TRADE ADJUSTMENT ASSISTANCE FOR FARMERS:

A TWO-STEP PROCESS

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UNITED STATES COURT OF INTERNATIONAL TRADE

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I. Introduction

Receiving cash benefits pursuant to the Trade Adjustment Assistance ("TAA") for Farmers program involves a two-step process. The statutory scheme provides for a two-step process for determining eligibility for TAA benefits. As discussed below, the first step involves the filing of a petition for certification of a particular group of agricultural commodity producers. The second step provides for a filing, by the individual producers covered by the group's certification, for technical assistance and cash benefits. During this phase, the United States Department of Agriculture ("USDA") must make a determination whether an applicant's submission meets the statutory and regulatory qualification requirements in order to be eligible for cash benefits.

II. Relevant Statutory Scheme

The Trade Act of 2002 (P.L. 107-210) amended the Trade Act of 1974 (19 U.S.C. § 2551, *et. seq*.) to add a new chapter 6, which establishes the Trade Adjustment Assistance for Farmers Program. Section 141 amended title II to authorize the Secretary of Agriculture to provide TAA cash benefits for an adversely affected "agricultural commodity producer." Pub. L. 107-210, 116 Stat. 933, 946-952 (2002); 19 U.S.C. § 2401(2). The amendment described "agricultural commodity producer" as a "'person' as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. § 1308(e))." *See* 7 C.F.R. § 1400.3.

A. The Group Petition Process

Pursuant to 19 U.S.C. § 2401a(a), "[a] petition for a certification of eligibility to apply for adjustment assistance under this part may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative."

The Secretary shall certify a group of commodity producers as eligible to apply for TAA if it is determined:

> (1) that the national average price for the agricultural commodity, or a class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity, or such class of goods, for the 5 marketing years preceding the most recent marketing year; and
>
> (2) that increases in imports of articles like or directly competitive with the agricultural commodity, or class of goods within the agricultural commodity, produced by the group contributed importantly to the decline in price described in paragraph (1).

19 U.S.C. § 2401a(c), 7 C.F.R. §§ 1580.101, 1580.201.

USDA's Foreign Agricultural Service ("FAS") administers the TAA for Farmers Program. The determination whether a petitioning agricultural commodity group meets the group eligibility requirements of the statute is made by FAS. A petition certification determination, made pursuant to section 2401, must be made within 40 days after the group's petition is filed. 19 U.S.C. § 2401b(a).

Part 1580 of USDA's regulations addresses the eligibility requirements set forth in 19 U.S.C. § 2401, 2401a-g:

> This part provides regulations for the Trade Adjustment Assistance for Farmers program. Under these provisions, producers of agricultural commodities may petition the Department of Agriculture for eligibility to apply for trade adjustment assistance based on criteria set forth in the Trade Act of 1974, as amended by the Trade Act of 2002 (19 U.S.C. 2251, et seq.). If the Administrator determines that the national average price for a commodity is less than 80 percent of the preceding 5-year average and that an increase in imports has contributed importantly to the decline in commodity prices, the producers may apply for technical assistance and cash benefits under the program.

7 C.F.R. § 1580.101.

Foreign Agriculture Service first reviews petitions for appropriateness, completeness, and timeliness, before publishing a notice in the Federal Register that they have been received. The Economic Research Service ("ERS") conducts a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS reports its findings to the FAS Administrator, who determines whether or not the group is eligible for trade adjustment assistance. If Administrator determines that the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price, the Administrator certifes the group as eligible for trade adjustment assistance. T*rade Adjustment Assistance for Farmers*, 68 Fed. Reg. 50,048 (Aug. 20, 2003).

B. The Individual Producers' Application Process

Upon certification, producers have 90 days to contact the Farm Service Agency to apply

for assistance. 19 U.S.C. § 2401e.

As soon as they apply, they are eligible to receive at no cost a technical assistance package specifically tailored to their needs by the Extension Service. 19 C.F.R. § 1580.302. "Any [TAA applicant] may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer." 7 C.F.R. §§ 1580.302(a), 1580.301(d); *see also* 7 C.F.R. § 1580.301(e). Depending upon the commodity and the region, the Extension Service package may include technical publications in print or on-line, group seminars and presentations, and one-on-one meetings. *Id.* Producers, who receive the technical assistance and also satisfy personal and farm income limits, are eligible for TAA payments. 7 C.F.R. § 1580.303(h) ("FSA shall not make adjustment assistance payments to producers who have not met at least once with an Extension Service employee to receive technical assistance."); *see* 7 C.F.R. §§ 1580.102, 1580.301. USDA's Farm Service Agency oversees the processing of the individual producers' TAA applications. 7 C.F.R. § 1580.301. However, the Foreign Agricultural Service makes the final determination regarding denial or approval of the applications.

Unlike section 2401a, which requires USDA to perform an investigation of the effects of imports upon the relevant commodity, pursuant to 19 U.S.C. § 2401e, if certain requirements are met, payment of adjustment assistance shall be made. Specifically, payments

> shall be made to an adversely affected agricultural commodity producer covered by a certification under this part who files an application for such assistance within 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 2401b of this title, if the following conditions are met:
>
> (A) The producer submits to the Secretary sufficient information to establish the amount of agricultural commodity covered by the application filed under this subsection that was produced by the producer in the most recent year.
>
> (B) The producer certifies that the producer has not received cash benefits under any provision of this subchapter other than this part.
>
> (C) The producer's net farm income (as determined by the Secretary) for the most recent year is less than the producer's net farm income for the latest year in which no adjustment assistance was received by the producer under this part.
>
> (D) The producer certifies that the producer has met with an Extension

> Service employee or agent to obtain, at no cost to the producer, information and technical assistance that will assist the producer in adjusting to import competition with respect to the adversely affected agricultural commodity . . .

19 U.S.C. § 2401e(a)(1).

In addition, the statute sets forth specific limitations upon adjusted gross income, the total amount of payments made to an agricultural producer, and restricts producers from receiving benefits under different parts of chapter 6. 19 U.S.C. §§ 2401e(b)-(d).

To implement section 2401, USDA regulations clearly identify the documentation that must be provided with a TAA application to demonstrate net fishing income:

> (6) [t]o comply with the certification requirements of [§ 1580(e)(4)], an applicant shall provide either –
>
> > (i) Supporting documentation from a certified public accountant or attorney, or
> >
> > (ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service ["IRS"] or another U.S. Government agency.

7 C.F.R. § 1580.301(e)(6); *see also* 7 C.F.R. § 1580.502(a)(2) (setting forth acceptable income documentation).

In contrast to 19 U.S.C. §§ 2401a and b, which require the Secretary to initiate an "investigation" and "determine whether the petitioning group meets the requirements of section 2401a(c) or (d)," section 2401e puts the onus upon producers who are part of a group certified pursuant to sections 2401a and b to meet the conditions set forth in the statute. Furthermore, in contrast to all members of a certified group being eligible for certain trade adjustment assistance benefits, 7 C.F.R. § 1580.302(a) ("Any producer of an agricultural commodity covered by a certification of eligibility may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer"); *see* 19 U.S.C. §§ 2401d(b)(1) and e(a)(1)(D), section 2401e does not require any investigative functions to be conducted by USDA, but rather, requires potentially eligible producers to file an application and "certify" that they meet certain conditions in order to receive cash benefits.

C. Determinations That May Be Challenged

Title 19, United States Code, section 2395(c) provides that,

> [t]he Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of Title 28.

19 U.S.C. § 2395(c). [2]

III. Recent Decisions Of The Court Of International Trade Concerning The TAA For Farmers Application Process

While the courts have decided many cases involving petitions for TAA benefits pursuant to 19 U.S.C. § 2271 *et seq.*, because it has only been available for three years, there is little case

[2] On November 1, 2004, USDA published Trade Adjustment Assistance For Farmers, 69 Fed. Reg. 63317 (Nov. 1, 2004), correcting its procedures for appealing determinations of the Secretary relating to TAA set forth in 7 C.F.R. § 1580.505. The regulation originally designated the USDA Farm Service Administration ("FSA") administrative appeal procedure to resolve disputes involving applications for program benefits. The FSA appeal procedures call for appeals to be brought before the National Appeals Division ("NAD") within USDA. "This was not intended, and would not be appropriate, because appeals from NAD go to the United States District Courts, whereas the Trade Act (19 U.S.C. 2395) grants to the United States Court of International Trade jurisdiction over of all claims arising under the TAA program." Trade Adjustment Assistance For Farmers, 69 Fed. Reg. at 63317-63318.

Therefore, 7 C.F.R. § 1580.505 was amended to delete the utilization of FSA's administrative appeals process. It now reads: "Any person aggrieved by a final determination made with respect to an application for program benefits under this part may appeal to the United States Court of International Trade for a review of such determination, in accordance with its rules and procedures." Id.

law directly addressing the TAA for Farmers Program. Although as an extension of the original TAA program (enacted as part of the Trade Act of 1974), the TAA for Farmers Program, has the same purpose as that of the TAA program administered by the Department of Labor, it is not the same program and, as stated above, involves two separate determinations which require different actions from the USDA. *See Trade Adjustment Assistance for Farmers*, 68 Fed. Reg. 50,048, 50,049 (Aug. 20, 2003) ("The purpose of TAA is to assist producers to adjust to imports by providing technical assistance to all and cash payments to those facing economic hardship.").

In its recent decisions, relying upon cases pertaining to the TAA program administered by Labor, the Court of International Trade has held that, "[t]he Department of Agriculture's discretion in conducting its investigations of TAA claims is prefaced by the existence of 'a threshold requirement of reasonable inquiry' and investigations which fall below this 'cannot constitute substantial evidence upon which a determination can be affirmed.'" *Anderson v. United States Sec'y of Agric.*, 429 F. Supp. 2d 1352, 1355 (CIT 2006) (quoting *Former Employees of Sun Apparel of Texas v. United States Sec'y of Labor*, 2004 WL 1875062 *6 (CIT Aug. 20, 2004)); *see Selivanoff v. U.S. Sec'y of Agric.*, 2006 WL 1026430 (CIT Apr. 18, 2006); *Wooten v. United States Sec'y of Agric.*, 414 F. Supp. 2d 1313, 1316 (CIT 2006) ("Defendant has failed to meet the threshold of reasonable inquiry by not investigating beyond Mr. Wooten's application. . . ."); *Van Trinh v. United States Sec'y of Agriculture*, 395 F. Supp. 2d 1259, 1271-1272 (CIT 2005) (remanded due to inadequate investigation of claim involving "bigger repairs on the boat in 2001" as compared to 2002 in light of amended tax return filing); *cf. Anderson v. United States Sec'y of Agric.*, 441 F.Supp.2d 1379 (CIT 2006) ("As long as the agency's methodology and procedures are reasonable means of effectuating the statutory purpose, and there is substantial evidence in the record supporting the agency's conclusions, the court will not impose its own views as to the sufficiency of the agency's investigation or question the agency's methodology.") (quoting *Ceramica Regiomontana, S.A. v. United States*, 636 F. Supp. 961 (CIT), *aff'd*, 810 F.2d 1137 (Fed. Cir. 1987)).

Further, the Court of International Trade has held that "strict 'rigidity in implementation of the [TAA] statute would undermine the remedial nature of the Act,' and [USDA] is therefore 'obliged to conduct [its] investigation with the utmost regard for the interests of the petitioning workers.'" *Anderson*, 429 F. Supp. 2d at 1355 (quoting *Former Employees of Elec. Data Sys.*, 350 F. Supp. 2d 1282, 1290 (CIT 2004) (additional citations omitted).

In *Van Trinh*, the Court stated:

> With little case law addressing the requisite investigatory standard directly applicable to Agriculture cases, it is instructive to look at the standards established in TAA case law involving the Labor Department.
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> * * * *
>
> Thus, as the court has previously stated, "[w]hile [the Department] has 'considerable discretion' in conducting its investigation of

> TAA claims, 'there exists a threshold requirement of reasonable inquiry. Investigations that fall below this threshold cannot constitute substantial evidence upon which a determination can be affirmed.'" *Former Employees of Sun Apparel of Texas v. United States Sec'y of Labor*, No. 03-00625, Slip Op 04-106 2004 WL 1875062 at *6 (CIT Aug. 20, 2004) (emphasis added) (quoting *Former Employees of Chevron Prods. Co v. United States Sec'y of Labor*, 245 F. Supp. 2d 1312, 1318 (CIT 2002) (quotation omitted)).

Van Trinh, 395 F. Supp. 2d at 1268.

IV. Section 2401e Does Not Require An Investigation

It appears that the decisions cited above adopted the standard of review and the duty to investigate applicable to Labor TAA determinations without making a determination of whether the Labor TAA statute and TAA for Farmers determinations involve a similar investigatory process. Because these are separate agencies, making benefits determinations based upon separate statutes, the courts should be cautious about adopting the standard applied to Labor investigations without analyzing the consequences and basis for such adoption. Below, I briefly summarize the investigatory and duty to assist functions that are required of Labor, in the TAA context, and the Veterans Administration, in the veterans benefit context, in order to provide a comparison with the requirements 2401e may impose upon the USDA. Based upon this brief comparison, I conclude that, although USDA's determinations concerning producers' eligibility for benefits pursuant to 19 U.S.C. § 2401e should be examined to determine if they are supported by substantial evidence upon the record and are otherwise in accordance with law, the statute does not appear to impose a threshold requirement of a duty to investigate. Rather section 2401e and USDA's regulations require a determination of whether the producers' applications meet the requirements set forth in the statute.

A. The Department Of Labor Has A Duty To Investigate Pursuant To The TAA Statute

In the context of certification of groups of workers for eligibility to apply for TAA pursuant to 19 U.S.C. §§ 2271, 2272, Congress directed Labor to conduct investigations and analyze facts contributing to petitioning workers' layoffs or work reductions, in order to determine if the worker groups qualify to be certified as eligible to apply for TAA. 19 U.S.C. § 2273. Labor implements this requirement via regulations in 29 C.F.R. Part 90 (the investigation process) and 20 C.F.R. Part 617 (governing individual benefits). Regarding individual benefits, 19 U.S.C. § 2311 provides for state agencies to handle individual benefits matters, on the Secretary of Labor's behalf, pursuant to agreement between Labor and the state agencies.

Section 2273 requires the Secretary of Labor to determine "whether the petitioning group

meets the requirements of section 2272. . . ." Thus, the courts have held that Labor bears a duty to investigate, but "the nature and extent of the investigation are matters resting properly within the sound discretion of the administrative officials." *Former Employees of CSX Oil & Gas Corp. v. United States*, 720 F. Supp. 1002, 1008 (CIT 1989) (quoting *Cherlin v. Donovan*, 585 F. Supp. 644, 647 (CIT 1984)); *accord Woodrum v. Donovan*, 544 F. Supp. 202, 205 (CIT 1982).

The Court of International Trade has held that Labor does have an affirmative obligation to conduct its own independent "factual inquiry into the nature of the work performed by the petitioners. . . ." *Former Employees of Ameriphone, Inc. v. United States*, 288 F. Supp. 2d 1353, 1359 (CIT 2003) (citing *Former Employees of Chevron Products Co. v. United States Sec'y of Labor*, 245 F.Supp.2d 1312, 1327-28 (CIT 2002) (quoting *Former Employees of Shot Point Servs. v. United States*, 17 CIT 502, 507 (1993))). The United States Court of Appeals for the District of Columbia Circuit has held that, "[b]ecause of the *ex parte* nature of the certification process, and the remedial purpose of the [TAA] program," Labor is obligated to "conduct [its] investigation with the utmost regard for the interest of the petitioning workers." *Local 167, Int'l Molders and Allied Workers' Union, AFL-CIO v. Marshall*, 643 F.2d 26, 31 (D.C. Cir. 1981); *see also Stidham v. U.S. Dep't of Labor*, 669 F. Supp. 432, 435 (CIT 1987) (citing *Abbott v. Donovan*, 588 F. Supp. 1438, 1442 (1984) (quotations omitted)).

Thus, in the context of Labor TAA investigations, although Labor is vested with considerable discretion in the conduct of its investigation of trade adjustment assistance claims, "there exists a threshold requirement of reasonable inquiry." *Former Employees of Hawkins Oil & Gas, Inc. v. U.S. Sec'y of Labor*, 814 F. Supp. 1111, 1115 (CIT 1993); *Former Employees of Electronic Data Sys. Corp. v. U.S. Sec'y of Labor*, 408 F. Supp. 2d 1338, 1342-43 (CIT 2005).

In recognition of its duty to investigate, Labor promulgated 29 C.F.R. § 90.12, which requires the agency to

> initiate, or order to be initiated, such investigation as [it] determines to be necessary and appropriate. The investigation may include one or more field visits to confirm information furnished by the petitioner(s) and to elicit other relevant information. In the course of any investigation, representatives of the Department shall be authorized to contact and meet with responsible officials of firms, union officials, employees, and any other persons, or organizations, both private and public, as may be necessary to marshal all relevant facts to make a determination on the petition.

Id.

B. The Veterans Claims Assistance Act Of 2000

The Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475, 114 Stat. 2096 (2000), enacted on November 9, 2000, was designed by Congress "to ensure that all information

necessary to making a determination on a claim is obtained by or presented to VA [Veterans Administration] early on in the decision making process--that is, prior to the initial adjudication of the claim." *Locklear v. Nicholson*, 2006 WL 2682835 (Vet. App. 2006) (citation omitted).

A key provision of that act is the duty to notify, now codified at 38 U.S.C. § 5103(a).

> Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

Id.

Throughout the *ex parte* administrative process, the VA is directed to assist the veteran in developing her claim. Indeed, the VA must "make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate" a veteran's claim for benefits. 38 U.S.C. § 5103A(a) ("The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary."). The Department of Veterans Affairs is thus charged with the responsibility of assisting the veteran in establishing his claim; that responsibility includes helping the veteran to gather supporting evidence. *Gonzales v. West*, 218 F.3d 1378, 1381 (Fed. Cir. 2000) (recognizing that the veterans' benefit adjudication system is designed to help veterans); *see also* 38 U.S.C. § 5107A (statutory duty to assist a veteran in the development of his claim for benefits); 38 C.F.R. § 3.159 ("Upon receipt of a substantially complete application for benefits, [the Veterans Department] will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim.").

Section 5103(a), provides as follows:

> Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf

of the claimant.

38 U.S.C. § 5103(a). Subsection (b) of section 5103 provides that information or evidence to be provided by the claimant must be "received by the Secretary within one year from the date of such notice." Id. § 5103(b). The VA has promulgated a regulation that effectuates the notification duty of section 5103.

"The purpose of the statute and the corresponding regulation is to require that the VA provide affirmative notification to the claimant prior to the initial decision in the case as to the evidence that is needed and who shall be responsible for providing it." *Mayfield v. Nicholson*, 444 F.3d 1328, 1333 (Fed. Cir. 2006) (citing *Paralyzed Veterans of Am. v. Sec'y of Veterans Affairs*, 345 F.3d 1334, 1344-45 (Fed. Cir. 2003); 66 Fed. Reg. 45,620, 45,622-23 (Aug. 29, 2001). "The text of section 5103(b). . . confirms that Congress envisioned a deliberate act of notification directed to meeting the requirements of section 5103, not an assemblage of bits of information drawn from multiple communications issued for unrelated purposes." *Id.*

Thus, the Secretary has an affirmative duty to assist claimants in obtaining evidence necessary to substantiate their claims. 38 U.S.C. § 5103A. The Department of Veterans Affairs must obtain the veteran's service medical records, 38 U.S.C. § 5103A(c)(1), as well as information from other governmental or non-governmental sources that have been adequately identified and authorized by the claimant. 38 U.S.C. §§ 5103A(b), (c). Moreover, other federal agencies have an affirmative duty to provide information to the VA. 38 U.S.C. § 5106 (2003).[3]

C. USDA's Obligations Pursuant To TAA For Farmers

As in the Labor certification phase, USDA is statutorily mandated to conduct investigations into agricultural commodity groups' petitions to determine if the commodity groups qualify to be certified as eligible to apply for TAA. 19 U.S.C. § 2401a(a). As stated above, title 7 of the C.F.R. Part 1580, governs trade adjustment assistance for farmers with respect to petitions and applications.

Similar to Labor and the VA, USDA has published regulations pertaining to its duty to investigate commodity groups' petitions. Pursuant to 7 C.F.R. § 1580.201(d), if USDA determines that a group petition meets the requirements of section 1580.201(c), it will

publish notice in the Federal Register that a petition has been filed

[3] Such Agencies include the National Personnel Records Center, which maintains Armed Services personnel records necessary to establish the incurrence of a disease or injury during service or the description of the nature of military service. Social Security, as well as Office of Personnel Management, records are necessary to establish that other federal agencies have determined that a disability suffered by a claimant entitles that claimant to disability claimants from that Agency. Any federal agency or department is required by this statute to provide such information to the Secretary.

> and that an investigation has begun. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the price series being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioners. If the petition does not meet the requirements of § 1580.201(c), the Administrator shall notify as soon as possible the contact person for the group or the authorized representative of the deficiencies.

7 C.F.R. § 1580.201(d); *see* 7 C.F.R. § 1580.202 (establishing procedures for hearings, petition reviews, and amendments).

Additionally, pursuant to 7 C.F.R. § 1580.203, USDA has established a procedure for notifying producers covered by certifications of how they may apply for adjustment assistance. Notification methods include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, internet web site notices, and use of broadcast and print media. 7 C.F.R. § 1580.203(d). Additionally, whenever a group of agricultural producers is certified as eligible for assistance, USDA "shall use the occasion to notify and inform other producers about the Trade Adjustment Assistance Program and how they may petition for adjustment assistance." 7 C.F.R. § 1580.203(e).

Unlike in the certification phase, when individuals apply for benefits pursuant to 19 U.S.C. § 2401e, neither the statute, nor the regulations impose a duty upon USDA to investigate the producers' ability to meet the statutory or regulatory requirements beyond the documentation submitted by producers pursuant to the regulations.

Requiring the same verified documentation from each applicant ensures that the procedures for determining "net fishing income" for each individual producer is uniform. Unlike the veterans benefits program which requires that the VA notify the claimant and the claimant's representative of any information, "not previously provided to the Secretary that is necessary to substantiate the claim," 38 U.S.C. § 5103(a), or the TAA program administered by Labor, which requires Labor to "marshal all relevant facts to make a determination on the petition," 29 C.F.R. § 90.12, there is nothing in the statute or regulatory scheme providing for the USDA to conduct an investigation of the documents submitted by an applicant seeking benefits pursuant to section 2401e.

Similarly, in contrast to Labor TAA and VA claims, 19 U.S.C. § 2401e and the regulations promulgated by the USDA are clear: the applicant for TAA assistance must file an application for such assistance within 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 2401b of this title and meet the requirements set forth in the statute. *Id.*; 7 C.F.R. § 1580.301(e)(6); *see also* 7 C.F.R. § 1580.502(a)(2) (setting forth acceptable income documentation).

With respect to section 2401e, USDA's regulations provide for the submission of specific documentation. Specifically, applicants must submit:

> (1) Certification that technical assistance from the Extension Service under § 1580.302 has been received.
> (2) Certification that cash benefits have not been received under any of the provisions of the Trade Act of 1974, as amended, other than those permitted under this part.
> (3) Certification that adjustment assistance payments have not exceeded the $10,000 limitation for the Federal fiscal year.
> (4) Certification that net farm or fishing income was less than that during the producer's pre-adjustment year.
> (5) Certification that their average adjusted gross income, as determined in accordance with 7 CFR 1400.601, for the 3 preceding tax years does not exceed $2,500,000.
> (6) To comply with certifications in paragraph (e)(4) of this section, an applicant shall provide either--
>
> (i) Supporting documentation from a certified public accountant or attorney, or
> (ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency.
>
> (7) To comply with certifications in paragraph (e)(5) of this section, an applicant shall provide either--
>
> (i) Supporting documentation from a certified public accountant or attorney,
> (ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency, or
> (iii) Information prescribed by the Department.

Id.

Thus, USDA verifies that an applicant has submitted the necessary documentation to determine whether the applicant meets the statutory and regulatory requirements for approval of TAA cash benefits. In fact, the regulations specifically state that only producers able to furnish their applications with all the required certifications shall be eligible for adjustment assistance payments. 7 C.F.R. § 1580.502(e).

Indeed, it appears that there would be no way for USDA to determine whether an applicant has met the statutory requirements unless he or she provided the necessary

documentation because, unlike the veterans benefit statutory scheme, the TAA for Farmers program does not provide USDA the authority to assist a producer in the collection of evidence, nor does the USDA possess the authority to obtain information from other governmental or non-governmental sources. 38 U.S.C. §§ 5103A(b), (c). Similarly, nothing in the statutory or regulatory scheme permits USDA "to contact and meet with responsible officials of firms, union officials, employees, and any other persons, or organizations, both private and public, as may be necessary to marshal all relevant facts to make a determination. . . ." 29 C.F.R. § 90.12. Without the investigatory powers to obtain or verify income and other requirements, section 2401e does not equip the USDA to perform an investigation similar to those contemplated in the Labor or VA contexts.

The only duty to assist contemplated in the TAA for Farmers statutory scheme appears to be pursuant to 19 U.S.C. § 2401d, which appears to relate to petitions filed upon behalf of groups of commodity producers, not applications field pursuant to 19 U.S.C. § 2401e. Specifically, 2401d(a) instructs that,

> the Secretary shall provide full information to agricultural commodity producers about the benefit allowances, training, and other employment services available under this subchapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups to prepare petitions or applications for program benefits under this subchapter.

Id.

V. Conclusion

USDA's determinations concerning eligibility for trade adjustment assistance pursuant to section 2401e should be examined to determine if they are supported by substantial evidence upon the record and are otherwise in accordance with law. 19 U.S.C. § 2395(b); *see Anderson*, 441 F. Supp. 2d at 1384 ("Although Agriculture's decision on a TAA application is adjudicatory in nature, the facts are not subject to trial de novo. 19 U.S.C. § 2395(b).") (citing *In re Robert J. Gartside*, 203 F.3d 1305, 1312 (Fed. Cir. 2000) (The "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law standard is deemed the most deferential.")). However, unlike Labor investigations, or USDA investigations pursuant to 19 U.S.C. § 2401a, section 2401e does not appear to provide "a threshold requirement of reasonable inquiry'" of which investigations which fall below cannot constitute substantial evidence upon which a determination can be affirmed.