

## Office of the Secretary of Labor

## § 75.1

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#### Dallas Regional Office

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### San Francisco Regional Office

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[72 FR 37099, July 9, 2007]

## **PART 75—DEPARTMENT OF LABOR REVIEW AND CERTIFICATION PROCEDURES FOR RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT OF 1972**

### Sec.

75.1 Introduction.

75.11 Standards for the review of applications.

AUTHORITY: Sec. 118, Pub. L. 92-419, 86 Stat. 663 (7 U.S.C. 1932).

### **§ 75.1 Introduction.**

(a) Section 118 of the Consolidated Farm and Rural Development Act authorizes the Rural Development Administration (RDA) of the U.S. Department of Agriculture (USDA) to make or guarantee loans to finance industrial and business activities in rural areas (broadly defined to include any place with a population of less than 50,000), 7 U.S.C. 1932(d). The Act also permits RDA to make grants to public bodies for measures designed to facilitate the development of private business enterprises and for pollution control and abatement projects.

(b) As a prior condition for the approval of such loans, guarantees and grants, the Act further specifies that the Secretary of Labor must certify to the Secretary of Agriculture within 30 days after referral, that the loan or grant is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing

## § 75.11

competitive enterprises in the area. Responsibility within the Department of Labor (DOL) for the review and certification process has been assigned to the Employment and Training Administration (ETA).

(c) The following procedures have been established by the Department of Labor in consultation with the USDA for the issuance of labor certifications under this program. These procedures are designed to insure the orderly and expeditious review of the applications by the Department of Labor (DOL) within 30 days after they have been received from the USDA. It is anticipated that the procedure will permit completion of all cases within the 30-day legal maximum processing period permitted under the law.

[40 FR 4394, Jan. 29, 1975, as amended at 72 FR 37103, July 9, 2007]

### § 75.11 Standards for the review of applications.

(a) *Applications to be routinely approved without field review.* The following types of applications will be routinely approved and certified by the Employment and Training Administration (ETA), provided that the required information is submitted by the applicant:

(1) *Loans which involve the change of ownership from one person or group to another or the refinancing of an existing loan.* Provided, That such loans will not result in any transfer from one area to another of any employment or business activity provided by operations of the applicant and are not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprise. In transmitting such applications to ETA, RDA will include:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan, and certifying that the loan is either for the purpose of financing the sale of the business or for the purpose of refinancing a loan and is not calculated to or likely to result in the transfer or expansion of employment or operations:

(ii) Three copies of Form RD 449-22, Certification of Non-Relocation; and

(iii) Three copies of Form RD 449-23, Data Information Sheet. ETA will issue an affirmative certification on such applications, without further review, within 10 working days.

(2) *Loans of less than \$100,000 where the loan proceeds are expected to result in the employment of not more than five workers.* In such instances, the RDA transmittal letter will call attention to the fact that the application involved falls within this category. This should be supported by data in the revised Forms RD 449-22 and 449-23 to be forwarded in triplicate to the DOL. For loan applications in this category, the RDA will also attach a certification signed by the State RDA director indicating that he has reviewed the loan application and certifying that such a loan is not calculated to or likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities in the area, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. Unless there is other evidence to indicate an adverse effect on unemployment or competitive business enterprises, ETA will accept this certificate and accompanying forms as the basis for an affirmative certification without further review and will so certify within 10 working days after receipt.

(3) *Grants where there are no known current or future occupants.* In the case of such applications, e.g., a county's proposal to build an industrial park, RDA will send a transmittal letter to ETA stating the name and location of the applicant, and the amount and purpose of the grant, and certifying that there are no known current or future occupants. RDA will also forward with the letter a resolution or other statement from the local governing

## 29 CFR Subtitle A (7-1-16 Edition)

body agreeing to a *prior* review and certification by ETA of any person or organization which may occupy all or part of the facility within 3 years from the date of the certification, to insure that the requirements of the Act are being complied with. ETA will, within 10 days after receipt of such applications, issue an affirmative certification conditional upon the right of review and certification of each potential occupant within the 3-year period.

(4) *Grants where the occupants are known*, and the improvement will not result in a transfer or increase in operations or employment by the occupants. The RDA transmittal letter shall provide, in addition to the information specified in paragraph (a)(3) of this section, the names of the occupants and a statement that this grant is not calculated to or likely to result in a transfer or increase in operations or employment. The applicant shall also be required to submit the same type of resolution as that specified in paragraph (a)(3) of this section. On the receipt of such data, ETA will issue a certification on the grant application and will certify the known occupants as well. The certification may require, however, that additional occupants or a change in occupants within the first 3 years after certification is subject to review and a redetermination.

(b) *Applications which will require field or other review.* (1) All loan and grant applications other than those specified in paragraph (a) of this section will be subject to a full review by the ETA prior to the issuance of a certification. For each loan application, the RDA shall submit to ETA:

(i) A letter of transmittal stating the name and location of the applicant and the amount of the loan;

(ii) Six copies of the Certificate of Non-Relocation (Form RD 449-22);

(iii) Six copies of the Data Information Sheet (Form RD 449-23); and

(iv) Any supplemental information, including A-95 Clearinghouse Reports, which RDA believes may be of value to ETA in evaluating the application.

For grant applications, the letter of transmittal shall also provide information about the purpose of the grant. Two copies of a resolution or other statement of the type specified under

paragraph (a)(3) of this section shall also be submitted with each grant application.

(2) Upon receipt of applications, ETA will review the materials for completeness and will inform RDA in writing of any missing items within 2 working days after the date of receipt. It is agreed that in such instances the statutory 30-day period will not begin until the file is complete. State workforce agencies will be requested, through the ETA regional offices, to provide labor market information needed to determine whether the loan would result in adverse competitive effect upon existing competitive enterprises in the area. Comments will be due in the ETA national office 3 weeks after receipt of the request in the ETA regional offices.

(3) To assist in the review process, DOL will publish in the FEDERAL REGISTER a weekly listing of applications received (other than those to be routinely certified). The listing will include the name and location (City and State) of the applicant and the principal product or type of business activity. In the case of grant applications, the listing will also include the name and principal product or business activity of the occupant(s) of the facility for which the grant is being made. All interested parties will be afforded a 2-week period from the date of publication to comment in writing to ETA. In the event that adverse comments are received, the applicant will be sent copies of such comments by certified mail, and afforded an opportunity to provide such additional information as the applicant deems appropriate within 2 weeks from the date of transmittal. The Rural Development Administration will also be provided with copies of such adverse comments.

(4) In some instances, involving particularly complex situations, ETA may request the Economic Development Administration (EDA) in the Department of Commerce, or other agencies to provide supplemental data. The number of such requests will depend upon the extent to which the DOL is capable of making resources available to EDA or other agencies to perform this function.

(5) When all the data have been assembled, a determination will be made

**Pt. 90**

by ETA of whether the requested certifications may be certified or denied. RDA will be notified in writing of the determination. If DOL's investigation indicates the need for additional information, all material will be returned to RDA with instructions indicating the additional information needed to make a certification. Continuation of the 30-day time limit will begin again when the additional material is returned to Labor.

(6) All denials will be given additional consideration if the applicant or the USDA provides additional evidence which they believe merits further consideration. If the DOL reaffirms its denial after a review of all available facts and such additional investigation as it may make, such denial shall be considered as final.

[40 FR 4394, Jan. 29, 1975, as amended at 72 FR 37103, July 9, 2007]

**PART 90—CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE**

**Subpart A—General**

Sec.

- 90.1 Purpose.
- 90.2 Definitions.
- 90.3 Applicability of part.

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

- 90.11 Petitions.
- 90.12 Investigation.
- 90.13 Public hearings.
- 90.14 Subpoena power.
- 90.15 [Reserved]
- 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.
- 90.17 Termination of certification of eligibility.
- 90.18 Reconsideration of determinations.
- 90.19 Judicial review of determinations.

**Subpart C—Initiation and Conduct of Study With Respect to Workers in Industry Which is the Subject of an Investigation for Industry Import Relief**

- 90.21 Study.
- 90.22 Dissemination of program knowledge and assistance to workers.

**29 CFR Subtitle A (7–1–16 Edition)**

**Subpart D—General Provisions**

- 90.31 Filing of documents.
- 90.32 Availability of information.
- 90.33 Confidential business information.
- 90.34 Notice procedures.
- 90.35 [Reserved]
- 90.36 Computation of time.

AUTHORITY: 19 U.S.C. 2320; Secretary's Order No. 3-81, 46 FR 31117.

SOURCE: 42 FR 32772, June 28, 1977, unless otherwise noted.

**Subpart A—General**

**§ 90.1 Purpose.**

The purpose of this part 90 is to set forth regulations relating to the responsibilities vested in the Secretary of Labor by the Trade Act of 1974 (Pub. L. 93-618), as amended, concerning petitions and determinations of eligibility to apply for worker adjustment assistance. Section 248 of the Act directs the Secretary of Labor to prescribe regulations which will implement the provisions relating to adjustment assistance for workers. This part will provide for the prompt and effective disposition of workers' petitions for certification of eligibility to apply for adjustment assistance.

[52 FR 23401, June 19, 1987]

**§ 90.2 Definitions.**

As used in this part, the term:

*Act* means the Trade Act of 1974, Public Law 93-618, 88 Stat. 1978, 2011-2030 (19 U.S.C. 2271-2321, 2395), as amended.

*Appropriate subdivision* means an establishment in a multi-establishment firm which produces the domestic articles in question or a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced. The term *appropriate subdivision* includes auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities.

*Certifying officer* means an official, including the Director, Division of Trade Adjustment Assistance, in the Employment and Training Administration, United States Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for