DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 635

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulations for 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). These proposed 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). These proposed regulations also reorganize and revise the existing rules to state the rights and obligations of workers for services and allowances, and to clarify the responsibilities of the Secretary of Labor and the State agencies. The setting forth of this information in each part dealing with a separate program conforms to the more recent practice in writing regulations for unemployment compensation and related benefit programs.

DATE: Written comments on these proposed regulations must be received by the Department of Labor on or before April 4, 1983.

ADDRESS: Send comments on these proposed regulations to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 “D” Street, NW., Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in Room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Goldberg, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 “D” Street, NW., Washington, D.C. 20213; telephone: (202) 376–7032 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes in the TAA Program for workers displaced by increased imports of articles like or directly competitive with articles produced by the workers. On the filing of a petition by a group of workers or their representative, the Department of Labor conducts an investigation of adverse impact of imports, and if it is found 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 Title XXV of the Omnibus Budget Reconciliation Act of 1981 further major changes were made in the TAA Program. In today’s proposal, the regulations for the TAA Program are extensively revised to implement those changes and to make other improvements and clarify the regulations.

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 who are separated from employment adversely affected by imports are eligible for reemployment services and allowances immediately after the Department of Labor issues a certification of eligibility to apply for TAA, but 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 amounts 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 TRA not to exceed an amount derived by multiplying the TRA weekly benefit amount by 52. 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 UI claimants, except when the workers are engaged in training approved under the Act or training approved under State law.

Workers in training approved under the Act may receive up to 26 additional weeks of TRA in order 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.

These proposed regulations also make other changes, including technical and clarifying changes.

The significant changes proposed in this document are:

1. Section 635.11(a)(2) requires, for purposes of TRA entitlement, that a worker’s first separation from adversely affected employment must occur: (a) On or after the impact date stated in the certification; (b) before the expiration of the two-year period beginning on the date of the certification; and (c) before the termination date, if any, of the certification.

“First separation” is defined as the worker’s first total or partial separation from adversely affected employment on or most closely following the impact date of the certification under which the worker is covered, and which occurs before or within the worker’s first UI benefit period.

The “date of separation” is defined to mean: (a) With respect to a total separation, the last day the worker worked in adversely affected employment, except that if the worker was on employer-authorized leave, it would mean the last day the worker would have worked in such employment had the worker been working; and (b) with respect to a partial separation, the last day of the week in which the partial separation occurred.

2. Section 635.11(a)(3) removes the limitation whereby only weeks of employment in the 52 weeks “immediately preceding” the worker’s total or partial separation can be counted as qualifying weeks for TRA entitlement. Under the 1981 amendments, the week of employment in which the worker’s separation occurs will be included as one of the weeks in the 52-week qualifying period.

In addition, § 635.11(a)(3) provides that any week a worker is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training, does not work because of a disability that is compensable under a State or Federal workers’ compensation law or plan, or...
has had employment interrupted in order 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. Not more than 3 weeks of such employer-authorized leave or leave to serve as a full-time union representative (or both), or not more than 7 weeks of disability covered by workers' compensation, or not more than 7 weeks total, combining weeks of disability and not more than 3 weeks of employer-authorized or union representation leave (or both), may be counted as weeks of employment for this purpose.

3. Section 635.11(a)(4) requires, for purposes of TRA entitlement, that a worker must have been entitled to UI (or would have been entitled if the worker applied therefore) for a week within the UI benefit period established after the worker's first separation, or within the UI benefit period in which such separation occurred.

"Benefit period" is defined as: (a) The benefit year and any ensuing period, as determined under State law, during which a worker is eligible for regular UI, additional UI, or EB; or (b) the equivalent of such a benefit year or ensuing period provided for under Federal UI law.

"UI" is defined as unemployment compensation payable to a worker under any State or Federal unemployment compensation law, including chapter 65, title 5, of the United States Code, and the Railroad Unemployment Insurance Act. This term includes regular UI, additional UI, and EB. (It also will include any temporary Federal supplemental compensation during periods when such compensation is payable.)

4. Section 635.11(a)(5) requires, for purposes of TRA entitlement, that a worker must have exhausted all rights to UI to which the worker was entitled under State or Federal law. Once the worker has exhausted all rights to UI, the worker will be entitled to TRA payments except for any week the worker is entitled to a payment of any further UI or waiting period credit.

"Exhaustion of UI" is defined as exhaustion of all rights to UI in a benefit period by reason of: (a) Having received all UI to which a worker was entitled under State or Federal UI law with respect to such benefit period; or (b) the expiration of such benefit period.

Under the 1981 amendments, once a worker has exhausted all rights to UI in the UI benefit period in existence or established after the worker's first separation, the worker may not be determined to have a subsequent exhaustion of rights to UI under that same certification. The purpose of this is to limit a worker to one period of entitlement to TRA under a particular certification, and to preclude establishing entitlement to a second period of TRA following a subsequent UI benefit period. However, the worker will be eligible to collect any remaining amount of the original TRA entitlement if the worker is still within the TRA eligibility period following exhaustion of UI in a subsequent UI benefit period.

5. Section 635.11(a)(8) requires workers, as a condition of eligibility for receiving TRA for any week, to apply for and accept offers of work and actively seek work in accordance with the provisions of conforming State law which apply to EB claims. The EB work test requires that claimants, whose prospects of returning to work are not good, will be disqualified in the event they fail to apply for, or accept offers of, "suitable work," as defined for EB purposes, or to actively seek such work. The EB work test does not apply to workers engaged in training approved under the Act or in training approved under State law.

6. Section 635.11(b) specifies the first week a worker is eligible for a TRA payment. Such first week is the later of: (a) The first week of unemployment which begins more than 60 days after the date of filing the petition that resulted in the certification under which the worker is covered; or (b) the first week after the worker exhausts UI. The purpose of this amendment is to encourage timely petitions before exhaustion of UI, thereby reducing the frequency of retroactive lump sum TRA payments.

"Week of unemployment" is defined as a week of total, part-total, or partial unemployment, as determined under State or Federal UI law.

7. Section 635.13 provides that the TRA weekly benefit amount payable to a worker for a week of total unemployment shall be equal to the most recent UI weekly benefit amount (including dependents' allowances) payable to the worker for a week of total unemployment preceding the worker's first exhaustion of UI. In a State in which weeks of UI are paid at varying amounts, related to wages with separate employers, the TRA weekly benefit amount shall be calculated the same as the EB weekly benefit amount is calculated. In addition, if a State calculates a base amount of UI and calculates dependents' allowances on a weekly supplemental basis, TRA weekly benefit amounts will be calculated in the same manner.

The TRA weekly benefit amount is reduced by: (a) Income deductible from UI under the disqualifying income provisions of State or Federal UI law; and (b) the amount of a training allowance that is deductible under Section 232(c) (formerly 232(d)) of the Act. In addition, the TRA weekly benefit amount will be reduced by any amount deductible from UI for days of absence from training under the provisions of the State law which apply to individuals in approved training.

Prior to the 1981 amendments, the TRA weekly benefit amount was a national uniform standard equal to 70 percent of the worker's previous gross weekly wage, not to exceed the average weekly manufacturing wage, reduced by: (a) The amount of the worker's UI entitlement, if any; (b) 50 percent of any remuneration for services performed during the week and (c) certain training allowances paid under Federal law. The TRA weekly benefit amount was also reduced for days of unexcused absence from training approved under the Act.

There is no change in section 232(b) of the Act, which provides that any adversely affected worker entitled to TRA and undergoing training approved under the Act, including on-the-job training, shall receive for each week of such training the TRA weekly benefit amount or the amount of the full amount of any weekly training allowance under any other Federal law to which the worker would be entitled. This TRA amount would be paid in lieu of any such training allowance.

8. Section 635.14 provides that the maximum amount of basic TRA payable to an adversely affected worker under a certification shall be an amount equal to 52 times the TRA weekly benefit amount, minus the total sum of UI payable to the worker in the worker's first UI benefit period.

Prior to the 1981 amendments, basic TRA was payable for up to 52 weeks of unemployment. In addition, workers who reached age 60 on or before their last separation from adversely affected employment and workers in training approved under the Act were entitled to receive up to 26 additional weeks of TRA. Workers in training approved under the Act will continue to be entitled to receive up to 26 additional weeks of TRA after October 1, 1981, but under the statutory amendments older workers will not longer be entitled to receive TRA for additional weeks.

9. Section 635.15 provides that basic TRA is payable during the 52-week eligibility period beginning with the first week following the first week in which the worker has exhausted all rights to regular UI. 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.

Prior to the 1981 amendments, basic TRA was payable over a 2-year benefit period following the worker's most recent separation from adversely affected employment, and additional weeks of TRA were payable over a maximum 3-year period.

10. Section 635.16 provides, for purposes of determining the applicable State law for a worker, that such law will be the State law under which the worker: (a) is currently entitled to UI; or (b) has most recently exhausted all rights to any UI to which the worker was entitled. The State law so determined will remain applicable to a worker unless the worker becomes entitled to UI under another State law. In such case, the applicable State law will be the law of the State in which the worker is entitled to UI.

11. Section 635.20 requires, as do the present regulations, that State agencies provide, or arrange to have provided, appropriate reemployment services to workers, such as counseling, testing, placement, supportive services, job search and relocation assistance, training and other services provided for under any other Federal law.

12. Section 635.22 provides that training may be approved under the Act for a worker if specified conditions are met: (a) There is no suitable employment available for the worker; (b) the worker would benefit from the training; (c) there is a reasonable expectation of employment following completion of the training; (d) the training is available from governmental agencies or private sources; and (e) the worker is qualified to undertake and complete the training. Because training costs must be paid by the Secretary if training is approved under the Act, no training may be approved unless there are sufficient federal funds on hand to pay for the training.

"Suitable employment," for purposes of approval of training under the Act, is defined in § 635.22 as work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage. (This is a defined term in section 230 of the Act.)

13. Section 635.23 provides that, when suitable employment is not available, the State agency will employ, identify, develop and secure training opportunities and establish linkages with other public and private agencies, Private Industry Councils, employers, and CETA prime sponsors, as appropriate, so as to arrange for training and the return of adversely affected workers to employment as soon as possible.

14. Section 635.27 provides that a worker in training approved under the Act outside the commuting area shall receive subsistence payments not to exceed the lesser of the actual per diem expenses, or 50 percent of the prevailing per diem authorized under the Federal travel regulations.

"Commuting area," for purposes of eligibility for subsistence and transportation payments while in training approved under the Act, and job search and relocation allowances, is defined as the area in which an individual would be expected to travel to and from work on a daily basis as determined under the State law.

15. Section 635.28 provides that a worker in training approved under the Act outside the commuting area shall receive transportation payments not to exceed the lesser of the actual cost for travel by the least expensive means of transportation reasonably available, or the cost per mile at the prevailing mileage rate authorized under the Federal travel regulations.

16. Subpart D, Job Search Allowances, provides for an increase in reimbursement for job search expenses from 80 percent to 90 percent of the costs of necessary expenses, but not in excess of 90 percent of the levels of subsistence and transportation expenses authorized for workers in training approved under the Act. In addition, Subpart D provides for an increase in the maximum amount of reimbursement from $500 to $600.

To qualify for a job search allowance, the worker must: (a) Have no reasonable expectation of securing suitable employment in the commuting area; and (b) have a reasonable expectation of obtaining suitable employment outside the commuting area and in the area where the job search will be conducted. For this purpose, "suitable employment" means suitable work as defined in the applicable State law for regular UI claimants or EB claimants, whichever is applicable to the worker.

17. Subpart E, Relocation Allowances, provides for an increase in reimbursement for relocation expenses from 80 percent to 90 percent of the costs of necessary expenses, but not in excess of 90 percent of the levels of subsistence and transportation expenses authorized for workers in training approved under the Act. In addition, Subpart E provides for an increase in the additional lump sum payment from a $500 to $600 maximum. Eligibility for

TRA is no longer a requirement for entitlement to relocation allowances after September 30, 1981.

To qualify for a relocation allowance, the worker must: (a) Have no reasonable expectation of securing suitable employment in the commuting area; and (b) have obtained suitable employment, or a bona fide offer of suitable employment, outside the commuting area and in the area of intended relocation. For this purpose, "suitable employment" means suitable work as defined in the applicable State law for regular UI claimants or EB claimants, whichever is applicable to the worker.

In accordance with the Federal travel regulations, Subpart E provides for the cost of: (a) Transportation of household goods and personal effects, not to exceed 11,000 pounds net weight for a worker with a family, and 5,000 pounds net weight for a worker without a family; and (b) temporary storage of household goods and personal effects, where necessary, for a period not to exceed 60 days.

18. Section 635.52 restates the rules of construction and other provisions governing the uniform interpretation and application of the law. In this regard, the regulation is revised to incorporate into §§ 635.52(c)(3) and (4) specific rules for assigning responsibility to the States for the payment of TAA only in accordance with the law and the regulations, and the States' responsibility for the making the United States whole where they violate the law and regulations. These rules (incorporating what is sometimes referred to as the "Lopez Rule") were developed following a series of cases where a State had paid claims in flagrant disregard of the law and the regulations.

19. Section 635.55 provides that a worker receiving a TAA overpayment, whether fraudulent or otherwise, will be liable for repayment. Section 243(a)(1) of the Act provides that repayment of an overpayment "may" be waived under certain conditions in accordance with guidelines prescribed by the Secretary of Labor. Such guidelines are prescribed in these proposed regulations at § 635.55(a).

Unless a TAA overpayment is otherwise recovered, or is waived under the guidelines prescribed in these regulations, the State agency shall recover the overpayment by deductions from any sums payable to the worker under the TAA Program or under any other Federal law administered by the State agency providing payments with respect to unemployment.

No single deduction may exceed 50 percent of the amount otherwise
payable to the worker, and when a
deduction is made, it shall be 50 percent
of the amount actually payable.
In the case of false statement or
representation, or of nondisclosure of a
material fact, the worker would also be
ineligible for any further TAA payments
in the future.
No repayment may be required or
deduction made until a determination of
overpayment has been made, notice has
been given to the worker of the
determination, an opportunity has been
given to the worker for a fair hearing,
and the determination has become final.
These provisions were effective on
August 13, 1981, and apply to all TAA
overpayments outstanding on that date
or determined on or after that date.
20. Section 635.62 provides
transitional procedures for
administering the TAA Program for
those workers who filed applications or
qualified for services and allowances
before and after the effective date of the
1981 amendments. This section also
includes conforming amendments
required to be made in existing State
laws, and the dates by which such amendments
must be made.
21. Section 655.64 reflects the change
in the termination date of the TAA
Program from September 30, 1982, to
September 30, 1983.
22. Other technical and clarifying
changes have been made in the
regulations.

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, N.W.,
Washington, D.C. 20213; telephone: (202) 379-7032 (this is a toll-free number).

Classification—Executive Order 12291
The proposed 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 proposed 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 proposed regulations,
but rather are direct statutory
obligations. Accordingly, no regulatory
impact analysis is required.

Regulatory Flexibility Act
The Department believes that this
proposed 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 proposed provisions to
implement work tests in accordance
with State provisions applicable to
extended benefit claimants.
However, most of the operating
mechanisms needed for the proposed
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.

Regulatory Flexibility Act Certification
I, Raymond J. Donovan, Secretary of Labor,
hereby certify, pursuant to 5 U.S.C. 605(b),
that the proposed rule published hereinafter
(20 CFR Part 635) will not have a significant
economic impact on a substantial number of
small entities, because this rule implements
amendments that do not heavily impact
agencies in small States and which,
moresover, have no significant economic
impacts on agencies in small States.
Dated: February 24, 1983.
Raymond J. Donovan,
Secretary.

List of Subjects in 20 CFR Part 635
Labor, Trade adjustment assistance,
Job search assistance, Reemployment
services, Relocation assistance, Trade
readjustment allowances, Vocational
education, Unemployment
compensation.

Words of Issuance
For the reasons set out in the
proposed rule in the Federal
Register, the addition of Part 635 to
Title 20 of the Code of Federal
Regulations is proposed as set forth
below.

Signed at Washington, D.C., on February
24, 1983.
Albert Angrisani,
Assistant Secretary of Labor.

PART 635—TRADE ADJUSTMENT
ASSISTANCE FOR WORKERS UNDER
THE TRADE ACT OF 1974

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Subpart A—General

§635.1 Scope.

The regulations in this Part 635 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 TAA) 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.

§635.2 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 635 are issued to implement the Act.

§635.3 Definitions.

For the purposes of the Act and this Part 635:


(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 wholly 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 employment in the 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the individual’s appropriate week 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 weeks in such period during which the individual was sick or on vacation) preceding the individual’s appropriate week 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.

(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, or extended compensation; or

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

(i) “Bona fide application for training” means an application for training filed on a form approved by the Secretary containing information which shall include the individual’s name, petition number, local office number, type of training, and which is signed and dated by the individual applying for training and a State agency representative.

(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; and

(2) Additional weeks. The 28-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 635.

(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, which had one or more individuals performing service in employment for it within the United States.
(q) “Employment” means any service performed for an employer by an individual for wages or by an officer of a corporation.

(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 insurance 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 a 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 on 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, with respect to an individual, the benefit period established after the individual’s first 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, and such first exhaustion shall be deemed to be complete at the end of the week in which such 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 which occurs before or within the individual’s first benefit period.

(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 7 consecutive days.

(x) “Liable State” 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.

(ff) “State law” means the employment insurance 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; or
   (2) Suitable work as defined in the applicable State law provisions consistent with section 302(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.

(hh) “Total separation” means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(ii) “Trade adjustment assistance” 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, and which is referred to as TAA.

(jj) “Trade adjustment allowance” means a weekly allowance payable to an adversely affected worker with respect to such worker’s unemployment under Subpart B of this Part 635, and which is referred to as TRA.

(kk) “Unemployment insurance” 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, and which is referred to as UI. This term also includes “regular compensation,” “additional compensation,” and “extended 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 or additional 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 with respect to the payment of extended unemployment compensation, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include regular compensation or additional compensation. Extended compensation is also referred to in this Part 635 as Extended Benefits or EB.

(ll) “Wages” means all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash.

(mm) “Week” means a week as defined in the applicable State law.
(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 separation, the individual must have had at least 28 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 §635.12. An individual may not combine employment and wages in adversely affected employment covered under more than one certification in order to qualify for TRA.

(ii) For purposes of this paragraph (a)(3), any week in which such individual:
(A) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;
(B) Does not work in such adversely affected employment because of the disability that is compensable under a workers' compensation law or plan of a State or the United States; or
(C) Had employment in such adversely affected employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision; shall be treated as a week of employment at wages of $30 or more: 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)(ii)(B) of this section occurred during the 52-week period concerned; or
(2) 7 weeks if all are weeks described in paragraph (a)(3)(ii)(B) of this section; or
(3) 7 weeks in the case of weeks described in paragraphs (a)(3)(ii)(B) and (A) or (C) of this section, or both, except that not more than 3 of such weeks may be other than weeks described in paragraph (a)(3)(ii)(B) of this section.

(iii) Wages and employment creditable under paragraph (a)(3) of this section shall not include employment or wages earned or paid for employment:
(A) Which is contrary to or prohibited by any Federal law; or
(B) Which is not adversely affected employment.

(4) **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:
(i) In which the individual's first 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 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.** (i) The individual must:
(A) Accept any offer of suitable work, as defined in §635.3(gg), and apply for any such suitable work to which the individual was referred by the State agency; and
(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 work which is suitable for the individual;

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 with respect to weeks which begin after the date the individual files an initial application for TAA under any certification.

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

(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 separation (as provided in paragraph (a)(2) of this section).

§635.12 **Evidence of qualification.**

(a) **State agency action.** When an individual applies for TRA, the State agency having jurisdiction under §635.50(a) shall obtain information necessary to establish:

(1) Whether the individual meets the qualifying requirements in §635.11;
(2) The individual's average weekly wage; and
(3) For an individual claiming to be partially separated, the average weekly wage.
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 correct, it shall make appropriate adjustments and shall make the determination on the basis of the adjusted data.

§635.13 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 635 or under the provisions of the applicable State law) shall be an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the individual for a week of total unemployment preceding the individual's first 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 dependents' 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 635 entitled for any week to a training allowance under any Federal law for the training of workers in a greater amount than the amount provided in paragraph (a) of this section (whether or not the individual filed a claim for such training allowance) shall receive the greater amount as TRA, as provided in section 232(b) of the Act. Payment under this paragraph (b) shall be in lieu of any other training allowance to which the individual is entitled under Federal law for the training of workers.

(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 due to the disqualification income provisions of the applicable State law or Federal unemployment insurance 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, Basic Educational Opportunity Grants, Supplemental Educational Opportunity Grants, and other training allowances under any Federal law other than for the training of workers and which are payable to the individual; and

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

§635.14 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 amount of TRA payable as determined under §635.13(a), to such individual for a week of total unemployment; 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 §635.11(a)(4).

(b) Exceptions. The maximum amount of TRA payable to an individual 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 §635.13(a);

2. The amount of the difference between the individual's weekly increased allowances determined under §635.13(b) and the individual's weekly amount determined under §635.13(a); and

3. The amounts paid for additional weeks determined under §635.15(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. If a training allowance under any Federal law is paid to an individual for any week of unemployment as to which the individual would be entitled, determined without regard to §635.13(c)(2) or any disqualification under §635.16(b)(2), to TRA, the amount of the training allowance paid for such week plus the amount of TRA otherwise payable, not to exceed an amount equal to the individual's regular weekly TRA, as determined under §635.13(a), shall be deducted from the maximum amount of TRA payable under paragraph (a) of this section when the individual applies for and is determined to be entitled to TRA, as provided in section 232(c) of the Act.

§635.15 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 §635.11(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 635 to an individual, in order to assist the individual to complete training approved under Subpart C of this Part 635. 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 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 §635.16(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 with respect to which the individual has first exhausted (as determined under § 635.11(a)(5)) all rights to regular compensation.

§ 635.16 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 in which the individual became entitled to UI (or would be entitled if the individual applied therefor).

(c) UCPE-UCX claimants. If an individual is entitled to UI under chapter 85, title 5 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 separation occurs.

§ 635.17 Availability and active search for work.

An individual shall not be paid TRA for a week of unemployment in 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 an individual with respect to a week in which the individual is undergoing training approved under the provisions of the applicable State law or under Subpart C of this Part 635, unless the individual is determined to be ineligible for such week under the applicable State law or § 635.18(b)(2).

§ 635.18 Disqualifications.

(a) State law applies. Except as stated in paragraph (b) of this section and § 635.55(b), an individual shall not be paid TRA for a week of unemployment for which 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 635; or

(ii) Refuses 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

(2) Quits work if the individual was employed in work which was not suitable employment, as described in § 635.22(a)(1), and it reasonably was 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.

(c) 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 635 shall not be entitled to basic or additional TRA, or any other payment under this Part 635, 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

§ 635.20 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 the adversely affected worker for work;

(2) Informing the adversely affected worker 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 § 635.22(a)(1), is available;

(4) Developing, reviewing, and updating, when necessary, a reemployment plan for the adversely affected worker;

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

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

(7) Provisng 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 program;

(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.

§ 635.21 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 as a tool in helping individuals to determine which skills or potentials can be developed or to determine the appropriateness of future 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 a particular job to meet an individual's needs which may involve job restructuring.

(e) Supportive services. Supportive services shall be provided to enable individuals to obtain or retain employment or to 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 § 635.22(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 § 635.22(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 of 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 which are common to all approaches. These include the following:

(1) Job search workshop. A short (1-3 days) seminar designed to provide participants with knowledge that will enable them to find jobs. Subjects are not limited to, but should include, 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 attempt to obtain jobs.

(i) Job search allowances. The individual may be provided job search allowances under Subpart D of this Part 635 to defray the cost of seeking employment outside of the commuting area.

(j) Relocation allowances. The individual may be provided relocation allowances under Subpart E of this Part 635 to defray the cost of moving to a new job outside of the commuting area.

§ 635.22 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, such training may be approved for an adversely affected worker if the State agency determines that:

(1) There is no suitable employment (which may include technical and professional employment) available for an individual. 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 80 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 198(2) of the Vocational Education Act of 1963) and employers; and

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

(b) Time limits for commencing training. An individual for whom training has been approved under paragraph (a) of this section must commence training within 60 days after the date of such approval, except that if the individual for good cause, as described in § 635.18(b), does not commence training within the 6-day period, such period may be extended up to a maximum of 120 days after the date of such approval.

(c) Approval of training under State law. Training approved by a State agency under State law is not considered to be approved training for the purposes of this Part 635. If the State agency subsequently determines that the individual and course of training meet the requirements of this Part 635 and training is approved, the State agency shall provide such training at no cost to the individual after such approval. Under no circumstances shall reimbursement be authorized for any costs incurred for any period prior to the approval of such training.

(d) Applications. Applications for, selection for, approval of, or referral to training shall be in accordance with instructions and on forms approved by the Secretary. Applications shall be furnished to an individual by the State agency.

(e) Determinations. Selection for, approval of, or referral of 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 §§ 635.50 and 635.51 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 § 635.22(a)(1), and have been approved for training may elect to:

(1) Terminate their jobs; or
(2) Continue in full or part-time employment; in order 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.

§ 635.23 Selection of training methods and programs.

(a) State agency responsibilities. If suitable employment, as described in § 635.22(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, employers, and CETA prime sponsors, as appropriate, which will 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, for the purpose of developing a retraining program that meets the manpower needs of such firm and to preserve or restore the employment relationship between the individual and such firm. The fact that there is no need by other employers in the area to train individuals in a specific occupation 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 facilities of the firm or elsewhere pursuant to §§ 635.24, 635.25, and 635.26, including training for which the firm pays the costs. This is to ensure that on-the-job training does in fact provide the skills necessary for the individual to obtain employment in a particular occupation rather than a job on a particular 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 §§ 635.24, 635.25, and 635.26.

(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 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. To the extent 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, CETA prime sponsors, Private Industry Councils, local educational organizations, local apprentice programs, local advisory councils established under the Vocational Education Act of 1983, and post-secondary institutions.

(3) Exclusions. In determining suitable training the State agency shall exclude certain occupations, including, but not limited to, the following:

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

(ii) Occupations which provide no reasonable expectation of permanent employment; or

(iii) Self-employment and occupations for which remuneration is wholly or primarily in the form of a commission.

§ 635.24 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 195(2) of the Vocational Education Act of 1983;

(c) The Comprehensive Employment and Training Act, as amended, offered by a prime sponsor; 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.

§ 635.25 Purchased Training.

If the State agency determines that placement of an adversely affected worker in preferred training under § 635.24 cannot be accomplished, the State agency shall attempt to make arrangements or enter into agreements to purchase training or provide for reimbursement of the cost of training through:

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

(b) Area vocational education schools, as defined in section 195 (2) of the Vocational Education Act of 1983;

(c) The Comprehensive Employment and Training Act, as amended, offered by a prime sponsor; or

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

§ 635.26 Approval of other training, including interstate.

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

(a) Circumstances preclude referral to training under § 635.24 or 635.25; and

(b) If institutional vocational training, the training has been approved by the State vocational education agency as meeting the standards of adequacy required by the applicable law; and

(c) The approval conditions in § 635.22 are met.

(d) The State agency performing as an agent State shall be responsible for selection and approval of training under § 635.24, 635.25 and 635.26. The agent State agency will pay any training related cost, including subsistence and transportation. The State agency is responsible for determining eligibility for FRA, and job search and relocation allowances. The agent State shall assist the individual in applying for such allowances.

§ 635.27 Subsistence payments.

(a) Eligibility. A trainee under this Subpart C may be afforded supplemental assistance necessary to pay costs 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 Comprehensive Employment and Training Act, as amended, or any other law, or for any day referred to under § 635.28 (c) (3) 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 the Federal travel regulations for the locale of the training.

(c) Applications. Applications for payment of subsistence shall be in accordance with instructions and on forms approved by the Secretary and furnished to the trainee by a 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 §§ 635.50 and 635.51.

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

§ 635.28 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.

(c) Travel included. Travel for which a transportation allowance may be paid shall include travel:
(1) At the beginning and end of the training program;
(2) When the trainee fails for good cause, as described in § 635.18(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 made in accordance with instructions and on forms approved by the Secretary and furnished to the trainee 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 §§ 635.50 and 635.51.

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

§ 635.29 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 § 635.11, 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 to the same extent as 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 with respect to which an individual is training approved under this Subpart C.

Subpart D—Job Search Allowances

§ 635.30 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.

§ 635.31 Applications.
(a) Forms. An application for a job search allowance shall be made in accordance with instructions and on forms approved by the Secretary, which shall be furnished to an individual by the State agency.

(b) Submission. An application may be submitted to a 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 job search begins in order 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, an application for a job search allowance may not be approved unless 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 182nd day after the concluding date of training approved under Subpart C of this Part 635, or approved under the regulations superseded by this Part 635.

§ 635.32 Eligibility.
(a) Conditions. To be eligible for a job search allowance an individual must:
(1) File a timely application;
(2) Have been totally separated from adversely affected employment at the time the job search commences;
(3) Be registered with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 635, and 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; and
(4) Complete the job search within a reasonable period not exceeding 30 days after the day on which the job search began.

(b) Completion of job search. A job search is deemed completed when the individual either secures employment or has contacted each employer to whom referred by the State agency in connection with a job search.

(c) Verification of employer contacts. The State agency shall verify contacts with employers certified by the individual.

§ 635.33 Findings required.
Before final payment of a job search allowance may be approved, the following findings shall be made:
(a) The State agency having jurisdiction under § 635.50(a) must find
that the individual meets the requirements of § 635.32(a).

(b) The State agency of the State where the individual resides must find that:

(1) The application was submitted within the time limits stated in § 635.31(c);

(2) The individual meets the requirements of § 635.32(a)(3)(l), and such finding shall state the basis thereof; and

(3) The individual completed the job search within the time limits stated in § 635.32(a)(4).

§ 635.34 Amount.

(a) Computation. The amount of a job search allowance shall be 90 percent of the total costs of each of the following allowable transportation and subsistence items:

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

(A) The actual cost of roundtrip 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;

(B) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations for such roundtrip travel by the usual route from the individual's residence to the area of job search.

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

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

(B) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations for the locality in which the job search is conducted.

(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.

§ 635.35 Time and method of payment.

(a) Determinations. A State agency promptly shall make and record determinations necessary to assure entitlement of an individual to a job search allowance at any time, whether 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. If delay in payment occurs under the preceding sentence, 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) Time limits. Notwithstanding paragraph (b) of this section, an application for a job search 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;

(2) The 212nd day after the concluding date or training approved under Subpart C of this Part 635, or approved under the regulations superseded by this Part 635.

§ 635.42 Eligibility.

(a) Conditions. To be eligible for a relocation allowance an individual must:

(1) File a timely application;

(2) Have been totally separated from adversely affected employment at the time relocation commences;

(3) Have not previously received a relocation allowance under the same certification;

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

(b)(i) Be registered with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 635, and the State agency shall determine 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; and

(ii) For purposes of this section, the term "suitable employment" means suitable work as defined in § 635.3(g)(2)(1) or (2), whichever is applicable to the individual; and

(6) Relocate within a reasonable period, as determined under § 635.43(b), and complete such relocation within a reasonable period of time as determined in accordance with Federal travel regulations and § 635.43(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
§ 635.43 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 under § 635.42(a)(6) 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 635, or approved under the regulations superseded by this Part 635.

§ 635.44 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 must 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 must make the determinations under this Subpart E, except as provided in paragraph (b)(2) of this section; and
(2) The State agency of the State of intended relocation must make the determination 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 § 635.42(a)[3][i].

§ 635.45 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 § 635.46;
(2) 90 percent of the expense of moving household goods and personal effects of the individual and family, if any, not to exceed 11,000 pounds net weight for an individual with a family, and 5,000 pounds net weight for an individual without a family, between such locations, as determined under § 635.47; 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.

§ 635.46 Travel allowance.

(a) Computation. The amount of travel allowance (including lodging and meals) payable under § 635.45(a)(1) shall be 90 percent of the total costs of each of the following allowable transportation and subsistence items:

(1) Transportation. The cost allowable for transportation shall not exceed the lesser of:

(i) The actual cost of transportation for the individual and family, if any, by the most economical public transportation the individual and family reasonably can be expected to take 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 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 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.

§ 635.47 Moving allowance.

(a) Computation. The amount of a moving allowance payable under § 635.45(a)[2] shall be 90 percent of the total of the allowable costs under (1), (2), or (3), and 90 percent of the total allowable costs under (4):

(1) Commercial carrier. Allowable costs for moving household goods and personal effects of an individual and family, if any, shall not exceed 11,000 pounds net weight for an individual with a family, and 5,000 pounds net weight for an individual without a family, by commercial carrier from the individual's old residence to the individual's new residence in the area of relocation, including reasonable and necessary accessorial charges, by the most economical commercial carrier the individual reasonably can be expected to use. Before undertaking such move, the individual must submit to the State agency an estimate from a commercial carrier as to the cost thereof. Accessorial charges shall include the cost of insuring such goods and effects for their actual value or $10,000, whichever is least, against loss or damage in transit, if a bid from a licensed insurer is obtained by the individual and approved by the State agency before departure. If a State agency finds it more economical to pay a carrier an extra charge to assume the responsibility of a common carrier for such goods and effects, 90 percent of such extra charge, but not exceeding $50, shall be paid in lieu of the cost of insurance.

(2) Trailer or rental truck. (i) Trailer. If household goods and personal effects are moved by trailer, the allowable costs shall be:
(A) If the trailer is hauled by private vehicle, the cost per mile for the use of the private vehicle at the prevailing mileage rate authorized under the Federal travel regulations for the usually traveled route from the individual's old residence to the individual's new residence in the area of relocation; and
(B) If the trailer is rented, and of the type customarily used for moving household goods and personal effects, the rental fee for each day reasonably required to complete the move; or
(C) The actual charge if hauling is by commercial carrier.
(ii) **Rental truck.** If household goods and personal effects are moved by rental truck of the type customarily used for moving household goods and personal effects, the allowable costs shall be:

(A) The rental fee for each day reasonably required to complete the move; and

(B) The necessary fuel for such rental truck which is paid by the individual.

(3) **House trailer.** If a house trailer or mobile home was used as the individual's place of residence in the old area and will be so used in the new area, the allowable costs of moving such house trailer or mobile home shall be:

(i) The commercial carrier's charges for moving the house trailer or mobile home;

(ii) Charges for unblocking and reblocking;

(iii) 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 flags;

(iv) 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; and

(v) The cost of disconnecting and connecting utilities limited to normal hookup of gas, electricity and water.

(4) **Temporary storage.** If temporary storage of household goods and personal effects is necessary, the cost of such temporary storage for a period not to exceed 60 days.

(b) **Travel.** Payments under this section shall be in addition to payments for transportation expenses for the individual and family, if any, under §635.45(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 provision of this Subpart E.

§635.48 **Time and method of payment.**

(a) **Determinations.** A State agency promptly shall make and record determinations necessary to assure an individual's entitlement to a relocation allowance at any time, whether 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. If delay in payment occurs under the preceding sentence, 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 §§635.46 and 635.47 shall be paid as follows:

(1) **Transportation and subsistence.** The amounts estimated under §635.46 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.

(2) **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 §635.46.

(2) **Moving.** The amount estimated under §635.47 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 §635.47(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 §635.47(a)(3), shall be advanced by check payable 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 submit with such payment reimbursement the State agency the amount, if any, by which the advance made under this paragraph (b)(2)(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 more economical, a State agency may make direct payments 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, but the United States shall not be or become liable to either party under any circumstances.

(ii) **Trailer or rental truck.** (A) Private vehicle with trailer. If the move is by private vehicle and trailer, 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:

(1) The individual shall submit an estimate of the rental cost from the rental agency;

(2) 90 percent of such estimated rental cost may be advanced by check payable to the order of the individual and the rental agency at the time payment is made under paragraph (b)(1) of this section; and

(3) On completion of the move the individual shall submit promptly to the State agency a receipted bill itemizing and evidencing payment of the rental charges for the trailer or truck and fuel costs, and shall reimburse the State agency for the amount, if any, by which the advance made for the trailer or truck exceeds 90 percent of the rental charges approved by the State agency. If the amount of the advance was less than 90 percent of the rental charges, the individual shall be paid the difference.

(iii) **House trailer.** If a house trailer or mobile home is moved by commercial carrier, the individual shall submit to the State agency an estimate of the cost of the move by the commercial carrier. A check for 90 percent of the amount of the estimate, if approved, payable to the individual and the carrier, may be delivered to the individual at the time of the scheduled move or within 10 days prior thereto.

(c) **Lump sum allowance.** The lump sum allowance provided in §635.45(a)(3) shall be paid when arrangements are completed for relocation of the individual and family, if any, but not more than 10 days before the anticipated date of shipment of the individual's household goods and personal effects.

(d) **Relocation completed.** A relocation is completed when an individual and family, if any, and their household goods and personal effects arrive at the individual's residence in the area of relocation. If no household goods and personal effects are moved, a relocation is completed when the individual and family, if any, arrive in...
the area of relocation and establish a residence in the new area. The later arrival of a family member approved for separate travel shall not alter the date a relocation was completed.

Subpart F—Administration by Applicable State Agencies

§ 635.50 Determinations of entitlement; notices to individual.

(a) Determinations of initial applications for TRA or other TAA. The State agency whose State law is the applicable State law under § 635.16, or the State agency as provided in § 635.28(d), shall promptly upon the filing of an initial application for TRA or other TAA, determine the individual's entitlement to such TRA, or other TAA under this Part 635, and may accept for such purpose information and findings supplied by another State agency under this Part 635.

(b) Determinations of subsequent applications for TRA or other TAA. The State agency promptly shall, upon the filing of an application for payment of TRA or subsistence and transportation under §§ 635.27 and 635.28, with respect to a week, 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 TRA, or 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 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 635.

(d) Use of State law. In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 635.51, a State agency, a hearing officer, or a court shall apply the regulations in this Part 635 and the substantive provisions of the Act. As to matters committed by the Act and this Part 635 to the applicable State law, a State agency, a hearing officer, or a 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 635 or the purpose of the Act or this Part 635.

(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 635, 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 et seq.)

§ 635.51 Appeals and hearings.

(a) Applicable State law. A determination or redetermination under this Part 635 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 635.

§ 635.52 Uniform interpretation and application.

(a) First rule of construction. The Act and the implementing regulations in this Part 635 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 635 shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act and this Part 635 throughout the United States.

(c) Effectuating purpose and rules of construction. (1) In order to effectuate the purpose of the Act and this Part 635 and to assure uniform interpretation and application of the Act and this Part 635 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 635. 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 635.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department’s interpretation of the Act or this Part 635, 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 635, 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. § 303(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 635 shall be terminated and § 635.59(f) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part 635, in determining any determination, redetermination, or decision referred to in paragraph (c)(1) 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 § 635.59(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.

(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.

§ 635.53 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 635 is conducted.

§ 635.54 State agency rulemaking.

A State agency may establish supplemental procedures not inconsistent with the Act or this Part 635 or procedures prescribed by the Department to further effective administration of this Part 635. 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.

§ 635.55 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 635 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 635; 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 the purposes of paragraph (a)(1)(i) of this section, the following factors shall be considered:

(A) 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.

(B) 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.

(C) Whether the individual knew or should have expected to know that the individual was not entitled to the TAA payment.

(D) 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.

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

(F) In the event of an affirmative finding on any of the foregoing factors, recovery of the overpayment shall not be waived unless:

(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 further and that the individual may be required to repay the overpayment in the event of a reversal of the appeal decision, and whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual.

(2) Whether recovery of the overpayment will not 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.
In the event of an affirmative finding on either of the foregoing factors, recovery of the overpayment shall not be waived. For this purpose, 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.

In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this hardship 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 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.

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 approved by the Secretary, which shall be furnished to the individual by the State agency. Notices of determination of overpayments shall include information concerning the waiver provisions of this section.

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 635;
(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 assistance or an allowance with respect to unemployment.

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.

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
(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 635 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 635.

Job search and relocation allowances: (1) If an individual fails, with good cause, to complete a job search or relocation, any payment or portion of a payment made under the Act and Subpart D or Subpart E of this Part 635 to such individual, that is not properly and necessarily expended in attempting to complete such job search or relocation, shall constitute an overpayment.
(2) If an individual fails, without good cause, to complete a job search or relocation, any payment made under the Act and Subpart D or Subpart E of this Part 635 to such individual shall constitute an overpayment.
(3) Such overpayments shall be recovered or waived as provided in paragraph (a) of this section.

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.
Deposit. Any amount repaid to a State agency under this section shall be deposited into the fund from which payment was made.

Procedural requirements: (1) The provisions of paragraphs (c), (e), and (g) of §635.50 shall apply to determinations and redeterminations made pursuant to this section.
(2) The provisions of §635.51 shall apply to determinations and redeterminations made pursuant to this section.

Fraud detection and prevention. Provisions in the procedures of each State with respect to 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 et seq.).

Debts due the United States. Notwithstanding any provision of this Part 635, TAA payable to an individual under the Act and this Part 635 shall be applied by the State agency to recover by offset of any debt due the United States from the individual, but 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 as provided in paragraph (i) of this section.

Child support and alimony. TAA 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.

§635.56 Involuntary rights to TAA.

Except as specifically provided in this Part 635, 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 §635.55. 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.

§635.57 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.
(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 635. 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 § 635.55 or paragraph (a) of this section, or in the case of information, reports and studies required pursuant to § 635.61, 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.

§ 635.58 UI.
UI 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 635.

§ 635.59 Agreements with State agencies.
(a) Authority. Before performing any function or exercising any jurisdiction under the Act and this Part 635, 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 a true 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 635.

(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 reviewing of State and State agency compliance with the Agreement entered into under this section.

§ 635.60 Administration absent State agreement.
In any State in which no Agreement under § 635.59 is in force, the Secretary shall administer the Act and this Part 635 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 635. Such arrangements shall include the requirement that TAA be administered in accordance with the Act and this Part 635, 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 635 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)).

§ 635.61 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 635.

§ 635.62 Transitional procedures.
The procedures for administering the Trade Act of 1974 before and after the amendments made by the Omnibus Budget Reconciliation Act of 1981 are as follows:

(a) TAA. The provisions contained in Subpart B of this Part 635 shall apply with respect to the qualifying requirements for TAA to adversely affected workers who are separated on or after October 1, 1981, and were not entitled to receive TAA for any week of unemployment which began after October 1, 1981. In addition, such provisions shall apply with respect to TAA payable for weeks of unemployment which begin before September 30, 1981, to adversely affected workers who were separated before October 1, 1981. Any adversely affected worker who is receiving or is entitled to receive TAA for any week of unemployment beginning before October 1, 1981, shall be entitled to receive TAA as follows:

(1) Weeks before October 1, 1981.
With respect to weeks of unemployment beginning before October 1, 1981, eligibility for TAA shall be determined in accordance with the provisions of the law and regulations in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1981.

(2) Weeks after September 30, 1981.
(i) Basic weeks (UI exhaustion). With respect to any week of unemployment beginning after September 30, 1981, for an individual who has exhausted all rights to UI prior to such week, eligibility for TAA shall be determined under Subpart B of this Part 635, except that the maximum amount of basic TAA payable to the individual for each such week of unemployment shall be an amount equal to the product of the amount of TAA payable to the individual for a week of total unemployment (as determined under § 635.13(a)) multiplied by a factor determined by subtracting from fifty-two the sum:

(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 TAA or UI (or would have been entitled to a payment of TAA or UI if the individual had applied therefor); and

(B) The number of weeks preceding such first week that are deductible under section 232(d) of the Trade Act of 1974 in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1981.

The amount of TAA 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 § 635.13(b).

(ii) Basic weeks (UI entitlement). With respect to any week of unemployment beginning after September 30, 1981, for an individual who still has entitlement...
to UI, payment of TRA shall be discontinued until the individual exhausts all rights to UI as provided in § 635.11(a)[5]. After exhaustion of all rights to UI, payment of TRA shall be determined under Subpart B of this Part 635, except that the maximum amount of basic TRA payable to the individual for ensuing weeks of unemployment shall be an amount equal to:

(A) the maximum amount of basic TRA as computed under paragraph (a)[2][l] 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 635.

(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, for any week which begins more than 52 weeks after the individual has exhausted all rights to regular compensation in the first benefit period (as provided in § 635.15(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) 28 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 § 635.15).

(b) Training, other reemployment services, and allowances. (1) With respect to applications for training filed before September 30, 1981, the provisions contained in Subpart C of this Part 635 shall apply to determinations regarding the approval of such training made after September 30, 1981.

(2) With respect to applications for transportation and subsistence payments while in training, and job search and relocation allowances, the provisions contained in Subparts C, D, and E of this Part 635 shall apply to such applications that are filed after September 30, 1981.

(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, unless such training is approved under the amended law and this Part 635.

(c) Fraud and recovery of overpayments. The provisions contained in this Subpart F with respect to fraud and recovery of overpayments 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. Except as provided in this paragraph (d)[2], the provisions of section 2514(a)(2)(D) of the Omnibus Budget Reconciliation Act of 1981 requiring amendment to State laws shall apply to State laws for the purposes of certifications under section 3304(c) of the Internal Revenue Code of 1954 on October 31 of any taxable year after 1981, except that, 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.”

§ 635.63 Savings clause.

The amendments made by the Omnibus Budget Reconciliation Act of 1981 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.

§ 635.64 Termination date.

The Act shall terminate on September 30, 1983, as follows:

(a) No application for TRA, transportation or subsistence payment while in training approved under Subpart C of this Part 635, shall be approved, and no payment of TRA, or transportation or subsistence, shall be made, for any week which begins after September 30, 1983.

(b) No payment of job search or relocation allowances shall be made after September 30, 1983, unless an application for such allowances was approved, and such job search or relocation was completed, on or before September 30, 1983.

(c) No training under Subpart C of this Part 635 shall be approved unless a determination regarding the approval of such training was made, and such training commenced, on or before September 30, 1983. No payment shall be authorized for any training costs incurred after September 30, 1983.

[PR Doc. 83-5290 Filed 3-3-83; 8:45 am]