

PA Department of Labor & Industry
Workforce Investment Center
Bureau of Workforce Investment
WORKFORCE INVESTMENT INFORMATION NOTICE – No. 5-03

TO : ALL TEAM PA CAREERLINK SITE ADMINISTRATORS
ALL BECS MANAGERS
ALL REGIONAL DIRECTORS
ALL TAA REPRESENTATIVES
FEDERAL PROGRAMS UNIT
UNEMPLOYMENT COMPENSATION WORKFORCE
DEVELOPMENT LIAISONS
RAPID RESPONSE REGIONAL REPRESENTATIVES
WORKFORCE INVESTMENT AREA, TITLE 1 OPERATORS

FROM : JOHN C. VOGEL
Director
Bureau of Workforce Investment

SUBJECT : Trade Act Petition and Certification Policies

INQUIRIES : If you have questions concerning this issuance, please direct them to one of the following Bureau of Workforce Investment, Trade Coordination Staff staff via e-mail or telephone:

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- 1. Purpose.** It is intended to furnish local staff with guidelines relative to the State's Trade Act certification and petition processes.
- 2. Reference.** Trade Act of 1974 (Pub. L. 93-618), as amended; 20 CFR Part 617; the Trade Act of 2002 (P.L. 107-210); 20 CFR 617; 29 CFR 90; General Administration Letter 7-94 with Changes 1, 2, and 3. The amendments to the TAA program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002; Section 122 of the 2002 Act amends Section 238 of the 1974 Act; Section 121 of the 2002 Act amends Section 237 of the 1974 Act; Training and Employment Guidance Letter (TEGL) 11-02 dated October 10, 2002; Training and Employment Guidance Letter No 2-03, dated August 6, 2003.

- 3. Discussion.** With the enactment of the Trade Act of 2002, the U.S. Department of Labor (USDOL) is solely responsible for investigating and certifying petitions. The State no longer conducts preliminary investigations. The Trade Act of 2002 reduces by one-third (from 60 to 40 days) the time period in which the Secretary must review a petition, so that workers receive benefits and services sooner.

The filing of a petition triggers immediate provision of rapid response assistance and basic adjustment services available under the Workforce Investment Act (WIA), facilitating coordinated planning and more rapid reemployment.

The Trade Act of 2002 expands coverage to include workers not only directly affected by increased imports or certain shifts of production to other countries, but also to eligible workers who are secondarily affected workers of an upstream supplier or downstream producer to a certified primary firm.

Workers who seek the benefits and services available under the Alternate Trade Adjustment Assistance (ATAA) program must file a regular TAA petition which includes a request that the worker group be considered for eligibility to apply for the ATAA program. Failure to submit the supplementary information with the petition means that USDOL will not consider the worker group for certification under the ATAA program.

A new petition form has been developed by the USDOL for petitions filed on or after November 4, 2003. The Reconsideration and Appeals process remains the same as in the Trade Act of 1974.

While the USDOL maintains a website on which they post notice of receipt of petitions and approvals, the official notification process is through *Federal Registers*, which can be accessed through the USDOL's website at , <http://www.doleta.gov/tradeact/petitions.cfm>.

- 4. Action Required.** Local staff will regard this issuance along with the Federal regulations for the Trade Act of 1974, TEG L No. 11-02 the Trade Act 2002, as the State's current Petition and Certification policies.
- 5. Attachments.** The Trade Act Petition and Certification policy.
- 6. Expiration Date.** Ongoing.

Introduction

The Trade Act of 1974 was amended by the Trade Act of 2002, which was signed into law on August 6, 2002. The amendments that are covered in these instructions apply to Trade Act petitions that are filed on or after November 4, 2002.

Definitions

- **Adversely Affected Secondary Workers** – A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance benefits under this chapter if the Secretary determines that –
 - (1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;
 - (2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification
 - (3) either –
 - (A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or
 - (B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).
- **A certification** is an official authorization by the USDOL for a specified group of workers to apply for adjustment assistance. Once a certification is given to a company, any workers within that company who have been laid-off or whose hours are cut dramatically are eligible to apply for benefits. Generally, a certification is effective for two years from the date it is issued.
- **Downstream Producer** – The term “downstream producer” means a firm that performs additional, value-added production processes for a firm or subdivision (known as the primary firm/subdivision), including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility of the primary firm/subdivision of a group of workers employed by the primary firm/subdivision. The certification of

the primary firm/subdivision must have been based on an increase in imports from, or a shift of production, to Canada or Mexico.

- Supplier – The term “supplier” means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.
- Alternate Trade Adjustment Assistance (ATAA) – The Trade Act of 2002 establishes ATAA as an alternative assistance program for older workers certified eligible to apply for Trade Adjustment Assistance. This program is effective for petitions filed on or after August 6, 2003. The Act requires that petitioners who request that workers be certified for the ATAA program must do so at the time the Trade petition is filed. ATAA is designed to allow TAA eligible workers for whom retraining may not be appropriate and who find reemployment to receive a wage subsidy to help bridge the salary gap between their old and new employment. To receive ATAA benefits, workers must be TAA and ATAA certified.
- Total separation – A layoff lasting seven or more consecutive days.
- Partial Separation – A separation that occurs when a worker’s hours of work or wages are reduced by 80 percent or less of the worker’s average weekly hours or wages.

Petition Process

A Trade Act petition must be filed with the USDOL at the following address:

U.S. Department of Labor
Division of Trade Adjustment Assistance
200 Constitution Avenue, N.W. Room C-5311
Washington, D.C. 20210
Phone Number: 202-693-3560
Fax Number: 202-693-3584, 3585

The USDOL’s website, <http://www.doleta.gov/tradeact/petitions.cfm>, provides information about the Trade Act programs including downloadable petition forms in both Spanish and English.

The petition must also be filed, simultaneously, with the Pennsylvania at the following address:

Department of Labor and Industry
Bureau of Unemployment Compensation Benefits and Allowances
Federal Programs Unit
6th Floor, Labor and Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Fax: 717-772-0378

A petition may be filed prior to a layoff on the basis of a threatened lay-off. A certification will not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firms occurred more than a year before the date of the petition on which the certification was granted.

A petition may be filed by any of the following:

1. The group of workers, including workers in an agricultural firm or subdivision of any agricultural firm.
2. The official certified or recognized union that represents the workers.
3. An official of the company where the workers worked.
4. Team PA CareerLink operators or partners as defined in Section 101 of the WIA, including the Department of Labor and Industry, Bureau of Workforce Investment.

The workers must be, or have been, employed regularly at the company identified on the petition. The workers' employment must be, or have been, related to the production of articles described in the petition.

The USDOL determines the eligibility of a requested petition for Adjustment Assistance under TAA. In order for a certification to be issued, the petition must satisfy these two criteria:

1. A significant number or proportion of the workers in the workers' firm, or an appropriate subdivision of such firm, must have become totally or partially separated or be threatened with total or partial separation.
2. The second criterion is satisfied if either A or B below are satisfied:
 - A. (i) sales or production, or both, at the petitioning workers' firm or subdivision must have decreased absolutely, and

(ii) imports of articles like or directly competitive with articles produced by the petitioning workers' firm or subdivision have increased, and

(iii) the increase in imports described in (ii) contributed importantly to the petitioning workers' separation or threat of separation and to the decline in sales or production at the firm or subdivision.

B. (i) there has been a shift of production by the petitioning workers' firm or subdivision to a foreign country of articles like or directly competitive with the articles which are produced by the firm or subdivision, and

(ii) one of the following conditions applies:

- a. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or
- b. the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act, or
- c. there has been or is likely to be an increase in imports of the articles that are like or directly competitive with articles which are or were produced by the firm or subdivision.

Petition forms are available at the Team PA CareerLinks as well as the USDOL's website. Any of the petitioners may use the facilities of the Team PA CareerLink to submit their petition. Upon receiving a petition, the Team PA CareerLink staff will immediately transmit the petition by facsimile or other electronic means to USDOL.

The TAA petition form includes five sections. Once the sections are completed and the petition is filed, investigators at the USDOL review the form and gather data in order to verify that a layoff or threatened layoff was caused by increased imports or shifts in production. The petitioners are encouraged to provide full and complete information in order to expedite the investigatory process.

Following is an overview and explanation of each section:

Section 1 - Petitioner Information:

Petition forms must be completed by a group of three or more workers, a company official, a union or other duly authorized representative, or a One-Stop Operator or One-Stop partner.

If three workers complete the petition, they must all work at the same location. Additionally, all three workers must sign the petition form. If workers who complete the form are not from the same location, or if they do not all sign the form, the petition will be considered invalid and returned to petitioners.

Section 2 - Company Information

If the petition form is for workers laid off in multiple locations, information for each location must be included in this section. If necessary, please use additional sheets of paper to provide company information for each location affected.

Petitioners should provide as much information as possible in this section. The more information provided, the quicker investigators can complete their research into the causes of the layoff and issue determinations.

Section 3 - Trade Effects

This section helps illustrate whether imports or shifts in production caused layoffs. This section also indicates whether layoffs were directly or indirectly caused by imports or shifts in production.

Section 4 - Secondary Worker Information

As described in the Definitions section on Page 2 of the petition form, Secondary Workers are workers indirectly affected by increased imports from or shifts in production to foreign countries. Secondary Workers are employed by firms that either supply components to a trade-affected firm, or assemble or finish products for a trade-affected firm.

Secondary Workers are eligible for TAA only if the firm they supplied components to or finished products for has already been certified by the USDOL as affected by increased imports or shifts in production to foreign countries. Petitioners can verify if firms have been certified as trade-affected by checking the *Federal Register*, or calling the Division of Trade Adjustment Assistance (DTAA). Petitioners who suspect that they are Secondary Workers should answer "Yes" to question 3(d) in Section 3 and provide as much information about the trade-affected firm as possible. The more information provided, the quicker investigators can determine whether or not workers qualify as Secondary Workers.

There are basically two groups of workers that can be certified as eligible to apply for adjustment assistance because the workers are secondarily affected--workers who supply components (upstream) to a firm whose workers are certified (primary) or workers who perform additional, value-added production and finishing operations (downstream) for a firm whose workers are certified (primary).

Upstream workers must directly supply the primary firm. The articles produced by upstream workers must be directly incorporated into the articles that were the basis for the certification of the primary firm's workers. Supplier chains are often categorized according to "tiers." Firms in the first tier supply components directly to the producer of

the final product. Firms in the second tier supply components to firms in the first tier, and so forth. The Secondary Worker coverage applies only to workers employed by firms in the first tier. The components supplied to the primary firm by the upstream workers must either account for at least 20 percent of the production or sales of the upstream firm, or the loss of business with the primary firm by the upstream firm must have contributed importantly to the upstream workers' separations or threat of separations. For upstream workers to be certified as secondarily affected, the import impact on the primary firm can come from increased imports from any country or a shift of production to any country that qualifies under the shift-of-production criteria.

Downstream workers must directly perform additional, value-added production processes, including final assembly or finishing, on the products of the primary firm. Downstream workers can only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico. Also, the downstream workers' firm must have suffered a loss of business with the primary firm that contributed importantly to the workers' separations or threat of separations.

Section 5 - Date

The petition must indicate the date on which it is filed. Petitions that are not dated will be considered invalid and returned to petitioners.

Other information can be submitted on additional sheets of paper with the petition form if necessary.

Upon receipt of the petition the USDOL will publish a notice in the *Federal Register* that the Secretary of Labor has received the petition and initiated an investigation.

Alternate Trade Adjustment Assistance (ATAA)

Workers who seek the benefits and services available under the ATAA program must file a regular TAA petition which includes a request that the worker group be considered for eligibility to apply for the ATTA program.

The USDOL will make ATAA Petition forms available once the Office of Management and Budget approves it. A supplemental form has been developed by the USDOL for temporary use which is available on the USDOL website.

In order to establish that petitioning workers are eligible to apply for the ATAA Program, the USDOL must first determine that all of the criteria for a regular TAA certification are met. In addition, the USDOL must find that three additional criteria are met for ATAA certification. These additional criteria are:

- (1) a significant number of adversely affected workers in the petitioning workers' firm are 50 years of age or older;

- (2) the adversely affected workers in the petitioning workers' firm possess job skills that are not easily transferable to other employment; and
- (3) the competitive conditions within the affected workers' industry are adverse.

Obtaining data and other information necessary to determine that all three of these criteria are satisfied will be part of the normal petition investigation process conducted by the DTAA. Workers may transmit data with their petition for any or all of these criteria, which will be considered by DTAA in making its determination.

For criterion 1, the term "significant number" means five percent of the adversely affected workforce or 50 workers, whichever is less, or at least three workers in a firm with less than 50 adversely affected workers.

For criterion 2, the DTAA of the USDOL will contact the company official to confirm that the worker group for whom a petition has been filed possesses job skills that are not easily transferable to other employment, with a focus on what skills the worker possesses. Should the company official be unable to provide information as to whether the skills are easily transferable, the state (e.g., Rapid Response or other appropriate unit) will be asked to furnish the assessment.

For criterion 3, information will be collected from government and industry association sources as part of DTAA's investigation process. Specifically, the information collected will be used to determine if:

1. the number of firms in the industry is declining;
2. the conditions (such as declining production and/or employment) in the industry are such that the affected workers are not likely to find new employment within the industry; or
3. aggregate U.S. imports of products like or directly competitive with those produced in the industry are increasing.

Rapid Response

Upon receipt of a petition on or after November 4, 2002, the State will ensure that rapid response assistance and appropriate core and intensive services, as described in Section 134 of the WIA, are made available to the workers covered by the petition to the extent authorized under the WIA and other Federal laws. This requirement applies to every petition received. If a petition is generated during the course of rapid response assistance to a worker group, this requirement will be satisfied for that petition. The State shall use the date that the petition is received by the State as the criterion for providing rapid response assistance.

Determination by the Department of Labor

The USDOL will make a certification of eligibility as soon as possible but, in any event, no later than 40 days after the date the petition is filed. Each certification will specify the date on which the total or partial separation began or threatened to begin. The determination on a petition is published in the *Federal Register* together with the reason for making the determination. The USDOL will directly notify the petitioners, company, and State of the final determination regarding the petition

When the USDOL makes an affirmative finding, the certification will establish an impact date. The impact date cannot begin more than one year prior to the date of the petition. The certification may set a termination date that identifies the date that the adverse effect ceased. If there is no termination date, the certification will expire two years from the date it is issued.

Only workers who have had a total or a partial separation from certified employment on or after the impact date and before the termination or expiration date are eligible to apply for program benefits.

Appeal Process

Workers whose petitions for TAA are denied by the USDOL may request administrative reconsideration of the USDOL's finding within 30 days after publication of the final determination in the *Federal Register*.

The request for reconsideration must be in writing, including the TAA investigation number, and a description of the group of workers on whose behalf the petition was filed, and must cite specific reasons why the workers consider the decision to be in error, either according to the facts, the interpretation of the facts, or the law itself.

Requests for reconsideration should be mailed to:

Office of Trade Adjustment Assistance,
200 Constitution Ave, N.W., Room C-5311
Washington, D.C. 20210

Workers may also file an appeal seeking judicial review of the USDOL's negative determination or redetermination within 60 days of publication of the denial in the *Federal Register*.

Appeals for judicial review must be filed with the:

U.S. Court of International Trade
Office of the Clerk
Federal Plaza
New York, New York 10007