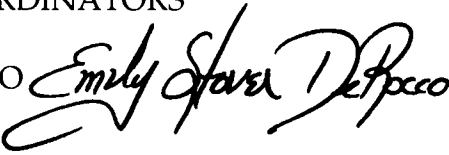


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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION TAA |
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| | DATE October 29, 2004 |

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-03, Change 2

TO: ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS
 ALL ONE-STOP CENTER SYSTEM LEADS
 ALL STATE TRADE COORDINATORS

FROM: EMILY STOVER DeROCCO 
 Assistant Secretary

SUBJECT: Requests for Certification under the Alternative Trade Adjustment Assistance (ATAA) Program for Certain Worker Groups Covered by Certified TAA Petitions

- Purpose.** To amend the operating instructions issued in Training and Employment Guidance Letter (TEGL) No. 2-03 and 2-03, Change 1, to permit certain worker groups previously certified under the Trade Adjustment Assistance (TAA) program to now request ATAA program certification.
- References.** Trade Act of 1974 (Pub. L. 93-619, as amended); Trade Act of 2002 (Pub. L. 107-210); Workforce Investment Act of 1998 (Pub. L. 105-220); 20 CFR Part 617; 29 CFR Part 90; TEGL No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002;" TEGL No. 2-03, "Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002;" TEGL No. 2-03, Change 1, "Alternative Trade Adjustment Assistance (ATAA) for Older Workers Questions and Answers."
- Background.** TEGL No. 2-03 provided interim operating instructions for states to use in implementing the ATAA program. TEGL No. 2-03, Change 1, provided answers to questions the Department received concerning the operation of the ATAA program. Since TEGL No. 2-03 and 2-03, Change 1, were issued, the Department has received inquiries from several worker groups who filed petitions for TAA shortly before the August 6, 2003, implementation of the ATAA program, and whose petitions were still in process at the time of implementation. The

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petitioners for these groups were not aware that they could have withdrawn their petitions and re-filed them with a request for ATAA certification on or after August 6, 2003.

In addition, the Department has received several inquiries from worker groups who filed petitions on or after August 6, 2003, but who were unaware that petitioners are required to request ATAA consideration at the time the petition is filed, if they wish to establish ATAA eligibility.

In order to provide equitable access to ATAA, the Department is amending the operating instructions issued in TEGL No. 2-03 and 2-03, Change 1, as they apply to worker groups covered by a certified petition that was in process on August 6, 2003 (i.e., filed prior to August 6, 2003 and certified on or after August 6, 2003) and to worker groups that filed their petition after August 6, 2003, who inadvertently used an obsolete form that did not provide an opportunity to indicate whether or not the petitioner wished to request ATAA certification. As explained in section 5, these worker groups (or their authorized representatives) may now request ATAA certification. These amendments do not apply to worker groups covered by a certification issued prior to August 6, 2003, nor do they apply to groups that indicated on the petition form that they did not wish to be considered for ATAA, failed to respond to the question, or that were contacted by the Department and indicated that they did not wish to be considered for ATAA certification at the time the original petition was filed.

4. **Previous Operating Instructions.** TEGL No. 2-03 contains instructions regarding the "Petitioning Process" for establishing ATAA eligibility. On page 2, the instructions require that in order to establish eligibility for ATAA, workers "must file a regular TAA petition, which includes a request that the worker group be considered for eligibility to apply for the ATAA program." Further, on page 3, the instructions provide that "Failure to submit the [request for ATAA certification] with the petition means that DOL will not consider the worker group for certification under the ATAA program."

TEGL No. 2-03, Change 1, includes clarifications of the requirement to submit an ATAA request at the time the petition is filed. Question 49 of the attachment clarifies that petitioners have the option of withdrawing their petition and re-filing:

"Q: Is there a mechanism to add a request for ATAA certification to a petition that is already in process?

A: Yes. A request for ATAA certification can be made on a petition that has been received but is still under investigation. In such cases, the petitioner(s) must withdraw the petition and resubmit it with a request for ATAA

certification because the Trade Act requires that an ATAA program request be made at the time the petition is filed.”

Question 50 clarifies that once a certification is made, there is no mechanism to request ATAA certification:

“Q: Is there a mechanism to review a TAA certification in order to add an ATAA certification where a request for ATAA was not indicated on the original petition?”

A: No. TEGL No. 2-03 provides that a request for ATAA consideration must be made at the time the petition is filed and is consistent with Section 246 of the Trade Act, as amended.”

This Change 2 amends the requirement to submit an ATAA request at the time the petition is filed for worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, using an obsolete form that did not allow them to indicate whether or not the petitioner(s) wished to request ATAA certification.

5. **Revised Operating Instructions.** Worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, using an obsolete form that did not allow the petitioner(s) to indicate whether or not they wished to request ATAA certification (except petitioners that were contacted by the Department and stated that they did not wish to be certified for ATAA) may now request ATAA consideration for the certified worker group. The request must be made to the Department and may be made by anyone who was entitled to file the original petition under section 221(a)(1) of the Act (i.e., three workers in the worker group covered by the certification, the union or other duly authorized representative, the employer, the state workforce agency, or a One-Stop operator or One-Stop partner). Requests for ATAA consideration must:

- 1) be in writing;
- 2) include the TAA investigation number of the original petition; and
- 3) describe the group of workers included in the original petition, the name and location of the company where they worked and the article produced by their company.

Requests may be mailed to the United States Department of Labor, Employment and Training Administration, Division of Trade Adjustment Assistance, Room C-5311, 200 Constitution Avenue, N.W., Washington, DC 20210, Telephone: 202-693-3560, or may be submitted by Fax to: 202-693-3584 or 3585.

Upon receipt of the request, the Department will conduct an investigation into whether the ATAA group eligibility requirements under section 246(a)(3)(A)(ii) of the Act were met at the time the original TAA petition was filed. If group eligibility is established, the Department will issue a notice of determination of ATAA for the worker group. The impact date, certification date, and expiration date of the original certification will remain unchanged and will apply to the ATAA certification as well. Individual workers will then be eligible to apply for ATAA benefits through the state agency. The standards for individual eligibility under section 246(a)(3)(B) of the Act and TEGL No. 2-03 and 2-03, Change 1, will apply to each worker who applies for the ATAA program. None of the individual eligibility criteria or deadlines are affected by this change; individuals must still meet all five of the individual eligibility requirements, including the requirement to obtain reemployment by the last day of the 26th week after the worker's qualifying separation from TAA/ATAA-certified employment.

Worker groups covered by certifications that were issued prior to August 6, 2003, or that indicated at the time of the petition, either on the petition form or through subsequent contact with the Department, that they did not wish to be considered for ATAA certification are not eligible to submit a new request.

6. **Filing of Future Petitions.** The "Petition for Trade Adjustment Assistance" (OMB approval number 1205-0342) includes a question asking whether the petitioner(s) wish to request ATAA certification. Petitioners who wish to request ATAA certification must do so by answering "yes" to the question on the petition form at the time that it is filed. The Department will make one attempt to contact any petitioner who leaves that question blank. If the Department does not get a response from the petitioner(s) within 24 hours, the Department will assume the petitioner(s) did not wish to be considered for ATAA and the investigation will be conducted accordingly. Once a certification is issued, these worker groups will not be able to request ATAA certification. States are encouraged to work with petitioners to make sure they are aware of the ATAA program and the need to request ATAA certification on the petition form.
7. **Notification.** The Department will initiate contact with the original petitioner(s) and a company official for each of the worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, but used an obsolete form that did not provide an opportunity to indicate whether or not the petitioner(s) wished to request ATAA certification to inform them of their opportunity to request ATAA certification. Groups of workers who wish to request ATAA certification will have 45 days from the date of the Department's notification to submit their request for ATAA certification. States are encouraged to inform individual workers covered by the certifications that are affected by the amendments in this Change 2 of their

opportunity to request ATAA certification and to provide assistance in filing these requests, as needed.

8. **Action Required.** State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of federal law that are contained in this advisory.
9. **Inquiries.** States should direct all inquiries to the appropriate ETA Regional Office.