EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA CORRESPONDENCE SYMBOL ONR DATE November 16, 2004

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 9-04

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: Services Authorized by the U. S. Department of Agriculture's (USDA) Trade Adjustment Assistance (TAA) for Farmers Program

1. **Purpose.** To inform the state workforce agencies (SWAs) of their responsibility to provide certain services under the TAA for Farmers program established by the Trade Act of 2002 and administered by the USDA.

2. **References.** Trade Act of 1974 (P.L. 93-619, as amended); Trade Act of 2002 (P.L. 107-210); 20 CFR Part 617; 7 CFR Part 1580; Training and Employment Guidance Letter (TEGL) 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002"

3. **Background.** The Trade Act of 2002 established the Trade Adjustment Assistance (TAA) for Farmers program for fiscal years 2003 - 2007. Under the program, the USDA provides technical assistance and cash benefits to eligible farmers and fishermen if increased imports have contributed importantly to a price decline of more than 20 percent. Technical assistance under the program includes access to resources through the USDA's Cooperative State Research, Education, and Extension Service, in partnership with a County Extension Service, to assist producers in exploring alternative crops and marketing techniques. The program's goal is to help producers—farmers and fishermen—respond proactively to import competition through training, cash benefits, and employment services.

RESCISSIONS	EXPIRATION DATE:
None	Continuing

4. **USDA Responsibilities.** In order to establish eligibility, a group of producers must first file a petition with the USDA's Foreign Agricultural Service. Petitions may be filed by a group of three or more producers or an authorized representative. The TAA for Farmers petition form may be found on the Internet at http://ffas.usda.gov/itp/taa/FAS0930.pdf. A copy may also be obtained from a USDA Farm Service Agency county office, or requested by phone at (202) 720-2916, or by writing to USDA, Foreign Agricultural Service, Trade Adjustment Assistance, STOP 1021, 1400 Independence Avenue, SW, Washington, DC 20250-1021, or by e-mail at trade.adjustment@fas.usda.gov.

   The Foreign Agricultural Service will certify producers' eligibility for adjustment assistance if they can demonstrate that the price of the agricultural commodity they produce is less than or equal to 80 percent of the national average prices for the 5 marketing years preceding the most recent marketing year and that increases in imports of like or directly competitive products "contributed importantly" to the decline in price.

   Once the petition is certified, in order to be eligible for benefits a producer must be:

   - An owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or a qualified fisherman; or
   - A producer of a raw agricultural commodity, including livestock, fish, and aquaculture products; and
   - Located inside the producing area covered by the petition.

   An eligible producer may only apply for adjustment assistance within 90 days after the certification date. Farm Service Agency county offices can help producers prepare and submit their applications.

   After submitting an application, producers are immediately eligible to request trade adjustment technical assistance from the Extension Service at no cost. The Extension Service will provide information regarding the feasibility and desirability of substituting one or more alternative commodities for the adversely affected commodity, as well as technical assistance to improve the competitiveness of the production and marketing of the adversely affected commodity.

   To qualify for a TAA for Farmers cash payment, producers must complete Form FSA-229, meet with the County Extension Service, and submit all supporting documentation by September 30 of the fiscal year in which the

certification is issued. If an applicant has already received $10,000 in TAA benefits or $65,000 in counter-cyclical payments for the year, or reported an increase in net farm or fishing income in the most recent tax year, he/she is disqualified from receiving an additional TAA for Farmers cash payment.

The amount of cash payment to a producer will be equal to the quantity of the agricultural commodity produced in the most recent marketing year multiplied by one-half the difference between the average price in the most recent marketing year and 80 percent of the average price for the 5 preceding marketing years.

5. **Entitlement to Training and Reemployment Services.** Under section 296(d)(1) of the Trade Act, individuals who are entitled to a cash payment from the USDA under the TAA for Farmers program are also entitled to receive training and reemployment services under the TAA for Workers program administered by the Department of Labor (DOL) and the SWAs.

   a. **Reemployment Services.** Reemployment services provided to individuals covered under a TAA for Farmers certification are governed by the federal regulations at 20 CFR 617, Subpart C, in the same manner and to the same extent as services provided to individuals covered under TAA certifications issued by DOL.

   b. **Training.** Individuals who are entitled to receive a cash payment from the USDA under the TAA for Farmers program are also entitled to receive training under the TAA for Workers program. However, the fact that they are entitled to training does not mean that they are entitled to receive any training they want. Rather, the Department must place reasonable limitations on the selection and approval of this training to assure that public funds are spent wisely.

      The Department recognizes that individuals entitled to a cash benefit under the TAA for Farmers program are a unique population and that the Department must adapt the TAA for Workers program to fit their particular situation. While section 296(d)(1) of the Trade Act does not require that the six criteria for training approval found in section 236 of the Act be applied, the Department believes that the conditions found in 20 CFR 617.22(a)(2) – (6) and in 617.22(b)-(f) establish reasonable conditions for selecting and approving training for these workers. Note that 20 CFR 617.22(a)(1) does not apply. The regulatory sections that apply are as follows:

20 CFR 617.22(a)(2) "The worker would benefit from appropriate training. (i) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program."

20 CFR 617(a)(3) "There is a reasonable expectation of employment following completion of such training. (i) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training."

20 CFR 617(a)(4) "Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).

(i) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private training (or education) provider, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in paragraph (a) of this section. It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(ii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the

worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area will involve less charges to TAA funds."

20 CFR 617(a)(5) "The worker is qualified to undertake and complete such training. (i) This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered."

20 CFR 617(a)(6) "Such training is suitable for the worker and available at a reasonable cost.

(i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph [20 CFR 617(a)(5)] is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker...

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training that is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more

than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available."

20 CFR 617(b) "Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) [excluding paragraph (a)(1)] of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker."

20 CFR 617.22(d) "Applications. Applications for, selection for, approval of, or referral to training shall be filed in accordance with this Subpart C and on forms which shall be furnished to individuals by the state agency."

20 CFR 617.22(e) "Determinations. Selection for, approval of, or referral of an individual to training under this Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 617.50 and 617.51 apply."

20 CFR 617.22(f) "Length of training and hours of attendance. The state agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

(1) The training shall be of suitable duration to achieve the desired skill level in the shortest possible time;

(2) Length of training. The maximum duration for any approvable training program is 104 weeks (during which training is conducted) and no individual shall be entitled to more than one training program under a single certification. [Except that individuals who require remedial education as part of their approved training program may receive up to an additional 26 weeks of training for a maximum duration of 130 weeks.]

(3) Training program.

(i) For purposes of this Part 617, a training program may consist of a single course or group of courses which is designed and approved by the state agency for an individual to meet a specific occupational goal.

(ii) ...An individual's approved training program may be amended by the state agency to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills, as long as the length of the amended training program does not exceed the 104-week [or 130-week, if remedial education is required] training limitation in paragraph (f)(2) of this section.

(4) Full-time training. Individuals in TAA approved training shall attend training full time, and when other training is combined with [on-the-job training] attendance at both shall be not less than full-time. The hours in a day and days in a week of attendance in training shall be full-time in accordance with established hours and days of training of the training provider."

Finally, Section 292(d) of the Act provides a special eligibility rule for qualified subsequent years that could result in producers of a specific commodity being certified in more than one year and being entitled to a cash benefit in more than one year. In such cases, individuals who are entitled to a cash benefit in multiple years for the same commodity are not entitled to a different training program under each certification. Only one training program will be allowed per affected commodity. If future certifications are issued with respect to the same commodity, the individual will be considered to already have received training, and additional training approvals will be denied. Note, however, that this does not preclude additional training approvals for certifications from different commodities should that occur in the future and make additional training appropriate for an individual.

Farmers may also be entitled to subsistence or transportation for training outside the commuting area. Subsistence and transportation payments provided to individuals covered under a TAA for Farmers certification are governed by the federal regulations at 20 CFR 617.27 and 617.28 in the same manner and to the same extent as services provided to individuals covered under TAA certifications issued by DOL.

c. **Other TAA Benefits and Services.** Individuals entitled to a cash benefit

under the TAA for Farmers program are not eligible for trade readjustment allowances (TRA), job search allowances, relocation allowances, the Health Coverage Tax Credit (HCTC), or the Alternative Trade Adjustment Assistance (ATAA) program for older workers.

6. Documentation of Eligibility. In order to be eligible to receive training and reemployment services, an individual certified under the TAA for Farmers program must be entitled to receive a cash payment from the USDA. In order for a state to approve training, the individual must provide documentation of entitlement to cash benefits by providing a copy of his/her approved Form FSA-229, "Application for Trade Adjustment Assistance (TAA) for Individual Producers" (OMB approval number 0551-0040), signed by the approving official at the Farm Service Agency. A copy of Form FSA-229 is attached.

   Accordingly, USDA will provide individuals who are entitled to receive a cash benefit with a copy of the signed, approved Form FSA-229, and instruct them that they must present the form when applying for training. This process will continue until an automated process allowing communication between SWAs and USDA can be developed. The target timetable for creating this automated system, for which USDA has the lead, is late 2004.

7. **Reporting Requirements.** States are instructed to report services delivered to TAA for Farmers participants on the quarterly ETA 563 report (OMB approval number 1205-0016). Outcomes for TAA for Farmers participants will be reported on the Trade Act Participant Report (TAPR) (OMB approval number 1205-0392). States will, with one exception, adhere to the same reporting instructions as always for both the ETA 563 and the TAPR. The exception is that all individuals served under a TAA for Farmers program certification should be reported under petition number "888888" on both the ETA 563 and the TAPR.

8. **Funding.** It is expected that training for participants covered under TAA for Farmers program will be supported through the regular allocation of trade training funds. No TAA funding is separately allocated for training participants covered under TAA for Farmers certifications. States will report the number of these participants served on the ETA 563 report, and their numbers will be included in the number of training participants used to calculate each state's base allocation under the funding formula. Consequently, training for agricultural producers is subject to the same funding conditions that apply to training for other TAA eligible workers in the state.

9. **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.

10. **Inquiries.** States should direct all inquiries to the appropriate regional office.

11. **Attachment.**

Attachment: Form FSA-229, Application for Trade Adjustment Assistance (TAA) for Individual Producers