. A
determination shall be made at any time to the extent necessary to establish or
protect an individual's entitlement to
TRA or other TAA, but no payment of
TRA or other TAA may be made by a
State agency until a certification is
made and the State agency determines
that the individual is covered
thereunder.

(b) Timing of applications. An initial application for TRA, and applications
for TRA for weeks of unemployment
beginning before the initial application for TRA is filed, may be filed within a reasonable period of time after publica-
tion of the determination certifying the appropriate group of workers under section 223 of the Act. However, an application for TRA for a week of unemployment beginning after the initial application is filed shall be filed within the time limit applicable to claims for regular compensation under the applicable State law. For purposes of this paragraph (b), a reasonable period of time means such period of time as the individual had good cause for not filing earlier, which shall include, but not be limited to, the individual's lack of knowledge of the certification or misinformation supplied the individual by the State agency.

(c) Applicable procedures. Applications shall be filed in accordance with this Subpart B and on forms which shall be furnished to individuals by the State agency. The procedures for reporting and filing applications for TRA shall be consistent with this Part 617 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Employment Services", Employment Security
Manual, Part V, sections 5000 et seq., which is available at all State Employment Security agencies.

§ 617.11 Qualifying requirements for TRA.
(a) Basic qualifying requirements for entitlement. To qualify for TRA for any week of unemployment, an individual must meet each of the following requirements of paragraphs (a)(1) through (a)(6) of this section:

(1) Certification. The individual must be an adversely affected worker covered under a certification.

(2) Separation. The individual's first qualifying separation before application for TRA must occur:

(i) On or after the impact date;

(ii) Before the expiration of the two-year period beginning on the date of the
certification; and

(iii) Before the termination date, if any, of the certification.
(3) Wages and employment. (i) In the 52-week period ending with the week of the individual’s first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.2. Employment and wages covered under more than one certification can not be combined to qualify for TRA.

(ii) For purposes of this paragraph (a)(3), any week in which such individual:

(1) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active military service for training;

(2) Does not work in such adversely affected employment because of a disability compensable under a workers’ compensation law or plan of the State or the United States; or

(3) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization or subdivision; shall be treated as a week of employment at wages of $30 or more.

(B) Provided. That not more than the following number of weeks may be treated as such weeks of employment—

(1) 3 weeks if no weeks described in paragraph (a)(3)(i)(A)(2) of this section, occurred during the 52-week period concerned; or

(2) 7 weeks if all are weeks described in paragraph (a)(3)(i)(A)(2) of this section; or

(3) 7 weeks in the case of weeks described in Paragraphs (a)(3)(ii)(A)(2) and (1) or (3) of this section, or both, except that not more than 3 of such weeks may be other than weeks described in paragraph (a)(3)(i)(A)(2) of this section.

(iii) Wages and employment credits under paragraph (a)(3) of this section shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(A) Entitlement to UI. The individual must have been entitled to (or would be entitled to if the individual applied therefor) UI for a week within the benefit period.

(1) In which the individual’s first qualifying separation occurred; or

(ii) Which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(5) Exhaustion of UI. The individual must:

(i) Have exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor); and

(ii) Not have an unexpired waiting period applicable to the individual for any such UI.

(6) EB work test. (A) Accept any offer of suitable work, as defined in § 617.3(gg), and actually apply for any suitable work the individual is referred to by the State agency;

(B) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week; and

(C) Register for work and be referred by the State agency to suitable work in accordance with the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(ii) The EB work test shall apply to an individual only for weeks beginning after the date the individual files an initial TAA application.

(b) First week of eligibility. The first week of eligibility for TRA shall be the later of:

(1) The first week beginning more than 60 days after the date of filing of the petition which resulted in the certification under which the individual is covered; or

(2) The first week beginning after the individual’s first exhaustion of UI (as provided in paragraph (a)(5) of this section) following the individual’s first qualifying separation (as provided in paragraph (a)(2) of this section).

§ 617.12 Evidence of qualification.

(a) State agency action. When an individual applies for TRA, the State agency having jurisdiction under § 617.50(a) shall obtain information necessary to establish:

(1) Whether the individual meets the qualifying requirements in § 617.11;

(2) The individual’s average weekly wage; and

(3) For an individual claiming to be partially separated, the average weekly hours and average weekly wage in adversely affected employment.

(b) Insufficient data. If information specified in paragraph (a) of this section is not available from State agency records or from any employer, the State agency shall require the individual to submit a signed statement setting forth such information as may be required for the State agency to make the determinations required by paragraph (a) of this section.

(c) Verification. A statement made under paragraph (b) of this section shall be certified by the individual to be true to the best of the individual’s knowledge and belief and shall be supported by evidence such as Forms W-2, paycheck stubs, union records, income tax returns, or statements of fellow workers, and shall be verified by the employer.

(d) Determinations. The State agency shall make the necessary determinations on the basis of information obtained pursuant to this section, except that if, after reviewing information obtained under paragraph (b) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it shall make appropriate adjustments and shall make the determination on the basis of the adjusted data.

§ 617.13 Weekly amounts of TRA.

(a) Regular allowance. The amount of TRA payable for a week of total unemployment (including a week of training approved under Subpart C of this Part 617 or under the provisions of the applicable State law) shall be an amount equal to the most recent weekly benefit amount of UI (including dependent’s allowances) payable to the individual for a week of total unemployment preceding the individual’s first exhaustion of UI following the individual’s first qualifying separation: Provided, that in a State in which weeks of UI are paid in varying amounts related to wages with separate employers, the weekly amount of TRA shall be calculated as it would be to pay extended compensation: Provided, further, that where a State calculates a base amount of UI and calculates, dependent’s allowances on a weekly supplemental basis, TRA weekly benefit amounts shall be calculated in the same manner and under the same terms and conditions as apply to claimants for UI, except that the base amount shall not change.

(b) Increased allowance. An individual in training approved under Subpart C of this Part 617 who is thereby entitled for any week to TRA and a training allowance under any other Federal law for the training of workers shall be paid in the amount computed under paragraph (a) of this section or, if greater, the amount to which the individual would be entitled under such other Federal law if the individual applied for such allowance, as provided in section 232(b) of the Act. A payment under this paragraph (b) shall be in lieu of any training-allowance
to which the individual is entitled under such other Federal law.

(c) **Reduction of amount.** An amount of TRA payable under paragraph (a) or (b) of this section for any week shall be reduced (but not below zero) by:

(1) Income that is deductible from UI under the disqualifying income provisions of the applicable State law or Federal unemployment compensation law;

(2) The amount of a training allowance (other than a training allowance referred to in paragraph (b) of this section) under any Federal law that the individual receives for such week, as provided in section 232(c) of the Act.

This paragraph (c) shall apply to Veterans Education Assistance, Pell Grants, Supplemental Educational Opportunity Grants, and other training allowances under any Federal law other than for the training of workers; and

(3) Any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law which apply to individuals in approved training.

§ 617.14 Maximum amount of TRA.

(a) **General rule.** Except as provided under paragraph (b) of this section, the maximum amount of TRA payable to an individual under a certification shall be the amount determined by:

(1) Multiplying by 52 the weekly amount of TRA payable to such individual for a week of total unemployment, as determined under § 617.13(a); and

(2) Subtracting from the product derived under paragraph (a)(1) of this section, the total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) in the individual’s first benefit period described in § 617.11(a)(4).

(b) **Exceptions.** The maximum amount of TRA determined under paragraph (a) of this section will not include:

(1) The amount of dependents’ allowances paid as a supplement to the base weekly amount determined under § 617.13(a); and

(2) The amount of the difference between the individual’s weekly increased allowances determined under § 617.13(b) and the individual’s weekly amount determined under § 617.13(a): and

(3) The amounts paid for additional weeks determined under § 617.15(b): but nothing in this paragraph (b) shall affect an individual’s eligibility for such supplemental, increased or additional allowances.

(c) **Reduction for Federal training allowance.** (1) If a training allowance referred to in § 617.13(c)(2) is paid to an individual for any week of unemployment with respect to which the individual would be entitled (determined without regard to any disqualification under § 617.18(b)(2)) to TRA, if the individual applied for TRA for such week, each week shall be deducted from the total number of weeks of TRA otherwise payable to the individual.

(2) If the training allowance referred to in paragraph (c)(1) of this section is less than the amount of TRA otherwise payable to the individual for such week, the individual shall, when the individual applies for TRA for such week, be paid TRA in an amount not to exceed the amount equal to the difference between the individual’s regular weekly TRA amount, as determined under § 617.13(a), and the amount of the training allowance paid to the individual for such week, as provided in section 232(c) of the Act.

§ 617.15 Duration of TRA.

(a) **Basic weeks.** An individual shall not be paid basic TRA for any week after the 52-week eligibility period beginning with the first week following the first week in the period covered by the certification with respect to which the individual has first exhausted (as determined under § 617.11(a)(5)) all rights to regular compensation.

(b) **Additional weeks.** (1) TRA payments may be paid for up to 26 additional weeks in the 26-week eligibility period following the last week of entitlement to basic TRA otherwise payable under this Part 617 to an individual, to assist the individual to complete training approved under Subpart C of this Part 617. However, TRA shall not be paid for a week under the provisions of this paragraph (b) unless the individual attends training during such week.

(2) To be eligible for TRA for additional weeks, an individual must make a bona fide application for such training:

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual’s first qualifying separation.

(3) No payment of TRA shall be made for any additional week unless the individual is actually engaged in training during the week and has not been determined under § 617.18(b)(2) to be failing to make satisfactory progress in the training.

(c) **Limit.** In no case may an individual receive TRA for any week which begins after the 78-week period following the week the individual has first exhausted (as determined under § 617.11(a)(5)) all rights to regular compensation.

§ 617.16 Applicable State law.

(a) **What law governs.** The applicable State law for purposes of this Subpart B is the State law under which the individual:

(1) Is currently entitled to UI (or would be entitled if the individual applied therefor); or

(2) Has most recently exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor).

(b) **Change of law.** (1) A State law determined under paragraph (a) of this section shall remain applicable to an individual unless the individual becomes entitled to UI (or would be entitled if the individual applied therefor) under another State law.

(2) If a State law ceases to apply to an individual, the applicable State law thereafter shall be the law of the State under which the individual became entitled to UI (or would be entitled if the individual applied therefor).

(c) **UCFE–UCX claimants.** If an individual is entitled to UI under chapter 85, title 8 of the United States Code, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State to which the individual’s Federal service and wages were assigned or transferred under Part 609 or Part 614 of this chapter.

(d) **RRUI claimants.** If an individual is entitled to UI under the Railroad Unemployment Insurance Act, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State in which the individual’s first qualifying separation occurs.

§ 617.17 Availability and active search for work.

An individual shall not be paid TRA for any week of unemployment during which the individual is not able to work or is unavailable for work under the applicable State law, or if the individual fails or refuses to make an active search for work or to apply for or accept work or to accept a referral to work under the applicable State law, including the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. This section shall not apply to weeks during which the individual is actually undergoing training approved under the provisions of the applicable State law or under Subpart C of this Part.
617, unless the individual is determined to be ineligible for such week under the applicable State law or § 617.18(b)(2).

§ 617.18 Disqualifications.

(a) State law applies. Except as stated in paragraph (b) of this section and § 617.55(b), an individual shall not be paid TRA for any week of unemployment if the individual is or would be disqualified to receive UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(b) Disqualification of trainees. (1) A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

(i) Is undergoing training approved under Subpart C of this Part 617; or

(ii) Refuses work to which the individual has been referred by the State agency if such work would require the individual to discontinue training or, if added to hours of training, would occupy the individual more than 8 hours a day or 40 hours a week, except that this paragraph (b)(1)(ii) does not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in such training: or

(iii) Quit work if the individual was employed in work which was not suitable employment, as described in § 617.22(a)(1), and it was reasonable and necessary for the individual to quit work to begin or continue training, except that this paragraph (b)(1)(iii) does not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in such training.

(2) An individual who, without good cause, refuses to accept or continue or fails to make satisfactory progress in training approved under Subpart C of this Part 617 shall not be eligible for basic or additional TRA, or any other payment under this Part 617, for the week of such occurrence and any week thereafter until the week in which the individual enters or resumes and makes satisfactory progress in such training. For purposes of this paragraph (b), good cause means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to make satisfactory progress in or continue training.

Subpart C—Reemployment Services

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) State agency referral. The State agency shall be responsible for referring adversely affected workers to the appropriate office for reemployment services when such individual:

(1) Expresses interest in any reemployment services while receiving UI; or

(2) Exhausts all rights to UI and becomes entitled to TRA.

(b) State agency responsibilities. State agency responsibilities under this Subpart C include, but are not limited to:

(1) Registering adversely affected workers for work;

(2) Informing adversely affected workers of the reemployment services and allowances available under the Act, the application procedures, and the filing date requirements for such reemployment services and allowances;

(3) Determining whether suitable employment, as described in § 617.22(a)(1), is available;

(4) Developing, reviewing, and updating, when necessary, reemployment plans for adversely affected workers;

(5) Providing counseling, testing, placement, and supportive services;

(6) Providing or procuring self-directed job search training;

(7) Providing out-of-area job search and relocation assistance;

(8) Making referrals to training;

(9) Locating, approving and procuring training;

(10) Monitoring the provisions of the approved training programs;

(11) Determining which occupations and training institutions offer, in a cost effective manner, a reasonable expectation of employment following such training; and

(12) Documenting the standards and procedures used to select occupations and training institutions in which training is approved.

§ 617.21 Reemployment services and allowances.

Reemployment services and allowances under this Subpart C shall include, as appropriate, the following:

(a) Employment registration. To ensure, so far as practical, that individuals are placed in jobs which utilize their highest skills and that applicants qualified for job openings are appropriately referred, applications for registration shall be taken on adversely affected workers who apply for reemployment services.

(b) Employment counseling. When local job opportunities are not readily available, counseling shall be used to assist individuals to gain a better understanding of themselves in relation to the labor market so that they can more realistically choose or change an occupation or make a suitable job adjustment.

(c) Vocational testing. Testing shall be used to determine which individual skills or potentials can be developed by appropriate training.

(d) Job development. A State agency shall develop jobs for individuals by soliciting job interviews from public or private employers and shall work with potential employers to customize or restructure particular jobs to meet individual needs.

(e) Supportive services. Supportive services shall be provided so individuals can obtain or retain employment or participate in employment and training programs leading to eventual placement in permanent employment. Such services may include work orientation, basic education, communication skills, and any other services necessary to prepare an individual for full employment in accordance with the individual's capabilities and employment opportunities.

(f) On-the-job training (OJT). OJT is training, in the public or private sector, and may be provided to an individual who meets the conditions for approval of training, as provided in § 617.22(a), and who has been hired by the employer, while the individual is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

(g) Classroom training. This training activity is any training of the type normally conducted in an institutional setting, including vocational education, and may be provided to individuals who meet the conditions for approval of training, as provided in § 617.22(a), to impart technical skills and information required to perform a specific job or group of jobs. Training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education or English-as-a-second-language, shall be considered as supportive services under paragraph (e) of this section.

(h) Self-directed job search. Self-directed job search programs shall be initiated to assist individuals in
developing skills and techniques for finding a job. Such programs vary in design and operation and call for a carefully structured approach to individual needs. There are basic elements or activities common to all approaches. These include:

(1) **Job search workshop.** A short (1–3 days) seminar designed to provide participants with knowledge on how to find jobs, including labor market information, applicant resume writing, interviewing techniques, and finding job openings.

(2) **Job finding club.** Encompasses all elements of the Job Search Workshop plus a period (1–2 weeks) of structured, supervised application where participants actually seek employment.

(3) **Job search allowances.** The individual, if eligible, shall be provided job search allowances under Subpart D of this Part 617 to defray the cost of seeking employment outside of the commuting area.

(4) **Relocation allowances.** The individual, if eligible, shall be provided relocation allowances under Subpart E of this Part 617 to defray the cost of moving to a new job outside of the commuting area.

§ 617.22 Approval of training.

(a) **Conditions for approval.** Subject to the availability of funds allocated by the Department to the State to pay for the full costs of training, training may be approved for an individual adversely affected worker only if the State agency determines that:

1. No suitable employment including technical and professional employment is available. For purposes of this section, the term “suitable employment” means, with respect to an individual, work of a substantially equal or higher skill level than the individual’s past adversely affected employment, and wages for such work at not less than 90 percent of the individual’s average weekly wage;

2. The individual would benefit from appropriate training;

3. There is a reasonable expectation (not necessarily a prior guarantee) of employment following completion of training;

4. **Approved training is available to the individual from governmental agencies or private sources, which may include area vocational education schools (as defined in section 521(3) of the Carl D. Perkins Vocational Education Act) and employers;** and

5. The individual is qualified to undertake and complete such training.

(b) **Time limits for commencing training.** An individual must commence approved training within 60 days after the approval date, except that for good cause shown, as described in § 617.18(b), such period may be extended up to a maximum of 120 days after the date of such approval.

(c) **Approv of training under State law.** Training approved by a State agency under State law is not approved training under this Part 617. If the State agency subsequently determines that the individual and course of training meet the requirements of this Part 617 and training is approved, the costs of such training incurred after such approval shall be paid under this Part 617. No reimbursement shall be authorized for any costs incurred for any period prior to the approval of training, under this Part 617, except in the case of a determination or decision reversing a determination denying approval of training under this Part 617.

(d) **Applications.** Applications for approval of, or referral to, training shall be filed in accordance with this Subpart C and on forms which shall be furnished to individuals by the State agency.

(e) **Determinations.** Selection for approval of, or referral to, an individual to training under this Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 617.50 and 617.51 apply.

(f) **Length of training and hours of attendance.** The State agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

1. The training shall be of suitable duration to achieve the desired skill level in the shortest possible time;

2. No approved training program shall exceed 104 weeks; and

3. The hours and days in a week of attendance shall be in accordance with procedures established by the State agency and with established hours and days commensurate with the course as determined by the training facility.

(g) **Training of reemployed workers.** Adversely affected workers who obtain new employment which is not suitable employment, as described in § 617.22(a)(1), and have been approved for training may elect to:

1. Terminate their jobs, or

2. **Continue in full- or part-time employment, to undertake such training, and shall not be subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment.**

(h) **Fees prohibited.** In no case shall an individual be approved for training under this Subpart C for which the individual is required to pay a fee or tuition.

§ 617.23 Selection of training methods and programs.

(a) **State agency responsibilities.** If suitable employment as described in § 617.22(a)(1), is not otherwise available to an individual or group of individuals, it is the responsibility of the State agency to explore, identify, develop, and secure training opportunities and to establish linkages with other public and private agencies, Private Industry Councils (PICs), employers, and Job Training Partnership Act (JTPA) service delivery area (SDA) grant recipients, as appropriate, which return adversely affected workers to employment as soon as possible.

(b) **Firm-specific retraining program.** To the extent practicable before referring an adversely affected worker to approved training, the State agency shall consult with the individual’s adversely affected firm and certified or recognized union, or other authorized representative, to develop a retraining program that meets the firm’s staffing needs and preserves or restores the employment relationship between the individual and the firm. The fact that there is no need by other employers in the area for individuals in a specific occupation for which training is undertaken shall not preclude the development of an individual retraining program for such occupation with the adversely affected firm.

(c) **Methods of training.** Adversely affected workers may be provided either one or a combination of the following methods of training:

1. **Insofar as possible, priority will be given to on-the-job training, which includes related education necessary to acquire skills needed for a position within a particular occupation, in the firm or elsewhere pursuant to §§ 617.24, 617.25, and 617.26, including training for which the firm pays the costs.** This ensures that on-the-job training provides the skills necessary for the individual to obtain employment in an occupation other than a particular job at a specific site; and

2. **Institutional training, with priority given to providing the training in public area vocational education schools if it is determined that such schools are at least as effective and efficient as other institutional alternatives, pursuant to §§ 617.24, 617.25, and 617.26.**

(d) **Standards and procedures.** The State agency shall document the standards and procedures used to select occupations and training institutions in which training is approved. Such occupations and training shall offer a reasonable expectation (not necessarily...
a prior guarantee) of employment following such training.

(1) Standards. The State agency shall approve training in occupations for which an identifiable demand exists either in the local labor market or in other labor markets for which relocation planning has been implemented. If practicable, placement rates and employer reviews of curriculum shall be used as guides in the selection of training institutions.

(2) Procedures. In determining the types of training to be provided, the State agency shall consult with local employers, appropriate labor organizations, Job Service Improvement Program Committees, JTPA SDA grant recipients, PIs, local educational organizations, local apprenticeship programs, local advisory councils established under the Carl D. Perkins Vocational Education Act, and post-secondary institutions.

(3) Exclusions. In determining suitable training, the agency shall exclude certain occupations, where:

(i) Lack of employment opportunities exist as substantiated by job orders and other pertinent labor market data; or

(ii) The occupation provides no reasonable expectation of permanent employment.

§ 617.24 Preferred training.

When a State agency refers an adversely affected worker for training, the State agency shall attempt to obtain such training at no cost through:

(a) On-the-job training offered by an employer;

(b) Area vocational education schools, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act;

(c) The JTPA SDA grant recipient; or

(d) Any other applicable law, if preferred training under paragraph (a), (b) or (c) of this section cannot be provided within a reasonable period of time.

§ 617.26 Approval of other training, including interstate.

(a) Liable State. A State may approve and purchase for an adversely affected worker any other training, including on-the-job training or institutional vocational training, if:

(1) Circumstances preclude referral to training under § 617.24 or § 617.25; and

(2) If institutional vocational training then the training has been approved by the State vocational education agency and the standards of adequacy required by the applicable law.

(b) Agent State. The State agency performing as an agent State shall be responsible for selection and approval of training under §§ 617.22 and 617.24 and 617.25. The State agent will pay any training related costs, including subsistence and transportation. The State agency is responsible for determining eligibility for TRA, and job search and relocation allowances. The State agent shall assist the individual in applying for such allowances.

§ 617.27 Subsistence payments.

(a) Eligibility. A trainee under this Subpart C shall be afforded supplemental assistance necessary to pay the cost of separate maintenance when the training facility is located outside the commuting area, but may not receive such supplemental assistance for any period for which the trainee receives such a payment under the JTPA, or any other law, or for any day referred to under § 617.26(c)(2), or pursuant to which a transportation allowance is payable to the individual, or to the extent the individual is entitled to be paid or reimbursed for such expenses from any other source.

(b) Amount. Subsistence payments shall not exceed the lesser of:

(1) The individual’s actual per diem expenses for subsistence; or

(2) 50 percent of the prevailing per diem rate authorized under Federal travel regulations (see 41 CFR Part 101-7) for the locale of the training.

(c) Applications. Applications for subsistence payments shall be filed in accordance with this Subpart C and on forms which shall be furnished to trainees by the State agency. Such payments shall be made on completion of a week of training, except that at the beginning of a training project a State agency may advance a payment for a week if it determines that such advance is necessary to enable a trainee to accept training. An adjustment shall be made if the amount of an advance is less or more than the amount to which the trainee is entitled under paragraph (b) of this section. A determination as to an application made under this section shall be subject to §§ 617.50 and 617.51.

(d) Unexcused absences. No subsistence payment shall be made to an individual for any day of unexcused absence certified by the responsible training facility.

§ 617.28 Transportation payments.

(a) Eligibility. A trainee under this Subpart C shall be afforded supplemental assistance necessary to pay transportation expenses if the training is outside the commuting area, but may not receive such assistance if transportation is arranged for the trainee as part of a group and paid for by the State agency or to the extent the trainee receives a payment of transportation expenses under another Federal law, or to the extent the individual is entitled to be paid or reimbursed for such expenses from any other source.

(b) Amount. A transportation allowance shall not exceed the lesser of:

(1) The actual cost for travel by the least expensive means of transportation reasonably available between the trainee’s home and the training facility; or

(2) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations. See 41 CFR Part 101-7.

(c) Travel included. Travel for which a transportation allowance shall be paid includes travel:

(1) At the beginning and end of the training program;

(2) When the trainee fails for good cause, as described in § 617.18(b)(2), to complete the training program; and

(3) For daily commuting, in lieu of subsistence, but not exceeding the amount otherwise payable as subsistence for each day of commuting.

(d) Applications. Applications for transportation payments shall be filed in accordance with this Subpart C and on forms which shall be furnished to trainees by the State agency. Payments may be made in advance. An adjustment shall be made if the amount of an advance is less or more than the amount to which the trainee is entitled under paragraph (b) of this section. A determination as to an application made under this section shall be subject to §§ 617.50 and 617.51.
§ 617.29 Application of EB work test.

(a) Registration for employment. Adversely affected workers who have exhausted all rights to UI and who otherwise qualify for TRA under § 617.11, shall, except as provided in paragraph (b) of this section:

(1) Register for work and be referred to work by the State agency in the same manner as required for EB claimants under the applicable State law provisions which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) Be subject to the work test requirements for EB claimants under the applicable State law provisions which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(b) Exceptions. Paragraph (a) of this section shall not apply to any week an individual is undergoing training approved under this Subpart C.

Subpart D—Job Search Allowances

§ 617.30 General.

A job search allowance shall be granted an adversely affected worker to assist the individual in securing a job within the United States as provided in this Subpart D.

§ 617.31 Applications.

(a) Forms. Applications for job search allowances shall be filed in accordance with this Subpart D and on forms which shall be furnished to individuals by the State agency.

(b) Submit. An application may be submitted to a State agency at any time by an individual who has been totally or partially separated whether or not a certification covering the individual has been made. However, an application must be submitted to a State agency before the job search begins for the job search allowance to be granted, and the job search may not be approved until after the individual is covered under a certification.

(c) Time limits. Notwithstanding paragraph (b) of this section, a job search allowance application may be approved only if submitted before:

(1) The 365th day after the date of the certification under which the individual is covered, or the 365th day after the date of the individual's last total separation, whichever is later; or

(2) The 182d day after the concluding date of training approved under Subpart C of this Part 617, or approved under the regulations superseded by this Part 617.

§ 617.32 Eligibility.

(a) Conditions. Job search allowance eligibility requires:

(1) A timely filed application;

(2) Total separation from adversely affected employment at the time the job search commences;

(3) Registration with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 617.

(4) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the computing area, and has a reasonable expectation of obtaining suitable employment of long-term duration outside the commuting area and in the area where the job search will be conducted. For purposes of this section, the term "suitable employment" means suitable work as defined in § 617.30(gg) (1) or (2), whichever is applicable to the individual.

(5) Completion of the job search within a reasonable period not exceeding 30 days after the day on which the job search began.

(b) Limit. The total job search allowances paid to an individual under a certification may not exceed $600, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.

§ 617.35 Time and method of payment.

(a) Determinations. A State agency shall promptly make and record determinations necessary to assure entitlement of an individual to a job search allowance at any time, before or after a certification covering the individual is made. No job search allowance may be paid or advanced to an individual until the State agency determines that the individual is covered under a certification. A State agency shall make payment as promptly as possible upon determining that the individual is covered under a certification and is otherwise eligible.

(b) Payment. Unless paragraph (a) of this section applies, a job search allowance shall be paid promptly after an individual completes a job search and complies with paragraph (d) of this section.

(c) Advances. A State agency may advance an individual (except an individual not yet covered under a certification) 60 percent of the estimated amount of the job search allowance payable on completion of the job search, but not exceeding $390, within 5 days prior to commencement of a job search. Such advance shall be deducted from

(1) Travel. The cost allowable for travel shall not exceed the lesser of:

(i) The actual cost of round trip travel by the most economical public transportation the individual reasonably can be expected to take from the individual's residence to the area of job search; or

(ii) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations (see 41 CFR Part 101–7) for such roundtrip travel by the usual route from the individual's residence to the area of job search.

(2) Lodging and meals. The cost allowable for lodging and meals shall not exceed the lesser of:

(i) The actual cost to the individual of lodging and meals while engaged in the job search; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (see 41 CFR Part 101–7) for the locality where the job search is conducted.

(3) Limit. The total job search allowances paid to an individual under a certification may not exceed $600, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.
any payment under paragraph (b) of this section.

(d) Worker evidence. On completion of a job search, the individual shall certify on forms furnished by the State agency as to employer contacts made and amounts expended daily for lodging and meals. Receipts shall be required for all lodging and purchased transportation expenses incurred by the individual pursuant to the job search. An adjustment shall be made if the amount of an advance is less or more than the amount to which the individual is entitled under § 617.34.

Subpart E—Relocation Allowances

§ 617.40 General.

A relocation allowance shall be granted an adversely affected worker to assist the individual and the individual's family, if any, to relocate within the United States as stated in this Subpart E. A relocation allowance may be granted an individual only once under a certification. A relocation allowance shall not be granted to more than one member of a family with respect to the same relocation. If applications for a relocation allowance are made by more than one member of a family as to the same relocation, the allowance shall be paid to the head of the family if otherwise eligible.

§ 617.41 Applications.

(a) Forms. Applications for a relocation allowance shall be filed in accordance with this Subpart E and on forms which shall be furnished by the State agency.

(b) Submission. An application may be submitted to the State agency at any time by an individual who has been totally or partially separated regardless of whether a certification covering the individual has been made. However, an application must be submitted to a State agency before the relocation begins for the relocation allowance to be granted, and the relocation may not be approved until after the individual is covered under a certification.

(c) Time limits. Notwithstanding paragraph (b) of this section, an application for a relocation allowance may not be approved unless submitted before:

(1) The 425th day after the date of the certification under which the individual is covered, or the 425th day after the date of the individual's last total separation, whichever is later; or

(2) The 182d day after the concluding date of training approved under Subpart C of this Part 617, or approved under the regulations superseded by this Part 617.

§ 617.42 Eligibility.

(a) Conditions. Eligibility for a relocation allowance requires:

(1) A timely filed application;

(2) Total separation from adversely affected employment at the time relocation commences;

(3) No prior receipt of a relocation allowance under the same certification;

(4) Relocation within the United States and outside the individual's present commuting area;

(5) Registration with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 617;

(6) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, outside the commuting area and in the area of intended relocation. For purposes of this section, the term "suitable employment" means suitable work as defined in § 617.3(gg) (1) or (2), whichever is applicable to the individual; and

(7) Relocation beginning within a reasonable period, as determined under § 617.43(b), and completion of such relocation within a reasonable period of time as determined in accordance with Federal travel regulations and § 617.43(a).

(b) Job search. Applications for a relocation allowance and a job search allowance may not be approved concurrently, but the prior payment of a job search allowance shall not otherwise preclude the payment of a relocation allowance.

§ 617.43 Time of relocation.

(a) Applicable considerations. In determining whether an individual's relocation is completed in a reasonable period of time, a State agency, among other factors, shall consider whether:

(1) Suitable housing is available in the area of relocation;

(2) The individual can dispose of the individual's residence;

(3) The individual or a family member is ill; and

(4) A member of the individual's family is attending school and when the member can best be transferred to a school in the area of relocation.

(b) Time limits. The reasonable period for actually beginning a relocation move shall expire 182 days after the date of application for a relocation allowance, or 182 days after the conclusion of training approved under Subpart C of this Part 617, or approved under the regulations in former 29 CFR Part 91, in effect prior to its redesignation as this 20 CFR Part 617 and its concurrent revision.

§ 617.44 Findings required.

The following findings shall be made before final payment of a relocation allowance may be approved:

(a) Intrastate relocations. If the area of relocation is in the State where the individual resides, the State agency of that State shall make all determinations under this Subpart E.

(b) Interstate relocations. If the area of relocation is not in the State where the individual resides:

(1) The State agency of the State where the individual resides shall make the determinations under this Subpart E; and

(2) The State agency of the State where the individual resides shall certify directly with the employer, or shall request the State agency of the State of intended relocation to verify, that the individual has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 617.42(a)(5)(i).

§ 617.45 Amount.

(a) Items allowable. The amount payable as a relocation allowance shall include the following items:

(1) 90 percent of the travel expenses for the individual and family, if any, from the individual's place of residence to the area of relocation, as determined under § 617.40;

(2) 90 percent of the expenses of moving household goods and personal effects of the individual and family, if any, not to exceed the maximum number of pounds net weight authorized under the Federal travel regulations (see 41 CFR Part 101-7), between such locations, as determined under § 617.47; and

(3) A lump sum payment, equal to 3 times the individual's average weekly wage, not to exceed $600.

(b) Reduction. The amount otherwise payable under paragraphs (a)(1) and (a)(2) of this section shall be reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source.

§ 617.46 Travel allowance.

(a) Computation. The amount of travel allowance (including lodging and meals) payable under § 617.43(a)(1) shall be 90 percent of the total costs of each of the
following allowable transportation and subsistence items:

(1) Commercial carrier. Allowable costs for moving household goods and personal effects of an individual and family, if any, shall not exceed the maximum number of pounds of net weight authorized under the Federal travel regulations (see 41 CFR Part 101-7) by commercial carrier from the individual's old residence to the individual's new residence in the area of relocation; or

(ii) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations (see 41 CFR Part 101-7) for the usually traveled route from the individual's old residence to the individual's new residence in the area of relocation. No additional mileage shall be payable for family members traveling on the same trip in the same vehicle.

(2) Lodging and meals. The cost allowable for lodging and meals for an individual or each member of the individual's family shall not exceed the lesser of:

(i) The actual cost to the individual for lodging and meals while in travel status; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (see 41 CFR Part 101-7) for the locality to which the relocation is made.

(b) Separate travel. If, for good cause, a member or members of an individual's family must travel separately to the individual's new residence, 90 percent of the total costs of such separate travel, computed in accordance with paragraph (a) of this section, shall be included in calculating the total amount the individual is entitled to be paid under this Subpart E. For purposes of this paragraph (b), good cause means such reasons as would justify the family member's inability to relocate with the other members of the individual's family, including but not limited to reasons related to the family member's health, schooling or economic circumstances.

(c) Limitation. In no case may the individual be paid a travel allowance for the individual or a member of the individual's family more than once in connection with a single relocation.

§ 617.47 Moving allowance.

(a) Computation. The amount of a moving allowance payable under § 617.45(a)(2) shall be 90 percent of the total of the allowable costs under either (1), (2), or (3) of this paragraph, and 90 percent of the total allowable costs under (4) of this paragraph:

1. The commercial carrier's charges for moving the house trailer or mobile home;

2. Charges for unblocking and reblocking;

3. Ferry charges, bridge, road, and tunnel tolls, taxes, fees fixed by a State or local authority for permits to transport the unit in or through its jurisdiction, and retention of necessary flagmen; and

4. The cost of insuring the house trailer or mobile home, and the personal effects of the individual and family, against loss or damage in transit, in accordance with the provisions in paragraph (a)(1) of this section.

(b) Travel. Payments under this section shall be in addition to payments for travel expenses for the individual and family, if any, under § 617.45(a)(1), except that the allowable cost for a private vehicle used to haul a trailer may not be paid under this section if any cost with respect to such private vehicle is payable under any other provisions of this Subpart E.

§ 617.48 Time and method of payment.

(a) Determinations. A State agency shall promptly make and record determinations necessary to assure an individual's entitlement to a relocation allowance at any time, before or after a certification covering the individual is made. No relocation allowance may be paid or advanced to an individual until the State agency determines that the individual is covered under a certification. A State agency shall make payment as promptly as possible upon determining that the individual is covered under a certification and is otherwise eligible.

(b) Travel and moving allowances. Allowances computed under §§ 617.46 and 617.47 shall be paid as follows:

1. Travel—(i) Transportation and subsistence. The amounts estimated under § 617.46 at 90 percent of the lowest allowable costs shall be paid in advance at the time an individual departs from the individual's residence to begin relocation or within 10 days prior thereto. An amount payable for a family member approved for separate travel shall be paid to the individual at the time of such family member's departure or within 10 days prior thereto.
(ii) Worker evidence. On completion of a relocation, the individual shall certify on forms furnished by the State agency as to the amount expended daily for lodging and meals. Receipts shall be required for all lodging and purchased transportation expenses incurred by the individual and family, if any, pursuant to the relocation. An adjustment shall be made if the amount of an advance is less or more than the amount to which the individual is entitled under § 617.46.

(2) Moving. The amount estimated under § 617.47 at 90 percent of the lowest allowable costs shall be paid:

(i) Commercial carrier. (A) If household goods and personal effects are moved by commercial carrier, 90 percent of the amount of the estimate submitted by the individual under § 617.47(a)(1) and approved by the State agency for covering the cost of such move, and 90 percent of the other charges approved by the State agency under § 617.47(a)(1) shall be advanced by check only to the carrier and insurer, and delivered to the individual at the time of the scheduled shipment or within 10 days prior thereto. On completion of the move, the individual shall promptly submit to the State agency a copy of the bill of lading prepared by the carrier, including a receipt evidencing payment of moving costs. The individual shall with such.submittal reimburse the State agency the amount, if any, by which the advance made under this paragraph (b)(1)(i) exceeds 90 percent of the actual moving costs approved by the State agency. The individual shall be paid the difference if the amount advanced was less than 90 percent of the actual moving costs approved by the State agency. (B) If noncommercial, a State agency may make direct arrangements for moving and insuring an individual's household goods and personal effects with a carrier and insurer selected by the individual and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. No such arrangement shall release a carrier from liability otherwise provided by law or contract for loss or damage to the individual's goods and effects. The United States shall not be or become liable to either party for personal injury or property loss damage under any circumstances.

(ii) Trailer or rental truck—(A) Private vehicle with trailer. If the move is by private vehicle and trailer, and if any, the allowable cost for the use of the private vehicle shall be made at the time payment is made under paragraph (b)(1) of this section.

(B) Rental trailer or rental truck. If the move is by rental trailer or rental truck:

§ 617.26(d), shall upon the filing of an initial application for TRA or other TAA promptly determine the individual's entitlement to such TRA or other TAA under this Part 617. and may accept for such purpose information and findings supplied by another State agency under this Part 617.

(b) Determinations of subsequent applications for TRA or other TAA. The State agency shall, upon the filing of an application for payment of TRA, or subsistence and transportation under §§ 617.27 and 617.28, with respect to a week, promptly determine whether the individual is eligible for a payment of TRA, or subsistence and transportation, with respect to such week, and, if eligible, the amount of subsistence and transportation, for which the individual is eligible. In addition, the State agency promptly shall, upon the filing of a subsequent application for job search allowances (where the total of previous job search allowances paid the individual was less than $600), determine whether the individual is eligible for job search allowances, and, if eligible, the amount of job search allowances for which the individual is eligible.

(c) Redeterminations. The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to a claim for UI under the applicable State law shall apply to determinations pertaining to all forms of TAA under this Part 617.

(d) Use of State law. In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 617.51, a State agency, a hearing officer, or a State court shall apply the regulations in this Part 617 and the substantive provisions of the Act. As to matters committed by the Act and this Part 617 to the applicable State law, a State agency, a hearing officer, or a State court shall apply the applicable State law and regulations thereunder, including procedural requirements of such State law or regulations, except so far as such State law or regulations are inconsistent with the Act or this Part 617 or the purpose of the Act or this Part 617.

(e) Notices to individual. The State agency shall notify the individual in writing of any determination or redetermination as to entitlement to TAA. Each determination or redetermination shall inform the individual of the reason for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of
entitlement to UI are subject to redetermination or appeal under the applicable State law.

(f) **Promptness.** Full payment of TAA when due shall be made with the greatest promptness that is administratively feasible.

(g) **Procedure.** Except where otherwise required by the Act or this Part 617, the procedures for making and furnishing determinations and written notices of determinations to individuals, shall be consistent with the Secretary’s “Standard for Claim Determinations—Separation Information,” Employment Security Manual, Part V, sections 6010-6015 (Appendix A of this part).

§ 617.51 Appeals and hearings.

(a) **Applicable State law.** A determination or redetermination under this Part 617 shall be subject to review in the same manner and to the same extent as determinations and redeterminations under the applicable State law, and only in that manner and to that extent. Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of a determination or redetermination under the State law where convenient or necessary. Procedures as to the right of appeal and opportunity for fair hearing shall be consistent with sections 303(a)(1) and (3) of the Social Security Act (42 U.S.C. 503(a)(1) and (3)).

(b) **Appeals promptness.** Appeals under paragraph (a) of this section shall be decided with a degree of promptness meeting the Secretary’s “Standard on Appeals Promptness—Unemployment Compensation” (Part 650 of this chapter). Any provisions of the applicable State law for advancement or priority of UI cases on judicial calendars, or otherwise intended to provide for prompt payment of UI when due, shall apply to proceedings involving entitlement to TAA under this Part 617.

§ 617.52 Uniform interpretation and application.

(a) **First rule of construction.** The Act and the implementing regulations in this Part 617 shall be construed liberally so as to carry out the purpose of the Act.

(b) **Second rule of construction.** The Act and the implementing regulations in this Part 617 shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act and this Part 617 throughout the United States.

(c) **Effectuating purpose and rules of construction.** (1) To effectuate the purpose of the Act and this Part 617 and to assure uniform interpretation and application of the Act and this Part 617 throughout the United States, a State agency shall forward, not later than 10 days after issuance, to the Department a copy of any judicial or administrative decision ruling on an individual’s entitlement to TAA under this Part 617. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual’s entitlement to TAA under this Part 617.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department’s interpretation of the Act or this Part 617, the Department may at any time notify the State agency of the Department’s view. Thereafter, the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department’s view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this Part 617, the Department may at any time notify the State agency of the Department’s view. If the determination, redetermination, or decision in question denies TAA to an individual, the steps outlined in paragraph (c)(2) of this section shall be followed by the State agency. If the determination, redetermination, or decision in question awards TAA to an individual, the benefits are “due” within the meaning of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. However, the State agency shall take the steps outlined in paragraph (c)(2) of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of TAA and a ruling consistent with the Department’s view, and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding TAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(4) (i) If any determination, redetermination, or decision, referred to in paragraph (c)(2) or paragraph (c)(3) of this section, is treated as a precedent for any future application for TAA, the Secretary will decide whether the Agreement with the State entered into under the Act and this Part 617 shall be terminated and § 617.52(b) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part 617, including any determination, redetermination, or decision referred to in paragraph (c)(2) or paragraph (c)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and § 617.52(f) applied and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (c)(2) or paragraph (c)(3) of this section, and shall be given an opportunity to present views and arguments if desired. Such request shall be made to the Secretary and may include views and arguments on the matters to be decided by the Secretary under paragraph (c)(4) of this section.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

(Approved by the Office of Management and Budget under control number 1205-0222)

§ 617.53 Subpoenas.

A State agency may issue subpoenas for attendance of witnesses and production of records on the same terms and conditions as under the State law. Compliance may be enforced on the same terms and conditions as under the State law, or, if a State court declines to enforce a subpoena issued under this
section, the State agency may petition for an order requiring compliance with such subpoena to the United States District Court within the jurisdiction of which the relevant proceeding under this Part 617 is conducted.

§ 617.54 State agency rulemaking.
A State agency may establish supplemental procedures not inconsistent with the Act or this Part 617 or procedures prescribed by the Department to further the effective administration of this Part 617. The exact text of such supplemental procedure or procedures, certified as accurate by a responsible official, employee, or counsel of the State agency, shall be submitted to the Department, on a form supplied by the Department. No supplemental procedure shall be effective unless and until approved by the Department. Approval may be granted on a temporary basis, not to exceed 90 days, in cases of administrative necessity. On reasonable notice to a State agency, approval of a supplemental procedure may be withdrawn at any time. If public notice and opportunity for hearing would be required under a State law for adoption of a similar or analogous procedure involving UI, such public notice and opportunity for hearing shall be afforded by the State agency as to the supplemental procedure.

(Approved by the Office of Management and Budget under control number 1205-022)

§ 617.55 Overpayments; penalties for fraud.
(a) Determination and repayment. (1) If a State agency or a court of competent jurisdiction determines that any individual has received any payment under the Act and this Part 617 to which the individual was not entitled, including a payment referred to in paragraph (b) or paragraph (c) of this section, such individual shall be liable to repay such amount to the State agency, and the State agency shall recover any such overpayment in accordance with the provisions of this Part 617; except that the State agency may waive the recovery of any such overpayment if the State agency determines, in accordance with the guidelines prescribed in paragraph (a)(2) of this section, that:
(i) The payment was made without fault on the part of such individual; and
(ii) Requiring such repayment would be contrary to equity and good conscience.

(2)(i) (A) In determining whether fault exists for purposes of paragraph (a)(1)(i) of this section, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know, that the individual was not entitled to the TAA payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(5) Whether there has been a determination of fraud under paragraph (b) of this section or section 243 of the Act.

(B) An affirmative finding on any one of the factors in paragraphs (a)(2)(i)(A) or (a)(2)(ii)(A) of this section precludes waiver of overpayment recovery.

(ii) (A) In determining whether equity and good conscience exists for purposes of paragraph (a)(1)(ii) of this section, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal, whether the State agency had given notice to the individual that the case has been appealed and that the individual may be required to repay the overpayment in the event of a reversal on appeal, and whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual.

(2) Whether recovery of the overpayment will cause extraordinary financial hardship to the individual, and there has been no affirmative finding under paragraph (a)(2)(ii)(A) of this section with respect to such individual and such overpayment.

(B) An affirmative finding on either of the foregoing factors in paragraphs (a)(2)(ii)(A) (1)-(2) of this section precludes waiver of overpayment recovery.

(C) (1) For the purpose of this paragraph (a)(2)(ii), an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual’s loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and an extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

(2) In applying this test in the case of attempted recovery by repayment, a substantial period of time shall be 90 days, and the foreseeable future shall be at least three months. In applying this test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making these determinations, the State agency shall take into account all potential income of the individual and the individual’s family and all cash resources available or potentially available to the individual and the individual’s family in the time period being considered.

(3) Determinations granting or denying waivers of overpayments shall be made only on request for a waiver determination. Such request shall be made on a form which shall be furnished to the individual by the State agency. Notice of determination of overpayments shall include an accurate description of the waiver provisions of paragraph (a) of this section, if the State agency has elected to allow waivers of TAA overpayments.

(4) (7) Unless an overpayment is otherwise recovered, or is waived under paragraph (a) of this section, the State agency shall recover the overpayment by deductions from any sums payable to such individual under:

(A) The Act and this Part 617;

(B) Any Federal unemployment compensation law administered by the State agency; or

(C) Any other Federal law administered by the State agency which provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(ii) In addition, a State agency may recover the overpayment from unemployment insurance payable to such individual under the State law.

(iii) No single deduction under this paragraph (a)(4) shall exceed 50 percent of the amount otherwise payable to the individual, and when a deduction is made it shall be 50 percent of the amount actually payable.

(b) Fraud. If a State agency or a court of competent jurisdiction finds that an individual:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact; or

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(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under the Act and this Part 617 to which the individual was not entitled. Such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under the Act and this Part 617.

(c) Training, job search and relocation allowances. (1) If an individual fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under the Act and this Part 617 to such individual, that is not necessarily expended in attempting to complete such training, job search, or relocation, shall constitute an overpayment.

(2) If an individual fails, without good cause, to complete training, a job search, or a relocation, any payment made under the Act and this Part 617 to or on behalf of such individual shall constitute an overpayment.

(3) Such overpayments shall be recovered or waived as provided in paragraph (a) of this section.

(d) Final determination. Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a) of this section by the State agency has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(e) Deposit. Any amount recovered by a State agency under this section shall be deposited into the fund from which payment was made.

(f) Procedural requirements. (1) The provisions of paragraphs (c), (e), and (g) of §617.50 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of §617.51 shall apply to determinations and redeterminations made pursuant to this section.

(g) Fraud detection and prevention. State procedures for the detection and prevention of fraudulent overpayments of TAA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection," Employment Security Manual, Part V, sections 7510-7515 (Appendix B of this part).

(h) Debts due the United States or Others. (1) Notwithstanding any provision of this Part 617, TAA payable to an individual under the Act and this Part 617 shall be applied by the State agency for the recovery by offset of any debt due the United States from the individual.

(2) TAA shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person, except that TRA payable to an individual shall be payable to someone other than the individual if required by State law and Federal law to satisfy the individual's obligations for child support or alimony.

§617.56 Inviolable rights to TAA. Except as specifically provided in this Part 617, the rights of individuals to TAA shall be protected in the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law. Such measures shall include protection of applicants for TAA from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to TAA, except as provided in §617.55. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to TAA.

§617.57 Recordkeeping; disclosure of information. (a) Recordkeeping. Each State agency will make and maintain records pertaining to the administration of the Act as the Secretary requires and will make all such records available for inspection, examination and audit by such Federal officials as the Secretary may designate or as may be required by law. Such recordkeeping will be adequate to support the reporting of TAA activity on reporting form ETA 563 approved under OMB control number 1205-0016.

(b) Disclosure of information. Information in records maintained by a State agency in administering the Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information shall not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the employer or other person for the purposes of this Part.

617. This provision on the confidentiality of information maintained in the administration of the Act shall not apply, however, to the Department or for the purposes of §617.55 or paragraph (a) of this section, or in the case of information, reports and studies required pursuant to §617.61, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the Department promulgated thereunder (see 29 CFR Parts 70 and 70a).

§617.58 Unemployment insurance. Unemployment insurance payable to an adversely affected worker shall not be denied or reduced for any week by reason of any right to a payment of TAA under the Act and this Part 617.

§617.59 Agreements with State agencies. (a) Authority. Before performing any function or exercising any jurisdiction under the Act and this Part 617, a State or a State agency shall execute an Agreement with the Secretary meeting the requirements of the Act.

(b) Execution. An Agreement under paragraph (a) of this section shall be signed on behalf of a State by an authorized official of the State and the signature shall be dated. The authority of the official shall be certified by the Attorney General of the State or counsel for the State agency, unless the Agreement is signed by the Governor of the State. An Agreement will be executed on behalf of the United States by the Secretary.

(c) Public access to Agreements. The State agency will make available to any individual or organization an accurate copy of the Agreement with the Agency for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

(d) Amended Agreement. A State or State agency shall execute an amended Agreement with the Secretary prior to administering any amendments to the TAA provisions of the Trade Act of 1974.

(e) Agent of United States. In making determinations, redeterminations, and in connection with proceedings for review thereof, a State or State agency which has executed an Agreement as provided in this section shall be an agent of the United States and shall carry out fully the purposes of the Act and this Part 617.

(f) Breach. If the Secretary finds that a State or State agency has not fulfilled its
commitments under its Agreement under this section, section 3302(c)(3) of the Internal Revenue Code of 1954 shall apply. A State or State agency shall receive reasonable notice and opportunity for hearing before a finding is made under section 3302(c)(3) whether there has been a failure to fulfill the commitments under the Agreement.

(g) Secretary's review of State agency compliance. The appropriate Regional Administrator shall be initially responsible for the periodic monitoring and review of State and State agency compliance with the Agreement entered into under this section.

§ 617.60 Administration absent State Agreement.

In any State in which no Agreement under § 617.59 is in force, the Secretary shall administer the Act and this Part 617 and pay TAA hereunder through appropriate arrangements made by the Department, and for this purpose the Secretary or the Department shall be substituted for the State agency wherever appropriate in this Part 617. Such arrangements shall include the requirement that TAA be administered in accordance with the Act and this Part 617, and the provisions of the appropriate State law except to the extent that such State law is inconsistent with any provision of the Act or this Part 617 or section 303 of the Social Security Act (42 U.S.C. 503) or section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)), and shall also include provision for a fair hearing for any individual whose application for TAA is denied. A final determination under this section as to entitlement to TAA shall be subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

§ 617.61 Information, reports, and studies.

A State agency shall furnish to the Secretary such information and reports and conduct such studies as the Secretary determines are necessary or appropriate for carrying out the purposes of the Act and this Part 617.

§ 617.62 Transitional procedures.

The procedures for administering the Agreement arrangements made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) are as follows:

(a) TRA. The provisions contained in Subpart B of this Part 617 shall apply with respect to the qualifying requirements for TRA for adversely affected workers who are separated on or after October 1, 1981, and were not entitled to TRA for any week of unemployment beginning before October 1, 1981. In addition, such provisions shall apply to TRA payable for weeks of unemployment beginning after September 30, 1981, to adversely affected workers separated before October 1, 1981. Any adversely affected worker entitled to TRA for any week of unemployment beginning before October 1, 1981, shall be entitled to TRA as follows:

(1) Weeks before October 1, 1981. For weeks of unemployment beginning before October 1, 1981, TRA eligibility shall be determined under the provisions of the law and regulations in effect before the amendments made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

(2) Weeks after September 30, 1981. (i) Basic weeks (UI exhaustion). For any week of unemployment beginning after September 30, 1981, TRA eligibility for an individual who has exhausted all rights to UI prior to such week shall be determined under Subpart B of this Part 617, except that the maximum amount of basic TRA payable to the individual for any such week of unemployment shall be an amount equal to the product of the amount of TRA payable to the individual for a week of total unemployment (as determined under § 617.13(a)) multiplied by a factor determined by subtracting from fifty-two the sum of:

(A) The number of weeks preceding the first week which begins after September 30, 1981, including all weeks in the individual's first benefit period, and which are within the period covered by the same certification as such week of unemployment, for which the individual was entitled to a payment of TRA or UI (or would have been entitled to a payment of TRA or UI if the individual had applied therefor); plus

(B) The number of weeks preceding such first week that are deductible under section 222(d) of the Trade Act of 1974 in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1981.

(C) The amount of TRA payable to an individual under this paragraph (a)(2)(i) shall be subject to adjustment on a week-to-week basis as may be required by § 617.13(b).

(ii) Basic weeks UI entitlement. For any week of unemployment beginning after September 30, 1981, TRA eligibility for an individual who still has entitlement to UI shall be discontinued until the individual exhausts all rights to UI as provided in § 617.11(a)(5). After exhaustion of all rights to UI, payment of TRA shall be determined under Subpart B of this Part 617, except that the maximum amount of basic TRA payable to the individual for ensuing weeks of unemployment shall be an amount equal to the remainder of:

(A) The maximum amount of basic TRA as computed under paragraph (a)(2)(i) of this section minus

(B) The total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) for weeks beginning after September 30, 1981.

(iii) Additional weeks. With respect to any week of unemployment beginning after September 30, 1981, for an individual who is in training approved under section 236 of the Trade Act of 1974, and who was receiving TRA for basic or additional weeks beginning before October 1, 1981, the weekly amount of TRA for any additional weeks beginning after September 30, 1981, shall be determined under Subpart B of this Part 617.

(3) Transitional eligibility period. (i) Basic weeks. Any individual who was eligible for a basic TRA payment for any week beginning before October 1, 1981, shall not be eligible for a basic TRA payment for any week beginning after September 30, 1981, and which begins more than 52 weeks after the individual has exhausted all rights to regular compensation in the first benefit period (as provided in § 617.15(a)).

(ii) Additional weeks. Any individual who was eligible for a TRA payment for an additional week beginning before October 1, 1981, shall not be eligible for a TRA payment for any additional week beginning after September 30, 1981, unless such additional week begins within:

(A) 26 weeks after the last week of the individual's entitlement to basic TRA, or

(B) 78 weeks after the individual exhausted regular compensation in the first benefit period, whichever occurs first (as provided in § 617.15).

(b) Training, other reemployment services, and allowances. (1) Applications for training filed before October 1, 1981, concerning the approval of such training after September 30, 1981, shall be determined under Subpart C of this Part 617.

(2) Applications for transportation and subsistence payments while in training, and job search and relocation allowances filed after September 30, 1981, shall be determined under the applicable Subpart C, D, or E of this Part 617.

(3) Individuals who have had self-financed training approved prior to October 1, 1981, shall not be reimbursed for training and related expenses.
incurred while in such training. 
However, such individuals may have
their eligibility for approved training
considered under the criteria outlined in the
amended or added provisions of the Act
and in § 617.22, and, if approved, shall be
entitled to have post-approval training
costs paid.
(c) Fraud and recovery of
overpayments. The fraud and
overpayment recovery provisions of this
Subpart F shall take effect on August 13,
1981, and shall apply to all
overpayments outstanding on that date
or determined on or after that date.
(d) Required amendments to State
law. The provisions of section
2514(a)(2)(D) of the Omnibus Budget
Reconciliation Act of 1981 (Pub. L. 97–
35) [relating to amendment of State
laws] shall apply to State laws for the
purposes of certifications under section
3303(c) of the Internal Revenue Code of
1984 on October 51 of any taxable year
after 1984, and in any State in which the
legislature of that State—
(1) Does not meet in a session which
begins after August 13, 1981, and before
September 1, 1982, and
(2) If in session on August 13, 1981,
and does not remain in session for at
least 25 calendar days thereafter, the
date of "1981" in this paragraph (d) shall
be deemed to be "1982."
§ 617.63 Savings clause.
The amendments to the Act made by
Title XXV of the Omnibus Budget
Reconciliation Act of 1981 (Pub. L. 97–
35) shall not abate or otherwise affect
entitlement to TAA under the Trade Act
of 1974 or any appeal which was
pending on October 1, 1981, or on the
date of enactment of any such
amendment, as applicable, or prevent
any appeal from any determination
thereunder which did not become final
prior to such applicable date if appeal or
petition is filed within the time allowed
for appeal or petition.
§ 617.64 Termination of TAA Program
Benefits.
The following rules are applicable to
the termination of TAA benefits under the
Act:
(a) No application for TAA, or
transportation or subsistence payment
while in training approved under
Subpart C of this Part 617, shall be
approved, and no payment of TAA, or
transportation or subsistence, shall be
made, for any week which begins after
the termination date specified in the
Act.
(b) No payment of job search or
relocation allowances shall be made after
the termination date specified in the
Act, unless an application for such
allowances was approved, and such job
search or relocation was completed, on
or before such termination date.
(c) No training under Subpart C of this
Part 617 shall be approved unless a
determination regarding the approval of
such training was made, and such
training commenced, on or before the
termination date specified in the Act.
Consistent with the requirements of section
236(a)(1) of the Act, the
availability of funds stipulation in
§ 617.22(a), and the termination
provisions of this paragraph (c),
resources may be committed on or
before the termination date specified in
the Act to cover tuition related expenses
which are obligated on or before such
termination date.
Appendix A—Standard for Claim
Determinations—Separation Information
6010 Federal Law Requirements. Section
3303(a)(1) of the Social Security Act requires
that a State law include provision for:
"Such methods of administration . . . as
are found by the Secretary to be reasonably
calculated to insure full payment of
unemployment compensation when due."
Section 3303(a)(3) of the Social Security Act
requires that a State law include provision for:
"Opportunity for a fair hearing before an
impartial tribunal, for all individuals whose
claims for unemployment compensation are
denied.
Section 3303(a)(4) of the Federal
Unemployment Tax Act and section 3303(a)(5)
of the Social Security Act require that a State
law include provision for:
"Expenditure of all money withdrawn from
an unemployment fund of such State, in the
payment of unemployment compensation. . . ."
Section 3303(b) of the Federal
Unemployment Tax Act defines
"compensation" as "cash benefits payable to
individuals with respect to their
unemployment."
6011 Secretary's Interpretation of Federal
Law Requirements. The Secretary interprets
the above sections to require that a State law
include provision for:
A. Individuals who may be entitled to
unemployment compensation are furnished
such information as will reasonably afford
them an opportunity to know, establish, and
protect their rights under the unemployment
compensation law of such State, and
B. The State agency obtains and records in
time for the prompt determination and review
of benefit claims such information as will
reasonably insure the payment of benefits to
individuals to whom benefits are due.
6012 Criteria for Review of State Law
Conformity with Federal Requirements:
In determining the conformity of a State
law with the above requirements of the
Federal Unemployment Act and the
Social Security Act as interpreted by the
Secretary, the following criteria will be
applied:
A. Is it required that individuals who may
be entitled to unemployment compensation
be furnished such information of their
potential rights to benefits, including the
manner and places of filing claims, the
reasons for determinations, and their rights of
appeal, as will reasonably insure their
reasonable opportunity to know, establish, and
protect their rights under the law of the State?
B. Is the State agency required to obtain, in
time for prompt determinations of rights to
benefits such information as will reasonably
insure the payment of benefits to individuals
to whom benefits are due?
C. Is the State agency required to keep
records of the facts considered in reaching
determinations of rights to benefits?
6013 Claim Determinations Requirements
Designed To Meet Department of Labor
Criteria:
A. Investigation of claims. The State
agency is required to obtain promptly and
prior to a determination of an individual's
right to benefits, such facts pertaining thereto
as will be reasonably sufficient to insure the
payment of benefits when due.
This requirement embraces five separate
elements:
1. It is the responsibility of the agency
to take the initiative in the discovery of
information. This responsibility may not be
passed on to the claimant or the employer. In
addition to the agency's own records, this
information may be obtained from the
worker, the employer, or other sources. If
the information obtained in the first instance
discloses no essential disagreement and
provides a sufficient basis for a fair
determination, no further investigation is
necessary. If the information obtained from
other sources differs essentially from that
furnished by the claimant, the agency, in
order to meet its responsibility, is required to
inform the claimant of such information from
other sources and to afford the claimant an
opportunity to furnish any further facts he
may have.
2. Evidentiary facts must be obtained as
distinguished from ultimate facts or
conclusions. That a worker was discharged
for misconduct is an ultimate fact or
conclusion; that he destroyed a machine upon
which he was working is a primary or
evidentiary fact, and the sort of fact that the
requirement refers to.
3. The information obtained must be
sufficient reasonably to insure the payment
of benefits when due. In general, the
investigation made by the agency must be
complete enough to provide information upon
which the agency may act with reasonable
assurance that its decision is consistent with
the unemployment compensation law. On the
other hand, the investigation should not be so
exhaustive and time-consuming as unduly to
delay the payment of benefits and to result in
excessive costs.
4. Information must be obtained promptly
so that the payment of benefits is not unduly
delayed.
5. If the State agency requires any
particular evidence from the worker, it must
give him a reasonable opportunity to obtain
such evidence.
B. Recording of facts. The agency must
keep a written record of the facts considered
in reaching its determinations.
C. Determination notices:  
1. The agency must give each claimant a written notice of determination with respect to his benefit year. 
   a. Any monetary determination with respect to his benefit year; 
   b. Any determination with respect to purging a disqualification if, under the State law, a condition of disqualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has not met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing. 
   c. Any other determination which adversely affects his rights to benefits, except that written notice of determination need not be given with respect to: 
      (1) A week in a benefit year for which the claimant’s weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2(f); 
      (2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraph 2(f); 
   2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal. 
   The written notice of monetary determination must contain the information specified in the following items (except h) unless an item specifically is not applicable. 
   a. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination. 
   b. Base period wages. The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show deductions for earnings.) 
   c. Employer name. The name of the employer who reported the wage is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript. 
   d. Explanation of benefit formula--weekly and maximum benefit amounts. 
   e. Information as to benefits for partial unemployment. This item must be included in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant’s rights to partial benefits for any week with respect to which he is working less than his normal customary full time because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made. 
   f. Deductions from weekly benefits: 
      (1) Earnings. Although written notice of determinations deducting earnings from a claimant’s weekly benefit amount is generally not required (see paragraph 1(c)(1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction, and sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request readetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law, the application of the law, an explanation of the change shall be included. 
      When claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information: 
      (a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction; 
      (b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and 
      (c) A clear statement of his right to protest, request a readetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, readetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action. 
      1. Other deductions: 
      (a) A written notice of determination is required with respect to the first week in claimant’s benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant’s benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request readetermination, or appeal. 
      (b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (a) (1) or (b) or (c) or any other provision of this Act. This notice must describe the deduction made from claimant’s benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request readetermination, or appeal. 

each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction is made; (iv) that the claimant will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

8. Seasonality factors. If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determinations.

h. Disqualification or ineligibility. If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which ineligibility was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause." Rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. Appeal rights. The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal, or if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest or redetermination for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered if a requirement.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your appeal, protest; redetermination) rights, see pages..." of the..." (name of pamphlet or booklet) heretofore furnished to you.

6014 Separation Information Requirements Designed To Meet Department of Labor Criteria:

A. Information to agency. Where workers are separated, employers required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods. When workers are separated and the notices are obtained on a deterministic basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days. When workers are separated and notices are obtained upon separation, it is essential that the employer send the notice to the agency with sufficient promptness to assure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. Information to worker.

1. Information required to be given. Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and continuing information for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.


The information and instructions required above may be given in any of the following ways:

a. Posters prominently displayed in the employer's establishment. The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. Leaflets. Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. Individual notices. Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.


If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be notified that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, §601.5.
Appendix B—Standard for Fraud and Overpayment Detection

7510 Federal Law Requirements. Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

“Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due.” Section 1603(a)(4) of the Internal Revenue Code and section 303(a)(5) of the Social Security Act require that a State law include provision for:

“Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . .”

Section 1607(h) of the Internal Revenue Code defines “compensation” as “cash benefits payable to individuals with respect to their unemployment.”

7511 The Secretary’s Interpretation of Federal Law Requirements. The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 Criteria for Review of State Conformity With Federal Requirements. In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants’ entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency’s procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual unit, as a basic function, the responsibility of making or functioning directly such investigations?

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both; and
2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and
3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make it practical to assign a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;
(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agent for another State);
(c) The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so-called “post-audit” is a matching of central office wage-record files against benefit payments for the same period. “Industry surveys” or “mass audits” are done in some States by going directly to employers for payroll information to be checked against concurrent benefit lists. A plan of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. Are adequate records maintained by which the results of investigations may be evaluated?

Explanation: To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measured against the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basic for drawing a clear distinction between fraud and error.

C. Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter future claimants?

Explanation: To meet this criterion, the State agency must issue adequate material of claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This action is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant’s rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

7515 Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments. If the methods of employment administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State’s alternative methods of administration meet the criteria.

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20 CFR Part 617

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending the regulations implementing the program of trade adjustment assistance for workers (TAA Program) provided under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93-618). This final rule implements the amendments to the Trade Act of 1974 in sections 2671 and 2672 of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

Sections 2671 and 2672 of Pub. L. 98-369 amended the Trade Act of 1974 (1) to enable workers to receive up to 26 additional weeks of trade readjustment allowances (TRA) by beginning the additional 26-week period with the first week the worker is in training, if such training is approved after the last week of basic TRA entitlement, and (2) to increase the maximum amount payable for job search allowances and the maximum lump sum amount payable for relocation allowances from $600 to $300.

The proposal was published in the Federal Register on April 15, 1985, 50 FR
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14720, and was numbered Part 635. The final rule is renumbered Part 617.

Note.—Chapter 2 of Title II of the Trade Act of 1974 was further amended by Title XIII, Subtitle A, Part 1 of Pub. L. 99-272. The Consolidated Omnibus Budget Reconciliation Act of 1985, April 7, 1986. The Title XIII amendments do not affect the provisions in this final rule. However, the Department is currently drafting changes to Part 617 to implement the 1986 amendments to the statute. At this writing changes in this document are being made to Part 617 as published elsewhere in today’s issue, and become effective on the day following the date on which Part 617 becomes effective.


FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, 201 D Street NW., Washington DC 20213; telephone (202) 376-2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes in the TAA Program for workers displaced from employment because of increased imports of articles like or directly competitive with articles produced by the workers. 19 U.S.C. 2271 et seq. On the filing of a petition by a group of workers or their representative, the Department of Labor (Department) conducts a factfinding investigation of adverse impact of imports and if it finds that the workers of a firm or a subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the adversely affected workers are eligible to apply for Trade Adjustment Assistance (TAA). In the Deficit Reduction Act of 1984 further changes were made in the TAA Program. Pub. L. 98-369, §§ 2671 and 2672. These final regulations implement those changes.

The amended TAA provisions are designed to help certified workers who apply for occupational training and additional weeks of TAA on a timely basis to avoid losing weeks of TAA because of delays in the approval of training for reasons beyond workers’ control. The amendments are also designed to pay higher job search allowances and relocation allowances.

Discussion of Comments and Changes

The Department received timely written responses from six State employment security agencies. Puerto Rico and Colorado endorsed the proposed regulations: West Virginia and Nevada raised issues and questions that are applicable to proposed regulations issued on March 4, 1983, 48 FR 9444, to implement amendments to the Trade Act of 1974 in Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) and, therefore, are outside the scope of these regulations. These issues and questions will be addressed in separate correspondence.

Michigan and New York submitted comments and suggested changes which were given full consideration before preparing final regulations.

1. The proposed regulation at § 635.15(b) concerns the payment of 28 additional weeks of TAA in the 26-week period that follows the last week of entitlement to basic TAA otherwise payable to the individual; or begins with the first week of such training, if the training is approved after the last week of entitlement to basic TAA. The New York Department of Labor suggests that the phrase “... if the training commences after the last week ...” be substituted for “... if the training is approved after the last week ...” since it would better serve the intent of the statutory amendment by assuring that workers’ weeks of eligibility for additional TAA are not diminished while waiting for approval for training to begin. New York points out that training approval must precede the start date of such training by several weeks to allow for negotiation and processing of financial agreements with training facilities. The rule as published would, consequently, restrict the worker’s eligibility for additional weeks of TAA in those cases where training is approved before the last week of entitlement to basic TAA but training is scheduled to start after that week.

The Department does not concur with the suggestion since the language of the regulation concerning the approval of training after the last week of basic TAA entitlement corresponds with the specific language of section 233(a)(3)(B) of the Trade Act as amended by section 2671 of Pub. L. 98-369 and is not subject to change by regulation. 19 U.S.C. 2290(a)(3)(B).

2. The proposed regulation at § 635.15(b) concerns the applicability of the new provision contained in § 635.15(b) for additional weeks of TAA when training begins after the last week of basic TAA entitlement. This new provision applies to workers who applied for training on or after December 16, 1983, and whose training applications were approved on or after July 16, 1984. The Michigan Employment Security Commission (MESC) points out that the amendment is intended to prevent workers from losing additional weeks of TAA because of delays in placing them in training. If this is the intent, then the provision should apply “... if the training is approved to begin after July 18, 1984.”

As the proposed rule is now written, MESC claims that workers who begin training on the same date could have different eligibility for additional weeks of TAA depending on their approval date. MESC also claims that the inequity would be eliminated if the regulation is revised to read “... approved to begin after July 18, 1984.”

The Department does not concur with the suggestion because use of the term “approved” corresponds to section 233(a)(3)(B) of the Trade Act as amended by section 2671 of Pub. L. 98-369 and is not subject to change by regulation. 19 U.S.C. 2290(a)(3)(B).

3. MESC also claims the December 16, 1983 date used in the proposed rule is not in the law and prevents unnecessarily, another inequity for workers who apply for training before December 16, 1983 and were not approved until or after July 18, 1984. These workers would be ineligible for additional weeks of TAA under the new legislation because of delays in approving their training. MESC claims the intent of the law would be better served by removing the December 16, 1983 date from the proposed rule since the July 18, 1984 date will sufficiently limit applicability of the new provision.

The Department agrees that the December 16, 1983, date is not required by statute and, therefore, is deleted.

4. The proposed regulations at § 635.65(b) increases the maximum amount payable to eligible workers whose application for additional allowances are approved after July 18, 1984. The MESC recommends that the rule be changed to be made effective for applications “... that are filed on or after July 18, 1984.” It claims the change would conform to the transition for changes in the proposed TAA rule published in the Federal Register on March 4, 1983 (48 FR 9444) [proposed regulation implementing the amendments to the Trade Act of 1974 made by Title XXV of the Omnibus Budget Reconciliation Act of 1981] which are effective based on job search application filing date. To use the approval date, the MESC claims, presents operational problems because it is not clear what constitutes approval of a job search application. It stated that a job search is not actually approved until it is paid, after the job search is ended and all verifications and receipts are received.

The Department does not concur in the recommended change. The term “approved” was used because it encompasses a larger universe of
eligible workers than the term "filed." Moreover, the proposed regulation at § 635.31(c) establishes time limits for filing for job search allowances but not for approval. Anticipated operational problems on what constitutes approval can be alleviated by following standard contracting procedures which require written approval prior to incurring expenditures of program funds. However, one clarifying change is made in § 635.65(b)[2] relating to eligibility for the increase in aggregate job search allowances if the full $600 had not been approved prior to July 18, 1984.

5. The proposed regulation at § 635.65(c) increases the lump sum amount payable to eligible workers whose applications for relocation are approved on or after July 18, 1984. MESC recommended the same change as presented for item 4 above, i.e., "... filed on or after July 18, 1984."

The Department does not concur in the recommended change for the same reasons as given in response to Item 4 above.

Classification—Executive Order 12291

The final rule is not classified as a "major rule" under Executive Order 12291, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Any added costs to the extent that they exist do not represent new burdens imposed by the final rule, but rather are direct statutory obligations. Accordingly, no regulatory impact analysis is required.

Trade Sensitive Activity

The Department believes that the final regulations do not involve trade sensitive activities. This determination is predicated upon the fact that the TAA Program is a domestic program designed to provide assistance to workers adversely affected by import competition and, as such, does not fall within the scope of the Office of Management and Budget's definition of a trade sensitive activity.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. While this rule may affect those agencies in small States that administer the TAA Program, most current TAA Program recipients are generally concentrated in larger industrial States, where jobs have been "hardest hit" by foreign import competition.

States may find some increased administrative costs for reviewing worker applications for training and TRA payments on file when the statutory changes are implemented. However, most of the operating mechanisms needed for the proposed TAA program are in place through the State employment security agencies, including benefit payments, appeals, work search and work test procedures and relocation allowances payment and approval of training assistance. This will assure that any additional administrative cost are minimal. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance as No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade adjustment assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

Words of Issuance

For the reasons set out in the preamble, Part 617 of Title 20 of the Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on December 12, 1986.
Roger D. Semerad,
Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

1. The authority for Part 617 continues to read as follows: Authority: 19 U.S.C. 2323; Secretary's Order No. 3–61, 46 FR 3117.

2. Paragraphs (b) and (c) of § 617.15 are revised to read as follows:

§ 617.15 Duration of TRA.

(b) Additional weeks. (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, as individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

3. Paragraph (b) of § 617.34 is revised to read as follows:

§ 617.34 Amount.

(b) Limit. The total job search allowances paid to an individual under a certification may not exceed $800, regardless of the number of job searches undertaken by the individual. The amount otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.

4. In § 617.45, the introductory text of (a) is republished, and paragraph (a)(3) is revised to read as follows:

§ 617.45 Amount.

(a) Items allowable. The amount payable as a relocation allowance shall include the following items:

(b) Additional weeks. (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, as individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

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(b) Additional weeks. (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, as individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

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§ 617.45 Amount.

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(b) Additional weeks. (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, as individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

3. Paragraph (b) of § 617.34 is revised to read as follows:

The procedures for administering the Trade Act of 1974 as amended by the Deficit Reduction Act of 1984 are as follows:

(a) TRA. (1) The provisions in Subpart B of this Part 617 shall apply to workers who would lose additional weeks of TRA payments because of delays in approving applications for training. Workers who filed timely, bona fide applications for training shall be eligible to receive additional weeks of TRA payments beginning the first week of training when their applications for training are approved on or after July 18, 1984, and the first week of such training begins later than the first week which follows the last week of entitlement to basic TRA.

(2) Workers whose applications for training were approved prior to July 18, 1984, are covered under the provisions of the Trade Act of 1974 as in effect prior to July 18, 1984, and are not entitled to additional weeks of TRA by reason of the amendment in section 2671 of the Deficit Reduction Act of 1984 or § 617.15(b) of this Part.

(b) Job Search Allowances. (1) The provisions in Subpart D of this Part 617 shall apply to timely applications for job search allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for job search allowances that were filed timely but were approved before July 18, 1984, are covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984, and are not entitled to receive the increase in the lump sum allowance level provided in section 2672(a) of the Deficit Reduction Act of 1984 and § 617.34(b) of this Part.

(c) Relocation allowances. (1) The provisions in Subpart E of this Part 617 shall apply to timely applications for relocation allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for relocation allowances were filed timely but were approved before July 18, 1984, are covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984, and are not entitled to receive the increase in the lump sum allowance level provided in section 2672(b) of the Deficit Reduction Act of 1984 and § 617.45(a)(3) of this Part.