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20 CFR Part 617

**Trade Adjustment Assistance for Workers;
Amendment of Regulations; Proposed
Rule**

DEPARTMENT OF LABOR**Employment and Training Administration**

RIN 1205-AB07

Trade Adjustment Assistance for Workers; Amendment of Regulations**AGENCY:** Employment and Training Administration, Labor.**ACTION:** Proposed rule.

SUMMARY: The Department of Labor proposes to amend the regulations on the trade adjustment assistance program for workers. The proposal would implement amendments to the Trade Act of 1974 made by Title V of the North American Free Trade Agreement Implementation Act, enacted December 8, 1993, and would provide uniform rules for States and State agencies in carrying out their responsibilities under the Trade Act. The proposed rule would affect workers in firms who are separated from employment because of increased imports from Mexico or Canada of articles like or directly competitive with articles produced by the workers' firm or because of the shift in production of such articles to Mexico or Canada. It would also impact State agencies that serve as agents of the United States, through written agreements with the Secretary of Labor, in providing trade adjustment assistance to adversely impacted workers.

DATES: Written comments on this proposed rule must be received in the Department on or before March 20, 1995.

ADDRESSES: Written comments may be mailed or delivered to the Office of Trade Adjustment Assistance, Employment and Training Administration, 200 Constitution Avenue NW., Room C-4318, Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room C-4318 at the above address.

FOR FURTHER INFORMATION CONTACT: Victor J. Trunzo, Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219-5555 (this is not a toll free number). Copies of this proposed rule are available in alternative formats for persons with disabilities. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION: Pursuant to Chapter 2 of Title II of the Trade Act of 1974, when a petition for trade

adjustment assistance (TAA) is submitted to the Department of Labor (the Department) by a group of workers or its authorized representative, a factfinding investigation is conducted. If the findings substantiate that the workers of a firm or subdivision of a firm have been adversely affected by import competition, a certification of eligibility is issued by the Department stating that the workers are eligible to apply for TAA benefits and services at a local office of a State employment security agency. TAA benefits and services include training, job search allowances, relocation allowances, trade readjustment allowances (TRA) and other reemployment services.

This proposed rule would implement amendments to Chapter 2, Title II, of the Trade Act made by Title V—NAFTA Transitional Adjustment Assistance and Other Provisions—of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182). The amendments in Title V made a significant change to Chapter 2, Title II, by adding a new TAA program for workers whose employment is adversely affected because of NAFTA. This program assists workers who have been adversely affected as a result of increased imports from Mexico or Canada of articles like or directly competitive with articles produced by the workers' firm or because of the shift in production of articles by the firm to Mexico or Canada.

The Title V amendments: (1) Add a new Subchapter D in Chapter 2, Title II, of the Trade Act entitled: "Establishment of a Transitional Program"; (2) set out separate criteria for certifying a worker group for NAFTA transitional adjustment assistance (NAFTA-TAA); (3) institute procedures for filing and processing NAFTA-TAA petitions by having petitions filed with the Governor in the State where the workers' firm is located; (4) establish time frames for Governors and the Secretary of Labor to process NAFTA-TAA petitions; (5) provide for the review of a petition under the regular TAA program when denied certification under the NAFTA-TAA group eligibility requirements; (6) provide that workers covered by a NAFTA-TAA certification are eligible, with specified exceptions, for benefits and services in the same manner and to the same extent as workers certified under the regular TAA program; (7) require workers certified for NAFTA-TAA to be enrolled in training within a prescribed time period to qualify for TRA; (8) eliminate the waiver of the training requirement as a condition for TRA eligibility for workers certified under the NAFTA-

TAA program; (9) require States to provide rapid response and basic readjustment services to workers under Title III of the Job Training Partnership Act (JTPA) when the Governor preliminarily finds the workers to be adversely affected by increased imports from, or the shift of production to, Canada or Mexico; (10) provide that no worker may receive assistance relating to a separation under both the regular TAA and NAFTA-TAA programs; and (11) make other conforming changes.

This proposed rule relates only to those provisions of Title V of the NAFTA Implementation Act affecting the TAA program. Most of the provisions of Title V are in the form of amendments to Chapter 2 of Title II of the Trade Act of 1974. While some of the provisions of Title V are not in the form of amendments to the Trade Act, they nonetheless must be given effect in implementing the NAFTA-TAA program.

While the NAFTA-TAA program is generally similar to the regular TAA program, it does differ in several ways. Under the NAFTA-TAA program, Governors have been given the specific role of making a preliminary finding in response to all petitions filed by worker groups of firms in the State. State agencies administering the TAA program have also been given new program responsibilities. Workers who have been certified as eligible to receive NAFTA-TAA are required to be enrolled in training within a prescribed time period to qualify for TRA payments. Waiver of the training requirement as a condition for TRA eligibility, which is now available to eligible workers in the regular TAA program, is not available to workers certified for NAFTA-TAA.

Section by Section Discussion*Section 617.1 Scope*

Section 617.1 would be revised to expand the scope of part 617 to include the NAFTA-TAA program. Since there are differences between the original TAA program and the NAFTA-TAA program, the original program will be referred to as the "regular TAA program" in subpart H and in several sections of the regulations revised by this rulemaking. However, all the regulations that use the term "TAA program" in part 617 would not be revised. Therefore, where this term is used in subparts A through G, it would ordinarily apply to both programs. Other technical changes would be made to this section to better reflect the

services and benefits available to adversely affected workers under both programs.

Section 617.2 Purpose

The purpose section would be revised by adding that an objective of the trade adjustment assistance program is to assist workers separated from employment because of increased imports from Mexico or Canada or by a shift in production by the workers' firm to Mexico or Canada. The revised provision would make specific reference to the new NAFTA-TAA program.

Section 617.3 Definitions

The definitions in paragraphs (j)(1) *Certification*, (mm) *Trade adjustment assistance (TAA)* and (nn) *Trade readjustment allowance (TRA)* of § 617.3 would be revised to bring them in accord with the provisions of proposed subpart H governing the NAFTA-TAA program.

The definition for *Certification* would be revised by removing the clause "under section 223" and thereby expanding the scope to include all certifications issued under the Act, including those related to the NAFTA-TAA program. The revised definition would state that *Certification* means a certification of eligibility to apply for TAA issued under the Act with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

The definition for *Trade adjustment assistance (TAA)* would be revised to include references to both the regular TAA program and the NAFTA-TAA program. The revised definition would state that *Trade adjustment assistance (TAA)* means the services and allowances provided for achieving reemployment of adversely affected workers under both the regular TAA and NAFTA-TAA programs, including TRA, training, job search allowances, relocation allowances, and other reemployment services.

The present definition for *Trade readjustment allowance (TRA)* would be revised by removing the clause "under subpart B," thereby expanding the definition to include TRA payable to all eligible workers under part 617, including those under the NAFTA-TAA program. The revised definition would state that *Trade readjustment allowance (TRA)* means a weekly allowance payable to an adversely affected worker with respect to such worker's unemployment under part 617.

Section 617.4 Benefit Information to Workers

This section would be amended to require State agencies to ensure that

their staffs are familiar with the NAFTA-TAA and the regular TAA programs, and the procedures for filing petitions under each program. According to existing § 617.4, the staff must inform workers applying for employment services and unemployment insurance benefits about the regular TAA program. Paragraph (a) of § 617.4 would be revised by deleting specific references to subparts B through E and section 223 of the Act, to make it applicable to certifications of eligibility for the NAFTA-TAA as well as the regular TAA program.

For the same reasons, paragraph (c) of § 617.4 would be revised by deleting the reference to section 223 of the Act; paragraph (i) of § 617.4(d)(1) would be revised by deleting the reference to subparts B through E and section 223 of the Act; and paragraphs (1),(2), and (3) of § 617.4(e) would be revised by deleting any references to subpart B and section 221 of the Act. Further, paragraph (e)(3) would be revised to clarify the references to time periods for enrollment in training in order to qualify for TRA under either TAA program.

Section 617.10 Application for TRA

Paragraph (b) of § 617.10, would be divided into two subparagraphs. The present paragraph (b) concerning timing of applications under the regular TAA program would be retained as paragraph (1) of § 617.10(b) and would specifically state that it applies only to applications for TRA under the regular TAA program.

Paragraph (b)(2), concerning the timing of applications under the NAFTA-TAA program, would state that for purposes of the NAFTA-TAA program, eligibility for TRA is conditional upon enrollment in an approved training program as required by § 617.78(b). The requirements of this provision are explained in the discussion of § 617.78 later in this preamble. The good cause provision in paragraph (b)(1) would not be repeated in this paragraph because the Act provides for specific time periods for enrollment in training that must be met in order to qualify for TRA.

Subpart H—NAFTA Transitional Adjustment Assistance

Subpart H, entitled NAFTA Transitional Adjustment Assistance, would be added to part 617. This subpart would include the rules for implementing the NAFTA-TAA program. Subpart H would contain provisions that address the certification process, eligibility for program benefits and services, and other administrative

provisions related to the NAFTA-TAA program.

Section 617.70 Definitions

This section would include the definitions applicable to the Governor's responsibilities for factfinding and making a preliminary finding in response to petitions for certification of eligibility under the NAFTA-TAA program and for administering this program. The proposed definitions are arranged in alphabetical order and, although primarily used in subpart H, are applicable to all of part 617.

The proposed definitions for *Appropriate subdivision*, *Firm*, *Increased imports*, *Like or directly competitive*, and *Significant number or proportion of workers*, are the same as the definitions of those terms in 29 CFR 90.2 which address the Department's processing of petitions under the regular TAA program. Therefore, they are not discussed further in this preamble. Use of these terms would provide consistency in their application in both the regular TAA and the NAFTA-TAA programs.

The definition of *Contributed importantly* is taken from paragraph (2) of section 250(a) of the Trade Act. This is the same definition in section 222(b)(1) of the Trade Act for the regular TAA program. It also is identical with 29 CFR 90.16(b)(3) regarding determinations and certifications of eligibility to apply for adjustment assistance under the regular TAA program.

The term *Governor* would be defined as the chief elected executive branch official of the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. This definition identifies the official responsible for receiving and making a preliminary finding upon petitions in all the jurisdictions within the NAFTA-TAA program.

The definitions of *NAFTA-TAA* and *regular TAA* programs are included in order to differentiate between the special TAA program for NAFTA-affected workers in subpart H and the regular TAA program.

A definition for the *Office of Trade Adjustment Assistance (OTAA)* is included in the proposal to identify the organization within the Department of Labor responsible for the administration of the trade adjustment assistance programs for workers. This is the office that State officials work with in order to administer the NAFTA-TAA program. The delegation to OTAA to act on behalf of the Secretary is derived from Secretary's Order No. 3-81 (46 FR

31117), which was issued on June 1, 1981.

A definition for *Shift in production* is included in the proposed rule since the NAFTA-TAA program permits the certification of workers based solely on a shift in production while the regular TAA program does not have a similar provision. This definition states that the term means a change, by the workers' firm or appropriate subdivision, in the location of the production of an article that was formerly produced in the U.S. by the workers' firm or appropriate subdivision to a producing plant located in Mexico or Canada, or a contract or license by the firm producing the article in the U.S. to have a firm produce that article in Mexico or Canada.

Section 617.71 Group Eligibility Requirements

Paragraph (a) of this section would set forth the group eligibility requirements for a worker group to be certified under the NAFTA-TAA program. This section is substantially identical to paragraph (a) of section 250 of the Trade Act. It would provide that a group of workers (including workers in any agricultural firm or subdivision) will be certified as eligible to apply for adjustment assistance under the NAFTA-TAA program if the Secretary determines that a significant number or proportion of the workers have become totally or partially separated, or are threatened to become totally or partially separated as a result of increased imports from, or a shift in production to, Mexico or Canada.

In order for the worker group to be eligible for certification, the investigation of the petition must substantiate that: (1) The sales or production, or both, of such firm or subdivision have decreased absolutely; (2) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased; and (3) the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

Alternatively, workers may be certified under the NAFTA-TAA program when it can be substantiated that, in addition to worker separations, there has been a shift in production by such workers' firm or appropriate subdivision to Mexico or Canada of articles like or directly competitive with articles that are produced by the firm or appropriate subdivision. The article must have been formerly produced by a U.S. located firm or appropriate subdivision of the firm and now be

produced in Mexico or Canada. A shift in production may occur either by the firm or subdivision moving production of the article to Mexico or Canada, or the U.S. located firm contracting or licensing for production of an article with a firm located in Mexico or Canada.

These provisions are generally similar to the group eligibility provisions used in the regular TAA program except that they focus on imports from Mexico or Canada. A significant variation is the provision for certification of a worker group when the firm shifts production to Mexico or Canada, a factor not relevant in the regular TAA program.

Paragraph (b) would state that workers of a firm or subdivision of the firm that provide a service rather than produce an article would not qualify for NAFTA-TAA. This limitation is consistent with the regular TAA program. This provision is based on the requirement in the Trade Act that eligibility must be based on increased imports or shifts in production of like or directly competitive "articles."

It is the Department's policy that workers of a firm that manufactures and supplies component parts to a separate firm, in which the workers of such firm have been certified under the NAFTA-TAA program, may only be covered by a certification of eligibility if the workers producing the component parts independently meet the eligibility criteria for certification. This is also consistent with the certification provisions of the regular TAA program. However, workers who were employed by such firms may be eligible for reemployment services and assistance under Title III of the Job Training Partnership Act (JTPA).

Section 617.72 Filing Petitions

This proposed section sets out provisions for filing a NAFTA-TAA petition. Paragraph (a) would require that a petition be filed with the Governor of the State in which the manufacturing facility is located. It would also require that the petition be filed by a group of three or more workers of a firm (including any agricultural firm or subdivision of an agriculture firm) or by an official of a certified or recognized union or by any other duly authorized representative of the workers. An official of the firm from which the adversely affected workers were separated or are threatened to be separated may serve as the duly authorized representative for the purpose of filing a petition, as may a community-based organization.

This provision would also provide that Form ETA-9042, OMB Control

number 1205-0338, *Petition for NAFTA Transitional Adjustment Assistance*, be used by workers or their authorized representative to petition under the NAFTA-TAA program. The form number is included to ensure that workers submit the correct form to the Governor.

Paragraph (b) would require States to make copies of the NAFTA-TAA petition form available in every local employment service and unemployment insurance office. Petition forms would also be made available at offices of cooperating agencies. Such agencies could include JTPA program offices, but this could vary depending on the State.

For purposes of clarification, it should be noted that, pursuant to 29 CFR 90.11(c), worker petitions under the regular TAA program will continue to be submitted on Form ETA-8560, *Petition for Trade Adjustment Assistance*, directly to the Department's Office of Trade Adjustment Assistance, at the address on the reverse side of the form.

Section 617.73 Finding and Assistance

This proposed section addresses the role of the Governor, the procedures to be used by the State in processing petitions under the NAFTA-TAA program, and the time frame for issuing a preliminary finding in response to petitions.

Paragraph (a) would set out the procedures and actions that must be taken by the Governor within 10 days. This 10-day requirement is derived from section 250(b)(2)(B) of the Act. Various provisions would set out the Governor's role, as well as the time frames for processing NAFTA-TAA petitions. Because of these time frames, specific processing procedures have been incorporated into the proposal. One provision would require the Governor to initiate factfinding in response to each petition.

Also included would be provisions that address the information to be obtained from the company official identified on the petition as the contact person. Accuracy in identifying the articles produced by the firm is critical in determining whether imports of like or directly competitive articles have increased.

Paragraph (a) would also include requirements for transmitting data request forms, notifying the State employment security agency and other cooperating agencies that a NAFTA-TAA petition has been received and that factfinding on a petition is underway, and transmitting to the OTAA the face page of the petition form with any changes obtained from the company

official. Receipt of the face sheet by OTAA would serve as notification to the Secretary that the Governor has received a petition and that factfinding has been initiated. Data on imports from Canada and Mexico would be prepared by OTAA and furnished to the State. The import data provided by OTAA would be required to be made part of the case file and used by the State when making a preliminary finding. When a petition indicates that the workers' firm shifted production to Mexico or Canada, data on imports would be furnished to the State by OTAA only upon the receipt of further information from the State that worker separations because of a shift in production by the workers' firm could not be substantiated.

The proposal would also require the State to contact the company official to urge completion and transmittal of the data package if it has not been received. Further, if the company official fails to cooperate, the State has the authority to inform the company of the subpoena authority provided in § 617.53. However, company cooperation is the best approach for obtaining the requested information. The State's goal should be to facilitate receipt of the data while avoiding subpoena procedures which can result in lengthy legal negotiations and even court proceedings. It is expected that a State will confer with OTAA when subpoena procedures are being considered.

Finally, paragraph (a) would require a preliminary finding of whether the group eligibility requirements of proposed § 617.71 have been met. In making this preliminary finding, the Governor will not apply the "contributed importantly" test in paragraph (iii) of § 617.71(a)(1). This provision is derived from Section 250(a)(1)(A)(iii) of the Trade Act. The completed petition package, with the preliminary finding, would then be transmitted to OTAA. This petition package would be required to include the petition face sheet, data packet (including the customer list), and the reasons for the preliminary finding. Further, petitioners would be required to be notified of the preliminary finding and that the petition package was submitted to the Department for review and final determination.

When the actions required by paragraph (a) are not completed within 10 days, paragraph (b) would require that every possible action be taken to complete them as soon thereafter as possible. This would help to assure that complete petition packages are submitted to the Department so that OTAA can promptly render a final decision.

Paragraph (c) is derived from section 250(b)(2)(C) of the Trade Act. When the Governor makes an affirmative preliminary finding that the employment of workers at a directly affected firm has been adversely affected by increased imports from, or production shift to, Canada or Mexico, the Governor must ensure, pursuant to 20 CFR 631.3(j), that rapid response and basic readjustment services authorized under Title III of the JTPA are made available to the workers. This requirement was recently added to 20 CFR part 631 (59 FR 45811, 45858).

Section 617.74 OTAA Procedures for Review of Petitions

This section would set out the procedures and actions to be taken by the OTAA to facilitate the Governor's responsibilities pursuant to proposed § 617.73.

Paragraphs (a) and (b) would require OTAA, when notified by a Governor of a petition for certification under the NAFTA-TAA program, to review the NAFTA-TAA Management Information System established in OTAA to ensure that a duplicate petition does not exist. A case number would be assigned to the petition and entered into the NAFTA-TAA Management Information System. The case number would be used to track progress in processing the petition by both the Governor and the Department. The case number would also be used in the final determination made by the Secretary on the petition. When a certification of eligibility is issued to a worker group in response to a petition, the case number is used by the State to report all program services and benefits provided to certified workers during the life of the NAFTA-TAA program certification.

The OTAA would also initiate the Department's responsibilities with regard to the petition when the case number is assigned. Paragraph (c) would require that OTAA publish a notice in the **Federal Register**. This notice would indicate that a petition has been received from a Governor and that factfinding has been initiated in response to the petition.

Paragraph (d) would require that OTAA notify the appropriate regional office and State agency of the case number assigned to the petition received from a Governor and that factfinding has been initiated.

Paragraphs (e) and (f) would require OTAA to analyze, in a timely fashion, U.S. import data regarding the article(s) produced by the petitioning workers' firm and to FAX information to the appropriate State agency regarding imports of such article(s) from Mexico

and Canada, if such import data are relevant to the determination. Where there is a shift in production, import data would not be relevant when the Governor makes a preliminary finding on the petition.

Paragraph (g) would require OTAA to provide advice and guidance to State agencies on all aspects of their responsibilities for factfinding and for issuing preliminary findings in response to NAFTA-TAA petitions.

Section 617.75 Determinations by Secretary on Petitions

Paragraph (a) would set out the procedures and actions that must be taken by OTAA, on behalf of the Secretary, within 30 days after receiving the completed petition package from the Governor. The 30-day requirement is derived from paragraph (1) of section 250(c) of the Trade Act.

The proposal would require OTAA to review the governor's preliminary finding and to take other actions necessary to determine whether or not the petition meets the group eligibility requirements for certification in § 617.71(a). To confirm the Governor's preliminary finding, OTAA would be required to apply the group eligibility requirements in paragraphs (a) and (b) of § 617.71, including the "contributed importantly" criterion, as appropriate. The customer list obtained by the Governor from the worker's firm would be used when applying the "contributed importantly" criterion.

Paragraph (a) would also require OTAA to issue either a certification of eligibility to workers to apply for benefits under the NAFTA-TAA program at a local office of the State employment security agency or to issue a denial of the certification.

Paragraph (b) would require OTAA to notify the appropriate regional office and State of the Secretary's determination to grant or deny a certification of eligibility, and to publish the determination in the **Federal Register**.

Paragraph (c) would provide that when the Secretary issues a negative determination regarding a petition under the NAFTA-TAA program because the workers' firm provides a service rather than produces an article, as provided in § 617.71(b), a factfinding investigation to determine eligibility to apply for benefits under the regular TAA program, pursuant to § 617.76(a), would not be conducted. The negative determination issued by the Secretary in such instances would indicate that a denial is also issued pursuant to 29 CFR 90.16(f) since the requirement that the

workers' firm produce an article has not been met.

Section 617.76 Denial of Certification

This section would require OTAA to review the petition to ascertain whether the workers may be certified under the regular TAA program when the Secretary issues a negative determination on a NAFTA-TAA petition under § 617.73. Such a review would be done routinely and would not require the submission of a petition form for the regular TAA program. An exception to this requirement would apply when the workers' firm provides a service rather than produces an article pursuant to § 617.75(c). The group eligibility requirements for the regular TAA program are provided at 29 CFR 90.16. While the group eligibility requirements for the regular TAA program are generally similar to those for the NAFTA-TAA program, there are two significant differences.

First, under the regular TAA program, increased imports of articles like or directly competitive with those produced by the workers' firm are considered from all countries, including Mexico and Canada, while under the NAFTA-TAA program only increased imports from Mexico and Canada are applicable. Second, the provision that a worker group may be certified for adjustment assistance solely because of a shift in production of articles does not exist in the regular TAA program. Under the regular TAA program, when a shift in production occurs, the workers' firm must begin to import that article in order for the workers to be certified.

Paragraph (a) would require the Department to complete a factfinding investigation and issue a determination as to whether or not a certification could be issued under the regular TAA program. As explained in the previous section, an exception to this requirement would be provided for in situations where the workers' firm provides a service rather than produces an article. The 60-day period for issuing a determination under subchapter A of the Act, would begin on the date of the denial of certification under the NAFTA-TAA program.

Paragraph (b) would provide that any worker aggrieved by a decision of the Secretary on a petition will be afforded the same rights for administrative reconsideration by the Department and for judicial review by the U. S. Court of International Trade as provided to workers pursuant to the applicable provisions of 29 CFR 90.18 and 19.

Section 617.77 Comprehensive Assistance

This section would require that, except as provided in § 617.78, workers covered by a certification under the NAFTA-TAA program will be provided reemployment and other program services and benefits in the same manner and to the same extent as workers covered by a certification under the regular TAA program. These services and benefits include employment services, training, job search allowances, relocation allowances and TRA payments. This provision is consistent with section 250(e) of the Trade Act and would assure uniformity of services and benefits to all workers, unless otherwise set out in proposed § 617.78.

Section 617.78 TRA Eligibility

This section would set out provisions related to eligibility for TRA applicable to workers who are certified under the NAFTA-TAA program. The conditions for qualifying for TRA are substantially different for the NAFTA-TAA program than for the regular TAA program. These differences would be addressed by this section. Rules related to eligibility for TRA not addressed by this section would be the same as under the regular TAA program.

Paragraph (a) would provide that the eligibility rules for the regular TAA program set forth in subpart B of part 617 apply except as those rules are modified by the section.

Paragraph (b) would require that a worker be enrolled in a training program approved under § 671.22(a) within one of two prescribed time periods: First, by the later of the last day of the 16th week of the worker's first benefit period, as defined in § 617.3(r) which pertains to the unemployment compensation benefit period; or second, by the later of the last day of the 6th week after the week in which the Secretary issues a certification of eligibility covering such worker. These time periods are set forth in accordance with paragraph (B) of section 250(d)(3) of the Trade Act.

Paragraph (c) would set out provisions for counting the weeks in the 16-week period in the first unemployment compensation (UC) benefit period and would explain when a worker is considered to be enrolled in training. Paragraph (c)(1) would provide that the 16-week period begins with the effective date of the UC claim and ends with the last day of the 16th week thereafter and includes weeks of waiting period credit, weeks of disqualification, weeks of employment, and weeks of unemployment.

With respect to the 16-week enrollment deadline the statute refers to the "initial unemployment compensation period." In order to give effect to the word "initial," the proposed rule refers to the term "first benefit period," as defined at 20 CFR 617.3(r). "First benefit period" means the benefit period established after the individual's first qualifying separation or, if the first qualifying separation occurs within an already established benefit period, the benefit period in which such separation occurs.

The Department recognizes that there will be situations in which workers do not qualify for TRA because they were unable to enroll in a training program within the statutory time periods. Often workers experience periods of intermittent unemployment after an initial UC benefit period has been established and therefore will not enroll in approved training before the last day of the 16th week of the worker's first benefit period. Such workers may also be separated from employment after the last day of the 6th week in which the certification is issued and similarly delay enrollment in approved training. In situations where both time periods are missed, workers should be advised to file a new petition under the regular TAA program since the time periods for enrolling in training and qualifying for TRA differ from the NAFTA-TAA program. However, if the NAFTA-TAA certification is based on a shift in production, a petition for regular TAA may not necessarily result in a certification.

Paragraph (c)(2) would provide that a worker is considered to be enrolled in a training program when the worker's application for training is approved by the State agency and the training institution or the worker has furnished written documentation to the State agency that the worker has been accepted in approved training which will begin within 30 days. The worker would begin to collect TRA when the conditions for enrollment in training have been satisfied and the worker has exhausted UC eligibility, or would have exhausted UC eligibility if the worker had applied for UC.

Paragraph (d) would set out provisions that address extenuating circumstances under which a worker may be allowed an additional 30-day period to enroll in training in order to qualify for TRA. The provision would allow the State to extend the time for enrollment in training for a period not to exceed 30 days, for justifiable cause, if, due to circumstances beyond the worker's control, the worker is unable to enroll in training for reasons such as, a

program is abruptly canceled; the first available enrollment date is past the deadline; injury or illness adversely affects the ability of the worker to enroll in training; or intermittent employment prevents the worker from enrolling in training. When the additional 30 days expire, it would not be possible for a worker to qualify for TRA.

Workers who are certified as eligible for TAA, but who are not eligible for UC, do not meet the tenure requirement for TRA, or do not meet the time requirements for enrollment in training in order to qualify for TRA, may be eligible for income support and other services under the JTPA Title III program. State agency staff should inform workers in these situations of the eligibility requirements for JTPA Title III income support and assist them in applying for such income support.

Paragraph (e) would require that in order for a worker to collect basic TRA pursuant to this section, the worker must continue to participate in or complete the approved training program.

Paragraph (f) would include the statutory requirement that no waiver of the training requirement may be authorized for workers certified under the NAFTA-TAA program. This provision, applicable only to the NAFTA-TAA program, is derived from paragraph (A) in section 250(d)(3) of the Trade Act.

Paragraph (g) would provide that in order to assist a worker to complete an approved training program, TRA payments may be made for up to an additional 26 weeks pursuant to § 617.15(b)(1). Since there are separate time periods for enrollment in training in order to qualify for TRA under the NAFTA-TAA program, the 210-day requirement in § 617.15(b)(2) would not apply.

Paragraph (h) would require the State agency to apply the break in training provisions in § 617.15(d). These provisions authorize the payment of TRA during certain breaks in training.

The provisions of paragraphs (f) through (h) would assure consistency in application of TRA payments to eligible workers under both programs.

Section 617.79 Nonduplication of Assistance

This section would set out provisions to ensure that workers of a firm who have been certified as eligible for services and benefits under both the NAFTA-TAA and regular TAA programs do not receive duplicate benefits. These provisions are derived from section 249A of the Trade Act

which addresses nonduplication of assistance.

Paragraph (a) would provide that a worker may not receive duplicate assistance relating to a separation pursuant to certifications under both the regular TAA and the NAFTA-TAA programs.

Paragraph (b) would provide that when a worker is covered under certifications for both NAFTA-TAA and regular TAA, based upon a single separation, the worker must make a one-time election under which certification to receive benefits. It would also provide that once a decision is made by the worker, that decision may not be changed. Further, the provision would state that if a worker begins receiving benefits under either certification, the commencement of such benefits would constitute an election. This requirement would assure compliance with the statutory prohibition of receiving assistance under both programs.

Paragraph (c) would provide that if a worker has a subsequent separation covered by the same two certifications, the election made pursuant to paragraph (b) also applies to any subsequent separations. This provision is necessary so that a worker electing benefits under paragraph (b) would not qualify for a duplicate round of benefits because of a subsequent qualifying separation covered by the same two certifications.

A worker who is faced with the option of making an election between the two TAA programs should be fully informed of the provisions of both programs and the consequences of electing one over the other. Therefore, paragraph (d) would require that the State agency staff provide information on both programs to workers faced with making such an election so that the workers can make an informed decision.

Section 617.80 Coverage Under a NAFTA-TAA Certification

Paragraph (a) of this section would address the reachback provision in section 506 of the NAFTA Implementation Act which provides that any eligible worker whose last total or partial separation occurred on or after December 8, 1993, would be eligible to receive NAFTA-TAA services and benefits. December 8, 1993 is the date that the NAFTA Implementation Act was signed by the President. It would also provide that the impact date on a certification of eligibility can be up to one year prior to the date of the petition. Therefore, this section would clarify that a certification of eligibility under the NAFTA-TAA program applies to any worker whose last total or partial separation from a firm or appropriate

subdivision of a firm occurred within one year of the date of the petition. However, to be covered under a certification, such separation could not occur any earlier than December 8, 1993. Further, the certification of eligibility would establish a termination date of up to two years from the date the certification is issued.

Paragraph (b) would provide that a certification may be terminated by the Secretary, for good cause, prior to the date specified in the certification of eligibility. This would assure that the Secretary has discretion to terminate a certification when the conditions under which the certification was issued have changed significantly.

Section 617.81 Termination of NAFTA-TAA Program Benefits

This section, which is derived from section 285(c)(2) of the Trade Act, as amended by section 505 of the NAFTA Implementation Act, sets out provisions for approving and paying assistance, vouchers, allowances and other payments to workers in the NAFTA-TAA program related to the program termination date of the law.

Paragraph (a) would require that, except as provided in paragraph (b), no assistance, voucher, allowance, or other payment may be provided under subpart H after the date that is the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by subpart H becomes effective.

Paragraph (b) would provide that on or before the date described in paragraph (a), a worker certified as eligible to apply, and who has been determined by the State agency to be eligible for assistance under subpart H, will continue to be eligible to receive all NAFTA-TAA assistance for any week the worker meets the appropriate eligibility requirements of subpart H. This provision would allow eligible workers to realize the benefits of the program and also provide for an orderly termination.

Paragraph (c) would require that, pursuant to § 617.51, a favorable determination, redetermination or decision on appeal, regarding benefits and services provided under subparts B through E, must be issued by the State agency on or before the date described in paragraph (a) in order for a worker to begin receiving assistance for any week the worker meets the eligibility requirements of NAFTA-TAA. This provision would prohibit the initiation of services and benefits to workers

based on State determinations, redeterminations or decisions after the termination date of the program as provided for in paragraph (a). It is important to establish a cutoff date for initiation of program service and actions.

In order for States to have time to make decisions with respect to individual claimant benefits all petitioners for certification should be aware that the processing of a petition usually takes about 40 days. If petitions for certification are submitted at least 40 days prior to the termination date of the program, this (1) would likely allow for the worker group determination to be issued by DOL, and (2) could provide individuals with an opportunity to apply for NAFTA-TAA benefits at their SESA local office and have a determination made on their individual application prior to the termination of the program.

Other Technical Changes

Subpart F—Job Search Program

Subpart F of part 617, which contains § 617.49, addressing job search programs, would be removed and subpart F would be reserved. The 1986 amendments to the Act required a worker to participate in a job search program as a condition for receiving TRA. The 1988 amendments to the Act terminated this requirement and added participation in training as a condition of entitlement for TRA for any weeks which begin after November 21, 1988. Therefore, this subsection is obsolete.

Section 617.50 Determinations of Entitlement; Notices to Individuals

A technical change to paragraph (b) of § 617.50 would be made to correct an error. The "\$600" amount, located in the parenthetical in the second sentence would be changed to "\$800." The \$800 amount and not the \$600 amount is provided for job search allowances in section 237 of the Trade Act as amended in 1986.

Drafting Information

This document was prepared under the direction and control of the Deputy Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 219-5555 (this is not a toll free number).

Classification Executive Order 12866

The proposed rule in this document is classified as a "significant regulatory action" under Executive Order 12866 on Federal Regulations. It may raise novel

legal or policy issues arising out of legal mandates in the President's priorities since it is related to implementation of NAFTA. It is not likely to result in having an annual effect on the economy of \$100 million or more; or create a serious inconsistency or interfere with action taken or planned by another agency.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, use of petition form ETA-9042, *NAFTA Petition for NAFTA Transitional Adjustment Assistance*, as required in § 617.72, has been approved by OMB (OMB control number 1205-0338). Form ETA-9043, *Transitional Adjustment Assistance Confidential Data Request*, and Form ETA-9044, *Customer Survey Form*, as required in § 617.73, has been approved by OMB (OMB control numbers 1205-0339 and 1205-0337). Form ETA-563, *Quarterly Determinations, Allowance Activities and Reemployment Services Under the Trade Act*, previously approved by OMB (OMB control number 1205-0016) for reporting program activities in the regular TAA program, was also approved by OMB for use in reporting NAFTA-TAA program activity.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605 (b). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, labor, reemployment services, relocation assistance, trade readjustment allowances, unemployment compensation, vocational education.

Signed at Washington, D.C. on January 5, 1995.

Doug Ross,

Assistant Secretary of Labor.

For the reasons set out in the preamble, part 617, Chapter V, Title 20, of the Code of Federal Regulations, is proposed to be amended as set forth below.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

1. The authority citation for part 617 is revised to read as follows:

Authority: 19 U.S.C. 2320, 2331 and 3314; Secretary's Order No. 3-81, 46 FR 31117.

2. Sections 617.1 and 617.2 are revised to read as follows:

§ 617.1 Scope.

(a) The regulations in this part 617 apply to the programs under Title II of chapter 2 of the Trade Act of 1974, as amended (the Act) in:

(1) Subchapter A for workers adversely affected because of increased import competition (TAA program or regular TAA program); and

(2) Subchapter D for workers adversely affected because of the North American Free Trade Agreement (NAFTA) (NAFTA-TAA program).

(b) Both programs identified in paragraph (a) of this section provide for:

(1) Reemployment services, such as counseling, testing, training, placement, and other supportive services;

(2) Training, job search and relocation; and

(3) Trade readjustment allowances (TRA) and other allowances such as allowances while in training, job search and relocation allowances.

(c) The regulations in this part also establish administrative requirements applicable to State agencies to which such individuals may apply.

§ 617.2 Purpose.

The Act created a program of trade adjustment assistance (TAA) to assist individuals who became unemployed as a result of increased imports to return to suitable employment. A specific TAA program was added to the Trade Act by Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) to assist individuals who become unemployed because of increased imports from, or a shift of production to, Canada or Mexico. The regular TAA and NAFTA-TAA programs provide for reemployment services and other program benefits to eligible individuals. The regulations in this part 617 are issued to implement the Act.

3. Section 617.3 is amended by revising paragraphs (j)(1), (mm) and (nn) to read as follows:

§ 617.3 Definitions.

* * * * *

(j)(1) *Certification* means a certification of eligibility to apply for TAA issued under the Act with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

* * * * *

(mm) *Trade adjustment assistance (TAA)* means the services and allowances provided for achieving reemployment of adversely affected workers under both the regular TAA and NAFTA-TAA programs, including TRA, training and other reemployment services, job search allowances and relocation allowances.

(nn) *Trade readjustment allowance (TRA)* means a weekly allowance payable to an adversely affected worker with respect to such worker's unemployment under this part 617.

* * * * *

4. Section 617.4 is amended by revising paragraphs (a), (c), (d)(1)(i), (e)(1), (e)(2), and (e)(3) to read as follows:

§ 617.4 Benefit information to workers.

(a) *Providing information to workers.* State agencies shall provide full information to workers about the benefit allowances, training, and other employment services available under this part and about the petition and application procedures, and the appropriate filing dates for such allowances, training and services.

* * * * *

(c) *Providing information to State vocational education agencies and others.* State agencies shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under the Act and of projections, if available, of the needs for training under section 236 of the Act as a result of such certification.

(d) *Written and newspaper notices.*—
(1) *Written notices to workers.* (i) Upon receipt of a certification issued by the Department of Labor, the State agency shall provide a written notice through the mail of the benefits available under this part to each worker covered by a certification of eligibility issued under the Act when the worker is partially or totally separated or as soon as possible after the certification is issued if such workers are already partially or totally separated from adversely affected employment.

(ii) * * *

(e) * * *

(1) Advise each worker who applies for unemployment insurance under the State law of the benefits available under this part and the procedures and deadlines for applying for such benefits.

(2) Facilitate the early filing of petitions under the Act and § 617.4(b) of this part for any workers who the agency considers are likely to be eligible for benefits. State agencies shall utilize information received by the State's dislocated worker unit to facilitate the early filing of petitions under the Act by workers potentially adversely affected by imports or, pursuant to § 617.71 of this part, a shift in production to Mexico or Canada for workers affected by NAFTA.

(3) Advise each adversely affected worker to apply for approval of training under § 617.22(a) as early as possible after a certification of eligibility for TAA issued by the Department in order that the worker can meet the time period for qualifying for TRA payments pursuant to §§ 617.11(a)(2) (vii) and 617.78 of this part.

* * * * *

5. Section 617.10(b) is revised to read as follows:

§ 617.10 Applications for TRA.

* * * * *

(b) *Timing of applications.* (1) For purposes of the regular TAA program, an initial application for TRA, and applications for TRA for weeks of unemployment beginning before the initial application for TRA is filed, may be filed within a reasonable period of time after publication of the determination certifying the appropriate group of workers under the Act. However, an application for TRA for a week of unemployment beginning after the initial application is filed shall be filed within the time limit applicable to claims for regular compensation under the applicable State law. For purposes of this paragraph (b)(1), a reasonable period of time means such period of time as the individual had good cause for not filing earlier, which shall include, but not be limited to, the individual's lack of knowledge of the certification or misinformation supplied the individual by the State agency.

(2) For purposes of the NAFTA-TAA program, eligibility for TRA is related to enrollment in an approved training program within the time periods specified in § 617.78(b) of this part.

* * * * *

§ 617.49 (Subpart F) [Removed and Reserved]

6. Subpart F, consisting of § 617.49, of part 617, is removed and reserved.

§ 617.50 [Amended]

7. In § 617.50(b), remove the word "\$600" located in the parenthetical in the second sentence, and add, in its place, "\$800."

8. A new subpart H is added to part 617 to read as follows:

Subpart H—NAFTA Transitional Adjustment Assistance.

Sec.

- 617.70 Definitions.
- 617.71 Group eligibility requirements; factfinding.
- 617.72 Filing of petitions.
- 617.73 Findings and assistance.
- 617.74 OTAA procedures for review of petitions.
- 617.75 Determinations by Secretary on petitions.
- 617.76 Denial of certification; review and appeals.
- 617.77 Comprehensive assistance.
- 617.78 TRA eligibility.
- 617.79 Nonduplication of assistance.
- 617.80 Coverage under a NAFTA-TAA certification.
- 617.81 Termination of NAFTA-TAA program benefits.

§ 617.70 Definitions.

The following definitions, which are primarily used in this subpart H, shall apply to all of part 617:

(a) *Appropriate subdivision* means an establishment in a multi-establishment firm that 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. This term includes auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities.

For purposes of this definition, an "establishment" is interpreted to include a place of business together with its employees, merchandise and equipment.

(b) *Contributed importantly* means a cause which is important but not necessarily more important than any other cause.

(c) *Firm* means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm.

(d) *Governor* means the chief elected executive branch official of a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(e) *Increased imports* means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.

(f) *Like or directly competitive* means that "like" articles are those which are substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which the articles are made, appearance, quality, texture, etc.); and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (*i.e.*, adapted to the same uses and essentially interchangeable therefor). An imported article is "directly competitive" with a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

(g) *NAFTA-TAA program* means the transitional adjustment assistance program for adversely affected workers established under subchapter D, Ch. 2, Title II of the Trade Act, as added by Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182).

(h) *Office of Trade Adjustment Assistance (OTAA)* means the organization within the Department of Labor responsible for the administration of the trade adjustment assistance program for workers.

(i) *Regular TAA program* means the program established under Title II, chapter 2 of the Trade Act of 1974, as amended, for workers covered by a certification of eligibility issued under subchapter A of chapter 2. These workers may be eligible for benefits under subparts B through E of this part.

(j) *Shift in production* means:

(1) A change in the location of the production of an article by such workers' firm or appropriate subdivision, that was formerly produced in the U.S. by the workers' firm, to a producing plant located in Mexico or Canada, or

(2) A contract or license by such workers' firm, or appropriate subdivision, producing the article in the U.S., to have a firm produce that article in Mexico or Canada.

(k) *Significant number or proportion of workers* means that:

(1) In most cases, partial or total separations, or both, as defined in § 617.3(cc) and (ll) of this part, in a firm or appropriate subdivision thereof, that are the equivalent to a total unemployment of five (5) percent of the workers or 50 workers, whichever is less; or

(2) At least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected.

§ 617.71 Group eligibility requirements; factfinding.

(a) A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under the NAFTA-TAA program pursuant to a petition filed under § 617.72 of this part if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either—

(1) That:

(i) The sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) Imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) The increase in imports under paragraph (a)(1) (ii) of this section contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or appropriate subdivision to Mexico or Canada of articles like or directly competitive with articles that are produced by the firm or appropriate subdivision. The article shall have been formerly produced by a U.S. located firm or appropriate subdivision of the firm and is now produced in Mexico or Canada. A shift in production may occur either by the firm or subdivision moving production of the article to Mexico or Canada, or the U.S. located firm contracting or licensing for production of an article with a firm located in Mexico or Canada.

(b) Workers of firms that provide a service only, rather than produce an article, are excluded from coverage.

§ 617.72 Filing of petitions.

(a) A petition for certification of eligibility to apply for benefits under the NAFTA-TAA program (Form ETA-9042, "Petition For NAFTA Transitional Adjustment Assistance") shall be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or by any other duly authorized representative. Such petition shall be submitted to the Governor of the State in which the manufacturing facility is located, or to the State official or organization designated by the Governor. For purposes of this paragraph, "group" means three or more workers in a firm or an appropriate subdivision.

(b) Copies of the NAFTA-TAA petition form with the address for filing the petition in the State shall be available in every local employment service and unemployment insurance office. Such forms shall also be made available at the offices of cooperating agencies.

§ 617.73 Findings and assistance.

(a) Upon the receipt of a NAFTA-TAA petition, the Governor shall take the following actions within 10 days after receiving the petition—

(1) Record the date of receipt of the petition on the face sheet.

(2) Review the petition for completeness and clarity.

(3) Initiate a factfinding investigation in response to each petition to ascertain whether the group eligibility requirements in § 617.71 of this part have been met.

(4) Telephone the company official listed as the contact person on the petition and address the following:

(i) Determine if the official listed on the petition is the appropriate contact.

If not, record the name, telephone number and FAX number (if available) of the appropriate contact person on the face of the petition;

(ii) Confirm the article description reported on the petition for accuracy;

(iii) Obtain preliminary information regarding total and partial worker separations at the firm during the past 12 months;

(iv) If there were separations or threats of separations, ascertain if the company increased imports from Mexico or Canada, had an actual or threatened shift of production to either country, or lost sales to customers who purchase from firms importing from Mexico or Canada; and

(v) Inform the official that data request forms will be sent by FAX (if available) or by mail, and obtain a commitment to supply the requested information promptly in order that a preliminary finding can be made within 10 days.

(5) FAX (if available) or mail the data request forms, which include a request for a listing of company customers, to the company official, specifying a due date for the information to be returned via FAX or mail.

(6) Inform the State employment security agency, and other cooperating agencies as appropriate, that factfinding on a petition is underway.

(7) FAX the face page of the petition form as well as any corrections or additions obtained during telephone contacts with the company official to OTAA. Based on receipt of this information OTAA shall assign a NAFTA-TAA file number to the case. OTAA shall initiate an analysis of data regarding imports from Canada or Mexico of the subject article except when the petition form indicates that the workers' firm shifted production to Mexico or Canada. When a shift in production is indicated, data on imports shall be furnished to the State only upon the receipt of further information from the State that a shift in production could not be substantiated.

(8) As appropriate, make import data obtained from OTAA part of the case file and use such data in making a preliminary finding.

(9) If the data package has not been received from the company official, contact the company official to urge completion and transmittal of the data package by FAX (if available) or mail.

(10) If the company official fails to cooperate pursuant to the requirements of this section, the State has the authority to inform the company of the subpoena authority provided in § 617.53 of this part and, if necessary, issue a subpoena for the required information.

(11) Make a preliminary finding of whether the group eligibility requirements of § 617.71 of this part have been met, except that the "contributed importantly" test in § 617.71(a)(1)(iii) of this part shall not be applied when the Governor makes a preliminary finding.

(12) Transmit the petition package, with the preliminary finding, to OTAA by FAX. The petition package shall include the petition face sheet, data packet (including the customer list), and the reasons for the preliminary finding.

(13) Notify the petitioners of the preliminary finding and that the petition package was submitted to the

Department of Labor for review and final determination.

(b) When the actions required by paragraph (a) of this section are not completed within 10 days, every possible effort should be undertaken to complete them as soon thereafter as possible.

(c) When an affirmative preliminary finding is made pursuant to this section, the Governor shall, pursuant to 20 CFR § 631.3(j), make rapid response and basic readjustment services under JTPA Title III (Economic Dislocation and Worker Adjustment Assistance Act) available to the workers.

§ 617.74 OTAA procedures for review of petitions.

When notified by the Governor of a petition under the NAFTA-TAA program, OTAA shall:

(a) Ensure that duplicate petitions do not exist, assign a number to the case according to the NAFTA-TAA Management Information System, and inform the State of the assigned number;

(b) Enter the case number in the NAFTA-TAA Management Information System and initiate the Department of Labor's responsibilities regarding the petition;

(c) Publish a notice in the **Federal Register** indicating that a petition has been received from a Governor and that factfinding has been initiated;

(d) Notify the appropriate regional offices and State agency of the number assigned to the case and that factfinding has been initiated in response to the petition;

(e) Analyze in a timely fashion, aggregate U.S. imports for the article(s) listed in the petition that are like or directly competitive with the article(s) produced at the subject firm, if such information is relevant to the determination;

(f) As appropriate, FAX information to the State regarding relevant imports from Mexico or Canada based on the aggregate import analysis; and

(g) Provide advice and guidance to State agencies on their responsibilities for factfinding and issuing preliminary findings in response to NAFTA-TAA program petitions.

§ 617.75 Determinations by Secretary on petitions.

(a) Within 30 days after receiving the completed petition package from the Governor, OTAA shall:

(1) Review the Governor's preliminary finding;

(2) Determine whether or not the petition meets the group eligibility requirements for certification in § 617.71 of this part; and

(3) Issue or deny a certification of eligibility to workers to apply for benefits under the NAFTA-TAA program at a local office of the State employment security agency.

(b) The Secretary's determination to grant or deny a certification of eligibility shall be sent to the appropriate regional office and the State, and be published in the **Federal Register**.

(c) When the Secretary issues a negative determination regarding a petition under the NAFTA-TAA program in which the workers' firm provides a service rather than produces an article, as required for certification under § 617.71 of this part, an investigation pursuant to paragraph (a) of § 617.76 of this part shall not be conducted. The negative determination issued by the Secretary may, in such situations, also deny certification under 29 CFR 90.16(f) since the requirement that the workers' firm produce an article has not been met.

§ 617.76 Denial of certification; review and appeals.

(a) A petition for which a certification of eligibility has been denied under the NAFTA-TAA program shall be reviewed by OTAA within 60 days to determine if a certification may be issued under the regular TAA program, except as provided in paragraph (c) of § 617.75 of this part. This review shall be conducted in accordance with the group eligibility requirements of the regular TAA program in 29 CFR 90.16(b). The 60-day time period shall begin on the date that the denial of certification of eligibility of the NAFTA-TAA petition is issued.

(b) Workers aggrieved by a decision of the Secretary of Labor on a petition under the NAFTA-TAA program shall be afforded the same rights for administrative reconsideration by the Department of Labor and for judicial review by the U. S. Court of International Trade as provided to workers pursuant to the applicable provisions of 29 CFR §§ 90.18 and 90.19.

§ 617.77 Comprehensive assistance.

Except as provided in § 617.78 of this part, workers covered by a certification of eligibility under the NAFTA-TAA program shall be provided reemployment and other program services and benefits under this part in the same manner and to the same extent as workers covered by a certification under the regular TAA program.

§ 617.78 TRA eligibility.

(a) Except as provided in this section, subpart B of this part shall apply in determining eligibility for TRA.