Total separation means the layoff or severance of an individual from a firm or an appropriate subdivision thereof.


§ 90.3 Applicability of part.

This part 90 generally relates to certifications of eligibility made under the Act. Subpart B specifically applies to the initiation and conduct of worker investigations and the issuance of determinations and certifications of eligibility to apply for adjustment assistance. Subpart C applies to studies of workers in industries which are the subject of investigations for industry import relief. Subpart D contains general provisions with respect to filing of documents and public availability of documents.

Subpart B—Petitions and Determinations of Eligibility To Apply for Adjustment Assistance

§ 90.11 Petitions.

(a) Who may file petitions. A petition under section 221(a) of the Act and this subpart B shall be filed by a group of workers for a certification of eligibility to apply for adjustment assistance or by their certified or recognized union or other duly authorized representative.

(b) Identification of petitioners. Every petition filed with the Department shall clearly state the group of workers on whose behalf the petition is filed and the name(s) and address(es) of the person(s) by whom the petition is filed. Every petition shall be signed by at least three individuals of the petitioning group or by an official of a certified or recognized union or other duly authorized representative. Signing of a petition shall constitute acknowledgement that each signer has read the entire petition, that to the best of the signer’s knowledge and belief the statements therein are true, and that each signer is duly authorized to sign such a petition.

(c) Contents. Petitions may be filed on a U.S. Department of Labor form. Copies of the form may be obtained at a local office of a State Employment Security Agency or by writing to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. Every petition shall include:

1. The name(s), address(es), and telephone number(s) of the petitioner(s);
2. The name or a description of the group of workers on whose behalf the petition is filed (e.g., all hourly and salaried employees of the XYZ plant of ABC corporation);
3. The name and address of the workers’ firm or appropriate subdivision thereof;
4. The name, address, telephone number, and title of an official of the firm;
5. The approximate date(s) on which the total or partial separation of a significant number or proportion of the workers in the workers’ firm or subdivision began and continued, or threatened to begin, and the approximate number of workers affected by such actual or threatened total or partial separations;
6. A statement of reasons for believing that increases of like or directly competitive imports contributed importantly to total or partial separations and to the decline in the sales or production (or both) of the firm or subdivision (e.g., company statements, articles in trade association publications, etc.); and
7. A description of the articles produced by the workers’ firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned.

If available, the petition also should include information concerning the method of manufacture, end uses, and wholesale or retail value of the domestic articles produced and the United States tariff provision under which the imported articles are classified.

(d) Number of copies. One (1) signed original and two (2) clear copies of the petition shall be filed. The name(s) of the person(s) signing the petition shall
be typewritten or otherwise clearly reproduced.

(Approved by the Office of Management and Budget under control number 1205–0192)


§ 90.12 Investigation.
Upon receipt of a petition, properly filed and verified, the Director of the Office of Trade Adjustment Assistance shall promptly publish notice in the Federal Register that the petition has been received. The Director shall initiate, or order to be initiated, such investigation as he determines to be necessary and appropriate. The investigation may include one or more field visits to confirm information furnished by the petitioner(s) and to elicit other relevant information. In the course of any investigation, representatives of the Department shall be authorized to contact and meet with responsible officials of firms, union officials, employees, and any other persons, or organizations, both private and public, as may be necessary to marshal all relevant facts to make a determination on the petition.

(Approved by the Office of Management and Budget under control numbers 1205–0197, 1205–0190, 1205–0191)

[52 FR 23401, June 19, 1987]

§ 90.13 Public hearings.

(a) When held. A public hearing shall be held in connection with an investigation instituted under §90.12 whenever, not later than ten (10) days after the date of publication in the Federal Register of the notice of receipt of the petition, such a hearing is requested in writing by:

(1) The petitioner; or
(2) Any other person found by the Director or Deputy Director to have a substantial interest in the proceedings. Such petitioner and other interested persons shall be afforded an opportunity to be present, to produce evidence, and to be heard.

(b) Form of request. A request for public hearing shall be filed in the same manner as provided for filing of petitions and other documents under §90.31(a). A request by a person other than the petitioner shall contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing; and
(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the subject matter of the petition and a statement of the nature of its interest in the proceeding.

(c) Time and place. Public hearings will be held at the time and place specified in a notice published in the Federal Register. Such notice shall be published at least seven (7) calendar days before the scheduled hearing.

(d) Presiding officer. The Director or Deputy Director shall conduct and preside over public hearings.

(e) Order of testimony. Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, a witness may be questioned by the presiding officer or an agent designated by the presiding officer. Any person who has entered an appearance in accordance with paragraph (j) of this section may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) Evidence. Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) Briefs. Briefs of the evidence produced at the hearing and arguments thereon may be presented to the presiding officer by parties who have entered an appearance. Three (3) copies of such briefs shall be filed with the presiding officer within ten (10) days of the completion of the hearing.

(h) Oral argument. The presiding officer shall provide opportunity for oral argument after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) Authentication of evidence. Evidence, oral or written, submitted at hearings, will upon order of the presiding officer be subject to verification from books, papers, and records of the
§ 90.14 Subpoena power.

(a) The Director or Deputy Director may require, by subpoena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official in his or her discretion deems necessary to make a determination.

(b) If a person refuses to obey a subpoena issued under paragraph (a) of this section, the Director or Deputy Director may petition the United States District Court within the jurisdiction of which the proceeding is being conducted requesting an order requiring compliance with such subpoena.

(c) Witnesses subpoenaed under this section shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the United States Department of Labor.

(d) Subpoenas issued under paragraph (a) of this section shall be served either in person by an authorized representative of the Department of Labor or by certified mail, return receipt requested. The date for compliance shall be not earlier than seven (7) calendar days following service of the subpoena.

§ 90.15 [Reserved]

§ 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.

(a) General. Within 60 days after the date of filing of a petition, a certifying officer shall make a determination on the petition. If, however, for any reason, a certifying officer has not made a determination in 60 days after the date of filing of the petition, the certifying officer shall make the determination as soon thereafter as possible. If the determination is affirmative, the certifying officer shall issue a certification of eligibility as provided in paragraphs (b), (c), (d) and (g) of this section. If the determination is negative, the certifying officer shall issue a notice of negative determination as provided in paragraphs (b) and (f) of this section.

(b) Requirements for determinations. After reviewing the relevant information necessary to make a determination, the certifying officer shall make findings of fact concerning whether:

(1) A significant number or proportion of the workers in such workers’ firm (or an appropriate subdivision of the firm) have become, or are threatened to become, totally or partially separated;

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles like or directly competitive with articles produced by such workers’ firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. For purposes of this paragraph and part, the term contributed importantly means a cause which is important but not necessarily more important than any other cause.

(c) Notice of affirmative determination and certification of eligibility. Upon reaching a determination on a petition that a group of workers has met all the requirements set forth in section 222 of the Act and paragraph (b) of this section, the certifying officer shall issue a certification of eligibility to apply for adjustment assistance and shall
promptly publish in the Federal Register a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include the certification of eligibility and shall constitute a Notice of Determination and Certification of Eligibility.

(d) Contents of certification of eligibility. The certification shall specify in detail:
(1) The firm or subdivision thereof at which the workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may identify individual workers by name; and
(2) The impact date(s) on which the total or partial separations of the workers covered by the certification began or threatened to begin. When applicable, the certification shall specify the date(s) after which the total or partial separations of the petitioning group of workers from the firm or subdivision thereof specified in the certification are no longer attributable to the conditions set forth in paragraph (b) of this section. For purposes of this section, the impact date is the earliest date on which any part of the total or partial separations involving a significant number or proportion of workers began or threatened to begin.

(e) Exclusions from coverage of a certification of eligibility. A certification of eligibility to apply for adjustment assistance shall not apply to any worker:
(1) Whose last total or partial separation from the firm or appropriate subdivision occurred more than one (1) year before the date of the petition; or
(2) Whose last total or partial separation from the firm or appropriate subdivision occurred before October 3, 1974.

(f) Notice of negative determination. Upon reaching a determination that the certification of eligibility shall be terminated, the certifying officer shall make findings of fact and shall promptly publish in the Federal Register a summary of the determination together with the reasons for making such determinations (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination.

(g) Notice of determinations. A notice of certification may contain a notice of negative determination with respect to certain segments of workers. Such notice shall constitute a Notice of Determinations.


§ 90.17 Termination of certification of eligibility.

(a) Investigation. Whenever the Director of the Office of Trade Adjustment Assistance has reason to believe, with respect to any certification of eligibility, that the total or partial separations from a firm or appropriate subdivision thereof are no longer attributable to the conditions specified in section 222 of the Act and §90.16(b), the Director shall promptly make an investigation. Notice of the initiation of the investigation shall be published in the Federal Register and shall be transmitted to the group of workers concerned.

(b) Opportunity for comment and hearing. Within 10 days after publication of the notice under paragraph (a) of this section, the group of workers or other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated. If a hearing is requested under this paragraph, such hearing shall be conducted in accordance with §90.13.

(c) [Reserved]

(d) Notice of termination. A certifying officer shall determine whether or not such certification shall be terminated. Upon reaching a determination that the certification of eligibility shall be terminated, the certifying officer shall make findings of fact and shall promptly have published in the Federal Register a summary of the determination and the reasons therefor (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Termination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the certifying officer. The termination
§ 90.18

date specified by the certifying officer shall be not sooner than the date on which notice of such termination is published in the Federal Register.

(e) Notice of partial termination. A notice of termination may cover only a portion of the group of workers specified in the certification. Such notice shall constitute a Notice of Partial Termination.

(f) Notice of continuation of certification. Upon reaching a determination that the certification of eligibility should be continued, the certifying officer shall promptly publish in the Federal Register a summary of the determination with the reasons therefor. Such summary shall constitute a Notice of Continuation of Certification.


§ 90.18 Reconsideration of determinations.

(a) Determinations subject to reconsideration; time for filing. Any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a determination issued pursuant to the Act and §§90.16 paragraphs (c), (f), and (g), or §90.17(d) may file an application for reconsideration of the determination with the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. All applications must be in writing and must be filed no later than thirty (30) days after the notice of the determination has been published in the Federal Register.

(b) Contents of application for reconsideration. An application for reconsideration shall include: (1) Name(s), address(es), and telephone number of the applicant(s); (2) The name or a description of the group of workers on whose behalf the application for reconsideration is filed; (3) The name and case number of the determination complained of; and (4) A statement of reasons for believing that the determination complained of is erroneous. If the application is based, in whole or in part, on facts not previously considered in the determination, such facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation that the determination complained of was based on mistake of facts which were previously considered, such mistake of facts shall be specifically set forth. If the application is based, in whole or in part, on an allegation as to a misinterpretation of facts or of the law, such misinterpretation shall be specifically set forth.

(c) Determination regarding application for reconsideration. Not later than fifteen (15) days after receipt of the application for reconsideration, the certifying officer shall make and issue a determination granting or denying reconsideration. The certifying officer may grant an application for reconsideration under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on mistake in the determination of facts previously considered; or

(3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the determination.

(d) Notice of affirmative determination regarding application for reconsideration. Upon reaching a determination that an application for reconsideration meets the requirements of paragraph (c) of this section, the certifying officer shall issue an affirmative determination regarding the application and shall promptly publish notice in the Federal Register that the application for reconsideration has been received and granted. Such notice shall constitute a Notice of Affirmative Determination Regarding Application for Reconsideration.

(e) Notice of negative determination regarding application for reconsideration. Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination regarding the application and shall promptly publish in the Federal Register a summary of the determination, including the reasons therefor.
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§ 90.19 Judicial review of determinations.

(a) General. Pursuant to section 284 of the Act, 19 U.S.C. 2395, any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a final determination issued pursuant to the Act and §90.16(c), §90.16(f), §90.16(g), §90.17(d), §90.18(e), §90.18(h) or §90.18(i) may commence a civil action for review of such determination with the United States Court of International Trade within sixty (60) days after the notice of determination has been published in the FEDERAL REGISTER.

(b) Certified record of the Secretary. Upon receiving a copy of the summons and complaint from the clerk of the Court of International Trade, the certifying officer shall promptly certify and file in such court the record on which the determination was based. The record shall include transcripts of any public hearings, the findings of fact made pursuant to §90.16(b), §90.16(e), §90.18(h) or §90.18(i), and other documents on which the determination was based.

(c) Further proceedings. If a case is remanded to the Secretary by the Court
§ 90.21 Study.

(a) Initiation. Upon notification by the Commission, pursuant to section 224 of the Act, that the Commission has begun an investigation under section 201 with respect to an industry import relief action, the Secretary shall direct the Director of the Office of Trade Adjustment Assistance to immediately begin a study of

(1) The number of workers in the domestic industry producing the like or directly competitive article(s) who have been or are likely to be certified eligible for adjustment assistance; and

(2) The extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) Report. The report of the Secretary of the study under section 224(a) of the Act and paragraph (a) of this section shall be made to the President not later than fifteen (15) days after the day on which the Commission makes its report under section 201.

(c) Release of report. Upon making the report of the study to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 1205-0194.


§ 90.22 Dissemination of program knowledge and assistance to workers.

Whenever the Commission makes an affirmative finding under section 201(b) of the Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall, to the extent feasible, make available to the workers in such industry full information about programs which may facilitate their adjustment to the import competition. He shall provide assistance to such workers in the preparation and processing of petitions and applications for program benefits.

Subpart D—General Provisions

§ 90.31 Filing of documents.

(a) Where to file; date of filing. Petitions and all other documents shall be filed at the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. If properly filed, such documents shall be deemed filed on the date on which they are actually received in the Office of Trade Adjustment Assistance.

(b) Conformity with rules. Documents filed in support of the initiation of an investigation by the Director of the Office of Trade Adjustment Assistance shall be considered properly filed if they conform with the pertinent rules prescribed in this part 90. The Director may accept documents in substantial compliance with the pertinent rules of this part provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules. The Director cannot waive