Signed in Washington, DC, this 19th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–699 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,796]

Venture Industries, Lancaster Ohio Plant, Lancaster, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 19, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding the eligibility for workers of Venture Industries to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm located Lancaster, Ohio, was signed on June 25, 2004, and was published in the **Federal Register** on August 3, 2004 (69 FR 46574).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

In the request for reconsideration of the petition denial, the petitioner claims that worker separations were ''due to the circumstances of the Venture Pegaform plant in Germany being in financial trouble, profits from the American plants were used to help get this facility back to where it could turn a profit, therefore leaving the American Venture Plants in financial trouble.'' The petitioner adds that the money used for the Venture Pegaform plant in Germany could have kept the Lancaster, Ohio plant open.

In order for the workers of the subject firm to be certified eligible to apply for trade adjustment assistance, the worker group eligibility requirements of section 222 of the Trade Act of 1974, as amended, must be met.

(1) 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

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

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

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B)(i) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) 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;

(II) The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The worker group eligibility requirements described above does not contain a provision for a shift of profits from a U.S. firm to a firm in a foreign country.

The workers of Venture Industries, Lancaster Ohio Plant, Lancaster, Ohio, produced sheet/fiberglass molding compound for exterior automotive parts. The Department's initial investigation determined that during the relevant period (from 2002 through April 2004) there were no imports by the firm or its customers of like or directly competitive products. Furthermore, the subject firm did not shift production of sheet/fiberglass molding compound from the Lancaster, Ohio plant to a foreign country.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 22nd day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–698 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program: Training and Employment Guidance Letter

The Employment and Training Administration interprets Federal law requirements pertaining to Trade Adjustment Assistance (TAA). These interpretations are issued in Training and Employment Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 2–03, Change 1, clarifies the interim operating instructions published in TEGL 2–03, and TEGL 2–03, Change 2, amends operating instructions issued in TEGL 2–03 and TEGL 2–03, Change 1.

TEGL 2–03 Change 1

TEGL 2–03 provided interim operating instructions for states to use in implementing the ATAA program. TEGL 2–03, Change 1, provides answers to questions the Department received concerning the operation of the ATAA program. The attachment restates the questions raised and provides the answers to those questions.

TEGL 2–03, Change 2

This TEGL modifies TEGL 2–03 and TEGL 2–03, Change 1, to allow certain certified worker groups to apply for ATAA retroactively. This will include workers who filed a petition using a form that did not include an opportunity to indicate whether or not the petitioner wished to request ATAA certification, and who either had a petition in process on August 6, 2003, or filed a petition on or after that date.

The instructions in TEGL 2–03, Change 1 and Change 2, are issued to the states and the cooperating state workforce agencies (SWAs) as guidance provided by the U.S. Department of Labor in its role as the principal in the TAA program. As agents of the Secretary of Labor, the states and cooperating SWAs may not vary from the instructions in TEGL 2–03, Change 1 and Change 2, without prior approval from the Department.

Dated: February 16, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor.

BILLING CODE 4310–30–M

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE July 14, 2004

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-03, Change 1

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS

FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Alternative Trade Adjustment Assistance (ATAA) for Older Workers Questions and Answers

1. **Purpose.** To answer questions related to the administration of the Alternative Trade Adjustment Assistance (ATAA) program that have arisen since the issuance of Training and Employment Guidance Letter (TEGL) No. 2-03.

2. **References.**

- Trade Act of 1974 (Pub. L. 93-619, as amended)
- Trade Act of 2002 (Pub. L. 107-210)
- The Workforce Investment Act of 1998
- 20 CFR Part 617
- 29 CFR Part 90
- TEGL No. 11-02
- Unemployment Insurance Program Letter (UIPL) No. 24-03
- TEGL No. 2-03.

The amendments to the Trade Adjustment Assistance (TAA) program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002 (the Act or the Trade Act). These amendments were included in Title I of the Trade Act of 2002.

3. **Background.** TEGL No. 2-03 provided interim operating instructions for states to use in implementing the ATAA program. Since the issuance of TEGL 2-03, the Department has received questions concerning the operation of the ATAA program. The attachment restates the questions raised and provides the answers to those questions.

RESCISSIONS	EXPIRATION DATE Continuing

4. **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.

5. **Inquiries.** States should direct all inquiries to the appropriate ETA Regional Office.

Attachment: Alternative Trade Adjustment Assistance (ATAA) Questions and Answers

Attachment

ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE (ATAA) QUESTIONS AND ANSWERS

Withholding

1. Q: Are ATAA benefits taxable income?

   A: Yes. ATAA wage subsidies are taxable income. You will need to issue a 1099 to recipients of the ATAA payments.

2. Q: Are pensions deductible from ATAA benefits, as with Unemployment Insurance (UI) payments?

   A: No. The Trade Act of 1974, as amended, did not direct that pensions be included in the calculation of the ATAA wage subsidy.

3. Q: How do state workforce agencies (SWAs) determine whether to deduct court-ordered child support payments from ATAA payments?

   A: ATAA payments are to be treated in the same manner as trade readjustment allowances (TRA). State laws regarding deductions of payments from UI and TRA must follow the Social Security Act (SSA). SSA Section 303(e)(1) defines "child support obligations" as "only includ[ing] obligations which are being enforced pursuant to a plan described in Section 454 of this Act which has been approved by the Secretary of Health and Human Services under part B of title IV of this Act." It therefore does not permit deductions for alimony or for child support in general, as provided by 20 CFR 617.55(h)(2), but only for child support obligations of the type specified. Unemployment Insurance Program Letter No. 45-89 (55 Fed. Reg. 1886 (1990)) explained in detail the deductions permitted under SSA Section 303(e)(2).

ATAA and UI

4. Q: Must the individual file for a UI claim in order to be eligible for ATAA? Does the worker have to be eligible for UI to be eligible for ATAA?

   A: No. There is no provision in the Trade Act or TEGL 2-03 that requires an individual to apply for UI in order to be eligible for the ATAA program. Nor is there a provision that requires an individual to be eligible for UI. ATAA and UI are statutorily separate programs. Eligibility for neither program is dependent on the other program.

5. Q: Can the ATAA wage subsidy be considered as income for the purpose of establishing eligibility for future UI claims?

A: The Trade Act does not direct that wage subsidies be reported as "wages" for UI purposes. However, UI eligibility is governed by state law. Therefore, states may consult their own UI law to determine if ATAA meets the state definition of wages for UI purposes.

6. Q: How should the SWA administer recovery of UI overpayments from ATAA, or recovery of ATAA payments from UI?

A: ATAA payments are to be treated in the same manner as trade readjustment allowances (TRA). Recovery of a state UI overpayment from ATAA is governed by SSA Section 303(g)(2), requiring an agreement with the Department before the state may offset ATAA to recover the state UI overpayment. Further, if the state does have such an agreement with the Department, there is no limit on the amount of the offset from ATAA.

Section 243(a)(2) of the Trade Act limits each deduction from state UI to recover a TAA or ATAA overpayment to a maximum of 50% of the payment. However, that applies only to the offset of state UI to recover a TAA or ATAA overpayment. It does not apply to the offset of TAA or ATAA to recover a state UI overpayment.

7. Q: Does the ATAA program in any way alter UI rules in a state?

A: No. ATAA does not change any UI rules. UI must still be administered in accordance with established instructions. A person receiving ATAA has returned to work and should be treated like anyone else returning to work. UI payments are not part of the calculation to determine the ATAA wage subsidy.

8. Q: If an ATAA recipient is laid off, can he/she reopen a UI claim that still has an unexpired benefit year? Does the state issue a written determination to the individual suspending ATAA until he/she is reemployed?

A. The worker may reopen his/her UI claim that still has an unexpired benefit year or file a new claim if the benefit year has ended in accordance with state UI law. In accordance with TEGL 2-03, Section F, a determination suspending the ATAA benefit is required if the individual attempts to claim ATAA benefits after separation. If the worker is reemployed, he/she may file a new ATAA application.

9. Q: Will the state UI office have the responsibility for administering the wage subsidy for ATAA recipients as they do for TRA recipients?

A: States have the choice of where they want to locate the responsibility. However, the organizational placement of this payment by the state must meet Governmental Accounting Standards Board requirements.

10 Q: Do UI laws apply to ATAA recipients?

A. No. An ATAA recipient is not eligible for UI because he/she is employed on a full-time basis as defined by state law in the state the worker is employed. Unless otherwise specified in an official advisory or regulation, no UI-related issue should influence the continued receipt of the wage subsidy. If, however, the ATAA recipient becomes unemployed and files for UI, then the state UI law would be applied to any potential UI entitlement.

11. Q: Is an ATAA recipient eligible for a new UI claim once the current benefit year expires?

A: No. An ATAA participant is not eligible for UI unless he/she becomes unemployed, at which time he/she becomes ineligible for ATAA.

12. Q: Where does the ATAA wage subsidy fit into the priority of payments, i.e., UI, Temporary Extended Unemployment Compensation (TEUC), basic TRA, additional TRA, and remedial TRA?

A: ATAA does not fit into this priority of payments because it is not related to UI. UI and ATAA are two separate programs that operate independently. UI is for individuals who are unemployed; ATAA is for individuals who are employed.

Full-Time Employment

13. Q: Must re-employment for ATAA purposes be "UI covered" employment?

A: No. Full-time employment need not be UI covered employment. However, since Section 246 of the Trade Act requires that a participant in ATAA must be employed full-time as defined by state law, the state workforce agency (SWA) must determine if the employment (including self-employment) obtained by the potential ATAA recipient meets the definition of full-time employment under the applicable state law.

14. Q: Can self-employment or work involving wages plus commission or piece work be considered full-time employment for the purpose of establishing ATAA eligibility?

A: Yes. Self-employment, work involving wages plus commission, or piece work can be considered full-time employment for the purpose of establishing ATAA eligibility if such employment meets the definition of full-time employment as defined by the state.

15. Q: If self-employment, work involving wages plus commission, or piece work qualify as reemployment, how would the income derived from these types of employment be used in calculating the ATAA wage subsidy?

A: The SWA should determine an approximation of the hourly wage and apply the

approximation when calculating the wage subsidy in accordance with procedures established in TEGL 2-03, Section G.

16. Q: If a worker applying for ATAA is hired by a temporary agency for a two-week period, should the SWA deny ATAA benefits because it is a short-term temporary assignment?

A: No. The ATAA program addresses full-time employment without distinction between temporary and permanent employment. This puts additional responsibility on the SWA caseworker who must inform the ATAA applicant that receipt of an ATAA wage subsidy gives up all future rights to TRA, job search allowances, and training. Since in this instance the temporary employment expires after two weeks, the worker needs to be advised that ATAA payments will cease at the end of the two weeks, as will eligibility for the Health Coverage Tax Credit (HCTC).

17. Q: Are workers participating in on-the-job training (OJT) under TAA or WIA eligible for the ATAA program?

A: No. While such training is potentially consistent with state definitions of full-time employment, the federal government is already subsidizing a portion of the worker's wages. Payment of the ATAA wage subsidy would essentially be "double dipping." This is true whether funded by TAA, WIA, or any other federal training program. Moreover, if funded by TAA, participation in OJT training automatically precludes eligibility for ATAA.

However, if a participant in WIA-funded OJT (or any federally subsidized employment from any funding source except TAA) completes his/her training and obtains full-time unsubsidized employment before the end of the 26-week ATAA eligibility period, the individual could be eligible for an ATAA wage subsidy.

18. Q: In the event that an ATAA recipient's hours are reduced to less than full-time, but he or she remains employed by the employer, does he or she lose ATAA benefits while working less than full-time?

A: Yes. Section 246 of the Trade Act requires that an individual be employed full-time as defined by state law. Therefore, any individual whose hours are reduced below full-time, as defined by state law, loses his/her ATAA benefits, including HCTC eligibility. It should also be noted that such an individual remains potentially eligible for ATAA for a period of up to two years from the date of qualifying reemployment, should such individual return to full-time work.

19. Q: Assume that an ATAA participant, who is employed full-time, is on unpaid leave for two days during a specific week. Would the individual be considered to be employed full-time during this week and eligible for an ATAA wage subsidy?

A: The state must look to state law to determine whether this meets the definition of

full-time employment.

Continuing Eligibility

20. Q: Section F (Continuing Eligibility) of TEGL 2-03 states that "In the event of a period of unemployment, workers will need to complete a new Individual Application for ATAA upon reemployment." If an employer has a regularly scheduled shutdown for one or two weeks, would the ATAA recipient have to reapply for the wage subsidy after the shutdown is complete or is reapplication necessary only when an individual is laid off and finds new employment?

    A: The state must look to state law to determine whether this meets the definition of full-time employment. If it is not inconsistent with state law, in cases where the workers are paid their regular wage during the period of the shutdown, this does not disqualify them from receiving ATAA. As indicated in Section F (Continuing Eligibility) of TEGL 2-03, not receiving wages for one full week is considered unemployment and makes a worker ineligible for ATAA. Moreover, during a regularly scheduled shut-down for a two-week period where a worker is not receiving wages, the worker may be eligible for UI for that two-week period. In any case, the worker would not be eligible for ATAA during this period unless wages were being paid during this period by the employer.

21. Q: If a person receiving an ATAA wage subsidy quits or is fired from his/her job, and finds another job, can he/she resume receiving the ATAA payment?

    A: Yes. In accordance with TEGL 2-03, Section F, a worker can reapply for ATAA when he/she obtains subsequent employment for up to two years from the date of original reemployment.

22. Q: Are all wages and hours from all employment (including overtime) to be included in the calculation of the wage subsidy and the calculation of the annual reemployment wage to determine if the $50,000 limit is exceeded for determining ATAA eligibility?

    A: As provided in TEGL 2-03, Section G, overtime wages are not included in the calculation of the annualized pre-separation or reemployment wage for determining eligibility for, and the amount of, the ATAA wage subsidy. Wages from all employment, excluding overtime pay, would be included in the annualized wage calculation for both the pre-separation wage and the reemployment wage.

23. Q: If a worker had a full- and part-time job and is laid off from the full-time position due to foreign trade, would his/her part-time wages be included in the formula for calculating pre-separation wages?

    A: Yes. Wages from all employment, full- or part-time, are taken into account when calculating the ATAA wage subsidy.

24. Q: Why are full- and part-time jobs used to determine a worker's annual wages for calculating an ATAA wage subsidy?

A: Section 246 of the Trade Act provides that the wage subsidy provides 50 percent of the difference between the wages received by the worker from reemployment and the wages received by the worker at the time of separation. The statute does not specify that the reemployment wages include only a single job or that the pre-separation wages are only those earned in the adversely affected employment.

25. Q: Why are overtime wages excluded from a worker's annual wage calculation in determining his or her ATAA wage subsidy?

A: Overtime wages are excluded due to their sporadic nature and the difficulty of projecting the level of such wages. Further, it avoids placing the worker in the awkward position of choosing whether to accept overtime hours where he/she either risks losing the ATAA wage subsidy or his/her job. Such a position is contrary to sound business-friendly practice.

26. Q: TEGL 2-03 does not permit telephone certification for establishing continuing eligibility. Documentation of employment, hours and wages must be provided at each continuing eligibility verification session. Does this requirement apply in those instances where the employer telephones with the necessary verification information and the results of that call are documented by state or local TAA staff?

A: Yes. The requirement for documentation of employment, hours, and wages provides hard evidence of the worker's employment and serves as a deterrent to fraud. However, the worker could send a copy of his/her check stub or a letter from the employer by mail or fax if unable to physically visit the state office.

Amount and Frequency of Payments

27. Q: TEGL 2-03 requires that the ATAA recipient will receive at least a minimum monthly payment. Can you explain what this means?

    A: It means that the ATAA wage subsidy may be paid on a weekly, biweekly, or other payment frequency but at a minimum must be paid monthly. This allows the state to determine what type of payment frequency is most compatible with the systems it currently uses to pay benefits to recipients. Having at least a monthly payment frequency does not mean that the worker must receive some minimum amount each month.

28. Q: Is there a minimum or maximum weekly benefit amount that can be paid?

    A: No. The benefit amount is based on the calculation of the ATAA wage subsidy provided in TEGL 2-03 and the frequency of the payment.

29. Q: Can the amount of the ATAA wage subsidy fluctuate during the course of the two-year eligibility period?

    A: Yes. The amount of the ATAA wage subsidy may vary week by week based on a change in the hours paid, or hourly wage or wage approximation. The SWA must recalculate the amount of the ATAA wage subsidy every time the individual returns for the monthly (or more frequent) verification of continuing eligibility in accordance with TEGL 2-03, Section G.

30. Q: In calculating an individual's ATAA payment, how does the SWA define the payable period for an ATAA wage subsidy?

    A: In accordance with TEGL 2-03, Section G, the payable period is at the option of the state but in no case should it be less frequently than monthly.

31. Q: How do severance pay and wages in lieu of layoff notice (e.g., 60 day WARN notice or other employer separation notice) affect the ATAA wage subsidy calculation?

    A: Severance pay and wages in lieu of layoff notice have no effect on the ATAA wage subsidy because the ATAA calculation should be based on the hourly wage and hours worked during the last full week of employment as described in TEGL 2-03, Section G. Wages received as severance or in lieu of layoff notice should not be part of the calculation.

32. Q: What documentation is acceptable for the purposes of establishing both initial and continuing eligibility?

A: Depending on the specific eligibility criterion, documentation may include materials such as a drivers license, birth certificate, copy of job offer letter, check stub, document referring to date of qualifying separation, supporting statement from the employer, annual earnings statements, W-2 forms, and/or other official documentation.

33. Q: If a worker earned $50 per hour in pre-separation employment, and later takes a job at XYZ Corporation at $10 an hour, would the worker receive an ATAA wage subsidy of $800 per week?

A: Yes, but in this example the worker will reach the $10,000 wage subsidy limit in approximately 12 weeks, assuming a 40-hour week in both the pre-separation employment and reemployment. There is an incentive for workers to take a job at wages as close to their pre-separation wage as possible in order to prolong the period in which they receive the ATAA wage subsidy and correspondingly prolong eligibility for HCTC.

34. Q: Do SWAs need to keep a computerized record of all information needed to calculate and pay an ATAA wage subsidy or can manual methods be utilized?

A: The state has the option to maintain computerized or manual record systems.

Funding Source

35. Q: What is the funding source for ATAA in Fiscal Year (FY) 2004 and are changes expected for FY 2005?

A: The funding source for ATAA wage subsidies is the Federal Unemployment Benefit Account (FUBA). The administration of ATAA wage subsidies will be paid from the State Unemployment Insurance and Employment Service Operations (SUIESO) account. Instructions for accessing the SUIESO account for administrative purposes were transmitted to the states in Unemployment Insurance Program Letter (UIPL) 14-04 on March 1, 2004. Once the methodology is finalized, it will be made available to states. In addition, TAA training and associated administrative costs, TRA payments, and job search and relocation allowances are funded from FUBA. Administration for TRA payments is funded through SUIESO. Changes are not expected for FY 2005, but if they occur an official announcement will be prepared.

For FY 2004, the total amount available for the wage subsidy program is $10 million. The FY 2005 budget requests an increased amount for the wage subsidy program. This request is pending congressional action and has not been approved.

Eligibility Period/Retroactivity

36. Q: Since the impact date is a year before the petition date, some workers who are certified eligible to apply for ATAA will have been separated as much as a year before the certification and will have become reemployed well before the certification is issued. In these cases, if workers apply and qualify for ATAA, can they receive a retroactive payment for the period they were employed prior to the date of ATAA certification? Could these workers receive a lump-sum payment of $10,000 if the difference between pre-separation and reemployment wages were sufficient to warrant such a payment? Would this also apply to workers who do not apply for the subsidy until the end of the eligibility period?

    A: TEGL 2-03, Section E, provides that the two year eligibility period for receiving ATAA payments begins with the first day of the ATAA qualifying reemployment and that the individual has two years from that date to apply. This means that the payments may be made retroactively if the worker has obtained qualifying reemployment within 26 weeks of layoff and later applies for the program. In addition, a lump-sum payment is possible if the difference between pre-separation and reemployment wages were sufficient to warrant such a payment.

37. Q: What is the rationale for allowing workers two years from their date of qualifying reemployment to file their application for ATAA?

    A: TEGL 2-03, Section E, states that the application for ATAA must be filed within two years of the first day of qualifying reemployment. This parallels Section 246 of the TAA Reform Act of 2002, which provides that the ATAA wage subsidy may be paid over a two-year period.

Initial Eligibility

38. Q: Must a worker be working or just offered full-time work within 26 weeks of their date of separation to be eligible for an ATAA wage subsidy?

    A: TEGL 2-03, Section E, states that the worker must obtain reemployment by the last day of the 26th week after the worker's qualifying separation from TAA/ATAA certified employment. This means that the worker's first day of employment must have occurred during the 26-week period.

39. Q: ATAA eligibility requires that the worker may not return to similar work for the employer from whom he/she separated. Does the state define "similar" work?

A: Yes. When an ATAA applicant accepts work with their layoff employer at a different location, the state is responsible for determining whether the work is similar. In addition, the individual cannot return to the division/facility from which he/she was separated, even if the work is not similar.

40. Q: If a worker applies for ATAA and is denied eligibility because annual earnings are in excess of $50,000, can the worker reapply and be found eligible for ATAA if he/she is separated from this job (voluntarily or otherwise) and finds new employment at less than $50,000?

A: If the individual is issued a determination denying eligibility for an ATAA wage subsidy based on the first reemployment because the reemployment did not meet the conditions to qualify for an ATAA wage subsidy, and if the individual is subsequently separated and finds a new job that does meet the conditions for ATAA, then a new ATAA application will have to be submitted. In this case, since the first reemployment did not qualify the individual for ATAA it cannot be used to establish qualifying reemployment within 26 weeks. Therefore, the subsequent full-time employment must occur within the 26 weeks from the qualifying separation to be considered for the ATAA subsidy.

41. Q: In the event a worker applies for ATAA and is denied by virtue of being 49 years old, would the worker qualify when he/she turns 50 and is still reemployed?

A: TEGL 2-03, Section E, requires that an individual be 50 years of age at the time of reemployment to be considered for the ATAA wage subsidy. Therefore, a worker denied by virtue of being 49 years old would not qualify if he/she turns 50 and is still reemployed in the same job. However, in the unusual circumstance that the worker becomes separated from the initial reemployment and is reemployed again within 26 weeks from his/her qualifying separation and has turned 50, he/she may be eligible for the ATAA wage subsidy at that time.

Benefit Receipt and Point of Disqualification

42. Q: If a worker exhausts his/her UI entitlement prior to the 26-week deadline for obtaining reemployment for ATAA purposes, can that worker receive TRA without losing all future eligibility for ATAA?

A: Yes. TEGL 2-03, Section E, specifies that workers give up their right to ATAA when they receive TAA-approved training. If the worker has exhausted his/her UI eligibility associated with the first benefit period at the time of layoff, it is possible to receive TRA benefits with a training waiver during the 26 weeks between layoff and obtaining qualifying reemployment for ATAA. Receipt of TRA will not void their right to choose ATAA, not will receipt of a job search allowance.

43. Q: Does participation in WIA training prior to or after TAA certification exclude the worker from eligibility for the ATAA program?

A: WIA training that is not TAA-approved does not disqualify someone from receiving the ATAA wage subsidy. TEGL 2-03, Section E, specifies that TAA-approved training does disqualify an individual from receiving the ATAA wage subsidy.

44. Q: What documentation is necessary to meet the requirement in TEGL 2-03 that a worker must choose between TAA and ATAA participation?

A: While Section E of TEGL 2-03 does not specify a requirement for documenting a worker's choice between TAA and ATAA, it does indicate that receipt of the first ATAA wage subsidy or enrollment in training will attest to this choice. However, states are free to establish their own documentation requirements for this purpose.

45. Q: Is it true that workers do not give up rights to TAA benefits until they receive the first ATAA payment?

A. Yes.

Petition Process

46. Q: For ATAA purposes, when determining whether the worker group possesses "skills that are not easily transferable" to other employment, will the determination address the skills of all workers at the affected firm, only the separated workers, all workers over age 50, or only separated workers over the age of 50?

A: The determination addresses the skills of the petitioning worker group, which may include individuals both above and below age 50.

47. Q: What does "skills that are not easily transferable" mean?

A: "Skills that are not easily transferable" refer to a set of skills that do not enable a worker to quickly obtain employment in a similar kind of work (e.g., a job at an equal or higher wage and skill level in the local labor market).

48. Q: May petitioners provide additional documentation in support of the TAA or ATAA petition?

A: Yes. Petitioners may, and are encouraged to, submit documentation that supports the specific criteria for TAA and/or ATAA certification with their petition.

Existing Certifications

49. 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. This would, however, change the impact date and may lead to workers laid-off more than one year prior to the date of the resubmitted petition being ineligible for TAA or ATAA certification.

50. 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 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.

Agent State/Liable State

51. Q: What are the responsibilities of the agent state and liable state in administering the ATAA program?

A: For ATAA purposes, the liable/agent state relationship applies only when a worker loses a job in one state, becomes reemployed in another, and is eligible for the ATAA wage subsidy. Under the ATAA program, the liable state is the same as the liable state for the regular TAA program, as described in 20 CFR 617.26(a). In most cases, the liable state is the state where the worker was working and separated from employment. The agent state is the state in which the worker is reemployed. The distinction has nothing to do with the state where the worker resides.

The responsibilities of the liable state include making all determinations of ATAA individual eligibility, issuing all redeterminations of individual eligibility and decisions on appeal, making the ATAA wage subsidy payments, paying relocation allowances, verifying employment, transmitting names of "eligible ATAA recipients" to the HCTC program office in the Internal Revenue Service (IRS), and completing all reports.

The responsibilities of the agent state are cooperating fully with the liable state and assisting the liable state in carrying out its activities and functions. The definition of full-time work for all ATAA participants working in the state is the responsibility of the agent state. Other responsibilities include providing interstate ATAA applicants with ATAA program information, assisting with filing applications, gathering information and forwarding it to the liable state, and

providing the liable state with information needed to make determinations of ATAA individual eligibility initially and on appeal.

Section 426 of the Trade Act specifies that the determination of full-time is based on the state law of the state where the individual is employed. Therefore, as indicated by the above, the liable state will have to make ATAA eligibility determinations based on the agent state's law. There will be instances where the agent state and liable state have different definitions of full-time employment. In these cases, the liable state will find it necessary to use the agent state's definition of full-time employment in making the eligibility determination for the ATAA program.

HCTC

52. Q: If a worker loses eligibility for ATAA due to separation from employment, does the worker lose HCTC eligibility?

A: Yes. The person is only eligible for HCTC for any month in which he/she received an ATAA payment. However, Section 35 of the Internal Revenue Code of 1986, as amended, provides eligibility for a grace period of one calendar month after the month in which the worker stops receiving the ATAA wage subsidy.

53. Q: Does receipt of only a relocation allowance under the ATAA program make the individual worker an "eligible ATAA recipient" for HCTC purposes for that month?

A: No. The definition of an "eligible ATAA recipient" provided in Section 35 of the Internal Revenue Code is an individual receiving the wage subsidy for that month.

Waivers

54. Q: Are there reasons where it would be appropriate to issue training waivers to ATAA-eligible individuals?

A: Workers who are interested in ATAA but do not yet have qualifying reemployment may wish to preserve their option to choose between TAA and ATAA while they search for ATAA-qualifying reemployment, or they may need to access the HCTC. In cases where one of the waver criteria is met, a waiver could be used to establish HCTC eligibility or to preserve the worker's option to access regular TAA benefits if he/she is unable to secure appropriate ATAA-qualifying reemployment.

Section E of TEGL 2-03 describes the various options available in granting waivers for these purposes. The use of waivers should be evaluated carefully and should also be consistent with guidance contained in TEGL 11-02 and 11-02, Change 1.

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	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

1. **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.

2. **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."

3. **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

RESCISSIONS	EXPIRATION DATE Continuing

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.

[FR Doc. 05–3420 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–C

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:*

NUREG/BR–0238, Materials Annual Fee Billing Handbook; NRC Form 628, ''Financial EDI Authorization''; NUREG/BR–0254, Payment Methods; NRC Form 629, ''Authorization for Payment by Credit Card''.

3. *The form number if applicable:*

NRC Form 628, ''Financial EDI Authorization''; NRC Form 629, ''Authorization for Payment by Credit Card''.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. *An estimate of the number of annual responses:* 7,330 (10 for NRC Form 628 and 7,320 for NRC Form 629 and NUREG/BR–0254).

7. *The estimated number of annual respondents:* 7,330 (10 for NRC Form 628 and 7,320 for NRC Form 629 and NUREG/BR–0254).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 611 (.8 hour for NRC Form 628 and 610 hours for NRC Form 629 and NUREG/BR–0254).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 25, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated in Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–3399 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation; Concerning the Application for Irradiation of Mixed Oxide Lead Test Assemblies at Catawba Nuclear Station, Units 1 and 2, Supplement No. 1 to Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of amendments to the Facility Operating Licenses to permit the use of mixed oxide (MOX) lead test assemblies (LTAs) in one of the two Catawba units and is considering the granting of exemptions from (1) the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44(a), 10 CFR 50.46(a)(1) and 10 CFR part 50, Appendix K with respect to the use of M5™ fuel rod cladding; (2) 10 CFR 50.46(a)(1) and Appendix K to part 50 with respect to the use of MOX fuel; and (3) certain physical security requirements of 10 CFR parts 11 and 73 that are usually required at fuel fabrication facilities for the protection of strategic quantities of special nuclear material. A similar request for an exemption from the requirements of 10 CFR 50.44(a) with respect to the use of M5™ fuel rod cladding is not being granted since 10 CFR 50.44 has been changed and an exemption is no longer necessary. The amended licenses and exemptions would apply to Renewed Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation (Duke, the licensee), for operation of the Catawba Nuclear