

**Guidelines for the Investigative Process to Determine Qualification  
as a Secondarily-Affected Worker Group**

**1. NAFTA-TAA Petition Filing Process**

A NAFTA-TAA petition may be filed by a group of three or more workers, including family farms and farmworkers, an employer, a union or a community-based organization representative. Workers employed by secondary firms who believe they may be secondarily-affected should complete the Secondary Firm section of the NAFTA-TAA petition. All NAFTA-TAA petitions must be completed and signed and sent to the State NAFTA-TAA Coordinator. (See **Attachment B** for NAFTA-TAA Petition Form).

**2. State NAFTA-TAA Coordinators Role in the NAFTA-TAA Investigative Process.**

Whether the petition identifies potential secondary impact or not, the State will conduct its preliminary investigation as outlined in GAL 7-94.

**a. Immediately upon receipt of the NAFTA-TAA petition, the State NAFTA-TAA Coordinator must:**

- 1) Review the petition for completeness and, if complete, record the receipt date at the bottom of the petition.

Completed NAFTA-TAA Petition must contain the following information:

- < Petitioner's name, address and telephone numbers (if company or union official is filing the petition, make sure the title is included);
- < Approximate date of layoff;
- < Union affiliation (if applicable);
- < Company name, address, telephone and fax numbers, and contact person;
- < List of articles produced by the company;
- < A statement of reason for submitting the petition must be check-marked (Item 4 of the petition form). If Item 4d has been check-marked, make sure the Secondary Firm section of the petition has been filled out. (Including company name, address and telephone number of the primary firm, a list of the articles produced by the primary firm, and a description of the relationship between the secondary firm and the primary firm.); and

- < Petitioner's signature and submission date.
- 2) Complete the "Governor's Office Use Only" section;
- 3) Immediately fax a copy of the petition to OTAA at (202) 219-5753 or (202) 501-6489;
- 4) Contact the company official<sup>1</sup> to verify the appropriate contact person, confirm the product description, inquire about worker separations, and inform the company that a Confidential Data Request (CDR) packet will be faxed; and
- 5) Prepare a CDR packet (with a five day deadline) and fax to company. (Ensure that CDR packet requests current company data, including year-to-date data compared to prior year-to-date data.)
- 6) When the State NAFTA-TAA coordinator receives a petition, a copy of the petition, or other appropriate notification, should be immediately provided to the State DWU.
- 7) If the CDR packet has not been received within 10 days, the State NAFTA-TAA Coordinator will call the company contact person and urge its completion and transmittal via fax.

**b. Upon receipt of the completed CDR, the State NAFTA-TAA Coordinator must:**

- 1) Review the CDR packet for accuracy and completeness;

An accurately and fully completed CDR packet must contain the following information:

- < Company name, address, telephone and fax numbers, contact person and signature of the contact person;
- < Information related to the NAFTA-TAA Program must be check-marked;
- < Sales, production and employment figures for the current and previous year and comparative periods for each affected article;
- < Total company imports from any country for the current and previous year and comparative periods for each affected article;
- < Total company imports from Canada or Mexico for the current and previous year and comparative period for each affected article;

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<sup>1</sup> GAL 7-94 provides detailed information on contacting the company official.

- < Production shifted to Canada or Mexico for the current and previous year and comparative period for each affected article;
- < Identification of the three major declining customers (including name, address, telephone and fax numbers, and contact person) that account for the significant decline in sales or production for each affected article;<sup>2</sup> and
- < Identification of the major projects for which the company submitted unsuccessful bids during the last two years (relevant only if the company works on a contractual basis).

If the company refuses to return a fully completed CDR, immediately contact the Federal Investigator regarding the issuance of a pre-subpoena letter by OTAA. Regulations on subpoena power authority are published at 29 CFR 90.14.

- 2) Make a preliminary finding regarding the worker group's eligibility to apply for transitional adjustment assistance upon receipt and review of the CDR packet. The preliminary finding shall include a brief statement indicating the basis for the finding.

**c. No later than ten days after the petition is received, the State NAFTA-TAA Coordinator will:**

- 1) Fax to OTAA:
  - another copy of the petition;
  - the CDR packet (including cover letter, customer list and/or official correspondence from the company contact person); and
  - the statement indicating the basis for the preliminary finding;
- 2) Notify the petitioners of the preliminary finding;
- 3) Notify the State DWU of the preliminary finding to ensure that rapid response and basic readjustment services are made available to the workers (if not already made available).

**3. OTAA NAFTA-TAA Investigation and Determination Findings.**

OTAA, upon receiving all pertinent information from the State NAFTA-TAA Coordinator, reviews the documentation and determines the scope of the

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<sup>2</sup> It is imperative that State NAFTA-TAA Coordinators make sure that information regarding customers and/or bids lost is identified in all CDRs. This is particularly important for petitions that have been filed as Secondary Firm, as secondary firms may be supplying or finishing production for a primary firm on a contractual basis. OTAA will use this information to determine whether the company is a secondary firm.

investigation (including ascertaining whether a customer survey needs to be initiated). All NAFTA-TAA petition investigations, whether filed as Primary Firm or Secondary Firm, are first reviewed to determine whether the group of workers meets the group eligibility requirements for certification as Primary Firms. In instances where workers can be certified as Primary Firms, workers do not have to be considered as secondarily-affected workers because they will receive program benefits pursuant to the NAFTA-TAA program. However, if there is no evidence that the group of workers meets the group eligibility requirements for certification as Primary Firms, then OTAA will determine whether the workers' employing firm qualifies as a Secondary Firm pursuant to the SAA.

OTAA will make all Final Determinations no later than 40 days after the petition is received by the State. All Final Determinations and findings identify the State DWU where the petitioning workers may seek assistance.

#### **4. Notification Process.**

##### **a. OTAA is responsible for:**

- 1) Faxing all Final Determinations to the State NAFTA-TAA Coordinator within 24 hours after the Certifying Officer has signed it;
- 2) Notifying the petitioners and the company contact person of its final determination;
- 3) Publishing all Final Determinations and Findings with Respect to Secondarily-Affected Workers in the Federal Register

OTAA will notify the Office of Worker Retraining and Adjustment Programs (OWRAP) of all Affirmative or Negative Findings Regarding Qualification as a Secondary Firm.

##### **b. The State NAFTA-TAA Coordinator is responsible for:**

- 1) Notifying workers covered by a certification as a Primary Firm that they are eligible to apply for benefits under the NAFTA-TAA Program;
- 2) Notifying workers covered by an Affirmative or Negative Finding Regarding Qualification as a Secondary Firm that they are eligible to apply for benefits under the JTPA Title III dislocated worker program; and
- 3) Notifying the State DWU of the Affirmative or Negative Finding Regarding Qualification as a Secondary Firm to ensure that rapid response and basic readjustment services are made available to all secondarily-affected workers.

**c. The State DWU is responsible for:**

- 1) Providing rapid response assistance to all workers;
- 2) Transmitting the Affirmative or Negative Finding Regarding Qualification as a Secondary Firm to the local service delivery area;
- 3) Assessing the local service delivery area's available resources; and
- 4) Encouraging the local SDA to apply for a National Reserve Account grants.

**5. Reconsideration of Negative Findings.** Interested parties as set forth at 29 CFR 90.18(a) may file an application for reconsideration by the OTAA as stipulated in 29 CFR 90.18. An application for reconsideration must provide information as to the basis for the request for reconsideration, such as citing of factual error in the Department's finding or referring to relevant information which was not previously considered, within 30 days after publication of the negative finding in the Federal Register. The Department will review the request for reconsideration for merit and, based upon that review, will determine whether to accept the case for reconsideration. If so accepted, the Department will conduct an additional investigation and, based upon a review of that additional information, will issue a finding upon reconsideration either reversing or affirming its previous finding. Notice of this finding will be published in the Federal Register. Secondarily-affected workers group findings issued by the Department upon reconsideration are not appealable to the Court of International Trade, unlike findings issued under TAA and NAFTA-TAA.

**6. Grievances Procedures.** Secondarily-affected workers may file complaints and grievances arising in connection with the JTPA program pursuant 20 CFR 627.500.