

## APPENDIX

## TAA PETITIONS INSTITUTED BETWEEN 12/27/10 AND 12/31/10

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75045	CVS Caremark (State/One-Stop)	Northbrook, IL	12/28/10	12/27/10
75046	Macsteel Service Centers USA (Company).	Liverpool, NY	12/28/10	12/28/10
75047	J.P. Morgan Chase (State/One-Stop)	Columbus, OH	12/28/10	12/27/10
75048	Premier Technical Plastics (Company)	Minden, LA	12/29/10	12/23/10
75049	Buckstaff Company (State/One-Stop)	Oshkosh, WI	12/29/10	12/28/10
75050	Strahan Sewing Machine Company (Company).	Chino Hills, CA	12/29/10	12/28/10
75051	American Express (Workers)	Salt Lake City, UT	12/29/10	12/28/10
75052	Siemen's Industry (State/One-Stop)	Columbus, OH	12/29/10	12/28/10
75053	C. Fassinger & Sons Manufacturing Company (Company).	New Castle, PA	12/29/10	12/28/10
75054	Plastic Suppliers Company (Workers)	Columbus, OH	12/29/10	11/23/10
75055	Bright Acquisitions Company LLC (Union)	Summersville, WV	12/30/10	12/29/10
75056	Ericsson, Inc (State/One-Stop)	Overland Park, KS	12/30/10	12/29/10
75057	Allstate Insurance Company (State/One-Stop).	Irving, TX	12/30/10	12/29/10
75058	Electrolux Central Vacuum Systems (Company).	Webster City, IA	12/30/10	12/24/10

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## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA-W-70,344]

**Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division, Fort Smith, AR; Notice of Negative Determination on Second Remand**

On November 4, 2010, the United States Court of International Trade (USCIT) granted the Department of Labor's second request for voluntary remand to conduct further investigation in *Former Employees of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division v. United States Secretary of Labor* (Court No. 09-00522).

On September 28, 2009, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, Fort Smith, Arkansas (subject firm). AR 35. Workers at the subject firm (subject worker group) provided airline customer services. AR 4,8,14,37. The Department's Notice of determination was published in the **Federal Register** on November 17, 2009 (74 FR 59251). AR 48.

For the Department to issue a certification for workers under Section

222(a) of the Trade Act of 1974, as amended (the Act), 19 U.S.C. 2272(a), the following criteria must be met:

I. The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2282(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.

II. The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied in one of two ways:

(A) *Increased Imports Path:*

(i) sales or production, or both, at the workers' firm must have decreased absolutely, and

(ii)(I) imports of articles or services like or directly competitive with articles or services produced or supplied by the workers' firm have increased. OR

(II)(aa) imports of articles like or directly competitive with articles into which the component part produced by the workers' firm was directly incorporated have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by the workers' firm have increased; OR

(III) imports of articles directly incorporating component parts not produced in the U.S. that are like or directly competitive with the article into which the component part produced by the workers' firm was directly incorporated have increased.

(B) *Shift in Production or Supply Path:*

(i)(I) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of

services like or directly competitive with those produced/supplied by the workers' firm; or

(i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the increase in imports or shift/acquisition must have contributed importantly to the workers' separation or threat of separation. *See* Sections 222(a)(2)(A)(iii) and 222(a)(2)(B)(ii) of the Act, 19 U.S.C. 2272(a)(2)(A)(iii), 2272(a)(2)(B)(ii).

For the Department to issue a certification for adversely-affected secondary workers under Section 222(c) of the Act, 19 U.S.C. 2272(c), the following criteria must be met:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a), and such supply or production is related to the article or service that was the basis for such certification; and

(3) either:

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in

paragraph (2) contributed importantly to the workers' separation or threat of separation.

Section 222(d)(3)(A) of the Act, 19 U.S.C. 2272(d)(3)(A), states that a "downstream producer means a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a)." Section 222(d)(3)(B) of the Act, 19 U.S.C. 2272(d)(3)(B), states that "value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services."

The negative determination states that, although there was a significant proportion or number of workers of the subject firm that were separated, the remaining criteria of Section 222(a) and Section 222(c) of the Act were not met. AR 37. The negative determination stated that the subject firm did not import like or directly competitive services during the relevant period or shift these services abroad. AR 38.

In the request for reconsideration, the petitioner alleged that because the workers at the subject firm provided services to individuals that are part of worker groups eligible to apply for TAA, the workers at the subject firm should also be eligible for TAA as "downstream producers." AR 42,43.

The Department issued a Notice of Negative Determination Regarding Application for Reconsideration applicable to workers of the subject firm on November 5, 2009, based on the finding that the petitioner did not provide new information. AR 44. The Department's Notice was published in the **Federal Register** on December 8, 2009 (74 FR 64736). AR 54.

In the complaint to the USCIT, the Plaintiff asserted that workers at the subject firm are eligible to apply for TAA as secondarily affected workers, that the decline in travel in the Fort Smith, Arkansas area is attributable to a reduction in the operations of firms in the local area due to trade impact, and that this decline in travel contributed to subject worker group separations.

#### First Remand Investigation

During the first remand investigation, the Department carefully reviewed previously submitted information, obtained additional information from the subject firm, and solicited input from the Plaintiff.

In the course of the first remand investigation, the Plaintiff provided information alleging that trade impact

caused the layoffs in the subject worker group. SAR 9.

The Department's findings on remand revealed that the subject worker group provided airline customer services such as airline ground handling, baggage, and ticketing, under contract exclusively for Delta Air Lines (Delta). These services were provided to individual passengers and the ticket purchases were made by individuals, travel agencies, corporate accounts, and the United States military. SAR 3,19,21,27,29.

The information obtained by the Department to address the allegation that the domestic merger between Delta and Northwest Airlines demonstrates trade impact confirmed the Department's findings. Subject worker group separations are attributable to Delta ceasing operations with the subject firm at the Fort Smith, Arkansas location, but the newly-merged airline maintained operations out of the Fort Smith, Arkansas location using a different airline customer service provider. Further, the services provided by the worker group cannot be imported or shifted abroad as they are used directly by domestic passengers. AR 17,24,25, SAR 3,19,21,27,29.

Based on careful consideration of all previously submitted information and new facts obtained during the first remand investigation, the Department determined that the subject worker group did not meet the eligibility criteria of the Act and issued a Negative Determination on Remand on September 3, 2010. SAR 34. The Notice of determination was published in the **Federal Register** on September 21, 2010 (75 FR 57517). SAR(II) 1.

#### Second Remand Investigation

The Department requested, and was granted, a second voluntary remand to obtain additional information to clarify the reason Delta ceased using services supplied by the subject firm, to clarify "directly" for purposes related to Section 222(d)(3)(A), and to determine whether the petitioning workers are eligible to apply for TAA.

During the second remand investigation, the Department obtained additional information from the subject firm, SAR(II) 6,8,44–48, solicited input from the Plaintiff, SAR(II) 6,10–15, and obtained new information from Delta regarding the reason that it ceased using services supplied by the subject firm in its operations at the Fort Smith airport. SAR(II) 7–9,29–42,50–52.

Information provided by Delta and the subject firm confirmed that the subject firm failed to win a bid to continue to supply services at the Fort Smith airport. When Delta and Northwest

Airlines merged, regional vendors were invited to submit bids to acquire ground handling operations at the Fort Smith location. The subject firm had the same opportunity to bid to win the contract to supply services at the Fort Smith, Arkansas airport as other firms, but did not win the contract. SAR(II) 46–48,51.

Section 222(d)(3)(A) of the Act requires that a "downstream producer" perform "additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a) [of Section 222 of the Act]." Section 222(d)(3)(B) includes "transportation services" among those services.

The Department's interpretation of "directly" in Section 222(d)(3)(A) is that there may not be an intervening customer or supplier. The subject firm provided services exclusively for Delta, so Delta is the only direct recipient of the services provided by the subject worker group. SAR(II) 46. The services supplied by the subject firm must be to a firm that employs workers eligible to apply for TAA on a primary certification. Delta does not have a worker group certified as eligible to apply for TAA, SAR(II) 53, so subject firm workers may not be certified under the secondary worker provisions of the statute.

Further, Section 222(c)(2) of the Act does not permit secondary worker certification unless the service provided by the subject firm "is related to the article or service that was the basis for such certification [under Section 222(a) of the Act]." This clause confirms Department's finding that it is not necessary to survey Delta's customers because the articles or services those customers produce or provide are not related to the supply of airline customer services that the subject firm provides.

Based on a careful review of both previously-submitted information and new information obtained during the second remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(c) of the Trade Act of 1974, as amended.

#### Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, Fort Smith, Arkansas.

Signed at Washington, DC, January 18, 2011.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2011-0009]

#### Standard on Fire Brigades; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Fire Brigades (29 CFR 1910.156).

**DATES:** Comments must be submitted (postmarked, sent, or received) by March 28, 2011.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2011-0009, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection request (ICR) (OSHA-2011-0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>.

For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled "**SUPPLEMENTARY INFORMATION.**"

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:**

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraphs (b)(1), (b)(2), (c)(1), (c)(2), and (c)(4) contain the paperwork requirements of the Standard.

Under paragraph (b)(1) of the Standard, employers must develop and

maintain an organizational statement that establishes: the existence of a fire brigade; the basic organizational structure of the brigade; the type, amount, and frequency of training provided to brigade members; the expected number of members in the brigade; and the functions that the brigade is to perform. This paragraph also specifies that the organizational statement must be available for review by workers, their designated representatives, and OSHA compliance officers. The organizational statement delineates the functions performed by the brigade members and, therefore, determines the level of training and type of personal protective equipment (PPE) necessary for these members to perform their assigned functions safely. Making the statement available to workers, their designated representatives, and OSHA compliance officers ensures that the elements of the statement are consistent with the functions performed by the brigade members and the occupational hazards they experience, and that employers are providing training and PPE appropriate to these functions and hazards.

To permit a worker with known heart disease, epilepsy, or emphysema to participate in fire brigade emergency activities, paragraph (b)(2) of the Standard requires employers to obtain a physician's certificate of the worker's fitness to do so. This provision provides employers with a direct and efficient means of ascertaining whether or not they can safely expose workers with these medical conditions to the hazards of firefighting operations.

Paragraph (c)(1) of the Standard requires employers to provide training and education for fire brigade members commensurate with the duties and functions they perform, with brigade leaders and training instructors receiving more comprehensive training and education than employers provide to the general membership. Under paragraph (c)(2) of the Standard, employers must conduct training and education frequently enough, but at least annually, to assure that brigade members are able to perform their assigned duties and functions satisfactorily and safely; employers must provide brigade members who perform interior structural firefighting with educational and training sessions at least quarterly. In addition, paragraph (c)(4) specifies that employers must: Inform brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water-reactive substances that may be present during fires and other