

**DEPARTMENT OF LABOR****Employment and Training Administration****20 CFR Parts 617 and 618****29 CFR Part 90**

[Docket No. ETA-2019-0009]

RIN 1205-AB78

**Trade Adjustment Assistance for Workers****AGENCY:** Employment and Training Administration, Labor.**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (Department) is expanding protection and support for U.S. workers adversely impacted by foreign trade by revising its Trade Adjustment Assistance (TAA) for Workers program (TAA Program) regulations. This final rule will, among other improvements, make it easier for workers to qualify for job search and relocation allowances, increase those allowances in line with the statute, expand training to include more flexibility for apprenticeships, ensure workers have access to individualized assessments, make it easier for groups of workers to apply for benefits, and offer assistance to additional categories of workers, including by helping workers in jobs threatened by foreign trade to receive training and support to transition to new employment.

**DATES:** This final rule is effective September 21, 2020.

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**I. Acronyms and Abbreviations**

- AAIW(s) adversely affected incumbent worker(s)
- AAW(s) adversely affected worker(s)
- ATAA Alternative Trade Adjustment Assistance
- EB Extended Benefits
- ECI Employment Cost Indices
- ETP(s) eligible training provider(s)
- FEIN(s) Federal Employment Identification Number(s)
- FTR Federal Travel Regulation
- HCTC Health Coverage Tax Credit
- IC(s) information collection(s)
- ICR(s) information collection request(s)
- IEP(s) individual employment plan(s)
- ITA(s) Individual Training Account(s)
- ITC International Trade Commission
- JSP job search program
- JTPA Job Training Partnership Act
- local area(s) local workforce development area(s)
- LWDB(s) local workforce development board(s)
- MIS management information system
- NAA National Apprenticeship Act
- OES Occupational Employment Statistics
- OJT on-the-job training
- OTAA Office of Trade Adjustment Assistance
- PIRL Participant Individual Record Layout
- RTAA Reemployment Trade Adjustment Assistance
- SNAP Supplemental Nutrition Assistance Program
- TAA Trade Adjustment Assistance
- TAA Program collective reference to the following three programs: TAA for Workers program, ATAA, and RTAA
- TAAEA Trade Adjustment Assistance Extension Act of 2011
- TAARA 2002 Trade Adjustment Assistance Reform Act of 2002

- TAARA 2015 Trade Adjustment Assistance Reauthorization Act of 2015
- TaOA Training and Other Activities
- TEGL(s) Training and Employment Guidance Letter(s)
- TGAAA Trade and Globalization Adjustment Assistance Act of 2009
- the Act chapter 2 of title II of the Trade Act of 1974, as amended
- TRA Trade Readjustment Allowances
- UI Unemployment Insurance
- UMRA Unfunded Mandates Reform Act of 1995
- USCIT United States Court of International Trade
- WARN Worker Adjustment and Retraining Notice
- WBA(s) weekly benefit amount(s)
- WIA Workforce Investment Act of 1998
- WIOA Workforce Innovation and Opportunity Act

**II. Background***A. Introduction to the Trade Adjustment Assistance Program*

On November 7, 2019, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (84 FR 60150), proposing to amend 20 CFR parts 617 (Trade Adjustment Assistance for Workers under the Trade Act of 1974) and 618 (Trade Adjustment Assistance under the Trade Act of 1974, as Amended) to expand protection and support for U.S. workers adversely impacted by foreign trade.

The Department is streamlining and consolidating three separate parts of the CFR that contain TAA Program regulations (20 CFR parts 617 and 618, 29 CFR part 90) into a single part (20 CFR part 618) with nine subparts. In addition, the revisions will codify into regulation elements of the most recent TAA Program amendments, the Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. 114-27, title IV) (TAARA 2015). This final rule also incorporates operating instructions issued via administrative guidance into the TAA Program regulations, with some refinements. Further, the revisions align the TAA Program regulations with the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113-128), the 2014 comprehensive legislation that reauthorized the public workforce system.

This final rule increases efficiency and flexibility for States and trade-affected workers. Because subpart B (Petitions, Investigations, and Determinations) of this final rule expressly permits workers employed by a leasing or staffing agency (termed “staffed workers”) to be members of a worker group, even if they are not mentioned specifically within the determination document, the

Department anticipates a substantial reduction in the number of requests to amend certifications. The Department also is increasing flexibility in subpart D (Job Search and Relocation Allowances) by making it easier for adversely affected workers (AAWs) to qualify for a job search allowance and ensuring that workers who qualify for relocation allowances are finding comparable or better paying jobs. Subpart F (Training Services) clarifies that work-based training includes apprenticeships for all or part of a trade-affected worker's training program. It also establishes a regulatory framework to provide assistance to workers who are currently employed but threatened with job loss resulting from foreign trade, thereby enabling such workers to retrain and seek new employment before job separation occurs. In subpart H (Administration by Applicable State Agencies), the Department is extending flexibility by removing the requirement that only State merit staff can provide employment and case management services using TAA Program funding, granting States more flexibility with program operations and creating better alignment with WIOA.

This final rule seeks to improve service delivery, and thereby serve trade-affected workers more effectively, by including service-delivery requirements that align with data-tested methods. Subpart A (General) better defines certain investigations-based terms to add consistency at both the State and Federal level and improve program operations, including reducing burden and workload for TAA Program investigative reconsiderations and appeals related to these terms. In addition, the Department is helping provide positive outcomes for each trade-affected worker by including new data-driven requirements for assessments and individual employment plans (IEPs) in subpart C (Employment and Case Management Services).

In subpart E, this final rule implements statutory provisions for Reemployment Trade Adjustment Assistance (RTAA) and incorporates administrative guidance previously issued by the Department, since no regulations covering the RTAA program existed. Subpart G implements several statutory changes to Trade Readjustment Allowances (TRA), including establishing deadlines to enroll in training, reducing the types of available waivers, allowing an election between Unemployment Insurance (UI) and TRA, and allowing AAWs to earn up to their weekly benefit amount (WBA) without penalty. In addition, subpart I

(Allocation of Funds to States for Training and Other Activities) replaces the term "training" with "Training and Other Activities" (TaOA) to reflect the additional benefits and services covered by such funding.

This final rule provides a consolidated, authoritative set of rules to guide Federal and State officials in implementing the Trade Act of 1974 (Pub. L. 93-618), as amended (the Act). This streamlining will also clarify the Department's interpretation of law for courts.

Subpart B (Petitions, Investigations, and Determinations) will produce cost savings by eliminating the two-step process for reconsiderations, which will reduce the processing time involved for all reconsiderations, and by clarifying "final determinations" for judicial appeals, which will reduce the number of those appeals. Subpart H (Administration by Applicable State Agencies) will also produce cost savings by revising the merit staff requirements to allow States to charge time for non-merit staff to TAA Program funds for the provision of employment and case management services. This final rule is considered to be an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

The purpose of this final rule is to ensure that the TAA Program regulations are modernized to reflect the program's current operation and make needed improvements. The revisions also will provide clarity by eliminating confusing and overly technical language and update the TAA Program regulations by encouraging the use of paperless electronic mechanisms over paper-based methods.

An ever-changing global marketplace drives the 21st-century economy. For America to compete in the global economy, its workers need to have the skills and support to take advantage of new opportunities. The TAA Program bolsters America's competitiveness by helping American workers retrain and reenter the workforce.

#### *B. Statutory and Regulatory History of the Trade Adjustment Assistance Program*

The Act (codified at 19 U.S.C. 2271 *et seq.*), title II, chapter 2, established the TAA for Workers program and the RTAA program, as well as the predecessor to RTAA, the Alternative Trade Adjustment Assistance (ATAA) program.<sup>1</sup> These programs, collectively

<sup>1</sup> ATAA is largely unaddressed in the final rule because it was replaced by RTAA.

referred to as the TAA Program, assist U.S. workers who have lost or may lose their jobs as a result of foreign trade (*i.e.*, trade-affected workers). The TAA Program provides AAWs and adversely affected incumbent workers (AAIW) with opportunities to obtain skills, credentials, resources, and support to help them become reemployed. TAA Program benefits and services under the TAARA 2015 amendments include employment and case management services; training; out-of-area job search and relocation allowances; income support through TRA; the RTAA wage supplement benefit for AAWs aged 50 or older who find qualifying reemployment; and, if available, eligibility for assistance with health care premium costs under the Health Coverage Tax Credit (HCTC),<sup>2</sup> which is administered by the Internal Revenue Service (IRS).

There are two steps for trade-affected workers to obtain program benefits and services. First, a group of workers must file a petition, or have a petition filed on its behalf, to determine worker-group eligibility. Upon receiving a petition, the Department initiates an investigation to determine whether the circumstances of the layoff meet the group-eligibility criteria established by section 222 of the Act. Second, if the Department finds the group eligible and certifies the petition, trade-affected workers in the worker group may individually apply to their State for TAA Program benefits and services. Under agreements between the Secretary of Labor (Secretary) and each Governor, the States determine individual eligibility based on the statutory criteria and provide the TAA Program benefits and services to trade-affected workers with Federal funds allocated by the Department for that purpose. The TAA Program is a required one-stop partner under WIOA. One-stop centers—branded as American Job Centers under WIOA—deliver workforce development services to job seekers and businesses nationwide.

Since 1975, the TAA Program has served over 2 million trade-affected U.S. workers. In Fiscal Year (FY) 2018, an estimated 76,920 workers became eligible for TAA Program benefits and services. Nearly 77 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program.

Trade-affected workers come from a variety of backgrounds and industries, so they enter the program with a wide array of skills and experience. Most

<sup>2</sup> The HCTC was due to expire on January 1, 2020, but has recently been extended to January 1, 2021.

trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, a median age of 52, and have a median tenure of 8.3 years of experience in adversely affected employment.<sup>3</sup> The TAA Program is designed to serve the needs of this unique population.

Congress has reauthorized and amended chapter 2, and thus the TAA Program, multiple times. The TAA Program was changed extensively by amendments in 1981 (Pub. L. 97–35, title XXV), 1984 (Pub. L. 98–369, sections 2671, 2672, 2673), 1986 (Pub. L. 99–272, title XIII, subtitle A, part 1), 1988 (Pub. L. 100–418, title I, subtitle D, part 3), and 1993 (Pub. L. 103–182, section 501 through 507). In 1987, the Department issued a final rule significantly revising the certification process in 29 CFR part 90 (52 FR 23403, June 19, 1987). In 1994, the Department issued a final rule significantly revising the TAA Program regulations in 20 CFR part 617 to implement the 1988 amendments (59 FR 906, Jan. 6, 1994).

In 2002, Congress reauthorized and amended the TAA Program in the Trade Adjustment Assistance Reform Act of 2002 (TAARA 2002) (Pub. L. 107–210). TAARA 2002 expanded the scope of the TAA Program, increased its benefit amounts, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (or NAFTA–TAA) program, established the HCTC to subsidize private health-insurance costs for qualified workers, and created the ATAA program as a demonstration program.

The Department published two NPRMs in 2006, to implement the TAARA 2002 amendments (71 FR 50760, Aug. 25, 2006 and 71 FR 61618, Oct. 18, 2006). However, Congress in 2007 (Pub. L. 110–5), 2008 (Pub. L. 110–161), and 2009 (Pub. L. 111–8) prohibited the Department from further action until Congress reauthorized the TAA Program. The next reauthorization, the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) (Pub. L. 111–5, div. B, title I, subtitle I), made such substantial amendments to the TAA Program that it rendered the 2006 NPRMs obsolete. The Department withdrew the NPRMs in 2009 (74 FR 27262, June 9, 2009).

TGAAA, part of the American Recovery and Reinvestment Act (Pub. L.

111–5), reauthorized and substantially amended the TAA Program. It expanded the program's benefits and the types of trade-affected workers the Department could certify. Section 1893 of TGAAA provided that most of the TGAAA amendments would expire on December 31, 2010. Congress later extended that expiration date by 6 weeks (Pub. L. 111–344).

The Department revised the TAA Program regulations in 2010, by adding a new 20 CFR part 618 (75 FR 16988, Apr. 2, 2010). The revisions addressed the allocation of TAA Program training funds to the States. The revisions also required, for the first time by regulation, that State administration of the TAA Program be performed by merit staff.

The Trade Adjustment Assistance Extension Act of 2011 (TAAEA), enacted in 2011, provided a balance between the expanded certification criteria and benefits and services provided under TGAAA, and the more limited provisions in TAARA 2002.

TAARA 2015 reauthorized the TAA Program through June 30, 2021. It primarily followed TAAEA, the 2011 law, with two exceptions. The amendments included capping funding for TaOA at \$450 million per fiscal year and establishing new performance indicators to align with WIOA. TAARA 2015 reauthorized the RTAA and HCTC benefit programs. TAARA 2015 continued to grandfather earlier versions of the TAA Program for trade-affected workers who had been certified under TAARA 2002, TGAAA, and TAAEA. That is, a trade-affected worker who was a member of a worker group covered by a certification that was issued under TAARA 2002, TGAAA, or TAAEA continued to receive benefits and services available under the respective program eligibility criteria applicable to those earlier amendments.

### C. Need for This Regulation

The TAA Program regulations were last updated in 1994, with only minor changes made in 2006,<sup>4</sup> 2007,<sup>5</sup> and 2010.<sup>6</sup> Since that time, multiple TAA Program legislative amendments have required various changes to the program, which the Department has addressed through administrative guidance. This final rule codifies in regulation program operations under the

most recent amendments (TAARA 2015), including significant elements of TAA Program administrative guidance. This final rule was drafted to reflect how the TAA Program is currently operating and includes some adjustments that will improve the program. Once this final rule is effective, the Department will rescind redundant administrative guidance, as appropriate.

This final rule will help States and the public better understand the proper operation of the TAA Program. It will promote transparency by setting out, in binding regulation, the major principles by which the TAA Program operates, and it also will provide the public and courts with the Department's authoritative interpretation of the Act.

In addition, this final rule includes clarifications that draw upon the Department's expertise gained from decades of experience operating the TAA Program. For example, the Department's litigation experience has provided insight into parts of the TAA Program regulations that have needed clarification to ensure more effective, efficient, and consistent operations of the TAA Program throughout the United States. In addition, since 2009, the Department has had the benefit of real-time data on trade-affected workers participating in the TAA Program, the analysis of which has driven improvements to the provisions in this final rule.

This final rule also includes changes that align the TAA Program regulations with WIOA. For example, WIOA further integrated the TAA Program with the public workforce and education systems by affirming the TAA Program as a required partner in the one-stop delivery system. This final rule aligns with and references the WIOA regulations where appropriate. This final rule also removes outdated references to the Job Training Partnership Act (JTPA) and the Workforce Investment Act of 1998 (WIA).

### D. General Comments Received on the Notice of Proposed Rulemaking

On November 7, 2019, the Department published an NPRM in the **Federal Register** (84 FR 60150), proposing to amend 20 CFR parts 617 (Trade Adjustment Assistance for Workers under the Trade Act of 1974) and 618 (Trade Adjustment Assistance under the Trade Act of 1974, as Amended) and 29 CFR part 90 to expand protection and support for U.S. workers adversely impacted by foreign trade. The NPRM invited written comments from the public concerning this proposed

<sup>4</sup> 71 FR 35511 (June 21, 2006) (making technical amendments to update obsolete, nonsubstantive, or nomenclature references).

<sup>5</sup> 72 FR 37097 (July 9, 2007) (making minor changes to 29 CFR part 90).

<sup>6</sup> 75 FR 16988 (Apr. 2, 2010) (adding 20 CFR part 618 to include only subparts H and I relating to merit staffing of State administration and allocation of TAA Program training funds to States).

<sup>3</sup> U.S. Department of Labor, Employment and Training Administration. (2019). "Trade Adjustment Assistance for Workers Program: Fiscal Year 2018." Retrieved from: <https://www.doleta.gov/tradeact/docs/AnnualReport18.pdf>.

rulemaking through December 9, 2019. This 30-day comment period was later extended by 2 days (84 FR 67681), through December 11, 2019, because of a *regulations.gov* website outage that occurred on December 9, 2019. No commenters requested an extension of the comment period or otherwise expressed concern about the public's ability to participate in the rulemaking process. The comments received on the NPRM may be viewed at <https://www.regulations.gov> by entering docket number ETA-2019-0009.

The Department received comment submissions from 54 commenters, of which 45 submissions were unique and 9 were duplicates or not related to the subject of this rule. The commenters represented a range of stakeholders from the public and nonprofit sectors. Public sector commenters included State and local government agencies, local workforce development boards (LWDBs), and one-stop operators. Nonprofit sector commenters included public policy organizations, advocacy groups, national and local labor unions, and a trade association. Of the unique comments, nearly one third came from State government workforce agencies. The Department also received several comments from private citizens.

These comments are addressed in Section III (Section-by-Section Analysis) of this final rule. About half of the unique comments supported parts of the proposal but opposed others, while a smaller number conditioned their support for the proposal on the Department adopting certain changes in this final rule.

The NPRM notified the public that an additional docket (ETA-2019-0010) for comments related to the information collection (IC) discussed in Section V.D of the NPRM preamble (Paperwork Reduction Act) would remain open until January 6, 2020. The Department did not receive comments related to this IC in this docket. For further information on the IC, please see the Paperwork Reduction Act (PRA) section of this final rule (Section IV.D).

#### General Comments on the Proposed Rule

One commenter agreed with the anticipated improvements and benefits of the proposed rule that the Department set forth in the NPRM. One commenter stated that several of the proposed changes would positively strengthen local control of program development. Another commenter agreed that the proposal would help workers but expressed curiosity about how the rule would affect the economy if adopted. Several commenters sought

guidance, unrelated to the proposal, on very specific programmatic scenarios related to their current workforce programs. One commenter expressed general concern that the proposed rule could disproportionately reduce benefits and services for rural AAWs. In contrast, another commenter said the proposed rule would help rural communities and areas with "a strong presence of the blue-collar work force."

None of these commenters provided specific, substantive comments on any particular part of the proposed rule or proposed regulatory text; therefore, these comments are not addressed in the Section-by-Section Analysis below.

One State workforce agency commented that the TAA Program needs updates to keep serving trade-affected workers most effectively. Another State workforce agency commenter supported efforts to incorporate existing law, administrative guidance, and practice into a single set of regulations, saying the changes would improve program operations and reduce the burden of referencing numerous amendments and issuances of administrative guidance. The Department has, wherever possible, incorporated administrative guidance into this rule.

The Department received one comment of general opposition to the timing of the proposed rule in relation to the upcoming Presidential election and the status of the economy. The commenter provided insufficient information on why it recommended delaying until after the election, so the Department is unable to address any specific concerns.

#### Comments on the Department's Approach to Rulemaking

A commenter from an LWDB strongly agreed with the Department's rationale concerning the need for a rulemaking, including that the proposed rule would increase stakeholder and public understanding of how the TAA Program works, would streamline State administration of the program, would strengthen transparency through codification of current practice, and would provide courts with the Department's definitive interpretation of the TAA Program's authorizing statutes.

Citing its own research about the need for TAA Program reform, a nonprofit public policy organization said that the proposed rule covers several issues raised in that research, namely the need to increase the proportion of dislocated workers covered; the need to strengthen the TAA Program across the board (rather than focus on training only); and the need to ensure the training offered

results in stable, family-sustaining employment. The commenter, however, suggested additional changes to increase the program's effectiveness: Extending eligibility to workers affected by automation and other large-scale economic disruptions, allowing workers to use TRA for services other than training, and making extra support available to communities hit hardest by foreign trade impacts. The Department appreciates this feedback, but these suggestions are beyond the scope of its statutory authority and are not addressed in this final rule.

While one commenter agreed with the overall argument for why a rulemaking is needed (e.g., to modernize the program regulations), it requested clarification about the intended effect of consolidating the regulations: Whether it will result in a "universal" program under which all trade-affected workers may access the same benefits regardless of the statutory basis for their certification, or whether the final rule will provide different requirements and benefits according to the individual statutory basis of eligibility. The commenter said it preferred the "universal" approach because it would provide a consistent level of support to all workers and help avoid "misunderstandings." While the Department appreciates the commenter's interest in the provision of a consistent level of support, the Department does not have the authority to apply this final rule to all trade-affected workers without regard to the version of the Act under which the worker group was certified.

#### Integrated Service Strategies To Align WIOA and TAA Programs

A worker advocacy group strongly supported efforts to codify into the program regulations improved alignment with WIOA, such as through the replacement of core indicators of performance based on TAAEA with primary indicators of performance based on WIOA, and the addition of more robust reporting and data collection requirements. Citing WIOA's approach to promoting industry or sector partnerships among stakeholders at the State and local workforce development area (local area) levels, the group also encouraged the Department to emphasize the importance of aligning training and other services to industry needs. Further, the commenter said that bringing this focus to the TAA Program would help ensure that public investments both lift up affected workers and respond to industry demands.

The Department aligned this final rule with WIOA requirements and has long promoted integrated service delivery for the TAA Program within the nation's public workforce system. These efforts began as early as the passage of the 1988 amendments to the TAA Program and the subsequent passage of the Economic Dislocation and Worker Adjustment Assistance Program. Integrated service delivery became a requirement, enforced via the Governor-Secretary Agreement, following the passage of the WIA. The Department has provided significant administrative guidance and dedicated substantial technical assistance resources to assist States and local areas in developing integrated service models focused on reducing barriers to participation and eliminating duplication of effort. After more than 20 years of promoting an integrated service delivery model and encouraging co-enrollment in WIOA (WIA, JTPA, etc.), the Department, based on detailed analysis of participant outcomes, is now mandating co-enrollment between the TAA Program and the WIOA dislocated worker program. Additionally, as the commenter recommended, the Department has aligned this final rule with the WIOA regulations wherever possible, unless a particular statutory limitation required otherwise or data analysis supported an alternative approach.

One commenter supported the Department's acknowledgment that WIOA and TAA Program alignment is important for workers, businesses, and communities, but it expressed concerns about the level of Federal funding and infrastructure limitations in the public workforce system. The commenter provided data supporting stated concerns about the levels of Federal funding of the public workforce system. The Department recognizes these concerns, but appropriated funding levels are beyond the scope of this rulemaking.

This commenter also made several recommendations to facilitate better alignment of the programs without overburdening workers or program administrators, including clarifying the meaning of WIOA-related terms, such as "customized training," "on-the-job training" (OJT), and "individual employment plan," and their application to the TAA Program. To the extent possible and consistent with statutory differences, the Department has aligned these definitions in the final rule. For further discussion regarding how these various terms have been defined, please refer to the preamble discussion for § 618.110 below.

### III. Section-by-Section Analysis of This Final Rule

If a section of the NPRM is not addressed in the section-by-section analysis below, there were no public comments received and, unless otherwise noted, the Department has adopted the section as proposed. The Department has made some nonsubstantive changes to the regulatory text to correct grammatical and typographical errors, or to improve readability.

#### A. Subpart A—General

Subpart A sets forth the purpose and scope of the TAA Program and defines relevant terms used throughout the rule. Subpart A as proposed in the NPRM modified and simplified several definitions for greater clarity, eliminated definitions in response to statutory changes to the Act, and added definitions of new terms based on statutory changes. The definitions used in this final rule are intended to reflect the modernized TAA Program, which has evolved since TAARA 2002, and ensure maximum alignment with WIOA. Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows.

#### Section 618.100 Purpose and Scope

Section 618.100 of the final rule sets forth the purpose and scope of the regulations governing the TAA program in one location. Prior to this final rule, this provision existed at 20 CFR 617.1 and 617.2. The NPRM proposed setting forth these provisions in one section, addressing the purpose in paragraph (a) and the scope in paragraph (b). The NPRM also proposed revising them by broadening the purpose to reflect that the TAA Program's purpose is more than just returning trade-affected workers to suitable employment and by expanding the scope beyond what was reflected in 20 CFR 617.2 in light of the fact that part 618 of the final rule combines what had been parts 617 and 618 of title 20 and part 90 of title 29.

With regard to the scope of this rule at paragraph (b), two commenters asked whether eligible trade-affected workers who are members of a worker group certified under previous amendments (versions) of the Act would be provided the benefits and services described in the proposed rule or whether administrative guidance would still apply. The TAA Program regulations were last updated in 1994, with only

minor changes made in 2006,<sup>7</sup> 2007,<sup>8</sup> and 2010.<sup>9</sup> Since that time, multiple TAA Program reauthorizations and amendments have required various changes to the TAA Program, which the Department has addressed through administrative guidance. Upon review, the Department concludes that some administrative guidance must remain active in order to serve continuing or new workers enrolling under the TAARA 2002 and TGAAA versions of the TAA Program. The Department will rescind administrative guidance that is either obsolete or superseded.

In short, this rule will apply except where it does not apply to older versions of the TAA Program because of a statutory conflict. Specifically, certain sections will not apply to members of worker groups certified under petition numbers TA-W-80,999 and below. Members of worker groups certified under petition series TA-W-43,000 through TA-W-69,999 and some under the petition series TA-W-80,000 through TA-W-80,999 are served by TAARA 2002,<sup>10</sup> and where this final rule does not apply to a since-amended version of the statute governing the relevant version of the program, administrative guidance will continue to apply for current members of worker groups and any new members of worker groups determined eligible for training services as well as job search and relocation allowances under that version of the program. The same applies for members of worker groups certified under petition series TA-W-70,000 through TA-W-79,999 served by TGAAA. Members of worker groups certified under petition series TA-W-81,000 through TA-W-84,999, and some certified under petition series TA-W-80,000 through TA-W-80,999, are served by TAAEA and this final rule will apply in full. Members of worker groups certified under petition series TA-W-90,000 and above, and some certified under petition series TA-W-85,000 through TA-W-89,999, are served by TAARA 2015, and this final rule will apply in full. The Department has added a clarification to § 618.100(b) of the final rule to explain the limitations of this part 618 and will

<sup>7</sup> 71 FR 35511 (June 21, 2006) (making technical amendments to update obsolete, nonsubstantive, or nomenclature references).

<sup>8</sup> 72 FR 37097 (July 9, 2007) (making minor changes to 29 CFR part 90).

<sup>9</sup> 75 FR 16988 (Apr. 2, 2010) (adding 20 CFR part 618 to include only subparts H and I relating to merit staffing of State administration and allocation of TAA Program training funds to States).

<sup>10</sup> States serving workers certified under petition series TA-W-42,999 and below should contact their regional office for guidance.

provide technical assistance on this topic.

One commenter generally supported facilitating State TAA Program administration. Another commenter wrote that it is difficult to administer separate TAA programs based on the many previous amendments. The Department explored whether it was possible to unite all previous versions of the TAA Program under a single rule to reduce the administrative burden on the States. Unfortunately, this is not possible through regulation and the final rule adopts the regulatory text as proposed.

#### Section 618.110 Definitions

Section 618.110 sets forth definitions used throughout the TAA regulations, consolidating definitions from several places in the old regulations and guidance, as well as adding some new defined terms. If the Department did not receive public comments on a definition or inclusion of a specific term, the term is not listed below and the definition was adopted as proposed, unless stated otherwise.

Some necessary technical changes were made to several definitions; specifically, the plural pronoun “their” was changed to a singular “his or her” in the definitions of “Administrator,” “eligible TAA recipient,” and “individual employment plan.” A similar pronoun change was made in the definition of “qualifying separation,” being replaced with the acronym “AAW’s.”

#### Agent State

The Department clarifies that there is only an agent State, other than the liable State, if the AAW has accessed services outside of the worker’s liable State. Until such time as the worker seeks services in another State, the liable State is both the liable and agent State. If the worker is simply seeking to travel to another State under a job search allowance, or is relocating to another State, that is not considered to be seeking services in that State. The Department has added this clarification to the definition.

#### Exhaustion of UI

The NPRM removed this defined term from 20 CFR 617.3(p) and included it in proposed subpart G rather than in proposed subpart A.

Several commenters raised concerns with the elimination of the term “exhaustion of UI.” The Department noted in the proposal that it intended to remove this term and address this via the language contained in proposed § 618.720(e). Upon further review, the

Department concurs with the commenters and has added to subpart A the original term and its definition into this final rule from 20 CFR 617.3(p), changing only the phrase “an individual” to “a worker.”

#### Family

The NPRM modified the definition of this term from 20 CFR 617.3(q), which was based on the Internal Revenue Code definition. The definition used in the NPRM was the definition of “immediate family” used in the Federal Travel Regulation (FTR) at 41 CFR 300–3.1.

Numerous commenters recommended the Department use the WIOA definition of “family” from 20 CFR 675.300, rather than the proposed definition. The commenters asserted that this approach would increase flexibility and better align the TAA Program with WIOA. The Department proposed the FTR definition of “family” because the term is used only in subpart D, which governs Job Search and Relocation Allowances. The definition of “family” used under other programs, such as WIOA, is inconsistent with subpart D and the requirements of the FTR and is, therefore, not used in this final rule. The Department adopts the term and definition as proposed. However, a technical correction was made to remove an erroneous letter “s” before the apostrophe. The rest of the definition of the term is adopted as proposed.

#### Full-Time Training

The NPRM added “full-time training” and defined it for the first time. The definition was derived from 20 CFR 617.22(f)(4) and defined full-time training as attendance in training in accordance with the training provider’s established full-time hours in a day (or credit hours) and days in a week. The Department also added an interpretation, originally published in TAAEA administrative guidance, that provided that in the last semester of training, if the remaining required courses to complete the approved training will not meet the training provider’s normal definition of full-time training, the State must consider the AAW to be in full-time training, and otherwise eligible to apply for TRA benefits.

A commenter agreed with the proposed definition of “full-time training,” saying it would help States assess TRA eligibility for students who are in their last semester of training. The Department has adopted this term and definition as proposed.

#### Group of Workers

The NPRM added “group of workers” and defined it for the first time in regulations. This term relates to the workers who file a petition or for whom a petition is filed. The NPRM defined it to mean at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The proposed definition included teleworkers and staffed workers because they are frequently performing the same work as other trade-affected workers in the subject firm and are under the subject firm’s operational control. Separated workers were included in the definition because they, too, may be trade-affected workers.

Two commenters supported redefining “group of workers” as meaning two or more (not three or more) workers. One commenter was concerned that the change would result in a higher volume of petitions filed and certified.

The Act does not define “group of workers” and does not otherwise indicate how many workers must be in a group. According to a plain and ordinary meaning of the term “group,” the word means more than one. Thus, the Department has reduced the number of workers required to two, allowing for the broadest interpretation of “group.” The Department acknowledges that this change may result in a higher volume of petitions; nevertheless, it concludes that this definition is consistent with the statutory framework. The Department adopts this term and definition into the final rule as proposed.

#### Individual Employment Plan or IEP

The NPRM added “individual employment plan or IEP” and defined it for the first time. The IEP is a dynamic document that may be changed based on comprehensive and specialized assessments, training program modifications, or other factors that emerge during program participation.

A commenter recommended a small edit to the definition of “individual employment plan” (replacing the word “State” with the phrase “career planner”) for better alignment with both 20 CFR 680.170 of the WIOA regulations (definition of IEP) and the proposed changes to permit staffing flexibility in the TAA Program regulations. Throughout the rule, the Department uses the term “State” because the obligation for providing these services under the Governor-Secretary Agreement is on the State. Some commenters were concerned that this was not the appropriate term to use, considering that the additional flexibility provided in the area of merit

staff requirements will result in many of the services under the TAA Program being delivered by local area WIOA staff that are not State employees.

The TAA Program is operated under an agreement between the Secretary and the Governor of each State. Although some services may be performed or administered by non-State staff, it is the State, via the cooperating State agency, that is ultimately responsible to ensure that those services are provided, so “State” will be retained throughout the final rule as the appropriate term.

#### Lack of Work

The NPRM added “lack of work” and defined it for the first time. The proposed definition was based on administrative guidance related to “strikes” and “lockouts” and their effect on eligibility for TAA Program benefits and services since 1987. Specifically, a “lack of work” separation occurs when the employer initiates the unavailability of work—the employer either does not have work for the worker to perform or does not make that work available to the worker.

One commenter agreed with the definition of “lack of work” to include workers involuntarily barred from work because of an employer-imposed lockout and maintained that this would reach workers who may not be covered by State UI laws. The Department adopts this term and definition into the final rule as proposed.

#### Layoff

The NPRM modified the definition of this term, by adding the words “of time” to the 20 CFR 617.3(z) phrase “expected to be for a definite or indefinite period.” In addition, the language at 20 CFR 617.3(z) and 29 CFR 90.2 that required that the layoff be expected to last for “not less than seven consecutive days” and “no less than seven (7) consecutive calendar days,” respectively, was not included in the proposed definition, because that restriction was not supported by the Act.

One commenter requested clarification regarding the Department’s decision not to retain from the previous definition of “layoff” in 29 CFR 90.2 the requirement that the employer’s suspension of a worker from pay status for lack of work be expected to last “no less than seven (7) consecutive calendar days.” The commenter asked, as an example, whether a worker who is “laid off” for 1 day and then starts employment with the same employer at a different facility would qualify for relocation allowance, or whether that would be treated as a “transfer.” More broadly, the commenter sought

clarification about whether there are specific instances in which a State must consider the length of the layoff to determine a worker’s eligibility for some TAA Program benefits.

The NPRM proposed removing the language regarding 7 consecutive days. The language removal affirmed that, consistent with the commenter’s example, an AAW can be laid off from trade-affected employment for 1 day and begin employment for the same employer at another facility that is not the same subdivision or firm of the certified worker group. Also, if all other eligibility requirements are met, the worker may qualify for a relocation allowance. The Department has determined that, generally, States may consider the length of a layoff to help determine if a qualifying separation is either a first separation or the most recent separation. The Department adopts this term and definition into the final rule as proposed.

#### Liabile State

The Department clarifies that a liable State is the State whose State UI law is the applicable law for the claim. Until such time as the worker seeks services in another State, the liable State is both the liable and agent State. The Department has added this clarification to the definition by indicating that a State can be both the liable and agent State.

#### On-the-Job Training or OJT

The NPRM modified the definition of “on-the-job training or OJT” from section 247(15) of the Act and 20 CFR 617.3(bb). It added that such training is work-based and performed under contract with an employer.

A commenter suggested aligning the definition of “on-the-job training” more closely with the WIOA definition (WIOA section 3(44)) to clarify when and how such training is provided and to describe a limit on the duration of such training. While many of the requirements align, there are statutory differences between the Act and WIOA as it relates to OJT, including differing criteria and labor protections. The Department has aligned this final rule wherever operationally and statutorily possible with the WIOA Final Rule, but the statutory differences prevent complete alignment here. The Department adopts this term and definition into the final rule as proposed.

#### Prerequisite Education or Prerequisite Coursework or Prerequisite Training

The NPRM added the terms *prerequisite education* or *prerequisite*

*coursework* or *prerequisite training* and defined them for the first time. They refer to approvable training under section 236(a)(5)(E) of the Act.

A commenter expressed concern that the proposed definition of the terms *prerequisite education* or *prerequisite coursework* or *prerequisite training* was overbroad and could result in all but a student’s last courses being treated as prerequisite. The commenter recommended that the Department adopt an alternative definition, based on language regarding classroom training currently found in 20 CFR 617.21(g): “any coursework or training required by a training provider before entering an occupational training program designed to impart the skills and information required to perform a specific job or group of jobs.” Another commenter requested clarification about the proposed definition, stating that it appeared inconsistent with administrative guidance.

The Department concurs with these comments. Though the Department intended to codify the administrative guidance, the Department’s definition failed to recognize that, throughout a training program, every course that precedes another one can be considered a prerequisite. The final rule revises the proposed definition of these terms and defines prerequisite education as those courses or training required by a training provider before entering an occupational training program designed to impart the skills and information required to perform a specific job or group of jobs, consistent with administrative guidance.

#### Program of Remedial Education or Remedial Education or Remedial Training

The NPRM added “program of remedial education or remedial training” and defined them for the first time. The terms relate to approvable training under section 236(a)(5)(D) of the Act and are used to refer to education designed to improve trade-affected workers’ basic knowledge.

A commenter asked for clarification on the Department’s proposed definition of the terms *program of remedial education* or *remedial education* or *remedial training*, stating that it seemed inconsistent with administrative guidance. The commenter did not provide any specifics regarding its concern.

The definition as provided, when read in concert with the allowable services under the employment and case management provisions of subpart C and the training provisions in subpart F,

is consistent with the previously issued administrative guidance. The Department adopts this term and the definition into the final rule as proposed.

#### Successor-in-Interest

The NPRM added “successor-in-interest” and defined it for the first time to provide clarity to States when there are mergers and acquisitions, name changes, bankruptcy proceedings, and other actions that may change the name of the firm under which a trade-affected worker’s wages are reported to the State or by whom a termination notice or threatened status letter is issued. Under the proposed definition, in determining whether or not there is a successor-in-interest, the State must determine whether most or all of the following conditions are met: There is continuity in business operations; there is continuity in location; there is continuity in the workforce; there is continuity in supervisory personnel; the same jobs exist under similar conditions; there is continuity in machinery, equipment, and process; there is continuity in product/service.

A State workforce agency commented that the Department’s clarification in the proposed rule of which actions establish a “successor-in-interest” relationship will help States by reducing their need to file petitions seeking to amend a certification. A different commenter requested further clarity as to how to determine whether a successor-in-interest exists. Another commenter requested clarification about the inclusion of wages paid to a worker by a successor-in-interest for purposes of proposed subpart G. Specifically, the commenter stated that States are not able to determine whether a successor-in-interest is “a valid entity tied to the trade-affected wage” and it asked what documentation a State would need to reach such a determination.

Under the TAA Program, the Department certifies a worker group, not a firm. Members of the worker group consist of those employed by the firm named in the certification, those employed by a staffing agency, those who telework at remote locations, and those employed by a successor-in-interest. In many circumstances, not all of these categories of trade-affected workers will be specifically referenced in the certification, but those workers will nevertheless be included in the worker group. States can more easily use the factors found in the definition at § 618.110 to determine whether a successor firm is a successor-in-interest and this is further discussed in §§ 618.225(k), 618.505(b), and

618.820(h). When a State determines that a firm is a successor-in-interest to the firm named in an active certification, the State benefits by being able to serve those workers without the delay of having to file a petition to amend the certification.

In regards to RTAA, as stated in § 618.505(b), if the State determines that the AAW returned to employment with a successor-in-interest to the firm from which the worker was separated, then the worker is not eligible for RTAA. This requirement is a protection against firms purposefully separating workers and then rehiring them under a successor-in-interest at lower wages, and shifting those costs to the taxpayer via the RTAA benefit. Applying the certification to the successor-in-interest reflects that the firm may continue to be affected by a trade impact. If the State determines that the reemployment is with a successor-in-interest, the State also must seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA Program, as provided in § 618.816(e).

The Department recognizes this may be a shift in how some States have administered the TAA Program. Specifically, TRA staff will need to work closely with TAA staff and can no longer rely on employing firms’ names being listed in the certification. This reliance on the certification as the sole source for employer information creates delays in serving trade-affected workers. The Department regularly receives petitions requesting to amend a certification solely to add the name of a successor-in-interest whose workers have already been identified to the State in a worker list as part of identifying the worker group. These requests arise simply because the TRA staff believes that the firm must be listed in the determination in order for the trade-affected worker to be eligible to apply for TAA Program benefits and services. The delays caused by waiting for a subsequent petition investigation to conclude prior to serving these workers creates longer periods of unemployment for workers in need of training or other reemployment services. The Department will provide technical assistance to States for handling successor-in-interest issues, as well as for their identification of and provision of benefits and services for members of certified worker groups. The Department adopts the term and definition into the final rule as proposed, except for two nonsubstantive spelling corrections.

#### Suitable Employment

The NPRM modified the definition of “suitable employment” from 20 CFR 617.22(a)(1)(i) and section 236(e) of the Act. The Department proposed that suitable employment exclude part-time, temporary, or threatened employment.

A State workforce agency commented that the proposed definition of “suitable employment” excluded “temporary employment” and asked the Department to clarify that temporary employment means work lasting 6 months or less. Two additional commenters requested clarification about the intended meaning of “threatened employment,” another category of work that would not count as “suitable employment.” Specifically, one of the commenters stated that it would support its interpretation as being “unlikely to lead to a long-term employment opportunity,” because of its concern that work meeting that definition, even if not explicitly temporary, would be susceptible to future elimination. The commenter maintained that this could trap workers in a “cycle” of needing continuous TAA Program benefits or result in their losing eligibility for retraining (and, therefore, having to assume training costs themselves), and should not be considered “suitable employment.”

The Department shares these concerns and agrees they should be considered. For this reason, the proposed definition of “suitable employment” in § 618.110 included language that part-time, temporary, short-term, or threatened employment is not suitable employment.

A State workforce agency recommended “streamlining” the definition of “suitable employment,” saying that the proposed definition would lead to unnecessary frustration and confusion among workers.

The Department concludes that the proposed definition of this term will reduce confusion by explicitly providing additional guidance to States and trade-affected workers for when employment is not suitable employment for purposes of the TAA Program.

Similarly, another State workforce agency raised the following concerns about the proposed definition of “suitable employment”: (1) The phrase “substantially equal or higher skill level” is unclear and open to interpretation and, if maintained in the final rule, will require administrative guidance for States to operationalize it as a criterion uniformly and objectively; (2) it is not sufficiently flexible and could bar workers at higher incomes from eligibility for some benefits, such

as job search and relocation allowances, because of inability to find new work at a high enough wage; (3) the lack of clarity as to whether and how it should be interpreted relative to other defined terms (*i.e.*, “average weekly wage” and “wages”) muddles the proper approach to issues like noncash compensation, commissions, and bonuses; and (4) the “blanket exclusion” for part-time work does not account for situations in which the new work is otherwise suitable in terms of skills required and wages paid “(e.g., a production worker ret[r]ains to be a [Registered Nurse]).”

The phrase “substantially equal or higher skill level” is contained in the statute. In operational terms, States assess the trade-affected worker’s preexisting skill levels, abilities, and education, and compare them with the requirements of available employment in the current and projected labor market to determine suitability. The Occupational Information Network (O\*NET) provides skill level information for hundreds of occupations. To address the example provided by the State, work scheduled for a Registered Nurse may only be 3 or 4 days a week, but the job is unlikely to be considered part-time under State law based on the hours worked. The Department further explains that the determination of the availability of suitable employment is used for the approval of benefits, not for projecting employment following the completion of training.

Several comments were received about the definition of “suitable employment,” requesting clarification of its relationship to the definition of “wages.” Proposed § 618.100(a) established that the purpose of the TAA Program is to return trade-affected workers to suitable employment as quickly as possible, which is unchanged from 20 CFR 617.2. In this context, suitable employment means that after the trade-affected worker receives services under the TAA Program, the worker is reemployed at an equal or higher skill level and earns at least 80 percent of his or her former wages. This goal of attaining suitable employment has not changed.

Unfortunately, there are situations in which trade-affected workers may be unable to obtain suitable employment. Such difficulties may occur because (1) few, if any, jobs are available at the workers’ former wages with the trade-affected workers’ experience; (2) the local labor market has few available jobs; or (3) the trade-affected workers have substantial barriers to reemployment. These factors can significantly limit trade-affected

workers’ employment opportunities. Offering appropriate training, especially in a stagnant labor market, may significantly increase a trade-affected worker’s prospects of obtaining suitable employment. Trade-affected workers must have access to training and services that will allow them the best possible outcomes and ability to compete for work at the highest skill levels and highest wages achievable, as quickly as possible. This must be accomplished with prudence, careful management of limited TAA Program funds, and a practical understanding of labor market realities; given the trade-affected workers’ preexisting skill levels, abilities, and education, and the current and projected needs of employers. States must ensure they administer their programs equitably and reasonably. The Department adopts this term and definition in the final rule as proposed.

#### Wages

The Act does not provide a definition of “wages,” so the Department proposed to retain the definition of “wages” from existing regulations at 20 CFR 617.3(pp).

One commenter was concerned with the ability of staff to calculate noncash compensation. Another commenter stated that the proposed definition of wages would complicate calculations needed under the RTAA benefit.

In response to these comments, the Department has reconsidered the proposed definition of “wages.” The final rule yields to applicable State laws, contains a new reference to a State’s definition of remuneration under State UI law, and revises the proposed definition in § 618.110 accordingly.

There is no practical or operational change with this revision, including no change for calculating TRA, or for determining whether reemployment is suitable employment. Before a State can approve a training program, the State must ensure that there is not suitable employment available to the AAW. While calculating the wage component of suitable employment is statutory, it is 80 percent of the average weekly wage as defined by the Act. When exploring the local labor market, the worker and the State will be limited to the information contained in job postings in calculating the reemployment wage. These postings will likely contain an hourly wage rate, annual salary amount, or range. Although the posting may contain reference to other benefits, commissions, or bonuses, these are not usually listed with a known value and are often not guaranteed. Where there is no known value of these benefits, bonuses, or commissions, the State

would simply use the wage rate or annual salary amount in the posting to determine whether the wage portion of the definition of suitable employment has been met. Where there are definite benefits, commissions, or bonuses, the State would include those amounts if it would be included in determining remuneration under State UI law. Based on oversight and technical assistance provided on this issue, the Department is confident that this reflects what is being done in most States under the previous regulations in 20 CFR part 617.

#### Other Terminology Applicable Across Part 618

A few commenters requested that the Department define the term “teleworker.” A State workforce agency added that, while § 618.225(j) offers some guidance as to its meaning, a fuller definition in § 618.110, like the definition of “staffed worker” found there, would be helpful. The Department has not included a definition of the term in this final rule because there is no singular, agreed-upon definition for the term “teleworker” across Federal programs. In general, teleworkers are workers who are members of a worker group who work remotely, but take direction from and report to the location listed for a firm on a certification. The remote location can vary, and may include the worker’s own residence, a shared office space, public location, etc. Teleworkers may need to provide information or documentation showing their connection to the worker group if they are not already listed on the worker list provided to the State by the firm.

The same commenter offered several further suggestions of definitions the Department should consider adding to this section of the rule:

- “Adjustment assistance” (used in § 618.205);
- “Annualized reemployment wages” and “annualized separation wages” (to replace the term “wages,” which the commenter said is defined in a manner inconsistent with how it is used in § 618.520(a)(2)(i) and (ii), with more “technical” terms);
- “Distance learning” (in lieu of defining it in § 618.620(b)(2));
- “Foreign trade,” “foreign trade impacts,” or both; and
- “Remedial education.”

The commenter also requested clarification about whether the terms “training” and “skills training” are meant to be interchangeable and suggested that these terms, which (along with the term “remedial education”) are used in § 618.610(b)(1), might warrant definition in this section.

The requested additional wage-related terms are unnecessary based on the modification made to the definition of “wages” in the final rule. Many of these terms are discussed elsewhere in this preamble and the Department concludes that the remaining terms are clear without further definition. The Department declines commenters’ suggestions for additional definitions.

#### Section 618.120 Severability

The Department has decided to include a severability provision as part of the final rule. To the extent that any provision of the final rule is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

#### B. Subpart B—Petitions, Investigations, and Determinations

The purpose of subpart B is to implement the provisions for determining group eligibility to apply for adjustment assistance for trade-affected workers. This subpart provides the process for the investigation of petitions for certification of eligibility to apply for adjustment assistance.

Subpart B addresses sections 221, 222, 223, and 224 of the Act, modifying 29 CFR part 90 and incorporating it into part 618. Proposed subpart B made several changes to update the regulations, including updates to reflect statutory changes and current procedures for filing petitions, conducting investigations, and issuing determinations of TAA Program eligibility, and added a requirement for exhaustion of administrative remedies, specifically, use of the reconsideration process, prior to judicial review. In the NPRM, the Department relocated most of the definitions in 29 CFR 90.2 to subpart A of 20 CFR part 618 for clarity and consistency. The Department did not receive any comments on proposed §§ 618.200, 618.220, 618.230, and 618.260. The final rule adopts these sections as proposed, with the exception of a change at § 618.220(d) to the use of a pronoun. Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows.

#### Section 618.205 Petitions

Proposed § 618.205 updated the section related to petitions at 29 CFR 90.11. The Department is finalizing this

section as proposed, except for the changes noted below.

#### Paragraph (a)

Proposed paragraph (a) of this section updated who may file a petition, based on changes to section 221(a) of the Act. This paragraph identified four entities who may file a petition: (1) A group of workers; (2) a union or other duly authorized representative; (3) the employer of the group of workers; or (4) one-stop center operators or partners, including State workforce officials, employment security agencies, or dislocated worker unit and rapid response team members. It also changed the language from 20 CFR 90.11(a) to reduce the number of workers who must sign the petition from three to two. The Act does not specify a minimum number of workers that make up a “group of workers.”

A commenter generally supported the proposed changes to the petition process, writing that they would reduce barriers for diverse AAW populations. Another commenter wrote that the proposal would clarify the petition process and remove overly technical language. A few commenters agreed that petitions should be filed through the Department’s website, but some also requested that the feature for uploading attachments be made more user-friendly. The Department will take these requests into consideration as it works to modify the online system for submitting petitions and uploading attachments, and appreciates the commenters’ input and support.

A few commenters supported the proposed change at § 618.205(a), writing that reducing the required number of workers on a petition from three to two would benefit workers and the petition process. The Department appreciates this support.

Another commenter stated that the introduction to paragraph (a) of this section is unclear and a State workforce agency provided recommended edits to § 618.205(a) to clarify which workers may file a petition. The State workforce agency said that the language in paragraph (a) of the proposed rule said that a group of workers may file a petition, yet paragraphs (a)(2) through (4) identified a list of additional entities that could also file a petition. The Department agrees that, while a group of workers may file a petition, there are also others who may file petitions on its behalf. The Department has revised the regulatory text to remove the use of the term “worker group” in this paragraph (a).

One commenter recommended removing language at § 618.205(a) that

would require petitioners to file simultaneously with their State, writing that a better approach would be for the Department to share petitions with States. The commenter also asked for clarification of the consequences if petitioners failed to file simultaneously under the proposed rule. Another commenter, however, recommended retaining the requirement that petitioners file simultaneously with the State, stating that this is a statutory requirement intended to ensure States provide rapid response services to petitioners. The commenter added that paragraph (j) of this section also should be changed to reflect the statutory requirement that the State and the Department receive petitions simultaneously. The Department agrees that simultaneous filing is not optional. The “may” that section 221(a)(1) refers to is the party that is authorized to file a petition, not to the requirement for simultaneous filing of a petition. The proposed rule required that petitions be filed simultaneously with the Department and the State. The Department, therefore, adopts the proposed language into the final rule, with the exception of § 618.205(j), which has been revised to require States to verify that the Department also has received the petition.

A State workforce agency recommended adding the words “certified or recognized” before “union” at paragraph (a)(2) of this section. The commenter maintained that doing so would be consistent with the regulatory text at §§ 618.205(b)(9)(i) and 618.210(c)(6). The Department agrees and acknowledges that this proposed revision would align the regulatory text more closely with the statutory requirement, and has revised the regulatory text accordingly.

The same State workforce agency also recommended replacing “employer” at § 618.205(a)(3) with “an authorized representative of the firm where the group of workers is employed.” It maintained that this language would better fit with the regulations’ definition of the term “firm,” which excludes government entities. The State workforce agency also said that § 618.205(b)(2) likewise uses the term “firm” instead of “employer.” The Department agrees that public sector workers do not meet the group eligibility requirements for a worker group under TAARA 2015. The use of the term “employer,” however, long predated the temporary addition of those workers in 2009, and changing the term from “employer” to “firm” may unintentionally limit the universe of petition filers, because the term “firm”

is specifically defined to include the “firm or appropriate subdivision.” The Department has adopted the language into the final rule as proposed.

The same State workforce agency requested clarification of “employment security agencies” at § 618.205(a)(4). The Department explains that “employment security agencies” is a legacy term that refers to the State agency responsible for administering UI. Section 618.205(a)(4) is adopted without change.

#### Paragraph (b)

Proposed paragraph (b) combined and modified 29 CFR 90.11(b) and (c) regarding the form and content of petitions. It required petitioners to provide information the Department needs to begin its investigation. Absent this required information, a petition would not be valid.

A commenter recommended rewording § 618.205(b) to reflect the possibility that a petition may be filed by persons other than the workers named in the petition. Another commenter generally supported the changes in paragraphs (b)(1) through (9) of this section. The Department agrees with the commenter that proposed paragraph (b) did not accurately reflect the universe of entities who may file a petition and has revised the regulatory text at § 618.205(b) by deleting the first sentence, which specifically referred to the worker group.

Two commenters asked whether § 618.205(b)(4), which required that a petition include the name and contact information of an official within the employer firm or an individual authorized to provide information regarding the operation of the group of workers’ firm, meant that only a single point of contact need be provided for a petition for certification. Another commenter recommended that the provision for “an individual authorized to provide information regarding the operation of the group of workers’ firm” be removed, as it is unclear who such an individual would be. The regulatory text as proposed means that at least one official within the firm employing the group of workers or an individual authorized to provide information regarding the operation of the business is required on the petition form; this regulatory text does not, however, preclude a petitioner from including more than one contact, if known.

One commenter wrote that proposed § 618.205(b)(6), which required that a petition include the actual or approximate date on which total or partial separations are threatened to occur or did occur, did not explain clearly

how a petitioner would address multiple separation dates. The commenter stated that worker separations in mass layoffs often come in waves, and it recommended that the “hover text” available in the online system for submitting petitions (asking that petitioners provide the “most recent date on which the separation occurred or is threatened to occur”) be adopted in the final rule. The Department has addressed these issues separately through revisions to the instructions provided through the online petition process and on the print versions of the forms.

One commenter wrote that proposed § 618.205(b)(8), which required that the petitioner provide a reason why he or she believes that worker separations have occurred or may occur at the firm due to foreign trade impacts or why an amendment to an existing certification should be granted, provides only a cursory mention of using petitions to amend active certifications. This commenter suggested that petitions to amend active certifications should be addressed in a separate paragraph. Another commenter also recommended that § 618.205(b)(8) and other sections of the regulatory text more clearly address requests to amend petitions. The Department specifically addresses amendments to active certifications in § 618.250, and has made no change in the final rule to § 618.205(b)(8) in response to these comments. The only change to § 618.205(b)(8) is the removal of the word “employer’s” before “firm” for consistency throughout this subpart.

One commenter recommended editing § 618.205(b)(9)(i), which identified who must sign the petition, by adding the words “of workers” after “petitioning group,” and adding the words “of the group of workers, or an official of the firm employing the group of workers” after “duly authorized representative.” The commenter wrote that the requirement in § 618.205(b)(9)(ii) that petitioners attest to their authorization to file a petition is problematic for petitioners under paragraph (a)(1) of this section, who often file because of their firm’s refusal to do so. The requirement that the workers attest to being authorized to file means only that the workers believe that they are included in the group of workers. This attestation is not related to the firm’s support of, or opposition to, the application. The Department has modified the language in the final rule at § 618.205(b)(9)(i) consistent with the comments received. These revisions provide important clarity, while not substantively changing the requirement.

#### Paragraph (d)

Proposed paragraph (d) of this section updated 29 CFR 90.11(c) and maintained the methods of filing, allowing petition submissions by fax, email, and mail, but strongly encouraged that all petitions be filed electronically with the Department through the Department’s website.

Another commenter recommended that paragraph (d) of this section be changed to direct workers to State TAA or TRA coordinators instead of a one-stop center, arguing that the former would provide more accurate information. WIOA designates the TAA Program as a required partner of the one-stop delivery system. Additionally, this final rule requires that the TAA Program be delivered primarily through the one-stop delivery system. Thus, the one-stop centers or rapid response units are the appropriate place for trade-affected workers to be directed to access additional information about the TAA Program. After considering this comment, the Department declines this suggestion, and adopts § 618.205(d) into the final rule as proposed, with a nonsubstantive edit to the hyperlink to the website for the TAA Program.

#### Paragraph (e)

Proposed paragraph (e) implemented section 224 of the Act, requiring the Department to take specific actions when the ITC issues an affirmative determination on the investigation under section 202 or 421 of the Act, or issues an affirmative final determination under section 705 or 735 of the Tariff Act of 1930.

Two commenters wrote that the changes for International Trade Commission (ITC) notifications at § 618.205(e) would better serve the public if States were notified in addition to industries. The Department explains that the notification to the States was already included in proposed § 618.205(e)(3); therefore, there is no need to revise paragraph (e) and the final rule adopts the paragraph as proposed.

One commenter requested that the Department allow petitions filed on behalf of companies with affirmative ITC determinations to omit information that otherwise would be required in a petition, writing that it is burdensome for States to provide that information. The Department will continue to explore options for the investigation process for petitions filed based on an ITC finding. Any changes made to the petition process must be made under an information collection request (ICR) separate from the final rule.

Accordingly, the Department declines to revise the regulatory text at this time, and this final rule adopts the provision as proposed.

#### Paragraph (j)

Proposed paragraph (j) of this section set forth the States' responsibilities under section 239 of the Act to verify that the Department has also received any petition filed with the State. No comments were received regarding this paragraph, but the Department has made a technical correction to § 618.205(j) to correct two incomplete conditional statements. There is no change to the intent of the proposed rule or its operational impact as a result of this edit.

#### Section 618.210 Investigation

Section 618.210 of the proposed rule described the investigation process, authorized under sections 221 and 222 of the Act, and updated the language from 29 CFR part 90 to reflect current procedures and practices in the areas of timing, period of investigation, investigative processes, protection of confidential business information, termination of an investigation, the investigative record, and site visits.

Several commenters stated that it would be helpful if the Department would share a list of impacted workers with States, saying that doing so would expedite their outreach to members of worker groups. The Department does not collect worker lists due to the personally identifiable information contained therein, nor is this information needed for a determination to be made. To assist States in collecting worker lists, the Department has explicitly authorized States to use subpoenas to collect this information from firms that fail to provide the information upon request. Although the use of subpoenas for this purpose has always been authorized under the TAA Program, it has, until now, been implied rather than specified.

Proposed paragraph (c) explained the steps the investigator may take in order to render a determination on a petition. It also identified commonly used sources of information, and provided added detail, structure, and transparency to stakeholders about the investigation process.

A commenter stated that the transparency of the investigative process provided at § 618.210(c) helps ensure that petitions are submitted correctly. The Department's intent of including this additional information is to provide the public with a better understanding of the investigation process and the information reviewed by the

Department. The final rule adopts this section as proposed, with the addition of a comma in paragraph (f).

#### Section 618.215 Public Hearings

Section 618.215 of the proposed rule set forth when a public hearing in connection with an investigation is to be held and, as was explained in the preamble to the NPRM, there were only a few proposed changes from 29 CFR 90.13.

Proposed paragraph (b) established the method for requesting a public hearing and expanded on the requirements related to hearings that existed at 29 CFR 90.13.

A commenter identified a nonsubstantive typo in § 618.215 at proposed paragraph (b)(3). The Department corrects the error by replacing "is" with "of" and also makes a change to the use of a pronoun in paragraph (d). The remainder of the section is adopted as proposed.

#### Section 618.225 Criteria for Certification of a Group of Workers

Proposed § 618.225 substantially updated language from 29 CFR 90.16(b) to describe the criteria the Department uses to certify a group of workers, which have expanded significantly under section 222 of the Act. It also identified factors under consideration in determining whether a criterion is met. The revised language provided transparency on how investigations are conducted, the importance of information collected, and how the information is used. The proposed provisions reflected Congressional intent and existing Departmental practices. The Department is finalizing this section as proposed, except for the changes noted below.

One commenter stated that transparency of certification criteria is helpful for the efficient operation of the petition process.

#### Staffed Workers § 618.225(i)

Proposed paragraph (i) of this section provided that staffed workers, working on or off site, would be classified as part of the worker group of the firm. The Department would specify in the determination document that all members of the affected worker group include teleworkers and staffed workers, but would not list specific leasing companies or temporary staffing entities. The Department would continue to collect information from the subject firm in order to establish the leasing or temporary staffing entity or entities over which the trade-affected workers' firm has operational control. Proposed paragraphs (i)(1) through (9) of

this section then listed the factors to be considered in evaluating operation control.

The Department specifically sought comments from the public on whether or not to include, by default, staffed workers as part of a certified worker group. The primary benefit to including staffed workers as part of the worker group is that staffed workers are members of a worker group even if they are not specifically mentioned within the determination document. States may serve those workers without the delay of petitioning to amend an active certification. The Department is finalizing this section as proposed, except for the changes noted below.

One commenter requested guidance for determining whether a staffing entity should be included in a certified worker group. Two commenters requested additional guidance for how States should provide services to staffed workers that were not included in the original certification, especially when more than one agency administers the TAA Program. Another commenter also requested further guidance on the treatment of staffed workers, explaining that there is tension between (1) the Department's determination whether a certification will cover a staffing entity, and (2) the allowance for staffed workers to belong to a certified worker group even if the determination document does not name the workers' staffing entity. A few commenters recommended that the Department continue to list all employers of staffed workers within its determination document, commenting that this practice better provides benefits to eligible workers and is less labor intensive for States. One commenter maintained that naming staffing entities in petitions would help States because the staffing entities, not the certified employers, would have workers' wage data. Conversely, a commenter wrote that requiring States to petition to amend certifications in order to provide benefits to unnamed staffed workers would be needlessly burdensome. Another commenter agreed, writing that such a requirement would lead to longer investigations and, thus, harm the entire worker group. A different commenter agreed that it would be easier for workers to be included on a single petition, but it said that doing so would complicate States' recordkeeping procedures. A commenter stated that the provision for staffed workers would impose an undue hardship on States with limited TAA Program staff. The commenter also pointed out that the TAA Program might be administered by two agencies within a State, which

could lead to inconsistent determinations regarding staffing entities.

The Department appreciates the time and effort taken by commenters to respond to this specific request. The Governor-Secretary Agreement binds the entire executive branch of a State to compliance with these regulations and all determinations made by the Department. Upon publication and implementation of this final rule, State workforce agencies, including those that administer UI, will be bound to implement them.

Once a certification is issued, the States are charged with determining individual eligibility. These regulations provide sufficient guidelines for State agencies to determine whether or not a trade-affected worker is included in the worker group, subject to the determination document issued by the Department. Further, these regulations require States to notify the Department when there are appeals to denials of benefits under the TAA Program. Through this process, the Department will ensure that States are fully compliant with the provisions of these rules related to staffed workers, teleworkers, and successor-in-interest issues.

The Department recognizes this may be a shift in how some States have administered the TAA Program. Specifically, TRA staff will need to work closely with TAA Program staff and can no longer rely on the names of employing firms being separately listed in the certification. This reliance on the certification as the sole source for employer information creates delays in serving trade-affected workers. The Department regularly receives requests to amend a certification solely to add the name of a staffing company whose workers have already been identified to the State in a worker list as part of identifying the worker group. These requests arise simply because the TRA staff believes that the firm must be specifically listed in the determination in order for the trade-affected worker to be eligible to apply for TAA Program benefits and services. The delays caused by waiting for a subsequent petition investigation to conclude, or for an amendment to be issued, prior to serving these workers creates longer periods of unemployment for workers in need of training and other reemployment services. The Department will be providing technical assistance to assist States in handling staffed worker issues as well as to assist in this transition to further empower States in their identification of and provision of

benefits and services for members of certified worker groups.

A commenter asked how the Department will treat workers it determines are ineligible after a State has already begun providing services to those workers. If a trade-affected worker is determined ineligible after a State has already begun providing services to the worker, he or she should be treated the same way as the State treats any other worker in similar circumstances. If necessary, the State would issue a benefit denial determination and afford the worker the opportunity to appeal the determination.

Additionally, since trade-affected workers, if eligible, are mandated to be co-enrolled with the WIOA dislocated worker program, the worker may continue to be served by that program or other partner programs. The commenter also questioned when and how often the Department would provide States with the names of staffing entities. The Department will provide States with information on staffing firms.

A different commenter asked how the Department would handle workers of a staffing entity that no longer contracts with a certified worker group firm. When a firm is queried about staffed workers, it will be asked to provide information on all staffing firms utilized during the certification period, even if the contract is no longer in place at the time of the investigation. In accordance with provisions in § 618.225(i), the Department will provide States with the names of staffing entities (if they are provided during the investigation process) at the time the certification is announced to assist States in notifying members of the worker group. States that discover additional leasing or temporary staffing entities employing staffed workers who are members of a certified worker group may serve those trade-affected workers without the delay of filing a new petition requesting an amendment to the certification. This change in procedure will enhance service delivery to workers. The list of staffing entities provided to the States by the Department should not be seen as limiting. There may be workers employed by other staffing entities not listed that are also members of the worker group. States should make clear to the firm that, when requesting the worker list, the list should include all on-site and off-site workers, as well as staffing agencies and successor-in-interest information, if known. The Department encourages States in need of technical assistance on individual scenarios that arise under this final rule

to contact their regional office for assistance.

One commenter requested that the Department share Federal Employment Identification Numbers (FEINs) with States to help identify impacted workers, especially teleworkers. The Department certifies a worker group, not a firm, and members of that worker group may be employed by the firm, a subdivision of the firm, a successor-in-interest, or a staffing agency under the direction of the firm. Although a FEIN may be collected during a petition investigation, the Department does not systematically collect all of the FEINs associated with a firm, subdivision of a firm, or all employers of a worker group. Therefore, though an FEIN may be provided, it is insufficient to identify all teleworkers.

The Department recognizes States' challenges in determining individual eligibility for TRA benefits and reviewing wage records to determine if an AAW has worked long enough at a location to qualify for TAA Program benefits. Additionally, challenges also can arise with regard to staffed workers and those who are perceived to be staffed workers.

Scenarios often arise where a firm that employs or employed a certified worker group outsources its payroll and benefits functions to a third party. Trade-affected workers named by the company as being part of the eligible worker group may have their wages paid by the third party and not the company named by the certified petition. For example, Company A has been named in a certification. Trade-affected workers named as part of the worker list associated with this certification have their wages paid to them by Company B, a third party that Company A has outsourced its payroll and benefits functions to, and their wage records do not align with being employed by Company A. The outsourcing of those workers' payroll and benefits processing by Company A to Company B does not render those workers ineligible to individually apply for TAA Program benefits and services. Often, States have filed a petition to request an amendment to a certification to offer clarification. Even though it may appear that the workers named are being paid by a third party, an amendment to add the payroll company before serving these workers is unnecessary. It also may be helpful for States, as part of initial requests to a firm for its worker list, to inquire whether the firm contracts its payroll out to a different company, and to ask for pertinent information about that payroll company.

The Department has adopted paragraph (i) into the final rule as proposed.

#### Teleworkers § 618.225(j)

Proposed paragraph (j) of this section codified administrative guidance issued as part of the TAAEA operating instructions. This section explained that teleworkers, also known as remote workers, may be part of a certified worker group without being specifically referenced in a certification document, insofar as their position is affected by the same trade effects as other trade-affected workers in the worker group.

One commenter supported including teleworkers in a certified worker group. Another commenter supported the proposal and stated that it would allow States to share lists of teleworkers with other States.

A State workforce agency recommended clarifying whether teleworkers based in other countries could be considered part of a worker group. A teleworker, living abroad, would not be eligible for services or benefits under the Act while abroad. Upon the teleworker's return to the United States, he or she would be able to apply for benefits and services and a determination would be made at that time. The Department adopts § 618.225(j) into the final rule as proposed.

#### References to Worker Adjustment and Retraining Notice (WARN) Letters

One commenter requested that, where WARN letters are referenced, the Department add "or a similar letter under [S]tate statute." Several States have State laws modeled after the Federal WARN Act requirements. The Department has modified the regulatory text in five instances at § 618.225(a)(2)(i)(C)(1), (b)(2)(i)(C)(1), (c)(1)(iii)(A), (d)(1)(iii)(A), and (e)(1)(iii)(A) to include language that references State-level WARN laws.

The same commenter also recommended replacing the term "displaced worker" with "dislocated worker" throughout the proposal in order to match WIOA terminology. Upon review, the Department has concluded that neither term is ideal. The Department has changed the six instances of the term "displaced workers" at § 618.225(a)(2)(i)(A)(4), (b)(2)(i)(A)(4), (c)(1)(i)(D), (c)(2)(i)(D), (d)(1)(i)(D), and (e)(1)(i) to "workers in the group of workers." Since "displaced workers" is not a defined term, "workers in the group of workers" is more appropriate and this clarification does not change the meaning of the regulatory provision.

Finally, the Department made nonsubstantive technical corrections to capitalize the term "Certifying Officers" in this section. Aside from the modifications discussed above, the final rule adopts § 618.225 as proposed.

#### Section 618.235 Determinations

Section 618.235 of the proposed rule clarified the process the Certifying Officer would use for issuing a determination based on the findings of the investigation as set forth in § 618.230. The final rule adopts this section as proposed, except for the changes noted below.

Proposed paragraph (c) covered determinations and was derived from 29 CFR 90.16(d). Proposed paragraph (d) covered amended determinations and codified the practice of amending a certification.

One commenter recommended a technical correction to the opening part of paragraph (c) of this section to clarify that the correct title is Certifying Officer and not Certifying Official. The same commenter also recommended revising paragraph (d) of this section to allow the Department to amend certifications with or without a petition. The commenter requested clarity about the provision in paragraph (d) allowing the Department to reconsider a denial on its own initiative, commenting that there is an absence of references to other, related provisions in § 618.245. Based on these comments, the Department revised the regulatory text at § 618.235(c) to refer to a Certifying Officer instead of a Certifying Official, at § 618.235(d) to provide that a determination may be amended in accordance with § 618.250(a), and has also added a new provision § 618.235(e) explicitly stating the Department's preexisting, intrinsic authority to modify its determinations. The Department has included a similar statement in the final rule at § 618.250(d) to address the comment about the Department's ability to amend determinations on its own authority.

#### Section 618.240 Termination of Certification

Proposed § 618.240 discussed the termination of certifications under section 223(d) of the Act and updated the previous regulations to reflect current practice and procedures through minor revisions to 29 CFR 90.17. The Department clarified that any party eligible under proposed § 618.225 to submit a petition may file for a reconsideration of a terminated or partially terminated certification. A decision to uphold the termination of a certification after reconsideration is a final determination by the Department

and subject to judicial appeal. The Department is finalizing this section as proposed, except for the changes noted below.

#### Paragraph (a)

Proposed paragraph (a) restated section 222(d) of the Act and is unchanged from 29 CFR 90.17(a). Proposed paragraph (a)(1) described that unless a termination is issued under proposed § 618.240, all certifications made under proposed § 618.235(a)(1)(ii) are considered terminated the day following the expiration date of the certification. Proposed paragraph (a)(2) provided that all ITC certifications, described at § 618.225(f), are considered terminated the day following the expiration date of the certification, which is 1 year following the date of publication of the determination in the **Federal Register**.

The Department received comments on proposed paragraph (d), discussed below, which resulted in the final rule not carrying forward proposed paragraphs (a)(1) and (2) of this section.

One commenter asked how a termination would affect program participants. In response to this comment, if a certification is terminated, no additional trade-affected workers would be eligible to enroll in the TAA Program as of the effective date of the termination. AAWs already receiving TAA Program benefits and services would be allowed to continue in the TAA Program. The Department made no changes in response to this comment.

#### Paragraph (b)

Proposed paragraph (b) included the notice language from 29 CFR 90.17(a) and updated it to include to whom the notices will be made. It also required the State to notify the trade-affected workers in the worker group of the initiation of the investigation to terminate a certification.

Two commenters asked how States may notify a worker group of a terminated certification. Similarly, a State workforce agency commented that States should be required to notify only those trade-affected workers who would face separations after a certification termination, because a broader requirement would burden States and confuse workers. The Department does not concur with the commenter that such a notice would cause burden or confusion. The notification should clearly state that workers fully or partially separated prior to the termination date remain eligible for benefits. The regulatory text in the final rule has not been revised.

## Paragraph (d)

Proposed paragraph (d) described the information that will be considered in determining whether to terminate a certification and provided that the period of investigation would remain the same as the period of investigation for the original certification.

One commenter asked how terminations issued because worker separations fail to result from conditions set out in section 222 of the Act could be consistent with paragraph (d) of this section, if the period of a certification will remain the same as the original period of investigation. The commenter asked if the issue is whether those conditions, which existed at the time of the certification, have changed in the period since the certification and before the standard date of termination. The termination provisions, as proposed, were based on the statutory language at section 223(d) of the Act and previous regulations at 29 CFR 90.17. The actions taken under the termination provision do not establish a new period of certification. A change in circumstances may occur to change the conditions under which the worker group was initially certified. In most scenarios, a termination is a result of the removal of a threat of separation and often there have been no actual separations and the conditions that resulted in the threat are no longer present. The Department sought to provide additional transparency and clarity on the internal operations of the investigation process related to terminations. In doing so, the Department now recognizes that the proposed language needs clarification. As a result, the Department has revised the regulatory text to reflect more closely the language included in 29 CFR 90.17 by deleting proposed § 618.240(a)(1) and (2), deleting the last sentence of proposed § 618.240(d) (which would have required the period of investigation of a termination of certification to remain the same as the period of investigation for the original certification), and making minor technical edits to proposed § 618.240(e)(1) and (f).

## Paragraph (e)

Proposed paragraph (e) combined 29 CFR 90.17(d) and (e) to provide details on the process of issuing a notice of termination or notice of partial termination, and detailed to whom the notices would be issued. It required States to notify the worker group of the termination or partial termination. It also stated that a termination would not take effect until the period in which a

party may request reconsideration has elapsed.

A State workforce agency requested additional guidance on paragraph (e) of this section, asking how the final rule would impact workers who receive services prior to a termination date. The Department clarifies that there would be no change in benefits to AAWs who have been separated or partially separated prior to the termination. AAIWs who are receiving benefits would be impacted by a termination or partial termination of a certification, as they would not have been separated or partially separated. Aside from the technical edit to § 618.240(e)(1) discussed above, the final rule adopts paragraph (e) as proposed.

## Paragraph (f)

Proposed paragraph (f) updated 29 CFR 90.17(f) and provided detail on the process of issuing a notice of continuation of certification, and detailed to whom the notice will be issued. It required States to notify the worker group of the continuation of certification.

One commenter recommended that the Department be required to provide notification to workers in a worker group for which certification has been terminated, instead of the State, writing that States could share their information with the Department or the Department could provide States with a letter to send on its behalf. The commenter also recommended deleting the third sentence of paragraph (f) of this section, as notice to the worker group is already addressed in the last sentence of paragraph (f). Another commenter supported notifying workers that a petition is under investigation, but requested that the regulation contain information as to what must be included in a notification and who would need to receive it. The Department will provide training and technical assistance on how States can provide notice to impacted trade-affected workers should a termination occur, but States should plan to contact workers using available contact information and to notify eligible workers who are nonparticipants in a similar manner in which States first notified the impacted workers of their eligibility to apply for benefits and services.

One commenter asked for an example of why a certification would be terminated. One example would be if the Department receives notice from a company official that the firm just received a new contract and have canceled the imminent layoffs of the certified worker group. Another example is where the company has

canceled the outsourcing of its manufacturing line to a foreign country. In these cases, the Department would investigate and determine whether separations are still attributable to the reasons stated in the worker group certification. The Department points out this provision also was in 29 CFR 90.17. Aside from the technical edit to § 618.240(f)(1) discussed above, the final rule adopts paragraph (f) as proposed.

## Paragraph (g)

Proposed paragraph (g) allowed for reconsideration of a termination or partial termination of a certification and referred parties to § 618.245.

The same commenter discussed immediately above also wrote that paragraph (g) of this section should refer to § 618.205, not § 618.225. The Department has corrected the typographical error.

## Section 618.245 Reconsideration of Termination of an Investigation, Denial, or Termination or Partial Termination of Certification

Proposed § 618.245 contained the process for reconsiderations of determinations on petitions. The proposed rule contained several changes from the previous language in 29 CFR 90.18 to provide additional clarifications and to enhance efficiency of investigations.

A State workforce agency stated that the Department should notify States when it is reconsidering a termination. The State workforce agency said that the proposed change would expedite reconsideration requests. Another commenter, a private citizen, agreed and said the rule would make reconsiderations mandatory prior to a final adverse determination. The Department concurs with the commenters and will provide notification of any intent to reconsider. This is an operational process that does not require a change to the regulatory text. As such, no changes were made to the regulatory text in the final rule in response to these comments.

## Section 618.250 Amendments of Certifications

Proposed § 618.250 provided the process for seeking amendments to certifications. Although the proposed process was not previously included in regulation, the Department has been issuing amendments for many years. Section 223 of the Act establishes that a determination be issued for any group that meets the eligibility criteria of section 222 of the Act. The Department interprets that provision to mean that, should new or supplemental

information support a clarification of the certified worker group, the Department may issue an amended certification under the same petition number and publish the amendment in the **Federal Register** and post it on the Department's website. The Department is adopting this section in the final rule as proposed, except for the changes noted below.

Proposed paragraph (a) described the reasons for amendments and explained that amendments must not extend the impact date as that would go beyond the period covered by the certification itself.

A commenter requested that the Department further specify that the Department may undertake to amend a certification on its own initiative, without a § 618.205 petition. The Department has modified the regulatory text in §§ 618.235(d) and 618.250(a) to clarify that the Department retains the authority to amend a certification without a petition where it has determined that an amendment is appropriate. The Department has further modified the paragraph heading in § 618.250(a) in the final rule from *Types of amendments* to *Reasons for amendments* to accurately reflect the contents of paragraph (a).

A commenter asked whether the reference in § 618.250(a) to § 618.235(a)(1)(iii)(A) should cite § 618.235(a)(1)(ii) instead. The correct reference is § 618.235(a)(1)(ii), and the citation in the regulatory text has been corrected accordingly.

#### Section 618.255 Judicial Review of Determinations

Section 618.255 in the NPRM proposed the process for judicial review of determinations issued under proposed § 618.245(g). This is a significant revision to the language previously at 29 CFR 90.19. Section 284 of the Act allows for judicial review of only "final determinations." Under previous regulations, all determinations the Department rendered were final determinations subject to judicial review. The Department is adopting the section in the final rule as proposed, except for the change noted below.

Proposed paragraph (b) defined only determinations on reconsideration issued under proposed §§ 618.240(g) and 618.245 as final determinations subject to judicial review through the United States Court of International Trade (USCIT).

A commenter wrote that § 618.255(b) should be amended to reference only § 618.245(g) rather than §§ 618.240(g) and 618.245. The commenter stated that the latter sections are not correct citations with respect to final

determinations. The Department concurs, has corrected the citation in the regulatory text, and otherwise adopts § 618.255(b) as proposed.

#### Section 618.265 Availability of Information to the Public

Section 618.265 of the NPRM proposed at paragraph (a) that the Department would post all determinations and redacted petitions on the Department's website. This paragraph also provided that members of the public may inspect petitions and other related documents filed with the Administrator. Proposed paragraph (b) stated that confidential business information would not be made available to the public. Section 618.265 as proposed was largely unchanged from the previous language at 29 CFR 90.32, except to indicate that copies of petitions, in redacted form, would be available on the Department's website.

A commenter recommended adding a reference to the TAA Program website to § 618.265(a). The Department concurs with the suggestion to include the website for the TAA Program in § 618.265(a). The website reference has been added to paragraph (a) of this provision in the final rule, and the Department otherwise adopts § 618.265 as proposed.

#### C. Subpart C—Employment and Case Management Services

Subpart C describes the employment and case management services that States must make available to trade-affected workers as required by section 235 of the Act. These services were previously set forth in 20 CFR part 617. The proposed regulation proposed significant changes to the part 617 provisions to reflect the changes enacted by TGA, TAAEA, and TAARA 2015. However, not all of the requirements included here are new. Previously, 20 CFR 617.20 and 617.21 contained many of the same elements now contained in section 235 of the Act and in this final rule.

Subpart C of the NPRM also proposed language to update 20 CFR part 617 to reflect changes to the TAA Program and related workforce development programs due to the authorization and implementation of WIOA. This subpart emphasizes the integration of the TAA Program into the one-stop delivery system established under WIA and continued under WIOA. It also implements the requirements of section 221(a)(2)(A) of the Act for the provision of rapid response assistance and appropriate career services for workers upon receipt of a petition filed covering a group of workers.

Some key proposals within subpart C included requiring initial assessments for trade-affected workers, clarifying the provision of required case management services, and prescribing requirements for IEPs.

The Department is finalizing this subpart as proposed, except for the changes noted below. Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows. No comments were received on proposed §§ 618.300 and 618.305, and the final rule implements these sections as proposed.

#### Section 618.310 Responsibilities for the Delivery of Employment and Case Management Services

Proposed § 618.310 of the NPRM set forth the State's responsibilities for delivering and making available employment and case management services. These responsibilities are from section 235 of the Act. The Department is making a technical correction to § 618.310(a) to edit the citation from § 618.820 to § 618.816. The Department is finalizing this section as proposed, except for the changes to § 618.310(b) and (c) noted below.

#### Paragraph (b)

Proposed paragraph (b) listed the State's specific responsibilities for delivering employment and case management services. The proposed regulatory text modified 20 CFR 617.20(b). The language in 20 CFR 617.20 was based on workforce programs that have been replaced by WIOA and used outdated language to describe reemployment services, now known under the TAA Program as employment and case management services. Proposed paragraph (b) did not significantly change the activities and services that States must provide or make available to trade-affected workers. It required that States (1) interview and review training opportunities for each trade-affected worker, (2) inform trade-affected workers of the services and allowances available, (3) help them secure suitable employment, (4) accept applications for training, (5) help them secure appropriate training, (6) monitor their training progress, (7) devise a training-waiver process, (8) provide access to workshops and other employment resources, and (9) coordinate other employment benefits that workers may be eligible for.

Proposed paragraph (b) also reorganized 20 CFR 617.20(b). All the

provisions of 20 CFR 617.20(b), if not contained in this section, are subsumed elsewhere in the rule.

One commenter expressed concern about the requirement at § 618.310(b)(1) mandating States subject “every” trade-affected worker to an intake process that includes an interview and a review of appropriate training opportunities. The commenter said many trade-affected workers will choose not to participate in the TAA Program, and States cannot be expected to force all workers eligible for the program to undergo the intake process. The commenter recommended changing the provision to require only that States “offer” to provide the intake process to trade-affected workers to account for the fact that some workers may in fact choose not to participate in the TAA Program. The Department emphasizes that intake requires an application of enrollment; therefore, the intake requirement is applicable only to those trade-affected workers who apply to the TAA Program for receipt of TAA Program benefits and services. As such, there is no need to change the regulatory text related to this requirement and it is adopted in the final rule as proposed.

A State workforce agency recommended adding language to § 618.310(b)(5) about States’ eligible training provider (ETP) list under WIOA to facilitate more effective communication about available training opportunities. Section 236(a)(5) of the Act, however, specifically prohibits limiting approved training under the TAA Program to the ETP and the Department is concerned that adding the commenter’s proposed language would potentially mislead those administering the program. Accordingly, the Department is adopting paragraph (b)(5) in the final rule as proposed.

#### Paragraph (c)

Proposed paragraph (c) implemented section 235 of the Act by requiring States to provide, if appropriate, specific employment and case management services to trade-affected workers. Proposed paragraph (c)(1) required States to assess workers’ skills and service needs through assessments and by identifying appropriate employment goals and barriers to employment. These goals should be based on a realistic assessment of available training; the worker’s knowledge, skills, and abilities; and the gap between them and those required for the worker’s identified employment goal.

Proposed paragraph (c)(2) required States to inform trade-affected workers of the availability of the development of an IEP to identify employment goals and

objectives and appropriate training and services needed by the trade-affected worker to achieve those goals and objectives. An IEP is a combination of the “training plan” contained in 20 CFR 617.20(b)(8) and the “reemployment plan” in 20 CFR 617.20(b)(13). The requirement to periodically review the reemployment plan in 20 CFR 617.20(b)(13) was carried forward as a requirement for an IEP under the NPRM. For workers seeking training or job search allowances, § 618.350(a) required States to provide workers with an IEP, though this is not a requirement for eligibility for benefits.

Proposed paragraph (c)(3) required the State to provide information to trade-affected workers on how to apply for financial aid, including referring workers to educational opportunity centers under the Higher Education Act of 1965, as amended (HEA). In addition, States must notify workers that they may request financial aid administrators to use current year income data, rather than preceding year income data, to determine the workers’ financial need. This is required by section 235(4) of the Act. There was no corresponding requirement in the previous rule.

Proposed paragraph (c)(4) required States to provide, if appropriate, certain services to trade-affected workers, including short-term prevocational services such as development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare workers for employment or training. These are referred to commonly as “soft skills” within the public workforce system. These services are required by section 235(5) of the Act. There was no corresponding provision in the previous rule.

Proposed paragraph (c)(5) required States to provide, if appropriate, individual and group counseling, including job search and placement counseling. These services can be provided in one-on-one counseling sessions or in workshops at a one-stop center. These services were referenced indirectly in 20 CFR 617.20 and 617.21 and are required by section 235(6) of the Act. The NPRM proposed the use of more modern terminology that reflects the changes to the public workforce system that have occurred through the transition from JTPA, to WIA, and now to WIOA.

Proposed paragraph (c)(6) required States to provide various kinds of employment statistics, including local, regional, and national labor market information, to ensure trade-affected workers make informed decisions about

their employment goals and training needs. Part 617 of title 20 of the CFR referenced the provision of labor market information to trade-affected workers in relation to job search activities, relocation, and training programs. Section 235(7) of the Act requires States to provide this information.

Lastly, proposed paragraph (c)(7) required States to inform trade-affected workers about supportive services available through partner programs, as required by section 235(8) of the Act. This requirement also was contained in 20 CFR 617.20(b)(5) and 617.21(e). The TAA Program reimburses limited travel and subsistence costs for training outside the worker’s commuting area and provides for all training-related expenses (see subpart F). However, the TAA Program does not pay for vehicle repairs, local travel costs, childcare, or other similar supportive services traditionally paid for under WIOA.

A State workforce agency recommended eliminating “duplicative” language in § 618.310(c) by deleting “under a certification of eligibility” because trade-affected workers, as defined in § 618.110, include only those the State determined to be in “adversely affected employment” and adding “ensure” to § 618.310(c) to clarify that the State must make employment and case management services available to trade-affected workers. The Department concurs and has revised the regulatory text in the final rule based on this comment.

One commenter expressed concern that RTAA is not on the list of services about which States must notify workers at § 618.310(c), despite its low usage among TAA Program recipients. The same commenter stated that most displaced workers return to work at reduced wages and that wage insurance is valuable for AAWs seeking reemployment on their own without much contact with the State. The commenter recommended that States “aggressively market” RTAA and suggested that information about the benefits of the RTAA program should be communicated to workers. The Department explains that States are required to notify workers about RTAA under § 618.816 and for that reason the Department is not adopting the recommendation to include RTAA on the list of services mentioned here. The Department does, however, strongly encourage that information about the benefits of RTAA be relayed to potentially eligible workers, including information on the flexibility of receiving training and RTAA concurrently.

One commenter asked whether States can meet the requirements at both § 618.310(c)(1) and (2) by combining the initial assessment with an IEP to identify barriers to employment. The Department is not establishing a sequence of services. Intake, assessment, and the development of an IEP can all occur in the same session with a career counselor. No changes have been made to the regulatory text in response to this comment.

#### Section 618.325 Integrated Service Strategies and Workforce Innovation and Opportunity Act Co-Enrollment

Section 618.325 proposed co-enrollment between the TAA Program, WIOA dislocated worker program, and other programs to ensure the availability of a comprehensive array of services for trade-affected workers and the integration of workforce development programs. The Department previously concluded that co-enrollment of trade-affected workers in the dislocated worker program under WIOA, WIA, and title III of JTPA before that, was the best way to integrate services and ensure successful reemployment of trade-affected workers. States have, generally, been co-enrolling trade-affected workers in accordance with administrative guidance. This integration of service strategies arises from the requirement in section 239 of the Act to make available employment and case management services, such as counseling, testing, placement services, and supportive and other services for trade-affected workers.

Proposed paragraph (a)(1) required co-enrollment of trade-affected workers in WIOA's dislocated worker program. Co-enrollment allows for more efficient use of public workforce system resources and reduces barriers to program integration. A trade-affected worker may decline co-enrollment, which has no effect on eligibility for benefits and services under the TAA Program. In implementing the co-enrollment requirement, States must make trade-affected workers aware that they are being co-enrolled in the WIOA program.

Proposed paragraph (a)(2) required that States make available to eligible trade-affected workers co-enrollment in Wagner-Peyser Act Employment Service activities, vocational rehabilitation services, and veterans' programs, such as the Jobs for Veterans State Grants program, and other one-stop partner programs, if appropriate. When trade-affected workers are co-enrolled properly in other one-stop programs, provided timely rapid response services, and given appropriate career services, they return to work as quickly as possible. Co-enrolled trade-affected

workers also can receive supportive services that may help them complete TAA approved training and then return to employment. The Department expects the TAA Program, in general, to pay for all training and related costs and the majority of employment and case management services. However, trade-affected workers often also benefit from WIOA's supportive services and post-employment follow-up services, which cannot be funded through the TAA Program.

Proposed paragraph (b)(1) emphasized that most trade-affected workers are dislocated workers as defined at WIOA section 3(15). Most trade-affected workers have been laid off, are likely to be eligible for unemployment compensation or are otherwise attached to the workforce, and are unlikely to return to a previous industry or occupation, which are the primary eligibility criteria for the dislocated worker program. There are only a few barriers to WIOA eligibility. Proposed paragraph (b)(2) recognized that AAIWs will generally not be eligible for the WIOA dislocated worker program, but in certain circumstances, such as a general announcement of a closure, they may meet those eligibility criteria and must also be co-enrolled. Similarly, some partially separated workers' wages and time on the job will have decreased, but they remain employed and do not meet any other eligibility requirements of the WIOA dislocated worker program. Proposed paragraph (b)(3) described that the broader requirement under WIOA that certain males be registered under the Selective Service provisions can be a barrier to co-enrollment. There is no Selective Service registration requirement under the TAA Program. If a trade-affected worker knowingly and willfully fails to register, he or she cannot co-enroll in WIOA and, therefore, the co-enrollment requirement does not apply.

Multiple commenters favored the co-enrollment requirement. A State workforce agency supported the mandated co-enrollment proposal and argued that trade-affected workers also eligible for WIOA's dislocated worker program would receive better "wrap-around" and follow-up services that the TAA Program cannot cover on its own, ultimately facilitating improved experiences and outcomes for workers. Other commenters agreed with the proposal to mandate co-enrollment of trade-affected workers also eligible for the dislocated worker program, with some stating the proposal also would improve workers' outcomes and experiences. A different State workforce agency expressed support for the

proposal, saying it would increase access to a broad array of services and promote greater cooperation between TAA Program administrators and their partners.

Multiple commenters suggested that if the Department seeks to mandate dislocated worker co-enrollment in TAA Program regulations, it also should mandate such co-enrollment in the WIOA regulations to ensure equivalent expectations across the two programs. The States, under the Governor-Secretary Agreement, are bound to the implementation of the final rule. The Agreement binds the entire executive branch of the State governments to the terms and conditions of the Agreement and the implementation of the TAA Program. This includes the implementation of the co-enrollment requirement. The Governor, through the State workforce development board, has the authority to enforce the co-enrollment requirement at the State and local area levels. In addition, WIOA itself requires a State to enroll an eligible individual who applies for the dislocated worker program, though receipt of services will be contingent on funding availability. The Department will provide additional technical assistance and training on co-enrollment to the workforce system.

Other commenters opposed mandating co-enrollment, stating that co-enrollment "does not make sense" and "undermines" the WIOA dislocated worker program. These commenters suggested co-enrollment should only apply when another program can offer complementary services (or funding to support such services) to trade-affected workers. One commenter said that, while co-enrollment would benefit workers in certain situations, it would not offer any benefits to workers who do not have a need for any services offered under WIOA. The same commenter suggested the rule should provide additional guidance to States beyond simply allowing workers to opt out, including informing workers about services that would be best delivered through WIOA co-enrollment and describing any additional reporting or other requirements that could impact a worker's decision to co-enroll.

Co-enrollment of TAA Program participants in the WIOA dislocated worker program drastically improves the quality of service to trade-affected workers and improves participant outcomes. Based on data States reported between FYs 2009 and 2017, TAA Program participants who were co-enrolled in the dislocated worker program under WIA/WIOA have superior post-program employment

results, by a consistent margin, in comparison to TAA Program participants who were not co-enrolled in a WIA/WIOA dislocated worker program. Moreover, these data showed no adverse impact on outcomes under the dislocated worker program as a result of co-enrolling TAA Program participants.

TAA Program participants co-enrolled in the dislocated worker program have (1) higher training participation (75 percent versus 51 percent for those not co-enrolled), (2) higher training completion rates (78 percent versus 71 percent for those not co-enrolled), and (3) higher credential attainment (73 percent versus 62 percent for those not co-enrolled). All of these outcomes are correlated with higher performance outcomes and the differences in performance are statistically significant. Accordingly, the Department declines to revise this section, and this final rule adopts this section as proposed.

A State workforce agency said that while it appreciates the “philosophy” of co-enrollment in WIOA, it has concerns about the impact on resources available to support non-TAA-eligible workers who already have a less desirable suite of benefits. The State workforce agency stated that most of the dislocated workers it works with could not access TAA Program benefits, and while it would be beneficial to offer a full suite of benefits to trade-affected workers through WIOA co-enrollment, doing so might deplete resources available for non-TAA-eligible dislocated workers. The State workforce agency suggested that Congress should consider this resource limitation when reauthorizing the Act. The Department appreciates the commenter’s concerns but reminds States that TAA Program funds are to be the primary source of funds used to serve trade-affected workers. The co-enrollment requirement does not change this, and WIOA funding should be used to provide services only where TAA Program funding may not be used for the service. No changes have been made to the regulatory text as a result of this comment.

One commenter suggested the Department should clarify that States can use TAA Program funds to cover costs associated with workforce system alignment to reduce administrative burdens, and it requested that the Department provide more guidance to States about the information workers will need before deciding to opt out of co-enrollment. Two different commenters asked if the Department would issue subsequent administrative guidance about co-enrollment for the WIOA program. The Department agrees

with these comments. Technical assistance is available on the TAA Program website, and additional training and technical assistance will be provided to address co-enrollment and the use of TAA Program funds to support co-enrollment.

One commenter requested that the proposed language be revised to include co-enrollment in WIOA’s adult and youth programs also, and stated that there is a Trade Adjustment Assistance Data Integrity measure that currently allows for adult co-enrollment and asked whether that practice would continue. A different commenter, as part of a request for the addition of WIOA’s adult program to the co-enrollment mandate, requested guidance allowing States and local areas to shift funding to the adult program and argued that failing to include this option would reduce supportive and integrated services for TAA Program participants in areas with less funding for WIOA’s dislocated worker program. The Department is limiting the regulatory requirement to the WIOA dislocated worker program because those eligibility requirements most closely align with the TAA Program; however, nothing prohibits a State or local area from also co-enrolling the worker in the adult or youth program if he or she is otherwise eligible. No changes have been made to the regulatory text.

One commenter expressed concern about the mandated co-enrollment provision because WIOA staff do not currently meet merit staff criteria under the TAA Program, and TAA Program funds cannot support the delivery of TAA Program services by such staff. The commenter urged that TAA Program funds be opened to all staff who will support TAA Program activities if co-enrollment is maintained, and it also suggested WIOA’s dislocated worker program should remove its merit staffing requirements. The Department’s revision to the merit staffing requirements in § 618.890 will address the commenters’ concerns by allowing non-merit staff to be funded under the TAA Program for the provision of employment and case management services. No changes have been made to the regulatory text.

One commenter expressed concerns with provisions contained in § 618.325(a) and (b). The commenter suggested that the first sentence of § 618.325(a)(1) and the corresponding language in (b)(1) be revised to restrict trade-affected workers to those “participating in the TAA Program” in order to distinguish between TAA Program participants and workers who may meet the definition of “trade-

affected worker,” but choose to not apply or participate in the program. The commenter also suggested the first sentence should not describe the co-enrollment requirement as an absolute, since the second sentence clarifies that workers can decline co-enrollment in WIOA. The Department reiterates that a trade-affected worker has already been determined individually eligible for the TAA Program and, thus, already has a connection to the workforce system. The definition of the term “trade-affected worker” means both “adversely affected workers” and “adversely affected incumbent workers.” A member of a worker group only becomes an AAW or AAIW once the worker individually applies and is determined eligible for TAA Program benefits and services. The Department further maintains that the second and third sentences of § 618.325(a)(1) provide sufficient clarification on the absolute nature of the co-enrollment requirement and must be read together to understand that the requirement is on the State, not the worker. No change has been made to the regulatory text in the final rule in response to this comment.

A State workforce agency suggested changing the beginning of the first sentence of paragraphs (a)(1) and (2) to “The State must ensure” to account for the fact that the act of co-enrolling workers may occur by non-State staff at the local area level. The Department clarifies that the use of the word “State” is related to the Agreement that provides the formal relationship between the States and the Department. Due to the unique nature of the workforce systems in each State, while removing the word for one State might be beneficial, in another it may complicate the issue. For the reasons discussed above and elsewhere in this subpart, the Department maintains the regulatory text as proposed.

One State workforce agency expressed support for the alignment of employment and case management services with established TAA Program goals and practices. Another commenter agreed with co-enrollment between the WIOA and TAA programs but questioned whether the WIOA regulations would be amended to include requirements associated with the TAA Program and how States would enforce cooperation, arguing that TAA Program staff do not control WIOA staff. The Department clarifies that WIOA section 512(hh)(1)(B) amended section 221(a)(2)(A) of the Act to require rapid response and appropriate career services at the time a petition is filed. These requirements are already in the WIOA Final Rule at §§ 682.302(d) and

682.330(i) of this chapter. With regard to the co-enrollment requirement, the Department concludes that no additional regulatory language is needed in the WIOA rules to compel compliance with this new requirement, since AAWs are eligible to be enrolled in the WIOA dislocated worker program upon request. The States, under the Governor-Secretary Agreement, are bound to the implementation of these rules. The Governor-Secretary Agreement binds the entire executive branch of the State government to the terms and conditions of the Agreement and the implementation of the TAA Program. This includes the implementation of the co-enrollment requirement. The Governor, through the State Workforce Development Board, has the authority to enforce the co-enrollment requirement at the State and local area levels.

Some commenters recommended that additional clarity was needed on the permissible usage of TAA Program funding for non-merit staff carrying out activities under subpart C and said that this lack of clarity provided a reason to match the staffing flexibility described in the proposed regulations for the Wagner-Peyser Act Employment Service, that have since been finalized. The commenters cited language from the preamble of the Wagner-Peyser NPRM (84 FR 29433, 29434 (June 24, 2019)) describing the Department's proposal in that context to allow States the flexibility to use different types of personnel and staffing models according to their needs. This final rule does not specifically address the Wagner-Peyser Act Employment Service; rather, these rules focus specifically on the application of merit staffing provisions as they pertain to the TAA Program.

One commenter requested clarity on the types of documentation required to demonstrate proof that a rapid response event occurred. In many States, the provision of rapid response is recorded during the intake process, through a cross-match within the State's management information system (MIS), or through another record-keeping database. This rule does not provide a specific documentation requirement. The Department considered the comments received and has finalized the section in this final rule as proposed.

#### Section 618.330 Assessment of Trade-Affected Workers

Section 618.330 of the proposed rule required States to design an assessment process. Section 239(g)(4) of the Act permits the Department to require initial assessments for all trade-affected

workers as part of the TAA Program intake process. States must provide all trade-affected workers an initial assessment after determining that they are individually eligible for the TAA Program as part of the intake process. This meets a necessary component of the requirement at section 239(g)(4) of the Act that each State perform "intake of" trade-affected workers covered by a petition. Intake includes these assessments but also the collection of demographic information for reporting purposes. The initial assessment must include an evaluation of a trade-affected worker's skill levels (including literacy, numeracy, and English language proficiency), abilities (including skills gaps), and supportive service needs.

#### Paragraph (b)

Proposed paragraph (b) required that States ensure the scheduling of the assessment gives trade-affected workers enough time and information to consider, request, and enroll in training or obtain a waiver of the training requirement for TRA before expiration of the statutory 26-week deadline for enrollment in training.

One commenter suggested revising the language of § 618.330(b) on the scheduling of an initial assessment to avoid a conflict with the Department's proposed changes for staffing flexibility at § 618.890 which would allow for the assessment to be scheduled and provided by parties other than the State. The final rule uses the term "State" because it is the State, bound by the Governor-Secretary Agreement, that is ultimately responsible for the provision of services and benefits under the TAA Program. That does not mean, however, that the services cannot be provided by other non-State entities acting on its behalf. The Department has not made any changes to the regulatory text in response to this comment.

The same commenter suggested a language change to help clarify that this requirement only applies to trade-affected workers found eligible for the TAA program under § 618.820(a). As provided in § 618.110, a trade-affected worker is a member of a worker group found individually eligible for the TAA Program. Therefore, no change to the regulatory text is needed to meet the commenter's concern.

However, the Department has made a minor edit to the regulatory text to change the use of a pronoun.

#### Paragraph (e)

Proposed paragraph (e) discussed what to do if a partner program conducts the assessment(s). The use of partner programs' assessments can

increase efficiency, ensure that workers quickly receive appropriate reemployment services, and quickly identify those workers requiring a more comprehensive and specialized assessment of their skills. The Department recognizes that the lack of uniform requirements for assessments means that some assessments conducted by partner programs may not meet all TAA Program requirements for an initial assessment. If so, the State must supplement those partner program assessments with additional information to comply with § 618.335.

The same commenter who recommended revising proposed paragraph (a) similarly recommended changing part of § 618.330(e) to remove the reference to the State, again saying this change would account for the increased flexibility around staffing. For the reason discussed above, the Department declines to make any changes to the regulatory text in response to this comment.

One commenter stated that an initial assessment will already have been completed as part of the intake process prior to the establishment of an IEP and argued that, as long as the worker's interests, skills, and capabilities are sufficiently documented, this should suffice, thus avoiding the need for additional forms and paperwork that would burden case managers unduly. A different commenter said that the increased focus on data-driven AAW assessments would require administrators to allocate more resources to technical staff and systems. Analysis of State expenditure levels over the past several years shows that there are sufficient financial resources available to the States to meet these requirements. Also, the development and enhancement of an integrated service model within the one-stop delivery system reduces duplication of effort. As stated earlier, it is possible for intake, initial assessment, and establishment of an IEP to be developed at the same time. These efforts must be documented in a worker's case file, but the Department has not prescribed standard forms or formats of those documentation requirements.

The Department considered the comments received and adopts the section in this final rule as proposed.

#### Section 618.335 Initial Assessment of Trade-Affected Workers

Section 618.335 of the proposed rule implemented section 239(g)(4) of the Act. The WIOA implementing regulations at 20 CFR 678.430(a)(3) mirror the statutory language in WIOA section 134(c)(2)(A)(iii) on initial

assessments. Section 618.335 aligned the TAA Program with WIOA and provides the requirements for an initial assessment of trade-affected workers. The first step in the process is to determine whether the worker will need employment and case management services and training. The State must provide TAA Program benefit information to trade-affected workers no later than at the time of the initial assessment, as discussed in § 618.816(f). However, the State may provide this information to a worker even earlier, upon receiving a notice of a certified petition covering that worker.

The Department received support for this provision from several commenters. An LWDB stated that ensuring workers have access to individualized assessments was an improvement and commented that the language at § 618.335 mirrors language in the WIOA regulations. A different commenter said the requirement to provide a comprehensive IEP for TAA-eligible workers would help workers navigate complex decisions and choices related to reemployment planning.

Multiple commenters argued that requiring an initial assessment for all trade-affected workers would increase overall costs and may not be needed or valued by workers in all cases. The explicit requirement for assessment is not a change from current operations. The statute requires the provision of employment and case management services to all trade-affected workers, and these requirements include intake and orientation activities.

The same group of multiple commenters requested clarity on whether the initial assessment requirement would apply only to trade-affected workers interested in training or to all trade-affected workers. The Department clarifies that an initial assessment is required for all trade-affected workers, not just those interested in training. Initial assessments are also valuable to those workers who only will receive employment and case management services.

A State workforce agency recommended that RTAA customers be exempted from a skill level assessment, since they are already employed full-time and may have to miss work to participate in literacy and numeracy assessments. The Department has considered the proposal to exempt RTAA from the initial assessment requirement; however, since RTAA also allows workers to participate in TAA approved training while reemployed and because assessments are generally conducted at intake, before RTAA

eligibility has been established, this provision is adopted in the final rule as proposed. In accordance with § 618.330(f), a worker may refuse an assessment.

One commenter recommended the Department refrain from creating unintended barriers to occupational training as it develops standards for assessments and referrals to employment services. The same commenter offered several suggestions to improve procedures around the comprehensive and specialized assessment afforded to workers who disagree with their initial assessment, including respecting trade-affected workers' right to training, considering the duration and depth of a worker's job search, assessing employment suitability, establishing timeliness standards, giving workers the opportunity to decline diagnostic testing, and explicitly stating that aligning the process with WIOA's initial assessment process is meant to increase coordination and decrease duplicative work rather than limit access to training. The Department reiterates that this final rule has aligned the regulatory text with WIOA regulations wherever possible. In addition, the Department continues to encourage service integration between all partner programs. This final rule does not establish duplicative requirements or barriers to training.

One commenter raised concerns about the potential for the Department's new standards for assessments and referral to employment services to erect barriers to occupational training. The same commenter stated that the proposal does not require that the initial and comprehensive and specialized assessments occur "within a reasonable amount of time," which, if required, would help facilitate workers' participation in training programs. The commenter expressed concern that the "two-prong approach" enshrines the idea that workers need to "qualify" for training rather than it being an entitlement accessible to them immediately upon certification. The purpose of assessments is not to create barriers to training, but to ensure that training programs are appropriate for the worker and otherwise meet the criteria for approval of training in § 618.610. The criteria for the approval of training in § 618.610 are largely unchanged from the previous rules. The proposal described the requirement for assessments to be conducted and for determinations on enrollment in training to be based on those assessments. This is not a barrier to enrollment in training, but an assurance that the selected training is appropriate

for the worker and likely to lead to employment.

The same commenter stated that the proposed assessments could place excessive administrative burden on workers seeking training, who, the commenter said, currently face an already complex system. The commenter also asserted that, while greater alignment with WIOA is praiseworthy, "complete adoption" of WIOA's assessment process would not be appropriate for the TAA Program and could lead to the "rationing" of training. To address these concerns, the commenter recommended that the Department merge §§ 618.335 and 618.345 into one section that does the following:

- Affirms the purpose of the assessment process as matching a worker with the best training opportunity;
- Prevents delays in workers' access to benefits for which they are eligible;
- Avoids prolonging unemployment (*i.e.*, because of "lag time" between different steps in the process);
- Requires States to provide initial and comprehensive and specialized assessments at the same time (*e.g.*, within 10 days);
- Ensures that IEPs are completed reasonably soon after assessments occur; and
- Makes clear that alignment with WIOA's approach is not meant to create barriers to accessing training.

The Department is not establishing a sequence of services or specific timelines. The initial assessment, comprehensive and specialized assessment, and IEP, could be accomplished in the same case management session. In fact, some of these elements may have already been performed by partner programs. As these services are already being provided by States, these explicit requirements provide clarity to the States, not additional processes. Appropriately administered, these services will potentially shorten durations of unemployment and result in better outcomes for trade-affected workers. The Department has determined the goals outlined in the comment are already met in the regulations, so the provision is adopted in the final rule as proposed, with the exception of an edit related to the use of a pronoun in paragraph (b)(2).

Paragraph (c)

Proposed paragraph (c) explained the State's options for service strategies based on the information gathered from the initial assessment. This involves first making a determination of whether

or not there is suitable employment available to the trade-affected worker and then identifying the options for moving forward.

A State workforce agency recommended changing part of § 618.335(c)(1) by editing the language related to providing employment and case management services to account for the proposed increase in staffing flexibility provided at § 618.890. The same commenter suggested making similar changes to § 618.335(c)(2), which discusses making comprehensive and specialized assessments available, to account for such flexibility. The commenter said the language at § 618.335(c)(1) and (2) was confusing because it seems to indicate that making certain services available depends on determinations regarding suitable employment. The commenter said that, since § 618.345 requires comprehensive and specialized assessments for all trade-affected workers, § 618.335(c)(1) is inconsistent in stating such assessments will be made available “[i]f the worker disagrees with the determination.” Subpart C defines “make available” to mean that the service must be provided if appropriate for the worker or if requested by the worker.

The language in 618.335(c)(1) proposed that after conducting the initial assessment, a State may already have sufficient information to determine whether suitable employment exists. If it does, training cannot be approved and the State should ensure that additional employment and case management services are provided to assist the worker to obtain the suitable employment. The provision of (c)(2) would apply where the determination is made that there is no suitable employment available to the worker. An initial assessment is required as part of intake of AAWs and AAIWs (trade-affected workers) applying to enroll in TAA Program benefits and services. If a partner program has already conducted an assessment, it should not be duplicated. If a worker does not seek enrollment in the TAA Program, then neither intake nor an initial assessment is required. With respect to staffing flexibility, these rules use the term “State” because it is the State, bound by the Governor-Secretary Agreement, that is ultimately responsible for the provision of services and benefits under the TAA Program. That does not mean, however, that the services cannot be provided by other non-State entities. The Department considered the comments received and adopts this section in the final rule as proposed.

#### Section 618.345 Comprehensive and Specialized Assessment of Trade-Affected Workers

Section 618.345 of the proposed rule implemented section 235 of the Act. WIOA section 134(c)(2)(A)(xii) and its implementing regulation at 20 CFR 678.430(b)(1) require States to provide comprehensive and specialized assessments. WIOA draws a distinction between basic career services and individualized career services as individualized career services only are required to be provided if it is determined appropriate. Section 618.345 aligned the TAA Program with WIOA.

Proposed paragraph (a) required States to make available comprehensive and specialized assessments to all trade-affected workers. Proposed paragraph (b) provided requirements for the content of the comprehensive and specialized assessments. Proposed paragraph (c) reiterated WIOA’s regulations and was meant to ensure that States have the information needed to help workers select appropriate training and a viable future career, thus increasing their chances of successfully completing training and finding sustainable employment. Proposed paragraph (d) allowed States to use information from the comprehensive and specialized assessment to determine whether training can be approved under the criteria listed in subpart F.

One commenter recommended changing § 618.345(a) by qualifying the term “all trade-affected workers” with “determined eligible for TAA Program benefits under § 618.820(a).” The same commenter also maintained that the language at § 618.345(c) discussing training opportunities and requirements for training participation was more appropriate for § 618.330(b), because an initial assessment is required to access the training benefit, but a comprehensive and specialized assessment is optional. The commenter further suggested that, to remain consistent with the language at § 618.330(e), the Department should require the use of comprehensive and specialized assessments to determine whether workers meet the six criteria for training approval. The Department reiterates that in accordance with §§ 618.335 and 618.345, States are required to ensure that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment has been made available to him or her. As discussed in subpart F, a State may have sufficient information available to approve training under subpart F

without a comprehensive and specialized assessment or development of a full IEP. The Department considered requiring a comprehensive and specialized assessment, as well as requiring an IEP, prior to the State approving training under subpart F; alignment with WIOA, however, took precedence as it is a primary goal of these regulations. The Department is finalizing this section in the final rule as proposed, except for a technical correction in § 618.345(b), replacing the plural possessive pronoun “their” with the singular possessive noun “worker’s.”

#### Section 618.350 Individual Employment Plans for Trade-Affected Workers

Section 618.350 requires that States make IEPs available to trade-affected workers and details what must be included in an IEP and States’ responsibilities with regard to monitoring and updating IEPs. Requirements related to IEPs were previously located in 20 CFR part 617. The NPRM proposed to revise and combine two separate paragraphs of 20 CFR part 617, regulations covering training programs at 20 CFR 617.20(b)(8) and reemployment plans at 20 CFR 617.20(b)(13), and to implement a new process for making IEPs available for trade-affected workers.

Proposed paragraph (a) required States to make available an IEP to all trade-affected workers and required the establishment of an IEP for workers who apply for training under subpart F or a job search allowance under subpart D. Proposed paragraph (b) required that the IEP use the results of the initial assessment and, if available, comprehensive and specialized assessments to inform and document a service strategy that provides the trade-affected worker with needed services for reemployment. Proposed paragraph (c) provided the required elements of an IEP. The IEP must be developed jointly between the State and the trade-affected worker. These elements are required because they cover most aspects of the training and reemployment process. Proposed paragraph (d) explained that the IEP can be developed by a partner program, but it must be supplemented to include the elements required in proposed paragraph (c) if the IEP does not already include them. This reduces duplication of services while still meeting program-specific needs.

Proposed paragraph (e) required States to monitor the worker’s progress toward meeting the IEP’s elements. Proposed paragraph (f) required States to modify the IEP as necessary, and with

the worker's input. States also must modify the IEP when there is a change to the trade-affected worker's approved training program or revisions to receipt of subsistence and transportation payments. Proposed paragraph (g) explained that a trade-affected worker seeking a job-search allowance under subpart D or training under subpart F may refuse to participate in the IEP process. However, the trade-affected worker must provide sufficient information, either through a partial IEP or outside of the IEP process, for States to make a determination on the six required training approval criteria or the job search allowance application criteria. Failure to do so will result in denial of the training program or allowance. A trade-affected worker so denied can appeal the training denial, in accordance with provisions in subparts D, F, and H.

One commenter stated that the proposed rule's discussion of employment plans does not mention "measurable skill gains." The Department clarifies that measurable skill gains is not one of the statutory primary indicators of performance for the TAA Program, and thus is not covered in the regulatory text.

The same commenter also stated that there was no mention of the use of O\*NET for the development of employment plans. Although O\*NET is not specifically included in the regulatory text of § 618.350, it is mentioned in § 618.635, the provision related to work-based training, and the Department maintains that O\*NET is a valuable source of information and tools for States and workers to use in developing IEPs, conducting assessments, and providing other employment and case management services to workers.

One commenter said the new requirement in § 618.350(a)(1) that trade-affected workers receive an IEP would lead to improvements in case management services for such workers. The commenter stated that some trade-affected workers might not need training to secure suitable employment and said the TAA Program should not be a "one-size-fits-all" program. The Department concurs and appreciates the support.

One commenter requested clarity on the meaning of the Department's proposal at § 618.350(f)(1) that States must modify an IEP as necessary to facilitate a successful outcome for the trade-affected worker, because § 618.350(c)(2) indicates that an IEP documents the training program "proposed." The commenter claimed that the Department later switches to refer to "pursued" training. This

commenter asked whether this change in language was intended to indicate that new targeted occupations or training programs could be identified at a later date even after a worker has already begun training for a different occupation. The Department explains that the term "pursued training" does not appear in the regulatory text as proposed or in the final rule. In response to the commenter's question regarding whether a worker could change his or her training program to pursue a change in occupational goals, under the right circumstances such a change could be appropriate. Section 618.665 of the final rule addresses the circumstances under which an approved training program may be amended. Any change, of course, must be documented in the worker's IEP. The Department anticipates a high demand for technical assistance related to amending training programs and the relationship to IEPs. Technical assistance will be provided on these topics.

One commenter suggested several revisions to the language found within § 618.350 to promote consistency with other changes proposed related to the increased flexibility associated with the use of non-merit staffing. This commenter recommended changing the language in § 618.350(a) from "A State must" to "A State must ensure" an IEP is made available to workers to account for the added flexibility of using non-merit staffing. The commenter also recommended revising the second sentence of § 618.350(d) by removing the words "by the State" to allow for the added flexibility to use non-merit staffing. The sentence would state, "If the IEP does not contain the components, the IEP must be supplemented, in conjunction with the worker, to ensure it is fully compliant with the TAA Program requirements in this part." Similarly, the commenter recommended changing the language at § 618.350(e), (f)(1), and (g) to provide that States, rather than carry out directly certain activities described therein, must "ensure" the activities occur, again to account for the added flexibility to use non-merit staffing. With respect to staffing flexibility, the Department explains that this final rule uses the term "State" because it is the State, bound by the Governor-Secretary Agreement, that is ultimately responsible for the provision of services and benefits under the TAA Program. That does not mean, however, that other non-State entities cannot provide the services. No changes to the regulatory text were made.

The same commenter recommended removing "and industry" from proposed § 618.350(c)(1), which required that the IEP include the trade-affected worker's employment goal, including the targeted occupation and industry, since many occupations intersect with several different industries. More broadly, the commenter suggested the main thrust of this provision should be "identifying the targeted occupation" for purposes of the IEP. After considering this comment, the Department is retaining the reference to industry. While the occupational goal is the determining factor to be used in assessments and approval of training, the identification of an industry is also helpful in assisting a trade-affected worker in seeking employment and selecting appropriate training, if needed.

The same commenter stated that there was a disconnect between the proposed language at § 618.350(e) and (c), because the former requires the State to monitor workers' progress in meeting responsibilities, but the latter does not require that worker responsibilities be documented in the IEP. The same commenter also said that the requirement at § 618.350(c)(2) to include "The type of training proposed, if any," in an IEP was too generic and suggested revising it to state, "The specific training program proposed, if any," because identifying the specific training program would aid the State in identifying suitable services and supplemental assistance needs. The Department agrees and has modified the regulatory text at § 618.350(c)(2) in the final rule to require the State to document the training program proposed in the IEP and has added a new paragraph (c)(5) to this section to require that the IEP document the trade-affected worker's responsibilities under the plan. The addition of paragraph (c)(5) is an acknowledgment that the trade-affected worker has an active role and responsibilities in the IEP process.

The same commenter sought clarification as to why an IEP was required for the job search allowance, but not for the relocation allowance. This distinction, however, is based on language in the Act. For a relocation allowance to be payable, a worker must have already secured new employment. When applying for a job search allowance, the worker is still seeking employment, which gives rise to the requirement for an IEP. The final rule adopts this section as proposed, with the exception of the minor updates to IEP documentation requirements in § 618.350(c)(2) and (5).

The Department is finalizing the section in the final rule as proposed, except for the changes noted above.

#### Section 618.355 Knowledge, Skills, and Abilities of Staff Performing Assessments

Section 618.355 is a new provision that has no comparable counterpart in previous regulations or in administrative guidance. It requires that the staff performing assessments of trade-affected workers possess certain knowledge, skills, and abilities in order to effectively provide employment and case management services to trade-affected workers. This provision is essential to ensuring that requirements under section 235 of the Act are fully implemented and that States provide high-level services. The NPRM proposed at paragraph (c) of this section that funds available under section 235A(1) of the Act may be used to improve and maintain the knowledge and ability of staff conducting assessments.

An LWDB asked whether TAA Program funds could be used to train employees at partner agencies (citing WIOA's dislocated worker program staff as an example) that perform assessments for trade-affected workers. The use of TAA Program funds in this manner is already an allowable cost under the TAA Program and will continue to be so under this final rule. The Department adopts this new provision into the final rule as proposed.

#### Section 618.360 Employment and Case Management Services for Trade-Affected Workers in Training

Section 618.360 of the proposed rule was a new provision that had no comparable counterpart in previous regulations and was added as a result of TAA Program oversight and monitoring the Department conducted. This section required States to continue to make employment and case management services available to all trade-affected workers considering training (and for AAWs on a waiver from training in accordance with subpart G), taking TAA approved training, or who have completed training.

A nonprofit public policy organization expressed support for the Department's clarification in the proposed rule that States must make employment and case management services available to workers who are in or have completed training, or are considering training, because continued employment and case management services will help workers overcome barriers to completing training programs. The Department has made

two nonsubstantive edits to this section of the final rule to remove the use of parentheses, remove some repetitive language, and replace the word "upon" with "after," and otherwise adopts § 618.360 as proposed.

#### D. Subpart D—Job Search and Relocation Allowances

Subpart D governs job search and relocation allowances, which are authorized, respectively, under sections 237 and 238 of the Act. Subpart D proposed to consolidate provisions contained in subparts D, E, and F of 20 CFR part 617, which implement these allowances. Subpart D proposed to largely preserve the 20 CFR part 617 requirements for job search and relocation allowances, with a few substantive changes to reflect a statutory increase to the limit for job search allowance reimbursement per AAW and per certification to \$1,250 from \$800; an increase in the maximum lump-sum payment for relocation to \$1,250 from \$800; and the definition of "suitable employment" as used in the eligibility requirement for both job search and relocation allowances, explained below. Subpart D also proposed procedural changes from 20 CFR part 617.

Finally, subpart D proposed to continue to require the use of the FTR at 41 CFR chapters 300 through 304, in determining amounts to be paid to or on behalf of workers by States for travel, subsistence, and transportation benefits to eligible AAWs. This is not a new requirement; the Department already requires use of the FTR for specified purposes in 20 CFR 617.34, 617.42, and 617.45 through 617.47. Nevertheless, there has been confusion in some States as to what travel requirements apply to the TAA Program. Subpart D, in expanding references to the FTR, proposed clarifications that workers using job search and relocation allowances are subject to the same Federal travel rules as employees of the Department.

The Department is finalizing this subpart in the final rule as proposed, except as noted below. Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows. No comments were received on proposed § 618.400, and the final rule implements this section as proposed.

#### Section 618.405 General

A commenter suggested adding examples of allowable activities that could be funded under a job search

allowance. The Department has added a non-limiting list of examples of allowable activities to the rule text, though which activities are allowable may vary depending on the needs of the individual. Some examples of activities that may be funded with a job search allowance are: travel to and attendance at job fairs and interviews; travel to and attendance at prevocational workshops; making an in-person visit with a potential employer who may reasonably be expected to have openings for suitable employment; completing a job application in person with a potential employer who may reasonably be expected to have openings for suitable employment; going to a local one-stop, copy shop, Post Office, or similar entity to print, copy, mail, email, or fax a job application, cover letter, and/or a resume; going to a local one-stop, public library, community center, or similar entity to use online job matching systems, to search for job matches, request referrals, submit applications/resumes, attend workshops, and/or apply for jobs; and, attending a professional association meeting for networking purposes.

#### Section 618.410 Applying for a Job Search Allowance

Section 618.410 proposed the same application process that is described in 20 CFR 617.31, but proposed changes to the instructions on when to file an application. Under 20 CFR 617.31(b), an AAW who is covered under a petition and who is totally or partially separated may apply for a job search allowance before or after the Department issues a certification. Proposed § 618.410 changed these procedures to require that a State accept applications for job search allowance only after the Department has issued a certification.

A State workforce agency questioned whether the phrase "who has a total or partial separation" is required in paragraph (b) of this section, since the definition of AAW contains that concept.

The Department agrees that this language is unnecessary and has modified the regulatory text of the final rule to remove that phrase and has made other conforming edits in paragraph (b) of this section. This is a nonsubstantive change.

The same State workforce agency also asked whether it was the case that an AAW would need to first apply under § 618.820(a) (determinations on initial applications under applicable State law) before receiving a job search allowance under this section. The Department affirms that the worker would have to submit an initial application to establish

eligibility because § 618.410(b) requires that the worker apply for the job search allowance in advance of conducting the actual job search activity.

A different State workforce agency opposed the proposed elimination in § 618.410(b) of precertification applications for job search allowances, which it understood to impact relocation allowances as well. The State workforce agency said that the change would be unhelpful to workers, because they might not realize that they must apply for allowances before initiating job searches or relocations, and the certification process can last for months. The State workforce agency suggested the Department should amend the provision to allow workers who moved between the impact date and the certification date to remain eligible for relocations allowances to defray costs already incurred.

Workers are not eligible for job search or relocation allowances under the TAA Program until after a certification is issued and they are determined to be AAWs. The Department maintains that it is necessary for States to be made aware of the worker's planned job search and relocation activities, at the outset, to ensure expenditures will be appropriate. The requirement that the FTR apply to AAWs also prohibits eligibility to impacted workers who are not yet covered by a certification. Workers needing job search assistance prior to a petition determination should be referred to WIOA or other partner programs.

No change has been made to the regulatory text in response to these comments. The Department made a nonsubstantive change in paragraph (b) of this section, as discussed above, and otherwise adopts § 618.410 in the final rule as proposed.

#### Section 618.415 Eligibility for a Job Search Allowance

Section 618.415 proposed eligibility requirements for job search allowances. Section 237(a)(2)(B) of the Act requires as a condition for receipt of a job search allowance that an AAW cannot reasonably be expected to secure suitable employment in his or her commuting area. The Department has made two edits to the use of pronouns in paragraph (a)(1)(i).

#### Section 618.415(a)(3)

Proposed paragraph (a)(3) of this section substituted the term "suitable employment" for "suitable work" and eliminated the reference to long-term duration. As proposed, suitable employment may exclude some work—*i.e.*, some lower skilled and lower

paying work—that would qualify as suitable work under a State law. Suitable employment is work at a substantially equal or higher skill level paying at least 80 percent of the AAW's previous wage. Suitable employment differs from suitable work because, in most States, suitable work includes jobs with wages, skills requirements, or both that are lower than those in jobs that would qualify as suitable employment under the Act. Proposed paragraph (a)(3) also added "employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates." This alternative ensures that AAWs who can reasonably expect to find a job that otherwise meets the suitable employment definition except that it pays a wage of at least the 75th percentile of national wages, rather than paying at least 80 percent of the AAW's previous wage, would still be eligible for job search allowances.

Numerous commenters expressed support for the new provision allowing employment that pays at least the 75th percentile of national wages (and meets other requirements) as an alternative to suitable employment as long as its effect is to increase the number of trade-affected workers eligible for job search allowances. One commenter stated that the change would enable more workers to access the benefit, because it lowers the threshold for eligibility, and asked whether the Department planned to clarify further how to use the National Occupational Employment Wage Estimates, saying that its State "typically has lower wages."

One commenter said the provision is confusing and stated that it would need training itself before training one-stop center staff in its State on its implementation and also expressed concern about the complexity of the website containing the National Occupational Employment Wage Estimates referenced in the provision, saying it would require training to use it correctly. Another commenter requested clarification about whether the percentile standard is based on all occupations or only the occupation in which the worker is searching for jobs.

The Department explains that, when applying the 75th percentile, the State would use the percentile for the occupation of the job in question. If there are multiple jobs available that might be suitable, the percentile for that specific occupation would apply. The Department will provide training on this provision.

A State workforce agency sought clarification on the purpose of the phrase "in the area of the job search,"

saying that the definition of "suitable employment" does not mention such a restriction. The State workforce agency recommended deleting the phrase from this section.

States are required to review the availability of suitable employment within the area of the job search. As expressed in the NPRM preamble, the Department largely expects this benefit to be used for workers to travel to in-person interviews or job fairs outside of their commuting area. A State must determine that no suitable employment is available to the worker in the commuting area before approving a job search allowance. The Department has made no change to the regulatory text in response to this comment.

Multiple commenters sought clarification on the 75th percentile of national wages via the National Occupational Employment Wage Estimates.

To find the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, visit the U.S. Bureau of Labor Statistics (BLS) web page, select the appropriate State and occupation for the worker, view percentile wage estimates, and locate the 75th percentile. Similar comments were received for the same provision in the relocation allowance section. The Department will provide training on this topic.

A State workforce agency sought an edit to § 618.415(a)(3) that would clarify the requirements regarding the applicability of the definition of suitable employment. The Department has modified the regulatory text by restructuring (a)(3) from a single paragraph into a list for clarity.

#### Section 618.415(a)(4)

Proposed paragraph (a)(4) of this section established for the first time that the State determines whether an AAW could reasonably expect to find suitable employment through alternatives to a job search allowance, such as by having an AAW search and interview for jobs through electronic means.

One commenter requested clarification about the "alternatives to being physically present" part of this provision.

Examples of such alternatives would be telephone or video interviews, but this is not an exhaustive list and the Department encourages States to innovate in serving workers.

The same commenter said its State permits many job search activities to serve as the basis for a job search allowance, including attendance at prevocational workshops or job fairs, "job matching" through the State's

system, and “traditional” job interviews. The commenter added that the State based these permissible activities on a Department-sponsored webinar. The commenter asked whether the proposed language meant that the State could approve allowances for interviews only.

The Department confirms that all of the examples above could be allowable activities under the job search allowance benefit. In response to this comment, the Department has included a nonexhaustive list of allowable activities in the regulatory text at § 618.405(a).

#### Section 618.420 Findings Required for a Job Search Allowance

Section 618.420 proposed what a State must find before approving a job search allowance, and further delineates the responsibilities between a liable State and an agent State, when a job search occurs in a different State from the liable State. Proposed subpart H, Administration by Applicable State Agencies, would establish the responsibilities of the liable State and the agent State. Specifically, § 618.824 proposed that the liable State would make all determinations on each claim for program benefits, and the agent State would pay the costs for job search and relocation allowances.

Proposed paragraph (b) of this section added a new requirement that the agent State, when requested by the liable State, must verify with the employer and report to the liable State whether the AAW has obtained suitable employment, or a bona fide offer of suitable employment, and pay the job search allowance.

One commenter expressed concern that involving the agent State in job search allowances would complicate the process and “frustrate a potentially already frustrated affected worker.” The commenter recommended keeping the liable State as the party responsible for paying these allowances, asserting it would be more efficient than the Department’s proposal. To be clear, if a worker is traveling outside of the liable State for a job search allowance, but is not accessing or receiving any services in the State he or she is traveling to, then the State to which the worker travels is not an agent State. In that scenario, the liable State is also the agent State.

As liable and agent State responsibilities apply to various types of decisions, the Department has aligned the responsibilities in this final rule based on years of feedback and requests for technical assistance as well as reviewing requests for reserve funds.

The Department is aligning the agent State’s provision of services with funding for those services and is assuring the retention of the policies of the liable State to give strength to a seamless transition for the worker. Further explanation is provided in § 618.824. The Department has made no changes to § 618.420 regulatory text in the final rule as a result of these comments, but edited the section heading for § 618.420 to specifically refer to a job search allowance.

#### Section 618.425 Amount of a Job Search Allowance

Section 618.425 proposed how to calculate the amount of a job search allowance.

One commenter requested clarification about the meaning of the phrase “by the usual route” with respect to the calculation of allowable travel expenses under proposed § 618.425(a)(1).

The Department has determined that the phrase “by the usual route” means a route by which most commuters would typically travel. The route is usual if it is a reasonable one and not unduly out of the way. The Department has made no changes to the regulatory text in the final rule in response to this comment.

The same commenter also recommended adding the words “payment or” to § 618.425(b), regarding the total limit for a job search allowance, so that it reads, in part, “the State must reduce the job search allowance by the amount of the payment or reimbursement.” This suggested language considers that some job search allowance costs may be paid directly to a provider or vendor. In those instances, those costs are not a reimbursement. Upon consideration, the Department has added the recommended language to the regulatory text in the final rule at § 618.425(b). The Department has also made two edits to the use of a pronoun and related subject-verb agreement.

#### Section 618.430 Determination and Payment of a Job Search Allowance

Section 618.430 proposed to require an AAW to provide supporting documentation upon completion of a job search in order for the State to make payment and requires the State to reimburse the AAW promptly.

Proposed paragraph (d) of this section specified the evidence an AAW must provide to receive a job search allowance. The Department proposed aligning the requirements for documentation with the FTR and the Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR part 200. At the time of the proposed rule’s publication, receipts were required for all lodging and purchased transportation expenses. A receipt was also required for any expense of \$75.00 or greater.

A State workforce agency requested more specificity in paragraph (d) of this section about which sections of the FTR and the Uniform Guidance provide the applicable requirements for documentation of expenses. The State workforce agency also recommended revising the last sentence of this provision to clarify that an “adjustment” in cases where the State has advanced the worker more than the allowable amount means the worker must reimburse the State for the difference. The State workforce agency suggested modeling this recommended revision on the language used in § 618.460(c)(2) (e.g., “the worker must repay any excess received”).

The FTR is maintained by the General Services Administration (GSA) and can be accessed at <https://www.gsa.gov/policy-regulations/regulations/federal-travel-regulation/federal-travel-regulation-and-related-files>. The Uniform Guidance is maintained by the Office of Management and Budget (OMB) and is available at <https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2chapterII.tpl>. After reviewing the suggestion to clarify language in § 618.430(d), the Department concurs with the suggestion to use the same language from § 618.460(c)(2). The Department has made nonsubstantive edits to this section in the final rule, including correction of a cross-reference to the section heading of a different section, edits to the use of a pronoun, and a clarification of the term “adjustment.”

#### Section 618.435 Job Search Program Participation

In the NPRM, the Department proposed § 618.435 as a replacement for 20 CFR 617.49 and to implement section 237(c) of the Act which provides that a State may reimburse any AAW for necessary expenses incurred by the worker in participating in an approved job search program (JSP).

Proposed paragraph (c) of this section required that subsistence and transportation costs must be approved, as appropriate, for workers participating in a JSP and the JSP may be within or outside the AAW’s commuting area.

One commenter said it was not clear why transportation and subsistence

payments would be provided for travel within the worker's commuting area.

A JSP is different than the job search allowance and is governed by a separate statutory provision. Section 237(c) of the Act provides an exception to the restrictions provided in section 237 governing job search allowances. Thus, the statutory prohibition on paying for transportation and subsistence within the commuting area does not apply to a JSP. The Department has made no change to the regulatory text in the final rule in response to these comments.

#### Section 618.440 Applying for a Relocation Allowance

Section 618.440 of the proposed rule described the application process for a relocation allowance but differed from 20 CFR 617.41 on when to file an application.

Proposed paragraph (b) allowed an AAW to apply for a relocation allowance only after the Department issues a certification covering that worker. This is consistent with section 238(a)(1) of the Act, which permits "an [AAW] covered by a certification . . . to file an application for a relocation allowance." This mirrored the change for job search allowances reflected in proposed § 618.410, which also does not permit applications until after the Department issues a certification. A State may not issue a relocation allowance or a reimbursement to anyone not covered by a certified petition for any reason. As previously noted in the preamble discussion of proposed § 618.410 regarding job search allowances, the Department proposed this change because permitting precertification applications can raise workers' expectations of payments that may not become available.

Proposed paragraph (b) of this section also contained the requirement that the State may approve the relocation only after an AAW files an application and before such worker undertakes the relocation.

A State workforce agency questioned whether the phrase "who has a total or partial separation" is required in paragraph (b) of this section since the definition of AAW contains that concept. The State workforce agency also asked whether it was the case that an AAW would need to first apply under § 618.820(a) (determinations on initial applications under applicable State law) before receiving a relocation allowance under this section.

The Department explains that this question is the same as the one raised under the job search allowances section (§ 618.410) and reiterates that a worker must first be determined to be an AAW

prior to submitting an application for a relocation allowance. Furthermore, an application for relocation allowance must be approved by the State prior to the beginning of the relocation. The Department has modified the regulatory text in the final rule to remove the language regarding separations since an AAW has already experienced a separation.

#### Section 618.445 Eligibility for a Relocation Allowance

Proposed § 618.445 on eligibility for a relocation allowance combined the requirements in 20 CFR 617.42 (Eligibility) and 617.43 (Time of relocation), edited them for clarity, and made several significant changes.

##### Section 618.445(a)(5)

Proposed § 618.445(a) removed the requirement in 20 CFR 617.42(a)(5) regarding registration with the State agency from the job search eligibility requirements because the Act does not contain a registration requirement for relocation allowance eligibility and because proposed § 618.310 of subpart C, absent from 20 CFR part 617, already required that States make available employment and case management services to all trade-affected workers. Further, proposed paragraph (a)(5) of this section departed from 20 CFR 617.42(a)(6) in three respects. Proposed paragraph (a)(5) of this section substituted a Federal law definition of "suitable employment" for "suitable work" under State law and eliminated the reference to "affording a reasonable expectation of employment of long-term duration," because the concept of long-term employment is substantially included in the definition of "suitable employment." Proposed paragraph (a)(5) of this section also added "employment that pays a wage of at least the 75th percentile for national wages, as determined by the National Occupational Employment Wage Estimates." This alternative ensures that AAWs who obtain or receive a bona fide offer of a job that otherwise meets the suitable employment definition except that it pays a wage of at least the 75th percentile of national wages, rather than paying at least 80 percent of the AAW's previous wage, would still be eligible for relocation allowances.

Numerous commenters expressed support for the new provision allowing employment that pays at least the 75th percentile of national wages (and meets other requirements) as an alternative to suitable employment as long as its effect is to increase the number of trade-affected workers eligible for relocation allowances. One commenter said the

provision is confusing and stated that it would need training themselves before training one-stop center staff in its State on its implementation. The commenter also expressed concern about the complexity of the website containing the National Occupational Employment Wage Estimates referenced in the provision, saying it would require training to use it correctly.

Similar comments to the above were received for § 618.415 under the job search allowance provisions. Section 618.415 proposed the same use of the 75th percentile of national wages as an additional option for determining suitable employment for eligibility of a job search allowance. The comments received on that proposed rule were nearly identical to those in this section. The Department did not revise § 618.445(a)(5) and the final rule adopts paragraph (a)(5) of this section as proposed.

##### Section 618.445(a)(6)

Proposed paragraph (a)(6) of this section integrated 20 CFR 617.42(a)(7) and 617.43 and simply stated the two statutory 182-day time limits for beginning a relocation, instead of stating that an AAW must begin a relocation "within a reasonable period" and later elaborating on what is a reasonable period merely by providing the same deadlines as in this proposed paragraph (a)(6). Proposed § 618.445 omitted references to reasonable period to begin a relocation because the firm deadlines provided for an AAW beginning a relocation are sufficient and render moot the references to a reasonable period.

Two State workforce agencies requested additional guidance on the language in § 618.445(a)(6)(ii), regarding workers who have completed an approved training program, that conditions the time limit on the workers having received supplemental assistance under § 618.640(c) and (d), because the training occurred outside their commuting area. One of the State workforce agencies asked whether this provision would allow only workers who completed training with supplemental assistance extra time in which to begin relocation, thus excluding workers who did not receive supplemental assistance. The same State workforce agency said that such an approach would be "manifestly unfair" to workers with employment prospects outside their commuting area. A different commenter asked the Department to keep the time limit for a worker to begin relocation and receive an allowance the same to preserve AAWs' access to services.

While the Department appreciates the commenters' input, the 182-day period after the conclusion of an approved training if the worker received supplemental assistance and transportation assistance is a statutory requirement found in sections 237(a)(2)(C)(ii) and 238(a)(2)(E)(ii) of the Act. The Department does not have the authority to establish a different deadline. Accordingly, the Department declines to revise this section and this final rule adopts this section as proposed, with an edit to the use of a pronoun in paragraph (b).

#### Section 618.450 Findings Required for a Relocation Allowance

The Department proposed § 618.450 in the NPRM as the counterpart to 20 CFR 617.44 and delineated in this section the responsibilities between a liable State and an agent State with respect to relocation allowances when a relocation occurs to a different State from the liable State. Proposed subpart H established the responsibilities of the liable State and the agent State. Specifically, proposed § 618.824 established that the liable State makes all determinations on each claim for program benefits, and the agent State pays the costs for job search and relocation allowances.

One State workforce agency expressed concern that involving the agent State in relocation allowances would complicate the process unnecessarily and could confuse workers by introducing a party they might otherwise have no need of knowing. Two different commenters requested clarification about the provisions regarding assistance for which an agent State is responsible. One of those commenters expressed confusion about what the proposed language means and asked to which of the following situations it applies: (1) A worker moves to the agent State and then requests a relocation allowance for another move within the agent State; or (2) a worker requests a relocation allowance to move from the liable State to the agent State. Similarly, a different State workforce agency asked the Department to confirm its reading of the provision as meaning that, when an AAW relocates from a liable State, the State to which the AAW moves is the agent State, and the agent State is responsible for the relocation allowance. The same State workforce agency said it would make more sense, in that case, for the liable State to remain responsible for relocation allowance applications and payments. Conversely, the State workforce agency suggested that in cases where the AAW already lives outside the liable State and wants to

relocate, whether to a different State or within that same State, then the State of residence should be considered the agent State, thus assuming responsibility for the relocation allowance. Several other commenters were concerned with some of the language regarding agent and liable States.

If a worker is relocating to a State other than the liable State, but not receiving any services in the State he or she is relocating to, then the State to which the worker travels is not an agent State. In that scenario, the liable State is both the liable and agent State and would be responsible for making the payments.

As liable and agent State responsibilities apply to various types of decisions, the Department has aligned the responsibilities in this final rule based on years of feedback and requests for technical assistance as well as reviewing requests for reserve funds. The Department is aligning the agent State's provision of services with funding for those services and is assuring the retention of the policies of the liable State to give strength to a seamless transition for the worker. Further explanation is provided in § 618.824 and the regulatory text is unchanged. The Department has determined that the previous rules in 20 CFR part 617 on this topic were incomplete and, by making agent and liable State activities more consistent in this final rule, there will be less confusion in the States and reduced requests for technical assistance around these areas.

Similar comments were received under the job search allowance provisions regarding which State is responsible for making payments. The Department modified the section heading for this section to reference a relocation allowance and corrected the citation in paragraph (a)(2) to reference § 618.445(a)(1); otherwise, the final rule adopts this section as proposed.

#### Section 618.455 Determining the Amount of a Relocation Allowance

Section 618.455 in the proposed rule consolidated, reorganized, and updated the previous requirements for determining the amount of a relocation allowance in 20 CFR 617.45 (Amount), 617.46 (Travel allowance), and 617.47 (Moving allowance).

Proposed paragraph (a)(3)(ii) increased the allowable amount of insurance coverage of household goods and effects to \$40,000 from \$10,000, found in 20 CFR 617.47(a)(1). Proposed paragraph (a)(3)(iii) provided that, if more economical, the State may directly

arrange for a carrier and insurer selected by the AAW to move and insure a worker's household goods and personal effects. Proposed paragraph (a)(3)(iii) also provided that the State may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. Under proposed paragraph (a)(4), a relocation allowance is paid as a lump sum equal to three times the worker's average weekly wage, not to exceed \$1,250. The lump sum maximum reflects the statutory limit and is an increase from the \$800 maximum provided in 20 CFR 617.45(a)(3).

A State workforce agency asked whether relocation allowances pay for moving equipment, such as boxes and tape, dollies, and car trailers. This is a very fact-intensive inquiry and difficult to answer without additional specific information. The Department refers the State to the FTR and advises it to direct any additional questions to its appropriate regional office who can assist with answering what is a very fact-dependent question.

One commenter supported the proposed increase in the amount of insurance coverage for a worker's household goods from \$10,000 to \$40,000, arguing that the costs of such goods have gone up considerably since the amount was last revised. A State workforce agency requested clarification about whether a State must follow procurement rules in carrying out proposed § 618.455(a)(3)(iii), under which the State may make direct arrangements to relocate a worker's belongings.

The Department affirms that States are subject to the Uniform Guidance, which requires States to use their non-Federal procurement standards.

Two commenters supported the full amount of a relocation allowance being paid as a lump sum. One of the commenters stated that the amounts available to workers for relocation are still "minimal," but said paying the total allowance in one installment would be more effective than distributing it over time. Similarly citing research showing the importance of income and reemployment supports to displaced workers, the other commenter stated that the financial effects of job loss can be substantial and stated that enhancing access to such supports can help these workers search for jobs more effectively.

The Department concludes that this practice will limit the financial strain experienced by workers as they transition to new employment. The Department has made six minor edits in paragraph (a) related to the use of

pronouns, and otherwise adopts this section in the final rule as proposed.

#### Section 618.460 Determinations and Payment of a Relocation Allowance

Proposed § 618.460 regarding determinations and payment of a relocation allowance served the same purpose as 20 CFR 617.48 (Time and method of payment), with some changes and reorganization. Nothing in § 618.460 as proposed departed in substance from 20 CFR 617.48 except for the requirements that an AAW be covered by a certification as a condition of the State accepting an application, and that workers submit documentation supporting all lodging, transportation, and meal expenses to be reimbursed by the State. This documentation is required for the same reasons it is required for workers seeking reimbursement of expenses through the job search allowance. Section 618.460 as proposed also reorganized the provisions of 20 CFR 617.48 and revised them for greater clarity.

#### Proposed Paragraph (c)

Proposed paragraph (c) specified what the AAW must provide for expenses to be reimbursed by a State under a relocation allowance. This specification served to clarify 20 CFR 617.48(b)(1)(ii) by requiring workers to provide documentation in accordance with the FTR and the Uniform Guidance. At the time of the proposed rule's publication, this included receipts for all lodging, purchased transportation, and any expense equal to or greater than \$75.00.

Several commenters expressed concerns about advance payments for relocation allowances. Some of these commenters argued that collecting overpayments would be challenging. Those commenters said receipts and evidence of completion should be required for payment and they argued that sometimes the only approach that will guarantee a worker follows the rules and remains in contact with staff is the "promise" of future payment, especially if the worker has moved across State lines. Two commenters said compliance with the proposal would require changes to laws, policies and procedures, or systems in States that currently do not allow advance payments. A different commenter said that sometimes moves occur so rapidly that the fiscal department does not have enough time to process the payment in advance. A State workforce agency said that mandating advance payments by States could weaken accountability and encourage fraud. The State workforce agency also stated that tracking receipts after payment has already been received

could be burdensome for workers and suggested reimbursement based on known costs as a more streamlined approach. Two commenters said that, if paid in advance of a relocation, workers and their families would be less likely to "cooperate" when it came time to submit documentation of the actual costs incurred. One of the commenters suggested instead paying 50 to 60 percent up front with the remainder payable upon completion of the move. A commenter recommended making advance payment optional by replacing the word "must" with "may."

With respect to the commenters' concerns about the practice of advancing funds to AAWs related to relocation expenses, the Department advises that this is not a new requirement. The goal of this subpart D is to convey the importance of reducing the financial stress placed on workers as they transition to new employment by reducing their out-of-pocket expenses at a time when they may still be unemployed and by minimizing delays caused by reimbursement procedures. The requirement to advance funds is not optional and States may not apply a percentage limit that is not authorized in this final rule. These payments are subject to the overpayment provisions contained in subpart H at § 618.832 and workers should be advised of that at the time the advances are paid.

Another commenter raised similar concerns regarding advance payment of the lump sum benefit. The lump sum benefit, however, does not require repayment as it may assist AAWs with out-of-pocket and incidental moving expenses not directly reimbursed through the relocation benefit.

The Department is finalizing this provision in the final rule as proposed, with the exception of an edit to the use of a pronoun.

#### Other Comments on Determinations and Payment of a Relocation Allowance

A State workforce agency requested clarification about how to calculate and administer relocation allowances. A different State workforce agency asked for more specificity in paragraph (c)(2) as to which sections of the FTR and the Uniform Guidance contain the applicable requirements for documentation of expenses. The Department refers the States to 41 CFR part 302, which provides the applicable regulations for relocation costs.

#### Paragraphs (d) and (f)

Proposed paragraphs (d) and (f) incorporated the provisions from 20 CFR 617.48(b) and (d).

One commenter expressed confusion about the intent of paragraph (d)(1) of this section, regarding the use of commercial carriers to move a worker's belongings, and stated its interpretation of the provision as follows: If the AAW is the one paying the carrier and insurer, then the State must advance payment to the AAW, but if the State is paying, then it must pay the carrier and insurer directly before the scheduled shipment. The Department also made a similar change in § 618.460(c) to make the same clarification for payment of travel allowances. The same commenter said that if this interpretation is correct, then the Department should rewrite the provision to make that meaning clearer.

After considering this comment, the Department concludes that the regulatory text in § 618.460(d)(1) could be clearer and has moved the provision proposed as § 618.460(d)(1)(iii) to § 618.460(d)(1) and rephrased it to clarify that, if the State is paying for the commercial carrier, that payment must be made in advance. The Department also made two edits to the use of pronouns in paragraph (d).

The same commenter also said it was "unsure about the logic" of the final sentence in paragraph (d)(1) of this section. Specifically, the commenter asked whether it means that payment must be made either exactly 10 days before shipment or at the time of shipment, but cannot be made at any point in between. Finally, the commenter questioned whether the purpose of the provision was to bar payment more than 10 days before shipment or to require payment within 10 days before shipment, and it said the latter framing would correspond to language in paragraph (d)(2) of this section. The Department agrees that this section could be clearer. A 10-day advanced payment window was established in order to limit the financial impact on workers during a time of transition to new employment.

The Department has moved the provision proposed in § 618.460(d)(1)(iii) to § 618.460(d)(1) and rephrased it to clarify that the payment must be made no earlier than 10 days in advance and no later than at the time of the scheduled shipment.

The same commenter also requested clarification about paragraph (f), concerning when relocation is considered complete, asking whether it is the case that delivery of belongings to temporary storage completes relocation, but only if the storage is within the area of relocation (as opposed to the area from which the worker moved). The commenter suggested that the first sentence could be clarified by reversing

the order of the “area of relocation” and “temporary storage” clauses so that it reads as follows: “An AAW completes a relocation when the worker and family, if any, along with household goods and personal effects are delivered to the new residence or to a temporary storage within the area of relocation.” While in most cases the commenter is correct that the relocation is completed when the last of the household goods are delivered to the new residence, to maintain the flexibility to fit all applicable workers, the Department did not further define the completion of a relocation because this will vary from worker to worker. The Department made a minor edit to the use of a pronoun in paragraph (e).

#### *E. Subpart E—Reemployment Trade Adjustment Assistance*

Subpart E governs RTAA. TGAAA established the RTAA program to replace the demonstration project known as ATAA, established by TAARA 2002. This subpart prescribes regulations implementing provisions in section 246 of the Act and incorporates administrative guidance. Before subpart E, there were no regulations covering the RTAA program.

RTAA provides wage supplements to eligible AAWs, aged 50 and older, who return to work earning less than their adversely affected employment and \$50,000 or less per year. AAWs receiving RTAA also may be eligible to receive employment and case management services, job search and relocation allowances, and TAA approved training. If the HCTC benefit is available, RTAA recipients are eligible to apply for or claim the HCTC. The goal of RTAA is to encourage reemployment for older workers who may find it difficult to secure a new job that pays as much as their old job.

Section 246(a)(3) of the Act sets forth the eligibility criteria for RTAA. An AAW is eligible for RTAA after beginning a new, full-time job at a firm other than the one from which the AAW was separated (or combination of jobs at firms that equate to full-time employment) that pays less (or collectively pays less if a combination of jobs) than the AAW’s adversely affected employment, or after beginning TAA approved training while reemployed at least 20 hours per week at a new job with a firm other than the one from which the AAW was separated.

Compared to ATAA, RTAA expands the range of benefits available by permitting training while receiving RTAA, and by allowing receipt of RTAA after such training is completed, if the AAW otherwise meets eligibility

requirements. This subpart E permits eligible AAWs to remain eligible for RTAA when employed part-time, provided that the AAW is enrolled in TAA approved training. Some AAWs may receive a TRA, the income support component of the TAA Program, before receiving their first RTAA benefit payment. For such workers, section 246(a)(4) of the Act requires reduction in the RTAA eligibility period by the number of weeks of TRA received as well as a reduction in the maximum RTAA amount payable.

Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows. No comments were received on proposed §§ 618.500 and 618.530, and the final rule implements these sections as proposed.

#### Section 618.500 Scope

Proposed § 618.500 set forth the scope of this subpart. It included an explanation of what RTAA is, and explained that this subpart identifies the eligibility criteria and the benefits available to AAWs who are eligible for RTAA.

The Department received no substantive comments on this section. Accordingly, it is adopted into the final rule as proposed.

#### Section 618.505 Individual Eligibility

Section 618.505 as proposed enumerated the eligibility criteria for RTAA, as set forth in section 246 of the Act.

#### Paragraph (a)

Proposed paragraph (a) outlined the general age, wage, and reemployment requirements to be eligible for RTAA. Proposed paragraph (a)(4)(i) codified that the determination of whether an AAW is employed full-time is based on the definition of full-time employment in the State in which he or she is employed.

One commenter wrote that the wage cutoff of not more than \$50,000 in § 618.505(a) should be reconsidered, recommending that it either be set to the 75th percentile of national wages according to National Occupational Employment Wage Estimates or based on workers’ “customary job classification.” The same commenter maintained that RTAA should protect workers who accept lower paying jobs rather than partial separation. Another commenter wrote that the salary cap and compensation available to RTAA recipients should be raised in light of wage increases since 2002. The

Department reiterates that the limit on earnings for RTAA recipients is set by statute at section 246(a)(3)(B)(ii) of the Act, as is the total amount of the benefit, which is set by section 246(a)(5)(A)(i) of the Act. The Department does not have the authority to increase either of these limits. However, the Department has revised the regulatory text in § 618.505(a)(2) to remove the word “calendar” and to add language regarding the projection of earnings. The language regarding projected earnings has also been added to § 618.505(a)(3).

One commenter wrote that proposed § 618.505(a)(4)(i) appeared to conflict with TAARA 2015, which it said allowed full-time RTAA participants to participate in the TAA Program as well. There is a statement contained in § 618.505(a)(4) that it is *either* full-time employment *or* a combination of employment and training that provides eligibility.

The same commenter added that the provision also appears to be contradicted by proposed § 618.520(b), which provided that RTAA recipients are eligible for TAA Program employment and case management services and training. The Department reiterates that RTAA participants are eligible for employment and case management services and training. The regulatory text at § 618.505(a)(4)(i) does not exclude workers who are employed full-time and also enrolled in training; it is intended only to make clear that workers employed full-time that otherwise meet the RTAA requirements need not be in training to receive the benefit.

A nonprofit public policy organization supported providing wage insurance to part-time workers receiving TAA approved training, writing that doing so will help workers balance work and education. The Department appreciates the commenter’s support.

#### Paragraph (b)

Proposed paragraph (b) explained terms specifically for the purposes of RTAA. As explained in more detail in the preamble to subpart A in the NPRM, the proposed definition of “firm” revised the term at 29 CFR 90.2. Of note, the proposed definition of “firm” incorporated the definition set forth at section 247(3) of the Act. Pursuant to the Act, the term “firm” means “a firm, including an agricultural firm or service sector firm; [or] an appropriate subdivision thereof.” Therefore, the term “firm” in the RTAA context means “firm or appropriate subdivision.”

Proposed paragraph (b)(1) provided instructions to States on how to make decisions relative to determining RTAA

eligibility based on whether or not the Department issued a certification for a subdivision of a firm or the entire firm. Proposed paragraph (b)(2) explained that the term “firm” includes predecessors and successors-in-interest, affiliated firms, and continuity of operations at the same location. The proposed regulatory text established several criteria in descending order that the State should apply to determine whether one firm is a successor-in-interest to another, including a list of conditions at paragraphs (b)(3)(i) through (vii) that a State may need to consider when rendering a determination. The intent of this provision was to assist States in determining whether the AAW has become employed by a “firm” that is different from the “firm” from which the worker was separated in accordance with section 246(a)(3)(B)(iv) of the Act.

A commenter wrote that proposed § 618.505(b)(2)(iii) has two seemingly contradictory statements on the RTAA eligibility of workers reemployed with a successor-in-interest to their former firm. The same commenter also questioned why these statements are located in § 618.505 and suggested relocating them to “another section” without specifying which one. The Department found no contradiction in the regulatory text. The intent of the regulation is to prohibit a situation where a firm is sold to a successor-in-interest and the AAWs’ wages are then cut, resulting in the payment of RTAA to continue to provide workers with similar wages and shifting the burden from the employer to the government.

One commenter asked for further guidance on the term “continuity,” as used in proposed § 618.505(b)(3). The commenter also asked if the term “majority” should be interpreted to mean that at least four of seven criteria apply. The Department is choosing not to define either of these terms in regulatory text to allow flexibility for States to interpret the test. With regard to continuity, there may be a short gap in operations from the firm to the successor.

The Department has added, for purposes of RTAA, a definition of the term “year.” For purposes of RTAA, a year represents the 12-month period beginning with the first full week of qualifying reemployment. This definition was added to resolve the issues with earnings projections for eligibility and continued eligibility in § 618.515(a)(3).

#### Paragraph (c)

Proposed paragraph (c) explained that, for purposes of RTAA, full-time

employment is defined by the law applicable to the State in which the reemployment occurs. The Department proposed to define State law in § 618.110 as the State UI law. Proposed paragraph (c)(1) explained that if State law does not contain a definition of full-time employment, the State is required to define full-time employment for RTAA purposes. Proposed paragraph (c)(2) required the State to verify reemployment in accordance with State policies. Verification of the firm can occur by such communication methods as email, phone call, certified letter, or other means determined by the State. Proposed paragraph (c)(3) established that if an AAW has multiple jobs, the State must combine hours of all employment to determine whether the worker meets the definition of full-time employment. Proposed paragraph (c)(4) provided that if the worker is employed in more than one State, the State must apply the State law with the lowest threshold of hours required for full-time employment.

A State workforce agency recommended altering § 618.505(c)(4)(i) (the Department believes the commenter is referring to § 618.505(a)(4)(i)) to make the applicable definition for “full-time employment” correspond with that of the liable State, rather than the State in which the AAW is employed. The Department explains that the liable State must still make the determination based on the definition of full-time employment of the State in which the AAW is reemployed. The Department is making no change to this practice.

A State workforce agency recommended that workers at successor-in-interest firms be eligible for RTAA when they work for reduced wages, arguing that they should be able to accept suitable employment without risking their UI benefits. The State workforce agency said that this practice could help older workers especially find reemployment while receiving modest RTAA subsidies. The Department declines to adopt this suggestion and is making no change to regulatory text as proposed because section 246(a)(3)(A)(iv) of the Act expressly prohibits payment of RTAA to an AAW who is employed at the firm from which he or she was separated, and a successor-in-interest, as defined in this final rule, is considered to be the same firm.

One commenter wrote that, regarding the requirement in proposed paragraph (c)(1) that States define full-time employment, the commenter was currently using a definition from adjudicatory decisions rather than from a State statute, as no such statute had

yet been passed. The Department advises that if there is no definition of full-time employment in applicable State law, use of adjudicatory decisions or similar determinations would be appropriate. The State also is permitted, under § 618.808 to establish a definition for TAA Program purposes.

#### Paragraph (d)

Proposed paragraph (d) provided that an application or eligibility for UI is not needed for RTAA purposes. There is no direct relationship between UI and RTAA. Eligibility for RTAA is not dependent on eligibility for UI. No comments were received on this paragraph.

#### Paragraph (e)

Lastly, proposed paragraph (e) explained the types of employment that are considered qualifying reemployment for RTAA. Proposed paragraph (e)(1) established that qualifying reemployment under RTAA is the same as covered employment for UI purposes. Proposed paragraph (e)(2) explicitly allowed a State to consider employment that provides wages plus commission, and piecework-based employment to be reemployment when determining RTAA eligibility. The Department proposes to authorize these specific types of employment to ensure that States are not limiting reemployment opportunities. Proposed paragraph (e)(3) provided that qualifying reemployment may include multiple jobs. In some instances, an AAW may have multiple part-time jobs instead of a single full-time job. This flexibility will allow AAWs to combine multiple part-time jobs to be considered full-time employment. Proposed paragraph (e)(4) provided that the State must count hours in which an RTAA-eligible worker is on employer-authorized leave as hours of work for purposes of meeting the full- or part-time employment definitions of this section, provided that doing so is consistent with State law. The Department found that States were not counting holidays or leave as hours of employment. This resulted in States disqualifying AAWs when there was a paid, observed holiday because the AAW did not “work” those hours, or in instances where the worker may have used a sick day.

A State workforce agency requested that the Department reconcile an apparent conflict between proposed paragraphs (c)(4) and (e)(3). The State workforce agency provided an example scenario of a worker employed in two States, one of which does not allow for the consideration of multiple jobs in

determining full-time employment. The Department refers the State to the appropriate regional office for these type of hypothetical scenarios. In general, when there is disagreement between agent and liable States, it is vital that the regional office be involved in resolving any potential conflicts as there are likely multiple factors to consider.

No changes were made to the regulatory text and the proposed language was adopted in the final rule.

#### Section 618.510 Eligibility Period for Payments of Reemployment Trade Adjustment Assistance and Application Deadline

Section 618.510 of the NPRM set forth the eligibility period for payments of RTAA as provided by section 246(a)(4) of the Act.

Proposed paragraph (a) provided that, for an AAW who has not received TRA, the worker may receive RTAA benefits for a period not to exceed 104 weeks (2 years) beginning on the earlier of the date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely affected employment that is the basis of the certification, or the date on which the worker first begins qualifying reemployment as described in § 618.505(e).

One commenter recommended eliminating the words “the earlier of” at the beginning of § 618.510(a), writing that the requirement complicates finding the effective date for RTAA claims. The commenter instead proposed that an eligibility period of 2 years from the date on which a worker begins qualifying employment be applicable for workers who have not received TRA. The eligibility period is defined in the statute at section 246(a)(4) and includes the “earlier of” language. The Department does not have the authority to change this via regulations. Accordingly, the Department is finalizing this section in the final rule as proposed.

#### Section 618.515 Continuing Eligibility and Timing of Payments

Section 618.515 of the proposed rule explained the requirements for an AAW’s continued eligibility under RTAA and the timing of payments.

Proposed paragraph (a)(1) allowed workers to change jobs without loss of access to RTAA so long as the worker continues to meet other eligibility criteria. Proposed paragraph (a)(2) prohibited the payment of RTAA during a period of unemployment and provided that the AAW may resume receipt of RTAA payments upon obtaining qualifying reemployment for the

remaining portion of the eligibility period. Section 246(a)(7) of the Act prohibits payment of TRA and RTAA for the same week.

Proposed paragraph (a)(3) established a requirement that if the computed annualized reemployment wages exceed \$50,000, no additional RTAA payments could be made unless conditions were to change again, resulting in recomputed annualized reemployment wages of \$50,000 or less. This provision was proposed to reduce the likelihood and number of overpayments that would otherwise occur.

One commenter wrote that the proposal would unfairly impact workers in fields with variable income streams, such as commission-based workers for whom a single high earning month could result in them losing a year of eligibility. The same commenter recommended aligning the proposal with how overtime is handled, where overtime does not count toward payments that could disqualify a worker. Another commenter expressed similar concerns, likewise stating that workers being paid by commission could be heavily impacted by the proposal and that § 618.515(a)(3) would impose administrative burdens on States. The Department concludes that the statute does not allow the Department to exclude overtime. The Department has made revisions to the regulatory text to address these concerns.

A State workforce agency stated that §§ 618.505(a)(2) and 618.515(a)(3) seemed to conflict as to whether overtime pay should be included in the calculation of wages and asked if the latter would allow workers to receive RTAA until their cumulative wages exceeded the annual limit. The Department agrees with the State that there is a conflict in the proposed rule. Upon further review, the Department has concluded that it has no legal basis to exclude overtime in calculating RTAA payments. Section 618.505(a)(2) has been modified in the final rule to remove the exclusion of overtime pay. Section 618.515(a)(3) has also been modified to delete the reference to a calendar year and add the requirement that States must calculate projected earnings for the year to determine continued eligibility.

With respect to the State’s suggestion that there is some confusion regarding the language involving the \$50,000 wage limit and calendar years and its query whether workers would be allowed to receive RTAA until their cumulative wages exceed \$50,000, this final rule deletes all references to the word “calendar” from subpart E and defines

“year” for RTAA purposes at § 618.505(b)(4). Further, under existing administrative guidance, at the point a worker’s annualized reemployment wages are projected to be above \$50,000, RTAA is stopped until such time as a recalculation shows an annualized reemployment wage of \$50,000 or less. Workers remain otherwise eligible for RTAA until they actually earn, or are projected to earn, \$50,000 in a year—as now defined in § 618.505(b)(4) for purposes of RTAA. Section 618.515(a)(3) and (d)(1) have been modified in the final rule to codify this requirement.

An AAW who is approved for RTAA and who continues to meet the eligibility criteria will be paid RTAA benefits until the end of the eligibility period or the payment of \$10,000, whichever occurs first. The State will need to assess each RTAA recipient’s continuing eligibility for RTAA. Whether RTAA entitlement is based upon part-time (at least 20 hours) or full-time employment, the State must verify the worker’s employment and wage status on at least a monthly basis. If the worker is employed part-time (at least 20 hours per week) and receiving RTAA while in TAA approved training, the State must, on a monthly basis, verify participation in the training. The determination of annualized reemployment wages is made prospectively. An AAW meets the “earns not more than \$50,000 a year in wages from reemployment” requirement in section 246 of the Act for a given month if the monthly determination of annualized reemployment wages that results in wages of less than \$50,000 is accurate and complete at the time it is made.

RTAA payments stop in the event of any one of the following: (1) The AAW’s annualized wages from reemployment exceed \$50,000 in a year; (2) the AAW no longer meets the reemployment requirement through either full-time work or a combination of TAA approved training and at least 20 hours of work; (3) the AAW has received the maximum amount of RTAA; or (4) the AAW has reached the end of the RTAA eligibility period. The final rule adopts the same practice.

One commenter wrote that workers who separate from employment that would put them above the \$50,000 limit should be eligible for RTAA if they find reemployment with wages below the limit. A worker can change jobs or obtain multiple jobs, but the earnings limit remains \$50,000. If the worker’s wages for the year are below \$50,000, they will be otherwise eligible for RTAA.

One commenter wrote that monthly verification for RTAA could be administratively burdensome, as such a schedule would not line up with UI or wage record reporting cycles, and recommended shifting to a quarterly cycle. The Department clarifies that current practice is that RTAA must be paid no less than monthly. Payment of RTAA is not related to UI wage record reporting. Monthly verification also reduces the possibility of overpayments.

A State workforce agency said that the proposed rule appeared to drop a requirement set forth in administrative guidance for States to verify the training enrollment status of RTAA participants every 30 days. This was an oversight by the Department. There was no intention to eliminate this requirement. The Department has modified the regulatory text in the final rule at § 618.515(a)(4) to retain this provision. If an RTAA recipient is employed on less than a full-time basis, he or she also must be participating in approved training to remain eligible for RTAA. This requirement is intended to reduce improper payments and to ensure that participants are still participating in training since there are potential financial ramifications if a participant does not complete training.

The Department has revised § 618.515(d)(1) and (2) to remove the word “calendar” before year. The Department has also added language regarding projected earnings in paragraph (d)(1). These changes were made based on comments received on proposed §§ 618.505 and 618.515 seeking clarification of calendar year and more definitive guidance on the \$50,000 earnings limit and to ensure that determinations of eligibility for RTAA are as accurate as possible.

#### Section 618.520 Benefits Available to Eligible Adversely Affected Workers

Section 618.520 of the proposed rule detailed the benefits available under RTAA as provided by section 246(a)(2) of the Act. Benefits available include wage subsidies, training, job search and relocation allowances, and, if available, the HCTC.

Proposed paragraphs (a)(2)(i) and (ii) provided the computations for annualized wages at separation and annualized wages from reemployment, respectively. A State would compute annualized wages at separation by multiplying the AAW’s hourly rate during the last full week of the AAW’s regular schedule in adversely affected employment by the number of hours the AAW worked during the last full week of such employment, multiplied by 52 (*i.e.*, the number of weeks in a year).

Proposed paragraph (a)(2)(i) referred to the AAW’s “regular schedule” and also excluded certain types of compensation from the meaning of “wages,” because certain types of work hours and compensation are too speculative and cannot be anticipated in computing annualized wages from reemployment under paragraph (a)(2)(ii) of this section.

Proposed paragraph (e) established the restriction that once an AAW has received a payment under RTAA, he or she is no longer eligible to receive TRA.

A State workforce agency requested clarification as to whether RTAA requires a full week of reemployment or whether States may prorate partial weeks. The comparison of wages for RTAA eligibility must be from the last actual full week of employment prior to separation and a full week of qualifying reemployment, whether actual or projected. This allows for a fair comparison of the wages.

One commenter asked whether commissions are included in the annualized wages calculation. For purposes of RTAA, the Department affirms that commissions are included in this calculation as well as overtime, bonuses, etc. In the discussion of § 618.515, above, the Department clarified that the statute does not allow for the exclusion of overtime. The section of this final rule has been modified in paragraphs (2)(i) and (ii) to remove the exclusion of overtime pay.

One commenter asked whether the Department would consider raising the maximum RTAA compensation in order to reflect better the economic climate. The income limits and benefit amounts under RTAA are established by section 246 of the Act. The Department does not have the authority to adjust these limits.

A State workforce agency recommended clarifying that States must instruct AAWs on their waiver of TRA benefits and the maximum value of RTAA benefits they may receive. The Department concurs this is a good practice, but has concluded it is unnecessary to regulate this activity. The statute does not explicitly require a notice of this type, as the AAW is not waiving TRA benefits. Rather, by receiving RTAA benefits, he or she is losing access to TRA benefits. The Department concludes that the decision on whether to provide this type of notice should be left to the individual States.

The Department is finalizing this section in the final rule by removing the exclusion of overtime pay under paragraphs (a)(2)(i) and (ii) and editing the use of a pronoun in paragraph (e). The rest of this section is adopted in this final rule as proposed.

#### Section 618.525 Determinations, Redeterminations, and Appeals

Section 618.525 explained the requirements related to determinations, redeterminations, and appeals under RTAA.

Proposed paragraph (a)(3) allowed an AAW to file a new application each time the AAW is reemployed and obtain RTAA if the AAW meets the criteria of proposed § 618.505(a) at the time of filing of the new application, even if the State previously denied a prior application.

Proposed paragraph (a)(4) provided that a State may approve a RTAA payment and pay it retroactively to an AAW who is covered by a TAA certification but who becomes reemployed before the Department issues the certification, provided the AAW otherwise meets eligibility requirements of § 618.505(a).

Retroactive payments are explained in the discussion of proposed § 618.505.

One commenter pointed out an error in § 618.525(a)(3), which stated that the denial of eligibility based on a “first” reemployment was subject to appeal. The Department was referring to an initial application for eligibility, but concurs that this should be made clearer. Therefore, the Department has removed the word “first” from § 618.525(a)(3) and replaced it with “nonqualifying” to clarify that an AAW who is denied eligibility based on nonqualifying employment may file a new application for a subsequent reemployment. Any denial of RTAA benefits is subject to appeal subject to the provisions of § 618.828. The final rule adopts this section as proposed, with the update to the filing requirements in § 618.525(a)(3).

One commenter asked whether States could process retroactive RTAA payments and whether retroactive payments under proposed paragraph (a)(4) would be available only to full-time reemployed RTAA participants. In response, the Department affirms that RTAA payments can be made retroactively if an AAW was otherwise eligible, experienced a total separation from adversely affected employment, but was reemployed prior to certification. Retroactive payments may be made whether the worker was employed on a full- or part-time basis. Retroactive payments are also allowable in situations where an AAW was denied RTAA based on the projection of annual reemployment earnings over \$50,000 but where the AAW did not actually end up earning over \$50,000 in that year. However, the Department made nonsubstantive edits to correct two

cross-references in paragraph (a) of this section, including correcting the section headings of the sections cited; otherwise, the final rule adopts this section as proposed.

#### *F. Subpart F—Training Services*

Subpart F governs the training portion of the TAA Program. Training is an opportunity to gain skills and reenter the workforce after a total or partial separation or threat of separation from adversely affected employment. The TAA Program's goal is to help each trade-affected worker participating in the program obtain suitable employment when possible and nonsuitable employment otherwise. Training under the TAA Program should assist a trade-affected worker in obtaining the skills necessary for employment as quickly as possible and at a reasonable cost. With those principles in mind, training should allow workers to compete for the highest paying employment achievable given their preexisting skills, abilities, and education and the current and projected job market.

TAA Program approval of a training program entitles a trade-affected worker to the payment of the costs of that training and related costs, subject to a number of limitations described in this subpart. Participation in a TAA approved training program is an eligibility requirement for TRA, with certain exceptions, as explained in subpart G. Under section 236(a)(6) of the Act workers may still be entitled to TRA and other TAA Program benefits if other funding sources pay all or part of the costs of a TAA approved training program.

Subpart F applies the FTR, at 41 CFR chapters 300 through 304, to States providing TAA Program training participants with supplemental assistance in the form of subsistence and transportation benefits. This is not a new policy. The Department already enforces this requirement under several provisions in the previous regulations, including 20 CFR 617.27 and 617.28, which reference the use of the FTR. This measure ensures uniform access to subsistence and transportation benefits. TAA Program training participants travel under the same rules as employees of the Department. Some key changes covered in this subpart F include expansion of apprenticeship training, approvable part-time training, parameters for serving AAIW, benchmark requirements to meet Completion TRA eligibility, and procedures for amending approved training programs.

#### Section 618.600 Scope

Proposed § 618.600 provided the scope of proposed subpart F. This section explained that the goal of training is to help trade-affected workers obtain the skills necessary to get back to work as quickly as possible at a reasonable training cost. The goal for reemployment is suitable employment, or reemployment that pays as much or more than the trade-affected worker's adversely affected employment, but obtaining suitable employment is not a requirement to approve training.

One commenter recommended changing the third sentence of § 618.600, which states that States should prefer training that replaces 100 percent or more of a trade-affected worker's wages in adversely affected employment by substituting the words "is expected to replace" for the word "replaces." The Department has not changed the regulatory text in the final rule, as the suggested revision has the same meaning as the proposed regulatory text.

#### Section 618.605 General Procedures

Proposed § 618.605 was derived, in part, from 20 CFR 617.20. This section discussed general procedures for trade-affected workers to apply for training, as well as other procedures States must follow in making determinations on applications for training.

Proposed paragraph (a) required States to ensure that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment has been made available to them, as required in proposed subpart C. Proposed paragraph (b) addressed applications for training, as well as for transportation and subsistence payments. It reflected more accurately that applications must be made to the States in accordance with their policies and procedures. Proposed paragraph (c) specified that decisions on selection of, approval for, or referral of a trade-affected worker to training, including whether to provide TAA Program-funded transportation and subsistence payments, are determinations to which apply § 618.820 (determinations of eligibility; notices to individuals), § 618.824 (liable State and agent State responsibilities), and § 618.828 (appeals and hearings).

Proposed paragraph (d)(1) required States to explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find appropriate training where no appropriate training opportunities exist.

Proposed paragraph (d)(2) provided that TAA Program funds may be used to create customized, group training opportunities in order to serve a particular dislocation event where available education and training programs are not sufficient. Proposed paragraph (d)(3) required States to coordinate with other public and private agencies, in cooperation with LWDBs, to ensure a wide range of training opportunities are available to trade-affected workers in high-demand occupations. Proposed paragraph (e) allowed training for trade-affected workers any time after their certification date without regard to whether such worker has applied for or exhausted UI.

One commenter expressed concern that the provision at § 618.605(a) did not distinguish between all trade-affected workers and those that choose to participate in the TAA Program. The same commenter recommended qualifying the term "trade-affected workers" with "who are participating in the TAA Program" to account for the fact that some trade-affected workers may not initiate or complete applications to participate. The definition of the term "trade-affected worker" in § 618.110 means both "adversely affected workers" and "adversely affected incumbent workers." When a member of a worker group individually applies for TAA Program benefits and services, that is when the State determines if he or she is an AAW or AAIW (trade-affected worker).

The same commenter also recommended changing the third sentence of § 618.605(a) by adding the words "that includes training" after "an IEP." The Department affirms that the rule provides that a trade-affected worker might not have an IEP, as discussed under subpart C. However, if an IEP does not contain a proposed training program, this would not apply. No changes have been made to the regulatory text at § 618.605(a) as a result of these comments.

The same commenter recommended changing some of the language at § 618.605(b) by adding the words "under this subpart" after "subsistence payments." Proposed paragraph (b) states, in relevant part, that applications for training, including requests for TAA Program-funded transportation and subsistence payments, must be made to the State in accordance with procedures the States established. There are no other subsistence payments available other than under subpart F, so no such language is needed. Therefore, no change has been made to the regulatory text at § 618.605(b) in the final rule.

The Department made nonsubstantive edits in paragraph (c) of this section to correct two cross-references to the section heading of a different section; otherwise, the final rule adopts this section as proposed.

A workforce advocacy group stated that access to training in sought-after fields was vital for TAA recipients because these workers have generally lost high-paying jobs requiring specific skills that may not be replaced in the evolving economy. The group also stated that communities of workers with similar skills are sometimes subject to mass layoffs and that such workers may need to be retrained for entirely new occupations. As this can happen, especially in more rural areas, the Department encourages States to work with LWDBs in addressing these dislocations at the community or regional level and not just from the viewpoint of an individual worker. This is also a situation in which customized group trainings could be an efficient method of training trade-affected workers.

The same workforce advocacy group expressed support for the provision at § 618.605(d) that allows States to use TAA Program funds to support basic skills training and English language learning programs. The group requested that the Department change references to “remedial education” to “basic skills instruction and remedial education,” because the proposed language is outdated and omitting “basic skills instruction” would restrict the types of eligible practitioners in the field. The Department does not view the regulatory text language as limiting. Basic skills training and English language learning programs would be considered “remedial education” under this final rule.

The same workforce advocacy group also requested that the Department include a reference to Integrated Education and Training (IET) at § 618.605(d)(2) in order to align better with WIOA practices and increase participation in IET programs. The Department does not conclude that such a specific reference is needed in the regulatory text. This type of training is already allowed under the TAA Program. Where this rule uses the term “contextualized occupational training,” that term includes the concept of IET. No changes have been made to the regulatory text at § 618.605(d) in response to these comments.

One commenter supported allowing communities to use TAA Program funds to create new training programs and said this element of the proposed rule was a “welcome change.”

One commenter recommended eliminating, in proposed § 618.605(e), what the commenter viewed as an entitlement to a “lifetime training benefit” and, instead, limiting participation in training under a specific certification to 5 or 10 years. The commenter said there should not be an entitlement to TAA approved training for workers who are displaced from jobs for reasons not related to trade. A different commenter asked if an expiration date for the lifetime training benefit would be included in the final rule. The Department considered imposing a deadline by which a trade-affected worker would have to begin training to retain access to the benefit; however, it has determined that there is no legal basis to do so. States must ensure that trade-affected workers who apply for training past the expiration of their certification meet the six criteria for the approval of training at § 618.610. No changes have been made to the regulatory text at § 618.605(e) in response to these comments. However, a minor edit was made to the use of a pronoun.

The Department will use this opportunity to remind States that, for purposes of determining suitable employment, States must look at the wages and skill level of the adversely affected employment. This means that States would need to look at the wages paid at the time of separation from adversely affected employment and not, in many cases, the AAW’s most recent separation, which might not be from adversely affected employment.

The Department declines revising § 618.605, for the reasons discussed above, and implements this section in the final rule as proposed.

#### Section 618.610 Criteria for Approval of Training

Proposed § 618.610, which corresponded to 20 CFR 617.22(a)(1) through (6), implemented all six statutory criteria for training approval from section 236(a)(1)(A) through (F). Under proposed § 618.610, training must be approved for a trade-affected worker if the State determines that all six criteria are met. The statutory criteria are as follows:

- There is not suitable employment available (section 236(a)(1)(A), corresponding to proposed § 618.610(a), Criterion 1).
- The worker would benefit from appropriate training (section 236(a)(1)(B), corresponding to proposed § 618.610(b), Criterion 2).
- There is a reasonable expectation of employment following completion of such training (section 236(a)(1)(C),

corresponding to proposed § 618.610(c), Criterion 3).

- Training approved is reasonably available to the worker (section 236(a)(1)(D), corresponding to proposed § 618.610(d), Criterion 4).

- The worker is qualified to undertake and complete such training (section 236(a)(1)(E), corresponding to proposed § 618.610(e), Criterion 5).

- Such training is suitable for the worker and available at a reasonable cost (section 236(a)(1)(F), corresponding to proposed § 618.610(f), Criterion 6).

The Department is finalizing this section as proposed, except for the changes noted below.

Under proposed § 618.610, States must consult the trade-affected worker’s assessment results and IEP, if available, before approving an application for training. One commenter asserted that the introductory paragraph of § 618.610 requiring States to consult a worker’s IEP before approving training applications was in conflict with the language at § 618.350(a)(2) requiring that an IEP must be documented before a trade-affected worker receives training under subpart F. An IEP should be established prior to the approval of a training program, but it is expected to be a dynamic document, subject to additions and revisions, so States must continue to consult the document. No changes have been made to the proposed introductory paragraph of § 618.610 in the final rule as a result of this comment.

Another commenter asked how the Department intended to define “foreseeable” as it appears in § 618.610(a)(1), which proposed a finding of no reasonable prospect of suitable employment becoming available for the worker in the foreseeable future as a part of Criterion 1. The Department considered further clarification of the term “foreseeable” in this context but has determined that the use of this term is unchanged from previous regulations, as is this criterion for training approval. There is no intent to change how States have historically interpreted this term; therefore, any new clarification may serve only to limit States’ flexibility. States should have a procedure or policy in place for consistently determining the availability of suitable employment for workers applying for training. The Department encourages States to contact their regional office to review their existing policies if further questions remain. No changes have been made to the proposed regulatory text at § 618.610(a)(1) in the final rule as a result of this comment.

A State workforce agency supported the “career pathway” option under § 618.610(b)(1) and maintained that many workers changing careers will need to take lower paying jobs initially in order to develop their skills in a new field. In contrast, a different State workforce agency recommended that the Department reconsider the use of “career pathway” at § 618.610(b)(1) since this is a technical term defined in the WIOA regulations. The State workforce agency recommended deleting the word “career” from the sentence containing the term “career pathway.” The Department concurs with the recommendation and has made that change to § 618.610(b)(1) in the final rule to distinguish this term from the WIOA term. The Department has also made a minor edit to the use of a pronoun.

One commenter asked why the Department limited the consideration of labor market conditions to a worker’s intended commuting area (introductory paragraph of § 618.610(c)) since some workers might be inclined to travel longer distances for the right job. The Department clarifies that the intent of this language is to limit the geographical area in which a trade-affected worker must seek suitable employment before training can be approved. It does not limit the suitable employment that a worker may accept. One commenter expressed concern about the provision at § 618.610(c)(4) requiring States to assess whether the number of workers enrolled in a given training will cover demand in the local labor market, because States’ implementation of this provision would be difficult and burdensome. The same commenter asked whether States would have to contact all providers who offer the type of training under consideration and what geographic parameters should be used to determine which providers must be contacted. The Department clarifies that § 618.610(c)(4) does not apply to most proposed training programs and it is specific to proposed training programs for limited demand occupations. The Department encourages the State, during the training approval process, to use any available means to evaluate the likelihood of the worker to successfully compete for and obtain a position after completing proposed training in the limited demand occupation. No changes to proposed § 618.610(c) were made in the final rule as a result of these comments. The Department did, however, make two edits for use of pronouns in paragraphs (c)(4) and (5) and subject-verb agreement in paragraph (c)(4).

#### Self-Employment as a Viable Employment Goal

Proposed § 618.610(c)(5) recognized that self-employment may be a viable employment goal. Under proposed § 618.610(c)(5), States must review the labor market conditions to determine that the skills to be obtained in the training will lead to self-employment that will provide trade-affected workers with wages or earnings at or near their wages in adversely affected employment.

Two commenters supported the provision to approve training programs that would lead to self-employment. Another commenter supported the Department’s proposal to consider self-employment as a viable employment goal and asked whether Criterion 6 for training approval (training is suitable for the worker and available at a reasonable cost) would be met if self-employment were to provide workers with earnings equivalent to or near their previous earnings. States should compare the trade-affected worker’s ability to undertake the training program against the worker’s self-employment goal and determine if the training program is suitable based on that comparison. The Department affirms that the commenter’s example would meet the “suitable for the worker” part of Criterion 6 (§ 618.610(f)(1)), if the training program being considered meets the conditions for a trade-affected worker to be qualified to undertake and complete a training (Criterion 5, § 618.610(e)(1) and (2)); and if the self-employment will satisfy § 618.610(c) (Criterion 3, reasonable expectation of employment) and provide the trade-affected worker with work of a substantially equal or higher skill level than the worker’s past adversely affected employment, and self-employment wages are projected to result in earnings equivalent to 80 percent of the worker’s adversely affected wages.

Multiple commenters asked about methods for tracking and reporting self-employment earnings. The final rule does not prescribe a specific method for the tracking of wages for self-employed trade-affected workers. Consistent with administrative guidance, the TAA Program allows for the collection and reporting of supplemental wage information consistent with WIOA. The State should contact its regional office if additional technical assistance is needed on this topic.

One commenter said that the language discussing self-employment is “vague” and asked whether self-employment is an approvable employment goal. The

same commenter said the language about self-employment as a viable employment goal should clarify that “entrepreneurial training” is not an approvable type of training even if entrepreneurship is a viable employment goal. While a trade-affected worker’s employment goal may be self-employment, the Department does not consider a training program consisting of only entrepreneurial training as an approvable training program under the TAA Program. Occupational training is a required component. The Department maintains that allowing a training program consisting of only entrepreneurial training conflicts with the goal of TAA approved training in § 618.600, which is that training provided must, at a reasonable cost and as quickly as possible, assist a trade-affected worker in obtaining the necessary skills to have a reasonable expectation of employment.

One commenter asked how the Department would overcome the suitability of training requirements with respect to self-employment since BLS states that self-employment initially presents some challenges for workers, including reduced income stability and difficulty securing business loans. The Department encourages States to refer trade-affected workers to self-employment assistance programs to assist workers in estimating or calculating future wages or earnings and other aspects of self-employment that are outside the purview of the TAA Program.

Criterion 4 (Training Reasonably Available) and Criterion 5 (Trade-Affected Worker Qualified To Undertake and Complete Training)

Proposed paragraph (d) implemented Criterion 4 and corresponded to 20 CFR 617.22(a)(4), but was simpler, better organized, and free of outdated references. References to approval of training outside the trade-affected worker’s commuting area for cost reasons were moved to proposed paragraph (f), Criterion 6.

One commenter viewed the language at § 618.610(d) requiring States to first consider training opportunities available within the worker’s commuting area as overly limiting because workers may be willing to travel longer distances to attend a training program of perceived higher quality. The Department has determined this is appropriately addressed at § 618.610(f)(2)(ii), which allows a State to approve a higher cost training if the training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater

earnings, or to return the trade-affected worker to employment in a significantly shorter duration. The Department has made no change to the regulatory text in the final rule as a result of these comments.

Proposed § 618.610(e)(3) (Criterion 5) consisted of five parts, paragraphs (i) through (v), which explained the State must consider (1) the worker's remaining weeks of UI and TRA payments (for AAWs) in relation to the duration of the proposed training program; (2) other sources of income support available to the worker, including severance earnings of other family members, and other family resources; (3) other fixed financial obligations and expenses of the worker and family; (4) the availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance or any private funding designated for student financial assistance, including, but not limited to, nongovernmental scholarships, awards, or grants; and (5) whether or not the worker is employed while attending training. The criteria are used only after the period of TRA eligibility because the purpose of TRA is to provide sufficient financial support to complete training. Finally, documentation is addressed in § 618.852 (Recordkeeping and disclosure of information requirements).

A nonprofit public policy organization said States should consider factors beyond just financial aid and Federal work-study programs when determining whether workers have alternative means to support themselves financially if a TAA approved training program lasts longer than a worker's TRA benefits. The organization suggested States should consider whether TAA Program recipients have access to supports like Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families benefits, or if recipients are equipped to attain part-time employment. The organization maintained that considering a wider range of factors would allow States to approve 4-year college programs for trade-affected workers. The Department agrees that this approach may be of interest to States and refers the commenter to § 618.610(e)(3)(ii), which discusses the need for States to consider other income.

One commenter said that if the intent of the provision at § 618.610(e)(3) is to prevent workers from failing to complete trainings because of a lack of financial support, then the relevant criterion should be whether a worker

has sufficient financial resources to support completion of a training program. The same commenter said it would be "odd" for this criterion to come into play only if a worker's remaining weeks of UI or TRA do not equal or exceed the length of a training program. The Department affirms that the relevant inquiry is whether someone has sufficient financial resources to complete training, but the statutory requirement is limited to the availability of TRA. States are encouraged to review trade-affected workers' financial situations as part of the case management services provided under subpart C.

A different commenter requested clarification on the types of documents needed to verify sufficient financial resources for workers whose UI or TRA runs out prior to the completion of a training program. Neither the proposed rule, nor the final rule, provides explicit documentation requirements for verification of financial resources. States are, however, required to retain or describe the documents they used to render a determination in the trade-affected worker's case file, in compliance with the final rule at § 618.610(e)(4).

One commenter asked whether assessments or IEPs completed by partner programs would satisfy requirements in § 618.610(e)(3). The Department addressed this subject under the responses to subpart C. Partner program assessments and IEPs may be used if they meet the requirements established in the final rule. Assessments and IEPs from partner programs that do not meet the requirements of the final rule may be supplemented by additional information in order to meet those missing requirements. Duplication of effort should be avoided wherever possible. No changes have been made to the regulatory text at § 618.610(e) in response to these comments.

#### Comments and Requested Clarifications on States' Coverage of Training Costs

Proposed § 618.610(f)(2), one component of Criterion 6 for training approval, requires that suitable training be available at a reasonable cost. Reasonable cost is a critical determinant in approving training programs.

One commenter requested clarification on "open-ended" and "potentially burdensome" guidance about training costs and asked the Department to restore the definition of "suitable work" to the version established in the previous regulation to ensure timely approval of training programs. The Department is unclear as

to the commenter's request for clarification on the provision of "suitable work," which is defined, and used, in subpart G. Subpart F uses the term "suitable employment." "Suitable work" is a term used in UI when claimants are conducting job search activities to remain eligible for receipt of benefits. Under previous regulations, "suitable work" was used as the standard for approval of job search allowances and relocation allowances. For further assistance on coverage of training costs, States are encouraged to contact their regional office.

One commenter requested clarification for States on whether they are permitted to pay travel allowances when travel would be required for workers to take certification tests. Another commenter questioned the propriety of using TAA Program funds to cover licensing costs or fees associated with certification tests, when licenses or certifications are required elements of an approved training program. When tests or exams, such as mid-terms, finals, or licensure exams, are part of an approved training program, transportation costs are allowable costs. These tests, especially those that might occur after the classroom training portion of the training has completed, should be documented as part of the training program. Otherwise, the TAA Program may cover the costs of any fees associated with the test as an employment and case management expense, but not transportation. Transportation costs outside of an approved training program would be considered a supportive service, which is not payable using TAA Program funds.

Multiple commenters requested clarification of training-related costs, specifically purchasing laptops, tablets, software, etc. for workers in TAA approved trainings. The Department clarifies that the proposed provision of training-related costs is unchanged from current practice and policy. If materials or supplies are required of all students enrolled in the training, States are required to provide those items for the trade-affected worker to use. Proposed § 618.610(f) does not prohibit a State from reimbursing a worker. As provided in the regulatory text at paragraph (f)(2), training costs may include tuition and related expenses, including books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the approved training program.

One commenter stated that the reference in the preamble to the proposed rule that States must exhaust alternatives before purchasing training equipment was “vague” and requested that the Department provide examples or further guidance. A different commenter suggested that, to improve clarity, the Department should explicitly require in the training approval criteria section itself that States must “exhaust alternatives” before purchasing equipment or other materials for workers. Section 618.610(f)(2)(B) of the final rule recommends that States explore other options before purchasing equipment or related materials needed for training. Alternatives could include, for example, an equipment lease agreement. The Department advises States to follow their regular procurement process and comply with 2 CFR part 200 and 2 CFR part 2900, as appropriate, paying close attention to the distinction between equipment and supplies. The regulatory text at § 618.610(f)(2) has been adopted in the final rule as proposed.

#### Section 618.615 Limitations on Training Approval

Proposed § 618.615 discussed the various limitations on a State’s approval of a training program. The proposed rule relocated some of the limitations on approval of training provisions from 20 CFR 617.25 to sections other than proposed § 618.615, where they more logically fit. The Department is finalizing this section as proposed, except for the changes described below.

#### Paragraphs (a) and (b)

Proposed paragraph (a)(1) retained the single training program rule of 20 CFR 617.22(f)(2). Changes to an ongoing training program are considered to be part of one training program.

Proposed paragraph (b) corresponded to 20 CFR 617.22(f)(4) with respect to full-time training but differed significantly by permitting States to approve part-time training as well. Proposed paragraph (b)(1) retained the provision in 20 CFR 617.22(f)(4) that training is full-time if it is in accordance with the established hours and days (or credit hours) of the training provider. Proposed paragraph (b)(2) discussed requirements related to part-time training under the TAA Program.

One commenter suggested revising part of § 618.615(a)(1) by adding the words “unless one of the conditions in [§]618.665 allows approval of a training program that is different from the originally approved training program” after “under a single certification.” The commenter did not provide a

justification for the recommended addition of language. The same commenter also said that several of the words in § 618.615(b)(2) were missing hyphens. Proposed § 618.615 provided the criteria that must be met at the initial approval of a training program. Proposed § 618.665 provided the criteria to be considered when amending a training program. Not all of the criteria from § 618.615 are included in § 618.665 because they are not all appropriate when considering an amendment. An amended training program is not a second training program; it is an amendment to the existing (approved) training program. With regard to the hyphens, the Department has corrected the regulatory text in the final rule to include the noted hyphens without substantive change. The Department has also made an edit to the use of a pronoun in paragraph (b).

Two commenters raised concerns with the regulatory language related to participants in training who find employment. One commenter asked whether this section was in conflict with proposed § 618.645 (voluntary withdrawal from a training program). The commenter asked whether this was a change from current interpretations. Another commenter raised concern with the language in § 618.615(b)(1) about an AAW in training who obtains employment that is not suitable employment being able to continue in training while employed. The Department affirms that AAWs are allowed to continue in approved training, regardless of their employment status, after their initial approval of a training program, as long as they continue to successfully follow their approved training program and the requirements to amend their training program. Determining whether suitable employment exists is the requirement for the approval of training and not a factor in determining whether approved training can continue. Regarding the identification of an apparent conflict between the language in proposed §§ 618.615 and 618.645 with regard to suitable versus unsuitable employment, the Department has revised the regulatory text for the final rule at paragraph (b)(1) of this section to remove the conflicting language and to indicate that the term “full-time training” has already been defined in § 618.110 and that it applies here.

A commenter stated that when AAWs need to drop classes and assume part-time status for a semester, their State’s program will discontinue TRA benefits for the part-time period and reinstate TRA benefits once the worker returns to full-time status the following semester.

States must temporarily discontinue TRA payments when an AAW reduces full-time training to part-time training. Part-time training is approvable, but, before approving, States must consider the worker’s approved training program as a whole and the worker’s reasons for utilizing only part-time training.

A different commenter suggested the Department provide a clearer definition of situations when a trade-affected worker “cannot undertake” full-time training because some workers claim they have been out of school for a long period of time and they cannot undertake full-time training. Success stories included on the TAA Program’s website have repeatedly highlighted that trade-affected workers who return to training usually excel as students. Trade-affected workers tend to apply the same work ethic to their studies as they had during their tenure in adversely affected employment. The Department is cautious about providing a definitive answer to such general scenarios without additional background information. States should seek assistance from their appropriate regional office on individual cases as there are often very specific circumstances that must be considered before a determination can be made.

When trade-affected workers indicate they need to drop a class, which will change their status from full-time to part-time, it is appropriate to inquire about why they need to drop the class. If it is due to a barrier to training, a referral to a partner program may be needed. If a worker drops from full-time training to part-time training to meet a financial need, such as to help them increase immediate earnings, they may also gain work experience that helps them secure higher paying employment post-training. The intent of the language in the preamble to the proposed rule was to ensure that, whenever possible, workers are enrolled in training that will ensure the fastest possible return to suitable employment. No change has been made to the regulatory text in response to these comments.

Another commenter expressed support for workers in training being allowed to continue their training full-time even if they find employment. The commenter was under the impression that under the previous rules and administrative guidance, workers may continue only in part-time training. The Department affirms that this is not a change from current policy as trade-affected workers may participate in either full-time or part-time training, or a combination of the two.

One commenter argued that since the criteria for approved trainings under

WIOA are generally stricter than those for the TAA Program, workers approved for WIOA trainings should automatically be approved for TAA approved trainings. While the Department supports State and local area efforts to make services as seamless as possible for trade-affected workers, the six criteria for approval of training, promulgated at § 618.610, are based on statutory requirements of the Act and must be met in order for training to be approved under the TAA Program. The Department explains that training eligibility under WIOA for dislocated workers found at WIOA section 134(c)(3) includes some of the six criteria for approval for a worker to meet training eligibility. The Department encourages States or local areas to incorporate elements of the six criteria under the TAA Program as part of determining the appropriateness of training for workers. By aligning the six TAA Program criteria process with the WIOA training eligibility, States and local areas can ensure a seamless transition from WIOA-funded training to TAA-funded training for the worker. In that scenario, there would be no extra step required. Without such a policy in place, the State must be able to document that the criteria at § 618.610 have been met. This does not mean that the WIOA-approved training must stop while TAA Program eligibility and training approval are addressed, but rather that the WIOA training cannot be considered TAA approved training until the State determines that the criteria in § 618.610 have been met.

#### Paragraph (d)

Proposed paragraph (d)(3)(iii) provided a pathway for approving a training program that exceeds the period during which TRA is available, as allowed under section 236(a)(9) of the Act, but is still within the maximum duration of training. One commenter supported the provision at § 618.615(d)(3)(iii) because it would help workers who were not notified of their eligibility for a training program in time to start training soon after losing their previous job, and because it would expand the types of trainings available to eligible workers.

One commenter described its organization's experiences with workers who may attest to having enough financial resources to support themselves during a training period based on "an unrealistic expectation" of their financial needs and expected future income. The commenter stated that career counseling and case management services could help workers create, and stick to, more

realistic financial plans. The Department agrees that financial planning is a key component of successful case management.

One commenter supported the exception for workers who have performed a period of duty in the Uniformed Services discussed at § 618.615(d)(4)(i) through (iii).

Accordingly, the final rule adopts the limitations on training approval as proposed in § 618.615, with grammar and nonsubstantive edits in § 618.615(b)(2) and (d)(2), and a substantive edit to § 618.615(b)(1) to remove the language regarding not suitable employment. The Department has also made four edits to the use of pronouns in paragraph (d).

#### Section 618.620 Selection of Training Program

Proposed § 618.620, authorized by section 236(a)(5) of the Act, set forth requirements related to a State's obligation to document the standards and procedures for the selection of training programs and the methods of training permissible.

#### Paragraph (a)

Proposed paragraph (a) provided for the standards required for the selection of training programs. This paragraph represented a change from the language at 20 CFR 617.23, which outlined the selection criteria for training programs and specified evaluation of a training provider's success by placement rates.

Some commenters sought clarification on the language in § 618.620 about establishing and documenting the standards and procedures used to select providers and training under the TAA Program. The Department emphasizes that the regulatory requirement is for documentation, which may be met by listing the State's requirements, whether new or preexisting. For example, many States require trade-affected workers to provide two or three different training options or training providers for the training program for which they are seeking approval and States may simply list this requirement, or similar requirements, as the standard. The Department reiterates that the statute prohibits limiting training under the TAA Program to only those options on the ETP list under WIOA. All training approved under the TAA Program must meet the criteria for training approval at § 618.610.

One commenter questioned how States should treat new training providers or programs that have not previously been utilized. The WIOA implementing regulations, at § 680.450, established the requirements for training

providers not previously approved under WIOA to submit applications to be considered eligible providers under WIOA. This process may be helpful to States seeking to establish standards for the approval of training providers and programs. The Department advises States that are seeking to establish standards to explore the process used for initial eligibility under WIOA and to contact their appropriate regional office for assistance on this issue.

Proposed paragraph (a)(2) allowed a State to choose a training provider from the ETP list, established under WIOA, without establishing additional standards or procedures. Section 236(a)(5) of the Act prohibits States from limiting training available under the TAA Program to only those training providers on the ETP list.

Several commenters supported the provision allowing States to choose an ETP recognized under WIOA section 122 without needing to create additional standards or procedures applicable to TAA. One commenter requested clarification about the meaning of the phrase "without establishing additional standards or procedures" and whether this applied to the criteria of training programs being selected or States' processes for procuring training providers. The Department affirms that when States enroll a trade-affected worker in a training program that is not on the ETP, they must follow a procedure that establishes standards for the approval of training providers and courses, as required by § 618.620(a)(2)(i).

Two commenters stated they already had a "process" for the ETP list. One of these commenters asserted that the provision at § 618.620 would be challenging for non-ETPs and would limit choices for trade-affected workers. Another commenter said that if a training provider or program is not on the ETP list, WIOA's dislocated worker program could still offer supportive services, but not an Individual Training Account (ITA). The Department affirms that if a training provider (or course) is already on the ETP list, no additional standards or selection process is required under the TAA Program. Section 618.620 allows the inclusion of providers that are not on the ETP list. States are required, in those cases, to establish standards to ensure that trade-affected workers are provided access to quality training programs. The Department clarifies that, with regard to ITAs, States are expected to utilize TAA Program funds to pay for the costs of training, while using WIOA funds to provide appropriate supportive services

that cannot be funded by the TAA Program.

#### Paragraph (b)

The Department made an edit to the use of a pronoun in paragraph (b)(1).

#### Paragraph (c)

Proposed paragraph (c) provided a nonexhaustive list of other specific types of approvable training programs, which generally followed 20 CFR 617.24(b) through (f).

One commenter requested clarification about whether, for workers who need “other training” under paragraph (c), that training is considered a “training opportunity,” or if it can be coupled with later “primary/core training.” The Department reiterates that a training program under the TAA Program can include any or all of the types of training described in subpart F. A worker could be enrolled in, for example, remedial training, occupational training, and an OJT, as part of a single approved training program.

#### Paragraph (d)

Proposed paragraph (d) provided that TAA Program funds can be used to provide training to trade-affected workers seeking to obtain an advanced degree or to complete coursework toward obtaining an unfinished advanced degree.

One commenter supported the option to receive remedial education before or during a requested training program, as well as the inclusion of different remedial education programs, such as Adult Basic Education and English Language Arts courses and high school equivalency preparation classes.

A State workforce agency, which described its position on the advanced-degrees provision found in proposed § 618.620 as “neutral,” questioned whether an advanced degree would impact WIOA performance measures given the proposed mandatory co-enrollment for WIOA and the TAA Program. The Department is aware of the exclusion of advanced degrees from the measurable skills gain measure. However, this exclusion is not a factor in the training approval criteria in § 618.610 and cannot be used by a State to deny training for an advanced degree under the TAA Program. The Department explains that services strategies and historical service data are now used in setting performance goals under WIOA. Further, although the enrollment of trade-affected workers in advanced degrees may impact the measurable skills gain indicator, those same workers are likely to have higher

employment rates and higher median earnings.

The Department made a nonsubstantive edit to modify a citation to correctly reference § 618.615(d)(3) in paragraph (d) of this section; otherwise, the final rule adopts this section as proposed.

#### Section 618.625 Payment Restrictions for Training Programs

Proposed § 618.625 listed a series of restrictions on payments for training programs. The Department received several comments related to proposed paragraph (c) of this section. Proposed paragraph (c)(2) allowed States to share training costs with authorities administering non-Federal, State, and private funding sources provided that there are insufficient TAA Program funds to cover the total cost of training.

One commenter supported the new provision at § 618.625(c)(2) allowing States to enter into cost-sharing arrangements with non-Federal entities as an improvement that added flexibility.

Another commenter stated that, in the proposed regulation, § 618.625(c)(2) cites to paragraph (d)(2)(ii) “of this section” despite § 618.625 not having a paragraph (d)(2)(ii). The commenter was concerned that there was no § 618.625(d)(2)(ii) to refer to. Section 618.625(d)(2)(ii) exists and cross-references § 618.940 (a provision related to insufficient funds), along with other regulatory provisions that would apply if the Department determines that there are insufficient funds available for TaOA to meet demand.

Proposed paragraph (c)(5) followed 20 CFR 617.25(b)(4)(ii)(C) but clarified it. As required by section 236(a)(4)(C) of the Act, in determining the amount of training costs payable from TAA Program funds, the State must not consider payments to the trade-affected worker under other Federal laws that do not directly cover the costs of training. Proposed paragraph (c)(5) also addressed the transition of Federal student financial assistance recipients from WIOA and other programs to the TAA Program.

A commenter suggested the Department should insert citations to applicable rules for Federal student financial assistance at § 618.625(c)(5)(iv). The Department, in drafting the final rule, sought to limit references to other regulations outside of this part 618. The Department, therefore, has elected not to add the requested reference, as this helps ensure that these regulations are not made obsolete by changes to other rules.

The Department adopts the section in the final rule as proposed.

#### Section 618.630 Training of Reemployed Trade-Affected Workers

Proposed § 618.630, which followed 20 CFR 617.22(g), derived from section 236(d) of the Act. The Department received no direct comments on this section. Nevertheless, comments received in response to §§ 618.615 and 618.645 have resulted in a change to the section heading of this section and to the regulatory text as described below.

In response to comments received in §§ 618.615 and 618.645, the Department is removing both uses of the phrase “that is not suitable employment” from § 618.630(a) and removing the phrase “not in suitable employment” from the section heading since this provision is not contingent on the employment obtained not being suitable.

#### Section 618.635 Work-Based Training Paragraph (a)

Proposed § 618.635 modified 20 CFR 617.25(a) to establish detailed requirements for OJT, customized training, and apprenticeship. The Department is finalizing this section as proposed, except for the changes described below.

Proposed paragraph (a)(3) implemented section 236(c)(3)(A) of the Act and required that the OJT contract specify the duration of the OJT, and be limited in duration as appropriate. Although statutorily limited to a maximum of 104 weeks under section 236(c)(3)(B) of the Act, the length of an OJT contract must also be limited to the specific vocational preparation required for the occupation, as listed on O\*NET ([www.onetonline.org](http://www.onetonline.org)).

One commenter asked why proposed § 618.635(a)(3) states that the worker’s academic and occupational skills must be considered, “as documented in the worker’s IEP, if available,” while the language at § 618.350 requires that an IEP be documented before workers may receive training under the TAA Program. The Department reiterates that not all trade-affected workers may have an IEP. If, instead, the State has sufficient information that would otherwise be included in an IEP, training may still be approved, even if the worker refuses to participate in the IEP process. However, the trade-affected worker must provide sufficient information, either through a partial IEP or outside of the IEP process, for the State to make a determination on the six required training approval criteria. Failure to do so will result in denial of the training program. A trade-affected

worker so denied can appeal the training denial. The final rule adopts the regulatory text in § 618.635(a)(3) as proposed.

Proposed paragraph (a)(4) implemented the statutory language in section 236(c)(4) of the Act, which excludes certain employers from receiving OJT contracts. One commenter asked for further clarification on the term “long-term” found in § 618.635(a)(4)(i). The Department explains that this is a statutory requirement at section 236(c)(4)(A), and applies to employers who exhibit a pattern of failing to provide AAWs in OJTs with continued, long-term employment as regular employees. States should apply a reasonableness standard. For technical assistance with a specific case, the Department recommends contacting the appropriate regional office. The final rule adopts the regulatory text in § 618.635(a)(4) as proposed.

Proposed paragraph (a)(5) set out the reimbursement provisions for the OJT contract at a rate of up to 50 percent of the wage rate for the OJT participant, limited to the duration of the contract, as provided in section 236(c)(5)(H) of the Act. One commenter asked whether the “wage rate” described at § 618.635(a)(5) includes all compensation, consistent with the definition of “wages” at § 618.110. The commenter said it was important to clarify this point because OJT reimbursement would be greater if all compensation, including benefits, were taken into consideration. The Department explains that, for purposes of reimbursing employers for the cost of training under OJT and apprenticeships, the term “wage rate” limits reimbursement to the hourly rate of pay for the worker and does not include any other compensation that may be included in the worker’s wages. The final rule adopts the regulatory text in § 618.635(a)(5) as proposed.

#### Paragraph (b)

Proposed paragraph (b)(4) explained the limitation from section 236(a)(10)(B) of the Act that AAIWs are eligible for customized training only if the position is for a position other than their adversely affected position. One commenter suggested clarifying § 618.635(b)(4), which provided that “[f]or AAIWs, approval is limited to customized training for other than their current position in adversely affected employment,” by adding the words “a position” so that the regulatory provision would read, in part, “approval is limited to customized training for a position other than their current

position in adversely affected employment.” The Department agrees that this phrase was inadvertently omitted and has inserted it into the final rule at § 618.635(b)(4).

#### Paragraph (c)

##### Specific Provision for Expanding the Term “Apprenticeship”

Proposed paragraph (c) provided that both registered apprenticeships under the National Apprenticeship Act (NAA), as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of an industry-recognized credential, are approvable TAA Program training activities.

A few commenters generally supported the proposed rule’s expansion of training options for workers, particularly the increased flexibility for apprenticeships.

A nonprofit public policy organization stated that placing more trade-affected workers in apprenticeships is a laudable goal and said that very few TAA Program recipients have participated in apprenticeships historically, including just 0.1 percent in 2018. The organization stated that the amount of financial support for apprenticeship expansion in the proposed rule went far beyond financial incentives offered through other State and Federal programs, and it suggested limiting support for apprenticeship expansion to smaller amounts, such as 25 percent of wages, in order to align better with other policies and to allocate more support to workers who are traditionally excluded from apprenticeships, such as women or older workers. The work-based learning portion of an apprenticeship is similar to that of OJT; thus, the Department has established the same reimbursement rate for that portion of an apprenticeship as exists for OJT. In addition, training programs under the TAA Program have always been allowed to contain both work-based and traditional classroom instruction. The apprenticeships newly covered by the expanded definition have long been approvable as OJT; this is not a change from current practice, but rather a shift in the benefits available.

One commenter asked whether the language at proposed § 618.635(c) meant that States could require TAA Program funding be used for registered apprenticeships only. The Department reiterates that, consistent with section 236(a) of the Act and § 618.610, States must approve a training if the State determines that there is no suitable

employment for the trade-affected worker, the worker would benefit from appropriate training, there is a reasonable expectation of employment following completion of such training, the training is reasonably available to the worker, the worker is qualified to undertake and complete the training, and the training is suitable for the worker and available at a reasonable cost. Among other requirements, this determination necessitates careful review of a trade-affected worker’s skills and experience, the knowledge the training would provide, and labor market conditions. Therefore, States may not, as a hard-and-fast rule, limit apprenticeships under the TAA Program to registered apprenticeships, for that would exclude other apprenticeship programs before determining whether they meet the criteria that should result in approval. However, if the State determines that a nonregistered apprenticeship under consideration does not meet the criteria to approve the training, the State must deny the training. For example, in evaluating a nonregistered apprenticeship under these criteria, a State may gather information that leads it to conclude the nonregistered apprenticeship would not increase the trade-affected worker’s likelihood of obtaining employment. If so, then the State may not approve that training. If the State denies training on these grounds, the State must consider other trainings for the trade-affected worker that would meet the criteria for approving training.

One commenter asked how the Department intended to define “industry-recognized credential” in proposed § 618.635(c). The term “industry-recognized credential” is not defined in the Act. However, the term “recognized postsecondary credential” is defined in section 247(19) of the Act, and that term also is used in section 239(j)(2)(A)(i)(IV) of the Act to identify a factor in one of the primary indicators of performance that the State must report to the Secretary. Section 3(52) of WIOA contains the same term and definition for similar reporting purposes. See 29 U.S.C. 3102. Industry-recognized credentials are a subset of recognized postsecondary credentials. The Department has determined that no further definition is needed in this final rule. The Department adopts this section as proposed.

#### Comments on Length of Training and Apprenticeships

Proposed § 618.635(c)(1) limited the duration of the paid work-based learning component of an apprenticeship to a maximum of 130

weeks, in line with the general limitation on training duration in proposed § 618.615(d)(3). The length of the educational or instructional training component, however, was limited only by the scheduled completion date of the apprenticeship.

Two commenters requested clarification on whether TAA Program funds could cover educational or instructional aspects of apprenticeship programs for up to 5 years under the proposed rule. One of the commenters also requested that the Department provide a more detailed description of any intended limitations on coverage of educational or instructional aspects of apprenticeship programs under the proposed rule. The other commenter said that educational or instructional aspects of apprenticeship programs take many forms, and it suggested the Department should provide clarification on a series of issues related to the 130-week limitation, including whether apprenticeships featuring a work-based learning model would be approved and whether apprenticeships longer than 130 weeks that do not offer industry-recognized credentials would be approved. Another commenter requested clarification on the proposed rule's revisions of the TAA Program's length of training requirements applicable to apprenticeships because, in their reading of the proposed rule, apprenticeship programs are covered for up to 5 years or for up to 130 weeks at 50-percent employer reimbursement. The same commenter asked what States should do after reimbursing apprenticeship costs for up to 130 weeks, specifically whether they should cease funding at that point or continue until the 5-year limit is reached. Another commenter asked whether § 618.635(c)(1) was intended to refer to the "full duration" of an apprenticeship and requested that the Department provide clarifying examples. With respect to the request that the Department provide an example of apprenticeship to elaborate on the information provided in the preamble, an apprenticeship lasting 5 years is an example, not a limit. Some apprenticeships will be shorter; a small number may be longer. There is no limit on the length of a training program that consists of an apprenticeship under these rules.

TAA Program funds may be used to pay for the entire length of the educational and instructional component of the apprenticeship even if it exceeds 5 years; however, the length of the paid work-based learning may not exceed 130 weeks. As for the request to provide additional clarification on

apprenticeships under the TAA Program, the Department will provide technical assistance on this topic after the issuance of this final rule and will issue further administrative guidance, if necessary. The final rule adopts § 618.635(c)(1) as proposed.

The same commenter sought guidance on how to report the training in required quarterly reporting. If the participant is still enrolled in an apprenticeship and the educational/instructional component has not ended, the training is still ongoing and would continue to be reported quarterly. The Department recognizes that under this policy, a State will report on the same individual for the entire duration of the apprenticeship. The final rule adopts § 618.635(c)(1) as proposed.

One commenter said that prior administrative guidance established that workers remain enrolled in the TAA Program until they achieve 80 percent of their former wages. The commenter suggested this threshold could be increased to 100 percent of former wages to ensure workers achieve their prior level of financial stability and continue in their careers with new skills. The proposed rule did not retain the previous administrative guidance on this topic because, as proposed, an apprenticeship no longer ends when a worker reaches suitable employment. The Department declines the suggestion for a wage threshold and this final rule adopts § 618.635 as proposed.

Proposed paragraph (c)(2) described the expenses related to apprenticeship that can be covered using TAA Program funds. These costs include expenses for the educational or instructional component of an apprenticeship (tuition, fees, tools, uniforms, equipment, books, etc.). In addition, the employer may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the work-based training and additional supervision related to the work-based training provided by the employer.

One commenter said the definition of "available at a reasonable cost" found at § 618.610(f)(2)(ii), which describes what reasonable costs are for trainings, contains important safeguards ensuring States evaluate training program quality adequately and make funding decisions carefully, and it recommended that the Department restate this provision as an introductory paragraph to § 618.635(c)(2). The Department has concluded there is no need to restate this and the final rule adopts § 618.635(c)(2) as proposed.

Another commenter discussed various provisions related to apprenticeship in

the proposed rule and provided feedback based on their depth of experience with registered apprenticeships. The commenter said jointly trustee, labor-management registered apprenticeships do not charge tuition, and apprentices in such programs incur little to no out-of-pocket expenses. The commenter recommended the Department clarify that reimbursable expenses associated with the educational or instructional facets of a training program include costs incurred by participants and the program itself. The commenter also said that in joint labor-management trust apprenticeship programs, the participating employer is the entity that either pays wages or covers costs associated with the program. The commenter recommended the Department clarify that the entity paying wages or covering "costs of additional supervision" should be reimbursed, whether that entity is the program sponsor or the participating employer. Additionally, the commenter said it was paramount that States send workers to "bona fide" programs that are committed to apprentices' success, and it expressed concerns about States' ability to evaluate new, "untested" industry-recognized apprenticeship programs. The commenter recommended revising the provision about the exclusion of certain sponsors (§ 618.635(c)(3)) to separate it into two paragraphs providing that States (1) may not enter into contracts with registered apprenticeship sponsors that exhibit a pattern of failing to provide apprentices with completion certificates, and (2) may enter into contracts with nonregistered apprenticeship sponsors only if they demonstrate a pattern of providing apprentices with industry-recognized credentials. The Department has reviewed § 618.635(c) in light of these comments and has made appropriate corrections to the regulatory text in the final rule by removing all references to sponsors in § 618.635(c), since "sponsor" is a term specific to registered apprenticeship, and replacing that term with "employer." With respect to the same commenter's statement that under many registered apprenticeship programs, participants are not charged any out-of-pocket costs, it would not be appropriate to charge a TAA Program participant either. Under apprenticeships, an employer is reimbursed for the extraordinary costs for supervision related to the work-based learning component of an apprenticeship. The removal of the term "sponsor" from the section should

provide additional clarity on costs of apprenticeships.

A State workforce agency generally supported apprenticeship and said that it looked forward to learning best practices from other States. The Department appreciates the State's willingness to adopt best practices from other States related to expanding apprenticeship opportunities under the TAA Program.

#### Apprenticeships Other Than Registered Apprenticeships

Several commenters expressed concern about the provision in proposed § 618.635(c)(4)(ii) to allow TAA Program funds to support apprenticeships that are not registered under the Department's Registered Apprenticeship program. They stated that, in their view, these programs lack important guarantees, requirements, and protections associated with the registered apprenticeship system. Another commenter requested clarity on the acceptable types of apprenticeship opportunities. One commenter expressed concern about the proposed rule's promotion of apprenticeships not registered and described this aspect as a "deregulatory" change. The commenter stated that, in its perspective, the proposed rule's description of permissible work-based learning programs as programs that result in a recognized post-secondary credential, which includes an industry-recognized credential, was overly broad and suggested that the provision encouraging TAA Program recipients to pursue apprenticeship opportunities should be limited to registered apprenticeships. Another commenter opposed a definition of apprenticeship in the proposed rule and any definition that would include programs outside of registered apprenticeship. The commenter stated it was imperative to distinguish between registered apprenticeship programs and other work-based learning programs, even if the latter offer industry-recognized credentials. One commenter, while supporting the Department's acknowledgment of work-based training programs as valuable opportunities for AAWs to obtain support under the TAA Program, expressed concerns about TAA Program benefits supporting programs that may not offer pathways to careers in the trades. The commenter recommended revising the proposed rule to either limit all TAA-eligible apprenticeships to the registered apprenticeship system or limit TAA-eligible apprenticeships in the construction industry specifically to that system. Some commenters

supported expanding job training opportunities to include apprenticeships as defined by the NAA but did not support including programs that simply result in "the issuance of a recognized postsecondary credential." The commenters expressed concern that allowing programs other than registered apprenticeships would, in their opinion, undermine registered apprenticeships' high standards for work safety and quality. The commenters suggested that other training programs could be included under OJT instead. One commenter stated that the current TAA Program law already contains an OJT program that employers may use if they want to provide paid job training but do not wish to sponsor registered apprenticeships. Another commenter suggested that the Department should prioritize increasing participation in the existing OJT program, and argued that expanding the allowable use of TAA Program funds to include all apprenticeships could undermine the existing options for training under the TAA Program. One commenter said it was crucial that TAA Program funds are spent only on proven programs with demonstrable benefits to workers, and it urged the Department to ensure that its funds support new opportunities for workers and do not subsidize employers for training offered in the ordinary course of employment. Some commenters said it made sense to encourage participation in apprenticeship programs by allowing States to reimburse program sponsors for up to 50 percent of apprentices' wages using TAA Program funds, and they argued that TAA Program involvement with apprenticeship has previously been minimal due to a lack of incentives for workers to pursue apprenticeships through the program. The commenters stated that the subsidy proposed in the rule, however, was substantial and would require close scrutiny because more than 730,000 programs in the United States offer industry-recognized credentials, but, in their view, many fall short of the apprenticeship standards outlined in the NAA. One commenter generally supportive of apprenticeship expansion efforts nevertheless recommended that the Department reserve the significant financial support proposed in the rule for registered apprenticeships only. The commenter stated that registered apprenticeships must comply with reporting requirements and meet certain criteria around job quality, and it suggested the Department should use TAA Program funds to support registered apprenticeships rather than

promote apprenticeships with weaker protections and lower quality standards.

Many of these comments stated that training approved under the TAA Program must, or at least should, meet the Registered Apprenticeship program standards established by the Department pursuant to its authority under the NAA and set forth at 29 CFR parts 29 and 30. But the TAA Program is not governed by the regulations implementing the Registered Apprenticeship program, and a broad range of employer-based training is allowed under the Act. The Act's standards for the benefit of workers and its criteria for approving training continue to be met under this final rule, as they have in the past.

With respect to commenters' concerns about proposed § 618.635(c) allowing apprenticeships under the TAA Program that are not registered apprenticeships under the NAA, section 236(a)(5)(G) of the Act provides the Secretary significant latitude in determining which types of training States may approve under the TAA Program. Section 236(a)(5)(A) of the Act also provides that employer-based training is allowable under the TAA Program and provides a nonexhaustive list of the types of allowable employer-based training. Using these two provisions, both registered apprenticeships and nonregistered apprenticeships have always been allowable types of training under the TAA Program. The proposed rule changed the benefits available for these training programs. In addition, proposed § 618.635(c) adopted the labor protections established in the Act for OJT as requirements for apprenticeships to provide additional protections. Lastly, proposed § 618.635(c) required any nonregistered apprenticeship to lead to the issuance of a recognized post-secondary credential, which includes an industry-recognized credential. TAA Program data have shown that participants who complete training and receive a credential have better outcomes than those that do not complete training or those that complete training but do not receive a credential. This requirement for a recognized post-secondary credential, when combined with employer-based training, promotes better outcomes for TAA Program participants. Accordingly, no changes were made to the regulatory text in response to these comments.

Proposed paragraph (c)(7) defined the term "sponsor" as it relates to apprenticeships. Proposed paragraph (c)(8) required the State to enter into a contract with the sponsor that establishes the terms and conditions of the apprenticeship. As explained in the above discussion of § 618.635(c)(2), the

Department has removed all references to sponsors in § 618.635(c). Accordingly, the Department has also removed proposed § 618.635(c)(7) from the final rule, since “sponsor” is no longer a term used in the rule, and redesignated proposed § 618.635(c)(8) as § 618.635(c)(7). Aside from the changes discussed above, the final rule adopts § 618.635 as proposed.

#### Section 618.640 Supplemental Assistance

Proposed § 618.640 discussed supplemental assistance that must be provided to trade-affected workers to defray reasonable subsistence and transportation expenses while a worker attends training at a facility outside of his or her commuting area.

#### Paragraphs (c) and (d)

Proposed § 618.640(c) and (d) discussed the requirements for supplemental assistance in the form of subsistence and transportation payments for TAA approved training participants.

The proposed requirements for subsistence payments were that trade-affected workers must be reimbursed for subsistence only for the period when they are not receiving or authorized to receive reimbursement or separate payments for such costs from any other source; that subsistence payments must not be made for any day when a worker receives a daily commuting transportation payment from TAA Program funds or any other source (except under certain circumstances, outlined at § 618.640(e)); and that subsistence payments must not be made for any day of unexcused absence from the training program.

The Department received comments on this section and responds to them below. The Department is finalizing this section as proposed, with the exception of the insertion of the phrase “trade-affected” in front of “worker” in paragraph (c)(2) and the correction of the use of a pronoun. One commenter questioned whether the proposed language at § 618.640(c)(2)(iii), which generally prohibited subsistence payments for any day a trade-affected worker receives a daily commuting transportation payment from TAA Program funds or another source, would allow subsistence payments for days when an absence is excused. The Department has specifically disallowed subsistence payments on days where an absence is unexcused and the State would be required to determine if a subsistence payment is necessary in the event of an excused absence.

One commenter said that the provision at proposed § 618.445(a)(1)(i) and (ii) allowing for different relocation completion deadlines for training participants inside and outside of a commuting area would necessitate programming adjustments to case and data management systems in order to achieve compliance. The Department explains that § 618.640(c) and (d) refer to subsistence and transportation assistance as part of an approved training program, not relocation allowances.

The same commenter also questioned whether the “maximum limit” on reimbursement of mileage outside the defined commuting area referred to a daily or overall limit. The Department confirms that it is a daily limit, as provided in § 618.640(d)(2) and (3). The State must determine whether it is more cost effective to provide subsistence payment in lieu of daily transportation costs. If the State determines that subsistence would be more cost effective, the trade-affected worker may choose to commute each day, but will be reimbursed only the costs determined under the subsistence benefit.

One commenter questioned whether mileage reimbursements would begin “at the mile beyond the definition” rather than “mile one” for trade-affected workers traveling beyond the normal commuting area. Another commenter questioned whether the provision at paragraph (d) indicating transportation payments are only available for miles outside of a worker’s commuting area was meant to indicate that all workers attending training would receive transportation reimbursements. As proposed in § 618.640(d), reimbursement is for mileage beyond the commuting area. Thus, “mile one” is the first mile outside of the regular commuting area. Trade-affected workers may receive supplemental assistance, including transportation, only if it is part of a TAA approved training program.

One commenter expressed concern that the decrease of mileage reimbursement in proposed § 618.640(d) and alignment of TAA approved training caps with lower local area WIOA caps, as described in the preamble to the proposed rule in § 618.650, would result in reduced AAW benefits, and it recommended eliminating these changes. The Department addresses training caps in proposed § 618.650 in that section of the final rule preamble below. The statute provides that the Secretary can authorize payments of supplemental assistance where appropriate. The final

rule codifies (as proposed) that supplemental assistance is allowable only if the trade-affected worker is accessing training outside of the worker’s commuting area, in accordance with section 236(b) of the Act, and that the reimbursement is limited to the mileage outside of that area. For workers co-enrolled with WIOA, that program could cover the transportation costs within the commuting area as a supportive service.

One commenter questioned whether States would be permitted to set definitions of commuting distance. The Department has determined that States may set new definitions or look to applicable State law. If no such law exists, States will need to establish a definition for purposes of this part 618.

One commenter said the provision at proposed paragraph (d) to restrict transportation payments to miles beyond a trade-affected worker’s commuting area would cause issues in its State because each WIOA region only covers specific commuting areas and pays different rates for transportation. The commenter also said this provision contradicts the principle of making TAA Program funds the primary source of Federal assistance for workers. A few commenters said that in their States, WIOA currently covers travel in the commuting area, and they argued that limiting TAA-funded reimbursement to miles outside of a commuting area would needlessly “shift” TAA Program supportive services onto WIOA. The commenters said this would be especially burdensome in States with large rural areas, such as the commenters’ States. These commenters also stated that limiting reimbursement to miles outside of the commuting area would force local areas to process multiple mileage reimbursements for the same trip, and since local areas set different reimbursement rates, the same worker could receive different WIOA mileage rate reimbursements across the State. Section 236(b) of the Act provides that when trade-affected workers are outside of their commuting area, supplemental assistance may be provided where appropriate. The proposed rule established conditions for such assistance and reflected the Department’s determination for when supplemental assistance is appropriate. As for the same commenter’s concern that there is a contradiction among the proposed rule and support services under WIOA, the language in proposed § 618.640, and the requirement that TAA Program funds be the primary source of funding for TAA Program workers, the Department disagrees that there is a contradiction. Under the TAA

Program, the Department considers reimbursing mileage within a defined commuting area a supportive service that would be allowed under a partner program, such as WIOA. The definition of commuting area (or commuting distance) is left to the States. This definition may already exist in State UI law, regulations, or program policy. If no such definition exists, the State must establish one for purposes of the TAA Program.

Some commenters also questioned whether transportation payments were meant to be limited to 90 percent of the prevailing personal vehicle mileage rate, and they asserted that such a limitation would mean less TAA Program funding would be used, workers might not receive sufficient reimbursement to cover their travel costs, and additional calculations at the time of approval and payment would be required. One commenter said the revision establishing a maximum limit of 90 percent of the cost per mile at the prevailing personal vehicle mileage rate was inconsistent with prior administrative guidance, which requires that transportation payments must cover the entirety of a worker's commuting distance. The Department clarifies that although the preamble to the proposed rule in § 618.640(d) included a discussion of the establishment of a 90-percent limit on the cost per mile, the Department did not intend to establish such a limit, as reflected in the proposed regulatory text, which did not include such language, and such limitation is not included in the final regulatory text.

One commenter requested additional clarification on whether States could determine if payments will occur on a weekly or monthly basis, stating that reimbursements could be less than \$10 in some instances and requiring weekly reimbursements for such small amounts would create administrative strain and unduly burden workers who must travel to recoup their reimbursements. The proposed rule, as adopted in the final rule, provided at § 618.640(c)(4) and (d)(4) that payments for supplemental assistance must be paid at the completion of a week of training. With the availability of electronic payment processing, the Department does not conclude that this is an undue burden on States, and many trade-affected workers are already under financial strain. The TAA Program provides sufficient funding to the States to meet this requirement and ease the additional financial burden placed on workers that need to travel to participate in training.

#### Paragraph (e)

The Department made two edits to the use of pronouns in paragraph (e).

#### Paragraph (g)

Proposed § 618.640(g) provided that trade-affected workers must provide receipts for all lodging, purchased transportation expenses, and meals as evidence of incurred expenses. Some commenters requested more clarity on what is meant by “purchased transportation expenses” and questioned whether the provision will require workers to submit receipts for gas and oil changes and other similar transportation expenses. One commenter questioned whether training participants who travel on a weekly basis would have to submit receipts for gas, and it argued that such a situation would preclude cost savings and place undue burden on the training participant. The proposed rule, as adopted by the final rule, provided that trade-affected workers travel in accordance with the FTR. If a worker is traveling by privately owned vehicle, the program reimburses at the rate established by the rate per mile established by GSA. The GSA rate per mile takes into account wear and tear as well as regular maintenance costs, as well as the cost of fuel. So, the receipts in question would be for purchased transportation, such as rental cars, buses, trains, airfare, ride-share services, and tolls. Receipts are required for these other types of transportation costs but are not needed for fuel unless a worker is utilizing a rental car. A State may use an online mapping tool to determine the mileage traveled. If the training location does not change, the mileage would need to be documented only once.

No changes have been made to § 618.640 as a result of these comments. The Department made a nonsubstantive edit in paragraph (b) of this section to correct a cross-reference to the section heading of a different section; otherwise, the final rule adopts this section as proposed.

#### Section 618.645 Voluntary Withdrawal From a Training Program

Proposed § 618.645 established a new requirement regarding a trade-affected worker's voluntary withdrawal from a training program. This provision had no comparable counterpart in previous regulations or in administrative guidance.

During its oversight of the TAA Program, the Department has encountered numerous situations where a trade-affected worker has withdrawn from training. States have also requested

technical assistance and interpretations of the Act and regulations related to this topic. This section provides direction to the States on this topic. The Department is finalizing this section as proposed, except for the changes described herein, and an edit to the use of a pronoun in paragraph (e).

One commenter supported the proposed provisions at § 618.645 and specifically § 618.645(a), which provided that States must advise trade-affected workers that withdrawal from a TAA approved training may result in an overpayment and ineligibility for TRA.

One commenter said in response to proposed paragraph (a) that its State does not currently have a mechanism to collect overpayments and asked whether having such a mechanism in place was mandatory for every State. The same commenter expressed concern that the provision could discourage some workers from engaging in TAA approved training. While the proposed provision requiring States to notify trade-affected workers that voluntary withdrawal from a training may be established as an overpayment and may result in ineligibility for TRA is new, the requirement to establish and collect overpayments related to training is not new and was included in the previous regulations at 20 CFR 617.55.

One commenter supported the provision at § 618.645(d) permitting workers to continue to receive job search and relocation assistance if they withdraw from training for good cause. The Department appreciates the commenter's support of this provision.

One commenter asked why the provision at proposed § 618.645(e)(1)(ii), which provided that States must continue funding an approved training program as long as training benchmarks at proposed § 618.660 continue to be satisfactorily met, refers to training benchmarks since these are only required for workers who need Completion TRA. The commenter suggested the regulation should specify that States need to have “a similar process” in place for workers not eligible for TRA. Although the statute only explicitly requires benchmarks for payment of Completion TRA, the Department has previously addressed the issue of training benchmarks in administrative guidance. This final rule requires, in § 618.660(b), that training benchmarks be established for all but short-term training. This ensures that States are remaining in contact with trade-affected workers enrolled in training and allows for any issues that arise during the training to be addressed in a timely manner in order to ensure a positive outcome for the worker. The

Department has revised the proposed regulatory text, by removing proposed § 618.645(e)(1)(i) and (ii) and incorporating the substance of proposed § 618.645(e)(ii) into the final regulatory text at § 618.645(e), in order to clarify that if a trade-affected worker wishes to withdraw from training, he or she may do so, subject to the provisions of this section. A State cannot subsequently deny training, after initially approving a training program, based on a later availability of suitable employment. This edit also conforms to the changes made to §§ 618.615 (limitations on training approval) and 618.630 (training of reemployed trade-affected workers).

#### Section 618.650 State Standards and Procedures for Establishing Reasonable Cost of Training

Section 236(a)(1)(F) of the Act requires States to approve training suitable for the trade-affected worker and available at a reasonable cost. Proposed § 618.650 set forth State standards and procedures for establishing reasonable cost of training. Proposed § 618.650 did not have a counterpart in the previous regulations at 20 CFR part 617. The Department is finalizing this section with a minor revision described below.

Proposed § 618.650(a) provided that while a State is not prohibited from setting a statewide limit or limits for local workforce development areas on the amount of training costs considered reasonable and appropriate for training programs, any limits the State establishes must reasonably take into account the cost of training available in local workforce development areas throughout the State (and any statewide limit must recognize that costs may vary significantly between urban and rural areas). Proposed § 618.650(a) also provided that expenditures must be prudent under the standards of the OMB's Uniform Guidance (2 CFR 200.404) and its attendant interpretive guidance, and that States must comply with the standards for reasonableness in proposed § 618.610(f)(2), including those permitting States to allow training other than the least cost option if the extra cost is justified by better trade-affected worker outcomes or a faster return to the workforce.

In the NPRM, the Department also solicited public comments regarding an alternative approach to establishing a definition of "available at a reasonable cost" wherein the Department would promulgate a regulation providing that a soft cap would be initially established as the local area's established limit for ITAs under WIOA. Under this alternative approach, the local area

would be able to request to exceed this cap to meet the needs of the trade-affected worker.

Two commenters maintained that their States would not support a soft cap establishing a local area's limit for ITAs under WIOA and opposed coupling the limit on training costs because of the many differences between the WIOA and TAA programs. One of these commenters said that in its State, caps on WIOA training funds are very low and almost all TAA approved training programs would need to include requests to exceed the cap. Another commenter similarly claimed that, in its State, local areas' ITA caps are below the State TAA approved training cap and the soft cap alternative would mean most training approval requests would seek to exceed the cap. The commenter stated that the approach proposed at § 618.650(a) would be less burdensome than the alternative approach. One commenter said its State has a training cost ceiling but evaluates training requests individually and will approve reasonable trainings with costs above the soft cap. The commenter argued that, since its State's training locations are limited, a soft cap should be regulated at the State level. One commenter recommended revising the last sentence of § 618.650(a) by replacing "local area" with "trade-affected worker." Comments, including those above, opposed the alternative using the ITA limit as a soft cap and coupling the limit on training with WIOA. The Department appreciates the feedback and will not be adopting the alternative proposal into the final rule. The demographic differences between TAA Program participants and WIOA participants is significant enough that the training and service needs of trade-affected workers often require additional resources beyond what WIOA would traditionally provide. Accordingly, no changes have been made to the regulatory text in response to these comments. The final rule adopts the proposed limitations for States that choose to implement one.

Paragraph (b) of proposed § 618.650 provided that States must develop transparent standards and procedures that provide for prompt consideration of any request for approval of training costs that exceed an established training cost limit. This paragraph required that the review standards developed by the State must allow for approval of costs that exceed the applicable training cost limit when a training program will provide the most reasonable way of returning a trade-affected worker to employment at higher wages or place the worker on a pathway to do so.

A commenter recommended that the Department reconsider the use of the term "career pathway" in proposed paragraph (b) since this is a technical term defined in the WIOA regulations, and it recommended deleting the word "career" from the second sentence of this paragraph. The Department concurs with the commenter and has made this change to the regulatory text at § 618.650(b) of the final rule.

#### Section 618.655 Training for Adversely Affected Incumbent Workers

Proposed § 618.655 addressed the approval of training for AAIWs. Proposed paragraph (a) clarified that AAIWs are eligible for approved training before separation, and further clarified that AAIWs may apply for training and States may approve training for any AAIW at any time after the date on which he or she is determined to be individually threatened with separation regardless of filing for, receiving, or exhausting UI. Proposed paragraph (b) clarified how a State will verify that an AAIW is threatened with total or partial separation.

One commenter expressed general support for serving AAIWs through partnerships between the TAA Program and rapid response and also provided a neutral response regarding serving AAIWs because of the low number of certified firms in its State.

The Department is adopting this section in the final rule as proposed, with the exception of edits to the use of pronouns in paragraphs (a) and (e).

#### Section 618.660 Training Benchmarks

Proposed § 618.660 provided the process for establishing and monitoring compliance with training benchmarks. Benchmarks are required by section 233(f)(3)(A) of the Act when the trade-affected worker enrolls in an approved training program that will extend beyond the duration of payable weeks of Basic TRA and Additional TRA, for the purposes of eligibility for Completion TRA, in accordance with subpart G. Proposed § 618.660 implemented existing operations of the TAA Program. The Department is finalizing § 618.660 as proposed, except for the one change in § 618.660(c) discussed below.

##### Paragraph (a)

Paragraph (a) proposed to codify the requirement for States to establish and document training benchmarks for AAWs (and it is recommended to do so for AAIWs) so that they can meet Completion TRA eligibility requirements described at proposed § 618.765. The benchmarks must be

established when the trade-affected worker enrolls in an approved training program so that the State can monitor the worker's progress toward completing the approved training duration limits set forth at proposed § 618.615.

A State workforce agency asked whether the training benchmarks apply to AAIWs in training and, if not, whether the State may require benchmarks for all trade-affected workers in training in order to monitor adequately their progression through trainings. The Department encourages States to utilize training benchmarks for all workers, including AAIWs. AAIWs are ineligible for Completion TRA, but as the AAIW may become an AAW upon separation, it is highly recommended that training benchmarks be put in place at the start of the AAIW's approved training program.

Paragraphs (b) and (c)

Proposed paragraph (b) required training benchmarks to be established for all but short-term training programs, such as a 3-month certificate program, and proposed paragraph (c) provided that to review the trade-affected worker's progress against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc.

One State workforce agency asked whether the Department intended to use the term "training provider" instead of "vendor" at § 618.660(c), and it expressed confusion over the use of different terms. The Department concurs with the commenter that the use of the different terms is confusing and has changed the proposed regulatory text from "vendor" to "training provider" in the final rule at § 618.660(c).

Paragraph (f)

Proposed paragraph (f) required a State to evaluate and document satisfactory progress against two benchmarks: (1) The AAW is maintaining satisfactory academic standing (*e.g.*, not on probation or determined to be "at risk" by the instructor or training provider); and (2) the AAW is on schedule to complete training within the timeframe identified in the approved training program.

One State workforce agency said that AAWs might be disadvantaged in States that require benchmark reviews more frequently than every 60 days since workers would have less time to demonstrate their progression within a training program and would be more

likely to fail subsequent reviews. The 60-day period was established in prior administrative guidance and the Department recognizes that many States have implemented case management processes that require a check-in with workers at least once every 30 days, which can inform a benchmark review but not take the place of one. The Department has determined that the proposed time period is sufficient and meets the requirement at § 618.660(e) that training benchmarks be flexible enough to allow for some variability and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and State environments. The Department, therefore, is adopting § 618.660(f) in the final rule as proposed.

One commenter requested clarification on what the Department meant in the preamble to the proposed rule when it stated that inclusion of benchmarks should occur when the training program is "initially established and approved" because contracts are sometimes placed months in advance of the start of a training program. Proposed § 618.660(f) required that benchmarks are to be evaluated and documented every 60 days beginning with the start of the approved training program. This may or may not align with when the contract is executed or an enrollment occurs. The 60-day period starts on the first day of actual training. The Department has retained the regulatory text at § 618.660(f) in the final rule as proposed.

Paragraph (g)

Under proposed paragraph (g)(1), upon failure to meet either or both of the benchmarks for the first time during the same evaluation period, the State must provide a warning to the AAW that his or her eligibility for Completion TRA is in jeopardy.

One commenter said the provision at § 618.660(g)(1) regarding ineligibility for previous benchmark failures appeared punitive. The commenter asked if there was a good cause exception to such ineligibility. The Department reiterates that the ineligibility for Completion TRA as a result of benchmark failures is statutory as provided in section 233(f)(3)(A) of the Act. Furthermore, this is not a change from current practice. Two unresolved benchmark failures will result in a loss of eligibility. However, as is also current practice, a training program can be amended to assist a worker to successfully complete training.

Proposed paragraph (g)(2) provided that, if an AAW who has previously failed to meet a benchmark under

paragraph (g)(1) fails to meet a benchmark during a subsequent benchmark review under paragraph (f), the State must notify the worker of his or her ineligibility for Completion TRA. An AAW may elect to continue in the approved training but will not receive any Completion TRA payments; or, the training program must be amended according to proposed § 618.665, and Completion TRA payments may resume.

Some commenters requested clarification under proposed § 618.660(g)(2) on whether a worker's failure to meet a different benchmark during a "subsequent benchmark review" will result in the loss of Completion TRA. These same commenters asked if under proposed § 618.660(g)(2) a client would lose Completion TRA if they were found to have resolved the original issue, but failed to meet a second benchmark, in the subsequent review. One commenter asked how this ineligibility clause would be applied to instances when a worker's failed benchmarks relate to different classes. The Department has determined that, after the first failure, if a warning and training program modification corrects the issue, then the failure "resets" and the AAW is considered to have no failed benchmarks. If, however, a first failure is not resolved and a second benchmark is failed with the first benchmark failure still outstanding, then a training program modification is required. If the worker fails to comply with the requirement to amend his or her training program, the worker must be notified of his or her ineligibility for Completion TRA. If the training program is amended, the worker can resume training and remain eligible for Completion TRA.

One commenter asked whether a State may take corrective action and provide assistance to an AAW if the State learns that the AAW is struggling with his or her training because of failing or withdrawing from classes. The State can provide assistance to the worker in a proactive manner in order to ensure a timely and successful completion of the training. The Department affirms that any corrective action taken should be documented on the worker's IEP and could include amending the training program. The Department made two edits to the use of pronouns in paragraph (g). No other changes were made to the proposed regulatory text at § 618.660(g) in the final rule.

Section 618.665 Amending Approved Training

Proposed § 618.665 provided conditions for amending an approved

training program. Proposed § 618.665 recognized that more substantial amendments may be necessary to provide trade-affected workers with skills necessary to obtain employment and sets forth the circumstances, and conditions, under which amendments must be made.

#### Paragraph (a)

Proposed paragraph (a) required the State to work in cooperation with the trade-affected worker in amending a training program where the need for such amendment was not foreseeable and where the worker demonstrates good cause for the need to amend. Proposed paragraphs (a)(1)(i) through (x) provided the list of conditions to be met for an amendment to be appropriate. Proposed paragraph (a)(2) provided that the training duration limits at proposed § 618.615(d)(3) apply to amended programs. Proposed paragraph (a)(3) required an amendment to be made before completion of the original training program.

One commenter said the process for modifying training programs set forth in proposed § 618.665(a) would allow for the creation of more customized training programs that align with AAWs' needs and would encourage "creative mixes" of classroom and work-based trainings. Another commenter expressed support for the added flexibility with respect to approved training programs because such flexibility would improve employment outcomes and result in higher wages. The Department appreciates the commenters' support of these provisions.

One commenter asked how the Department intended to define "industry-recognized credential" as it appears in proposed § 618.665(a)(1)(ii). The Department addressed this in response to a similar comment in § 618.635. The term "industry-recognized credential" is not defined in the Act; however, the term "recognized postsecondary credential" is defined in section 247(19) and that term also is used in section 239(j)(2)(A)(i)(IV) to identify a factor in one of the primary indicators of performance that the State must report to the Secretary. Section 3(52) of WIOA contains the same term and definition for similar reporting purposes. Industry-recognized credentials are a subset of recognized postsecondary credentials. The Department has determined that no further definition is needed in this final rule.

One commenter expressed support for the proposed provision to amend a worker's approved training program in § 618.665. The commenter asked if

§ 618.665(a)(1)(iv) applies if approval of a short-term training would improve employment prospects. The commenter also asked whether the Department had considered a time limit on trade-affected workers' ability to amend their training program with a different occupational goal. Under the proposed rule, and as adopted in the final rule, a training program can be amended to shorten it if the shorter training will improve the likelihood of employment. The Department considered establishing a time limit on when a trade-affected worker can amend his or her training program to another occupational goal, but decided not to in order to allow States flexibility to serve the varying needs of trade-affected workers.

The same commenter also asked if the provision at proposed § 618.665(a)(1)(v), which explains that an amendment to an approved training program is appropriate if the worker cannot successfully complete the originally approved training program, extended to "any reason." The Department asserts that the concept of reasonableness always applies to Federal regulations. This is not, and should not be viewed as, an allowance to amend for any reason.

With respect to the limit of one training program per certification set forth in proposed § 618.655(d)(3), a State workforce agency asked what circumstances would transform a training amended under the provisions at proposed § 618.665(a)(1)(v), (vi), and (vii) (listing conditions that may allow an amendment) to an entirely new training program. A training program may be amended up until the time the trade-affected worker has completed the entire training program as originally approved. Only if a worker had completed his or her approved training program, and then sought additional components to add to the training program, would there be a second training program. The Department affirms that the provisions established in § 618.665 are sufficient to prevent workers from receiving more than one training program per certification and do not establish entitlement to a second training program.

One commenter stated its interpretation of the language at proposed § 618.665(a)(1)(i) through (x) was that the TAA Program would no longer limit each worker to one training as long as at least one of the conditions in paragraphs (i) through (x) is satisfied, and it asked the Department to confirm this interpretation. The Department reiterates that allowing amendments is not the same as providing a second training. Amendments are merely

modifications to the trade-affected worker's one training program. The one training program policy is still in place. A worker could not, for example, complete an entire training program and then apply for another training program. The Department has made an edit to the use of a pronoun in paragraph (a)(1)(iii).

#### Paragraph (b)

Proposed paragraph (b) sets forth the criteria that must be met in order for a training program to be amended.

One commenter asked why the assessment of labor market conditions at proposed § 618.665(b)(1) is limited to the trade-affected worker's commuting area or the area of the worker's intended relocation. The same commenter stated that this provision was "unnecessarily limiting" and argued that workers may be willing to commute longer distances for suitable employment. The commenter also said proposed § 618.665(a)(2), providing that the training duration limits at proposed § 618.615(d)(3) apply to amended programs, was "overly limiting" since workers may seek to travel a longer distance to attend a higher quality training even if there is a suitable training program that aligns with their occupational goals within their commuting area. The commenter's statement that workers may be willing to commute farther for what they perceive to be higher quality programs was also directed at the language in proposed § 618.665(b)(1)(iv), which explains that amendment is appropriate if the worker has a reasonable expectation of employment in a limited demand occupation in their commuting area. The Department has determined that without this limiting language, a State could require an unreasonable work search across a broad geographic area. Although workers may choose to seek and accept employment outside of their commuting area without relocating to that area, they need not do so to be eligible for training. Thus, the requirements are limited to the commuting area or to where the worker intends to relocate.

The same commenter said many of its comments concerning the language in proposed § 618.610, which addresses criteria for initial approval of training, also applied to proposed § 618.665 and asked why the Department determined it was necessary to repeat these provisions in both places. Not all of the provisions in § 618.610 are repeated in this section because they do not all apply when amending a training program. Therefore, the Department chose to list those requirements that do apply in proposed § 618.665.

The Department made a nonsubstantive edit in paragraph (b)(3)(iii) of this section to correct a cross-reference to the section heading of a different section, two edits to the use of pronouns in paragraph (b)(1), and an edit to subject-verb agreement; otherwise, the final rule adopts this section as proposed.

One commenter argued that it would make more sense to consider general labor market information, rather than just the information in the worker's case file, when seeking to amend an approved training. The Department affirms that the regulatory text at proposed § 618.665(b)(1) requires an examination of the labor market conditions at the completion of the training program. If the end date of the training program has been modified, or will be modified as a result of the amendment, the State would need labor market information beyond that which is likely to already be included in the trade-affected worker's case file.

One commenter said that while proposed § 618.665(b)(1)(ii) states, in part, "as identified on the worker's IEP, if available," the provision at § 618.350 indicates that an IEP must be documented before a worker can receive training under the TAA Program. The documentation requirement was addressed previously in the final rule preamble under subpart C.

The same commenter also asserted that proposed § 618.665(b)(1)(ii) indicates that the original occupational goals cannot be amended, a provision that may conflict with the language at proposed § 618.665(a)(1)(vii), which included "[t]raining in another occupation will lead to a greater likelihood of training completion or a better employment outcome" as a basis for amending approved training. The cited provision does not prohibit a change in occupational goals. The IEP is dynamic and can and should be revisited throughout a trade-affected worker's enrollment in the TAA Program. If a change in occupational goal is determined to be appropriate, the IEP will need to be updated.

The final rule adopts the regulatory text in § 618.665 in the final rule as proposed.

#### *G. Subpart G—Trade Readjustment Allowances*

Subpart G covers the eligibility requirements for, and the amounts and duration of, TRA. Subpart G reorganizes and simplifies some of the provisions of 20 CFR part 617 to make them easier to follow and modifies or excludes some provisions of part 617 to reflect statutory amendments and policy

determinations found in administrative guidance. Where the Department received comments on specific paragraphs within a section, details of those paragraphs as proposed in the NPRM are included to provide context for the discussion of comments that follows. No comments were received on proposed §§ 618.700 and 618.770. Those sections are adopted in the final rule as proposed.

#### Section 618.705 Definitions

Proposed § 618.705 had no comparable counterpart in previous regulations or in administrative guidance. It established for the first time definitions of the terms "participating in approved training" and "training allowance" as used in this proposed subpart G. It also addressed the issue of wages as it relates to a successor-in-interest.

Proposed paragraph (a)(1) of this section defined the phrase "participating in approved training" generally, relative to attendance and taking part in on-site classes, activities, and events as well as covering excused absences.

A State workforce agency asked for more information about what documentation is needed to show, under paragraph (a)(1) of this section, that a worker's absence from or failure to take part in training was excused by the training provider in accordance with the provider's written policies. The Department has determined that documentation may be varied and includes, but is not limited to, a written or electronic note or a documented phone call. Specific questions about this issue should be discussed with the appropriate regional office.

Proposed paragraph (c) of this section defined the term "adversely affected employment" and was derived from the definition of the term "firm" contained in 29 CFR 90.2 and in proposed § 618.110, which provided that any predecessors or a successor-in-interest are considered part of the same firm for purposes of proposed subpart B.

Proposed paragraph (c) extended that logic to the wages earned by an AAW that may be reported under the subject firm named on a petition, a predecessor, or a successor-in-interest. For purposes of TRA, wages reported to a State or paid to an AAW by a successor-in-interest are to be treated as weeks and wages in adversely affected employment for purposes of establishing TRA eligibility.

One commenter said that paragraph (c) was a "welcome addition" because it removes the "inconvenience" of having to track down the names under which

an employer's predecessors or successors, or both, operated in order to include them in certification documents. The Department appreciates this feedback.

The Department has made no changes to this section in response to these comments and adopts it into the final rule as proposed.

#### Section 618.710 Categories of Trade Readjustment Allowances

Proposed § 618.710 explained that there are three categories of TRA: Basic, Additional, and Completion, which were discussed in proposed paragraphs (a), (b), and (c), respectively. This proposed section had no parallel in 20 CFR part 617 but was part of administrative guidance.

Proposed paragraph (b) described Additional TRA as payable to an AAW who meets the requirements of proposed § 618.760, which set forth qualifying requirements for, and the timing and duration of, Additional TRA, and stated that Additional TRA begins the first week after exhaustion of Basic TRA.

The Department received no comments on proposed § 618.710. However, upon review of the proposed regulatory text, the Department has determined that the statute does not explicitly require the exhaustion of Basic TRA as an eligibility criteria for Additional TRA. As a result, the Department has edited the second sentence of paragraph (b) of this section to remove this requirement, and has otherwise adopted the section as proposed.

#### Section 618.715 Applications for Trade Readjustment Allowances and Payment

Proposed § 618.715 pertained to applications for TRA and payment. Paragraph (a) addressed the timing of TRA applications; paragraph (b) set forth the procedures for filing applications; paragraph (c) addressed how determinations of the applications should be treated; paragraph (d) discussed matters related to payment of TRA; and paragraph (e) pertained to the taking of applications for TRA benefits. The Department is finalizing this section as proposed, except for the changes described herein.

#### Paragraph (a)

Proposed paragraph (a) of this section modified 20 CFR 617.10(b) to specify that an application for TRA must be filed after a certification is issued. It also omitted all references to applications for TRA that appeared in 20 CFR 617.10(b) for weeks of unemployment beginning

before the initial application for TRA is filed because doing so would needlessly confused the requirement that TRA cannot be paid until an AAW is covered by a certification as described in proposed paragraph (d) of this section. Proposed paragraph (a)(2) of this section provided that an application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

One commenter requested clarification about the requirement in paragraph (a)(1) of this section that TRA applications be filed after publication of the certification of the appropriate worker group, asking whether this meant publication by the Department in the **Federal Register** or by the State itself. The same commenter said that waiting for **Federal Register** publication could be “problematic” in its State, because local area one-stop center staff collect TRA applications at TAA Program orientation meetings, which require “multiple steps” to be scheduled, and then transmit the applications to State-level administrators for processing, and “[n]one of this activity is tied to” a notice appearing in the **Federal Register**. The commenter added that the only “timeliness issue” it could anticipate under the present approach would be if the one-stop center provided proper notice of an upcoming orientation and the trade-affected worker neither attended nor made plans to attend on an alternative date. The certification date on the determination document would govern for this purpose, not the publication in the **Federal Register**. The Department has revised the rule in paragraph (a)(1) to remove the reference to publication of the certification to remove any confusion over when an application may be filed. The revision makes it clear that the application may be submitted as of the certification date of a petition.

The same commenter also asked how States should implement this provision for AAWs who are separated later in the certification period. States must work with firms to continually update worker lists of those workers that have separations and threats of separations throughout the duration of the certification period.

#### Paragraph (c)

Proposed paragraph (c) of this section established that TRA determinations are subject to specified requirements in proposed subpart H concerning determinations, appeals, and hearings. It also required that an AAW’s case file include the worker’s TRA application(s)

and the determinations on those applications.

Two commenters provided feedback on the requirement in paragraph (c) that States maintain copies of TRA applications and determinations in AAWs’ case files. One commenter, saying that in its State separate agencies administer the TAA Program and TRA, asked whether the Department intends in such cases for the TAA Program agency to keep the applications in its files or for the TRA agency to maintain them. The Department has considered this comment and has determined that it is the State’s prerogative to determine where the TRA application is kept. TRA records must be stored according to Federal and State records retention requirements and made available to the Department for review, as appropriate.

One commenter described a similar division of responsibilities between State agencies, with TRA determinations maintained electronically, and asked whether this requirement meant needing to keep paper copies as well, which it said would be “a waste of paper.” The Department maintains that participant records may be electronic or paper, but must be accessible to case managers and other State and Federal officials who require access to a trade-affected worker’s case file. State files and recordkeeping procedures are at the discretion of the State but if there is a lack of file integration between agencies who administer the TAA Program and TRA, then States may use TAA Program funds to improve their case file integration and accessibility. States may have to examine and modify policies and procedures to ensure that appropriate individuals have access to a trade-affected worker’s complete file, including TRA. The Department made a nonsubstantive edit in paragraph (c) of this section to correct two cross-references to the section headings of different sections; otherwise, this final rule adopts this section as proposed. No changes to the regulatory text have been made in response to this comment.

#### Paragraph (d)

The Department has made an edit to the use of a pronoun and subject-verb agreement in paragraph (d).

#### Paragraph (e)

Proposed paragraph (e) of this section provided that an application is required for each TRA benefit type available to the AAW, however, as discussed below, paragraph (e) of this section has been modified in this final rule.

Multiple commenters addressed the requirement in paragraph (e)(1) of this

section that States collect separate applications for Additional TRA, where an application for Additional TRA was not previously required. Many of the commenters expressed concern that this change would delay the payment of TRA benefits to workers, with one of the commenters saying the provision would lead to “unnecessary paperwork” and another commenter maintaining that it could present “financial hardship” for AAWs. A few commenters said that in their States, workers can move from Basic TRA to Additional TRA automatically, with no separate application needed, as long as certain requirements are met, and they suggested this approach be maintained. The commenters argued that separate applications would increase administrative burdens on States or would entail “substantial changes” to their systems. One commenter questioned whether requiring separate applications for Additional TRA was intended to provide accountability around workers’ participation in training. Another commenter requested clarification about the correct implementation of this provision, asking whether States should supply workers nearing the end of Basic TRA eligibility with an application for Additional TRA and a deadline by which to return it. The Department recognizes these concerns and has modified the regulatory text at § 618.715(e)(1) to require an initial application (which is typically for Basic TRA, but could be for Additional TRA if the AAW receives UI for a duration that exceeds Basic TRA) and a separate application for Completion TRA.

It is important for AAWs to be aware that the conditions for receipt of each type of TRA are unique. Therefore, in response to these comments, the Department has established a requirement at § 618.715(e)(3) that AAWs be notified when they move from Basic TRA to Additional TRA so that they are aware of the eligibility conditions they must continue to meet to remain eligible. Providing a notice to AAWs informing them of eligibility criteria at each benefit entitlement stage fulfills due process requirements and reinforces program integrity. This also serves as the record that the State advised AAWs properly, and the State will be better able to sustain a denial of benefits at the appellate level since it will document that benefit information was provided with specificity to all AAWs proximate to the benefit payments.

Section 618.720 Qualifying Requirements for Basic Trade Readjustment Allowances

Proposed § 618.720 set forth the requirements for Basic TRA eligibility and was largely taken from the previous regulations at 20 CFR 617.11(a)(2), but contained some changes.

Paragraph (e)

Proposed paragraph (e) of this section required exhaustion of UI prior to receipt of TRA and sets forth two requirements. First, proposed paragraph (e) makes an exception that exhaustion of additional compensation that is funded by a State, and not reimbursed from any Federal funds, is not required. Second, it explains that whenever an AAW becomes entitled (or would become entitled if the worker had applied) to UI (except additional compensation that is funded by a State and not reimbursed from any Federal funds) TRA eligibility is suspended until the worker again exhausts UI. Proposed paragraph (e)(1) required exhaustion of UI entitlement and was based on 20 CFR 617.11(a)(2)(v)(A) and (B).

One commenter expressed concern about how paragraph (e)(1) of this section defines “exhaustion of UI,” saying it is unclear because the definition contains a circular reference to the term being defined. The commenter then quoted the previous definition of this term in 20 CFR 617.3(p) and suggested that the Department adopt this more clear definition of the term from part 617. The Department explains that § 618.720(e) provides that UI entitlement must be exhausted under the conditions at paragraph (e)(1) of this section and not under the conditions at paragraph (e)(2) of this section. The Department has simplified paragraph (e)(1) of this section by adding the words “except as provided at § 618.720(e)(2)” to the end of the first sentence and deleting the second and third sentences. The substantive requirement is unchanged. The previous definition of *exhaustion of UI* at 20 CFR 617.3(p) also is retained in its entirety because unlike the TRA requirement presented by § 618.720(e), it explains a different concept that applies to UI and any Federal unemployment such as TRA. Exhaustion of all UI entitlement occurs by either: (1) The receipt of all entitlement (monetary benefits) in a benefit period; or (2) the end or expiration of the benefit period (benefit year ending date), whichever occurs first.

Proposed paragraph (e)(2) of this section codified section 232(d) of the Act. This provision allowed an AAW to elect to receive TRA instead of UI under certain circumstances.

One commenter supported the language in paragraph (e)(2) of this section that provides workers the option of receiving TRA rather than UI, saying that access to TRA would help workers in work-based training who are “connected to employment” but still require income supports to bring their initial earnings closer to their former wages. The final rule adopts the regulatory text in paragraph (e)(2) of this section into the final rule as proposed.

Proposed paragraph (e)(3) of this section detailed the requirement that States provide the AAW with a summary of their potential UI and TRA benefits in writing and document the AAW’s choice in the case management file.

One commenter, citing the requirement in paragraph (e)(3) of this section that States provide AAWs a written summary of their potential TRA and UI benefits and document the AAW’s choice in his or her case file, asked whether, in States where separate agencies handle the TAA Program and TRA/UI, the TAA Program agency would need to document the AAW’s choice in its files or if it would suffice for the TRA/UI agency to document the choice in its files. A different commenter said that the provision would require changes to the UI system in its State to ensure proper documentation. It is important that a record of actions taken and the choices selected by the AAW be documented and readily available for review by the Department. Whether this documentation is maintained at the local area or State level or with one State agency or another is up to the State.

The Department has determined that for an AAW to exercise the option between UI and TRA, the worker is required to file for UI benefits, establish a valid claim, and be found eligible to receive UI benefits, if such election is made. It is not enough only to consider potential monetary eligibility. A claimant can be found monetarily eligible, but still not be eligible to receive such UI entitlement consistent with 26 U.S.C. 3304(a)(7). This is a requirement of the Federal Unemployment Tax Act, which requires a worker who has received compensation during a benefit year to have had work since the beginning of such year in order to qualify for compensation in the next benefit year. Accordingly, documentation of this

choice is required to eliminate ambiguity and maintain program integrity. The final rule adopts the regulatory language in paragraph (e)(3) of this section into the final rule as proposed, with the exception of a change to the use of a pronoun.

Proposed paragraph (e)(4) of this section provided that if the AAW exercises the election to receive TRA, State law governs what happens to the valid UI claim filed. Proposed paragraph (e)(5) provided that the AAW must have no unexpired waiting period applicable for such worker for any UI, except when collecting TRA.

As a result of the comments received above regarding proposed paragraph (e) of this section and the exhaustion of UI, the Department has edited the regulatory text in proposed paragraph (e)(4) through (e)(6) of this section to simplify the provisions related to UI claims in the second benefit year, the exhaustion of UI, and waiting periods, respectively. Paragraph (e)(5) of this section was newly inserted in this final rule and this resulted in the renumbering of proposed paragraph (e)(5) as paragraph (e)(6) in this section.

Paragraph (f)

Proposed paragraph (f) of this section combined the requirements in 20 CFR 617.11(a)(2)(vi) and 20 CFR 617.17 and reorganized and rephrased the paragraphs containing the specified means for meeting the Extended Benefits (EB) work test requirements in an easier to follow format. In addition, proposed paragraph (f)(2)(ii) of this section provided that the EB work test requirements do not apply during a break in training that does not exceed 30 days. The Department made an edit to the use of a pronoun in paragraph (f).

One commenter asked whether proposed paragraph (f)(2)(ii), which provides an exception to both the “able and available” requirement and the EB work test requirement for workers during breaks in training not lasting more than 30 days (per the counting method in § 618.775(b)), means that these requirements do apply if the worker’s break lasts longer than 30 days. The comment relates to the application of the EB Work Test.

The EB Work Test is an eligibility requirement for all TRA as provided at § 618.720(f)(1), except as provided at paragraph (f)(2) of this section. An AAW enrolled in TAA approved training, or participating in such training, or on a break from training, does not need to continue meeting the EB Work Test. As provided at § 618.775 (payment of TRA during breaks of training), Basic and Additional TRA are payable during

TAA approved training breaks, not exceeding 30 days. However, Basic and Additional TRA are not payable if the break in such TAA approved training exceeds 30 days.

The AAW can elect to seek employment at all times, consistent with the EB Work Test, but it would have no effect on the payment of TRA during the enrollment or participation in TAA approved training nor during breaks in TAA approved training, whether or not they exceed 30 days. The Department has edited the regulatory text in the final rule at § 618.720(f)(2)(ii) by removing the reference to breaks in training lasting longer than 30 days in order to clarify the relationship between the EB Work Test and breaks in training.

Proposed paragraph (f)(3) of this section contained the definition of “suitable work.” The applicable definition depends on an AAW’s job prospects as discussed in 20 CFR 615.8(d). For an AAW with job prospects determined to be “good,” the applicable definition is that of claimants for regular compensation. Conversely, where a worker’s job prospects are “not good,” the Federal-State Extended Unemployment Compensation Act of 1970 definition applies, and it considers any work within the worker’s capabilities to be suitable.

A State workforce agency agreed with the Department’s rationale, expressed in the NPRM, for paragraph (f)(3) applying different job search requirements to AAWs with “good” job prospects versus those with “not good” job prospects (a determination the State makes under 20 CFR 615.8(d)) but asked for definitions of “good” and “not good.” The State workforce agency also argued that the differentiation of job search requirements would mean “considerable changes” to its State’s UI system. The language in the proposed regulatory text is revised in the final rule based on the EB Work Test provisions found at 20 CFR 617.11(a)(2)(vi). A portion of this language was omitted in the proposed rule in error, specifically the reference that registration for work be made consistent with the EB regulations found at 20 CFR part 615. The applicable reference is 20 CFR 615.8(d), which provides an extensive explanation on the classification and determination of job prospects to establish whether they are “good” or “not good.” The Department revises paragraph (f) in the final rule to include the language that was omitted in error and to provide the proper reference to 20 CFR 615.8(d).

#### Paragraph (g)

Proposed paragraph (g) of this section followed the participation in training requirement of 20 CFR 617.11(a)(2)(vii). Proposed paragraph (g)(2) provided the Department’s position that the participation in training requirement does not apply to an AAW before what is commonly referred to as the 26/26-week deadline for enrollment in training found in section 231(a)(5)(A)(ii) of the Act and incorporated into proposed § 618.725. Thus, an AAW may receive Basic TRA up to the applicable training enrollment deadline in proposed § 618.725 without meeting the participation in training requirement.

One commenter said new paragraph (g)(2) of this section, addressing receipt of TRA prior to the training enrollment deadline, makes the requirements clearly understood. The Department has incorporated the above-mentioned changes to the regulatory text for § 618.725 and otherwise adopts this section into the final rule as proposed.

The Department made an edit to the use of a pronoun in paragraph (g)(3).

#### Section 618.725 Training Enrollment Deadlines

Proposed § 618.725 did not have a counterpart in the previous regulations at 20 CFR 617, but was administered by States based on administrative guidance. This § 618.725 in the proposed rule set forth the statutory deadlines by which an AAW must be enrolled or participating in approved training, or have a training waiver in effect as a condition for receiving TRA. These deadlines are commonly referred to as the training enrollment deadlines or the “26/26-week deadlines.”

Proposed paragraphs (a)(1) and (2) of this section implemented the training enrollment deadlines that require an AAW to be enrolled in training or have a waiver granted no later than the last day of the 26th week after either the worker’s most recent qualifying separation or the last day of the 26th week in which the certification was issued to receive Basic TRA. This is also what is known as the “26/26-week deadlines.” The training enrollment deadlines are established by section 231(a)(5)(A)(ii)(I) and (II) of the Act.

One commenter opposed the establishment of a 26-week deadline to enroll in training in cases of partial separation, saying it would penalize partially separated workers who have not enrolled. The Department reiterates that the deadline in the regulation is a statutory deadline and may not be modified. However, the deadline for a partially separated worker may actually

change as a worker with a partial separation under an existing active certification would have 26 weeks from the week in which he or she became partially separated to enroll in (or be waived from) training and, if he or she later experiences a total separation, the enrollment deadline would restart based on the date of the total separation.

Proposed paragraph (a)(3) of this section implemented the deadline in section 231(a)(5)(A)(ii)(III) of the Act that allows an AAW 45 additional days after the later of the training enrollment deadlines described above, if there are extenuating circumstances that justify the extension. The Act does not elaborate on what are extenuating circumstances. Proposed paragraph (a)(3) of this section explained that extenuating circumstances are those that constitute good cause—unusual situations that are beyond the control of the AAW and that make enrollment within the otherwise applicable deadline impossible or unreasonable. Additional discussion of extenuating circumstances and good cause is found in the preamble for proposed § 618.730.

One commenter supported the “extenuating circumstances” provision in proposed § 618.725(a)(3) that would extend a worker’s eligibility for TRA income supports by extending the training enrollment deadline for 45 days if there is “good cause.” The Department appreciates this support and the final rule adopts the regulatory language of this section as proposed.

#### Section 618.730 Good Cause

Proposed § 618.730 did not have a counterpart in prior regulations at 20 CFR part 617 but was administered by States based on administrative guidance that implements section 234(b) of the Act. In determining whether to apply the good cause exception, States should consider the following: whether the State failed to provide timely notice of the need to act before the deadline passed; whether factors outside the control of the AAW prevented the worker from taking timely action to meet the deadline; whether the worker attempted to seek an extension of time by promptly notifying the State; whether the worker was physically unable to take timely action to meet the deadline; whether the employer warned, instructed, threatened, or coerced the worker in any way that prevented the worker’s timely filing of an application for TRA or enrolling in training; whether the State failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker’s entitlement to TRA; or whether there are other compelling

reasons or circumstances that would prevent a reasonable person from meeting a deadline.

A State workforce agency supported the Department's clarification of the "good cause" exception and suggested the flexibility it provides should be expanded to allow for waiver of "any of time limitations or other requirements" if the AAW can demonstrate "good cause" exists. Through these regulations, the Department codifies four different concepts where exceptions to certain deadlines are appropriate: extenuating circumstances, justifiable cause, good cause, and equitable tolling (§ 618.888). Though similar, they are not interchangeable. States may apply these, as appropriate, for a worker's unique circumstances.

Proposed paragraph (b) of this section provided that for good cause to exist, the AAW must have acted diligently yet been unable to apply for, enroll in, or receive a training waiver within the required time limitations because of exigent circumstances.

Citing a Rutgers University study about the negative effects of prolonged unemployment, a different commenter recommended that the Department revise proposed § 618.730(b) to state explicitly that "good cause" encompasses the difficulties workers face that are "exacerbated by the trauma and stress of unemployment," such as financial straits, depleted savings, and emotional strain. The same commenter expressed concern that, without explicit encouragement from the Department to interpret the standard liberally, States would hesitate to apply it in a way that provided workers the most opportunity to access training. The Department is well aware of the difficulties that workers face when unemployed. States are aware of these difficulties as well. However, the Department has decided not to include any specific examples in the regulatory text as there are often too many variables to consider such that providing a definitive opinion in this final rule would be difficult. For technical assistance on the application of these provisions to specific circumstances, States should consult with the appropriate regional office.

The final rule adopts the regulatory language as proposed.

#### Section 618.735 Waiver of Training Requirement for Basic Trade Readjustment Allowances

Proposed § 618.735 addressed waivers of the training requirement as a condition for receiving Basic TRA. This section permitted States to issue waivers if an AAW was unable to meet the training required and identified the

circumstances under which a waiver could be granted.

#### Paragraph (b)

Proposed paragraph (b) of this section set forth the permissible bases for waiving the training requirement.

One commenter urged the Department to reinstate the more numerous waivers of the training requirement for Basic TRA that existed before the enactment of TGAAA in 2009 and the regulatory changes that followed. A different commenter specifically requested the restoration of the "marketable skills" waiver, which allowed workers with in-demand skills to receive extra weeks of TRA beyond the standard UI entitlement by waiving the training requirement. The same commenter expressed concern about what it called the "underlying unfairness" of the proposed approach of making TAA-eligible workers with marketable skills look for suitable employment, thereby forfeiting TRA benefits. The categories are statutory, as established in section 231(c)(1)(A) through (C), and the Department does not have the authority to add additional categories; therefore, the final rule adopts the regulatory language regarding the waiver categories as proposed.

One commenter responded to the Department's request for comments by asking that the Department include more descriptive language about the bases of waiver criteria into the regulatory text by inserting the statutory language. The Department has determined this addition is not necessary, and adopted the regulatory descriptions of the waiver conditions as proposed.

#### Paragraph (c)

Proposed paragraph (c) of this section governed the contents of a waiver and provided that a waiver does not take effect unless it contains, at a minimum, six specific items of information. Proposed paragraph (c) modified the requirements that existed at 20 CFR 617.19(a)(2)(i) through (vii) to account for the statutory change concerning allowable conditions for issuing a waiver.

A State workforce agency questioned the necessity of the requirement in paragraph (c)(1)(vi) of this section that a waiver cannot take effect unless it contains a signature from "an official of the State authorized to grant the waiver" and said that the State's approval in the electronic case management system should suffice. The same commenter also asked why such a signature would be needed to waive the training requirement but not to enroll a worker

in training. As provided by the Department in proposed subpart H, as well as in this final rule, electronic signatures are allowable, as are scanned signed copies. This would be the same for training approval or approval of other benefits. The Department strongly encourages States to move toward electronic case files and electronic benefit management wherever possible to reduce operational costs and improve efficiency of the provision of TAA Program benefits and services. The final rule adopts the regulatory text in paragraph (c)(1)(vi) of this section as proposed.

#### Paragraph (f)

The Department made an edit to the use of a pronoun in paragraph (f).

#### Paragraph (g)

Proposed paragraph (g) of this section revised 20 CFR 617.19(c) and implemented section 231(c)(2)(B) of the Act, by requiring that a waiver be revoked if the waiver criteria are no longer met and that the AAW be notified in writing of the revocation. Omitted from the regulation in proposed paragraph (g) of this section were two provisions from 20 CFR 617.19(c)(2) and (3) that did not impose substantive requirements.

One commenter, citing the preamble discussion about paragraph (g) and the Department's explanation that it dropped two provisions from 20 CFR 617.19(c)(2) and (3), stated its understanding of the removed provisions as follows: if the waiver is revoked because a worker enrolls in training, then the State simply revokes the waiver on the waiver form and does not need to send the worker a written notice of revocation outlining the worker's appeal rights, but if the waiver is revoked for any other reason, then the State sends the worker a notice of appeal rights. The same commenter said that if its understanding of these provisions is correct, then it would support taking that approach. Similarly, another commenter said that changing the status quo, in which revocation that occurs because "training is feasible and appropriate" does not result in written notice since the AAW simply begins training, could be confusing to workers and disrupt service delivery. This commenter asked for clarification about whether, under the proposed approach, all revocations must be issued as written notices and treated as appealable determinations. Waivers must be revoked, in accordance with section 231(c)(2)(B), when the conditions that led to the issuance of such waiver are no longer in effect. If during the

periodic review of the waiver, it is discovered that reason(s) for such waiver are no longer applicable, the waiver must be revoked and the AAW must meet the requirements of § 618.725(a)(5). This would include when an AAW enrolls in approved training. States must issue determinations on revocations and provide appeal rights consistent with §§ 618.820 and 618.828. The final rule adopts the regulatory language in paragraph (g) of this section as proposed.

The Department is finalizing this section into the final rule as proposed.

#### Section 618.740 Evidence of Qualification for Basic, Additional, and Completion Trade Readjustment Allowances

Proposed § 618.740 was modeled after 20 CFR 617.12 and provided the requirements for evidence of qualification for Basic, Additional, and Completion TRA. Proposed paragraph (a) of this section was substantially the same as 20 CFR 617.12(a) and contained the requirement that States obtain the basic information necessary to establish whether a TRA applicant is eligible to receive TRA.

A State workforce agency interpreted the Department's overview of § 618.740 in the NPRM preamble as meaning that a State does not need an application to determine TAA Program eligibility if, based on the worker list it receives from the employer, it has enough information to assess a worker's eligibility for benefits. The State workforce agency asked the Department for confirmation that the State does not need to require workers to apply if the information from the employer provides sufficient grounds on which to base an eligibility determination as to the TAA Program and TRA. The Department explains that if the worker list provides sufficient information for the State to determine that a trade-affected worker was separated for lack of work as a member of the worker group, then no additional information is required to render a general determination on overall TAA Program eligibility, allowing a worker to receive employment and case management services. Benefits and services such as training and TRA have other eligibility requirements that must be met, however.

Further, the worker list initiates the process by which the State contacts the trade-affected workers advising them of the availability of benefits. All members of the certified worker group must be provided notification of their potential eligibility. The State must request the firm to provide a list of workers who

have experienced a separation or are threatened with separation from employment from the certification's impact date through its expiration date, as soon as the certification is issued and throughout the certification period. The information provided by the firm is then used to advise workers of the potential TAA Program eligibility. If there is a conflict between the information provided by the firm and information provided by a worker, additional fact finding is necessary from both parties.

It is important for States to ensure that firms provide a list of all separations regardless of the reason for the separation. This avoids situations in which the firm only submits to the State workers who the firm believes had a lack of work separation. Otherwise, some workers considered by the firm as not experiencing a lack of work separation may be left off the list when in fact they should have been included, resulting in unnecessary delays for receipt of benefits and services for such workers. States also must work with the firm to identify workers who are individually threatened with separation. The worker list provides valuable information that is used by the State as a basis for issuing determinations of program entitlement. The State is the responsible party and the final authority issuing individual determinations as to which workers had a lack of work. Once this action occurs, the workers are considered to be an AAW or an AAIW. The Department made a nonsubstantive edit in paragraph (a) of this section to correct a cross-reference to the section heading of a different section; otherwise, the final rule adopts this section as proposed.

#### Section 618.745 Weekly Amounts of Basic, Additional, and Completion Trade Readjustment Allowances

Proposed § 618.745 governed the determination of an AAW's weekly amount of TRA, whether Basic, Additional, or Completion. This proposed section only impacts TRA benefits, not UI. The Department received no comments relating to proposed § 618.745 and therefore the final rule adopts the section as proposed, with the exception of edits to the use of pronouns in paragraphs (b) and (c).

#### Section 618.750 Maximum Amount of Basic Trade Readjustment Allowances

Proposed § 618.750 explained how to calculate the maximum amount of Basic TRA. It was derived from previous regulations at 20 CFR 617.14, with a few substantive and organizational differences. The proposal defined the

maximum amount of Basic TRA payable to an AAW as the product of 52 multiplied by the TRA weekly amount for a week of total unemployment, calculated under proposed § 618.745(a) (weekly amounts of TRA), reduced by the total sum of UI (except State-funded additional compensation) that the AAW was entitled to or would have been entitled to had the worker applied in such worker's first benefit period. As proposed in paragraph (b), this does not include any supplemental payments for dependent allowances. One change from previous regulations concerned the reduction for the total sum of the AAW's UI entitlement. Paragraph (a)(2) of 20 CFR 617.14 provided that a worker's UI reduction must include, in addition to any UI to which the worker was entitled, any UI to which the worker would have been entitled had the worker applied for it during the worker's first benefit period. The last sentence of that paragraph added that in calculating the worker's maximum TRA amount, the worker's full UI entitlement for the first benefit period must be subtracted, regardless of the amount, if any, actually paid to the worker. This provision created an unintended result for AAWs who during the first UI benefit period exhausted regular compensation, became eligible for EB under 20 CFR part 615 and, while continuously unemployed, could not receive the full EB entitlement because, prior to EB exhaustion, the EB period triggered "off" such that no further EB benefits were payable in the State. While the statutory and regulatory language implies that the full entitlement must be reduced, the AAW could not have filed and received such benefits. Accordingly, the Department's revised position was that if, and only if, the benefit was available to the AAW, it must be reduced.

One commenter requested clarification about the provision in § 618.750(a) concerning the reduction in the maximum amount of Basic TRA payable based on workers forgoing a UI benefit to which they were entitled. The same commenter asked whether a worker who elects to wait until filing would be "out those two weeks." The Department explains that the regulatory citation tracks the statute at section 233(a)(1) of the Act. This requires that the full UI entitlement during the first benefit period is reduced, independent of the actual receipt, to establish the maximum Basic TRA payable. For purposes of this calculation, UI includes regular compensation, EB, and Federal supplemental compensation. Accordingly, if the AAW was entitled to

compensation and had a balance in such compensation, such compensation must be reduced from the maximum Basic TRA payable, independent of the reasons the AAW could not receive such compensation. The final rule adopts the regulatory text as proposed.

#### Section 618.755 Eligibility Period for Basic Trade Readjustment Allowances

Proposed § 618.755 established the Basic TRA eligibility period. The Department did not receive any comments on this section. The final rule adopts the regulatory text as proposed, with a technical correction that removes an erroneous reference to § 618.755(c), a nonexistent regulatory provision.

#### Section 618.760 Qualifying Requirements for, and Timing and Duration of, Additional Trade Readjustment Allowances

Proposed § 618.760, establishing the qualifying requirements for, and duration of, Additional TRA, had no specific counterpart in 20 CFR part 617; however, most of the provisions in § 618.760 were contained in various sections of the prior regulations at 20 CFR part 617 and had been updated through administrative guidance over time. The Department is finalizing this section as proposed, except for the changes described herein.

Proposed paragraph (a) of this section contained Additional TRA qualifying requirements and was largely unchanged from 20 CFR 617.11(a)(2) (TRA qualifying requirements), 20 CFR 617.15(b)(2) (training application filing deadlines), and 20 CFR 617.15(b)(3) (requirement of participation in training except during breaks in training). Proposed paragraph (a)(2) of this section specified that the AAW must have exhausted Basic TRA before establishing eligibility for Additional TRA.

One LWDB understood proposed § 618.760(a)(2) as meaning that a worker who has reached 104 weeks of Basic TRA eligibility without exhausting that benefit is not eligible to receive Additional TRA, even after receipt of EB or supplemental compensation, and asked the Department whether that was the provision's intent. The provision to require exhaustion of Basic TRA was included in the proposed rule to clarify that Additional TRA is not a permissible alternative to Basic TRA for an AAW who missed the training enrollment deadlines in § 618.725 and who lacks good cause for failure to meet such deadlines. However, upon further review of the Act as a result of this comment, the Department concludes that there is no statutory basis to establish this provision in the

regulations. Proposed § 618.760(a)(2), therefore, has been removed from the regulatory text in the final rule, and proposed paragraph (a)(3) has been redesignated as final paragraph (a)(2) to reflect the deletion of proposed paragraph (a)(2).

#### Section 618.765 Qualifying Requirements for, and Timing and Duration of, Completion Trade Readjustment Allowances

Proposed § 618.765 provided the qualifying requirements for, and duration of, Completion TRA. This section codified section 233(f) of the Act, and provisions in administrative guidance implementing the statute, and resolved policy issues arising from the implementation.

Proposed paragraph (c) of this section explained that the Department determined that the eligibility period for Completion TRA will be the 20-week consecutive calendar period beginning with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended for justifiable cause in accordance with proposed § 618.770(a).

A commenter asked whether modification of a training contract during the eligibility period, while there is Completion TRA eligibility remaining, resulting in training continuing after the eligibility period, would be deemed "justifiable cause" for extending the eligibility period under § 618.765(c). Before any determination can be made on whether or not to apply justifiable cause, fact-finding must occur. The Department encourages States to work with their appropriate regional office to address specific cases as they arise. The final rule adopts the regulatory text as proposed.

#### Section 618.775 Payment of Trade Readjustment Allowances During Breaks in Training

Proposed § 618.775, governing payment of TRA, whether Basic or Additional, during breaks in training, was substantially the same as 20 CFR 617.15(d) except that, as the result of a statutory change to section 233(e) of the Act, it extended the maximum number of days a break may last without interrupting TRA payments from 14 days to 30 days. Proposed paragraph (b) of this section provided a basis for counting days similar to 20 CFR 617.15(d).

One commenter recommended that the Department add language to paragraph (b) of this section, which explains what days count toward the 30-

day maximum, to account for workers enrolled in training that mostly occurs on weekends, which the commenter said is true of some technical certification courses. To illustrate this point, the commenter provided an example of two workers, where one has classes that meet primarily on weekends, while the other has classes that meet only on weekdays. In the commenter's example, while the two workers may experience a break at the same time, because weekends do count toward the weekend student's total, but do not count toward the weekday student's total, the break is treated as shorter for the weekday student than it is for the weekend student. The commenter asked for clarification about how many days following the worker's return to training must pass before the worker can have another break and still remain eligible for TRA benefits. The commenter described an example in which the worker takes a course lasting 1 or 2 days in between two breaks in training and asked whether this would "reset" the count for the 30-day limit. The commenter also requested clarification about how this provision applies to distance learning programs with no set class schedule, namely whether weekends and holidays would be excluded for such programs. The Department appreciates the commenter's concerns, but there are too many unknowns and additional information would be needed in order to provide an informed response. The commenter is encouraged to contact its appropriate regional office for technical assistance on individual case scenarios. The Department is finalizing this section in the final rule as proposed, with the exception of a subject-verb agreement edit in paragraph (c).

#### Section 618.780 Disqualifications

Proposed § 618.780, governing disqualifications from receiving TRA, was structured the same as 20 CFR 617.18. Proposed paragraph (d) of this section, prohibiting payment of TRA to an AAW for any week during which the worker is receiving part-time training, did not have a comparable section in 20 CFR part 617, as it was a new statutory requirement in section 236(g) of the Act, which had been implemented provisionally via administrative guidance.

One commenter requested clarification about the correct interpretation of paragraph (d) of § 618.780, concerning disqualification from receiving TRA for any weeks in which a worker participates in part-time training, which states that part-time training is any training not meeting the

definition of “full-time training” in § 618.110. The same commenter quoted the definition in § 618.110 of “full-time training,” which provides in paragraph (2) of the definition that students in their last semester of training will be considered in full-time training, even if their courses do not meet the training provider’s definition of full-time, if those courses are the only training or coursework required to finish the training. The commenter asked the Department to confirm that a State does not need to obtain additional documentation from a training provider in order to pay TRA for a worker’s last semester of training. A different commenter said the proposed rule did not include language extending eligibility for TRA to workers in part-time training during their last semester who are scheduled to graduate and only need that semester’s courses to complete their requirements. States should ensure that courses taken in the last semester of the AAW’s approved training program are the only classes or coursework needed to complete training, and if they are less than full-time, that should be documented in the worker’s case file. The Department also refers the commenters to the definition of full-time training at § 618.110, where the final semester of training is specifically addressed. The Department made a nonsubstantive edit in paragraph (a) of this section to correct a cross-reference to the section heading of a different section; otherwise, the final rule adopts this section as proposed.

#### *H. Subpart H—Administration by Applicable State Agencies*

Subpart H governs the administrative requirements and rules that States must follow in delivering TAA Program benefits and services. Subpart H mirrors subpart G of 20 CFR part 617 with a few exceptions. These exceptions include organizing sections differently for improved clarity; revising provisions to reflect recent statutory amendments and policy determinations; and adding new sections to address requirements for veterans’ priority of service, general fiscal and administrative requirements, and TAA Program performance. Subpart H also excludes some provisions that are contained in subpart G of 20 CFR part 617 because they are based on expired laws. Other major changes cover topics such as merit staffing requirements; actions the Department may take in the absence of an executed Governor-Secretary Agreement; State submissions of administrative rulings and waivers of training; veterans’ priority of service requirements;

program performance requirements; and overpayment requirements and instructions.

There were no comments received on proposed §§ 618.800, 618.820, 618.828, 618.836, 618.840, 618.844, 618.848, 618.856, 618.868, 618.872, 618.884, 618.894, and 618.898. Accordingly, the final rule implements these sections as proposed, except for an edit to subject-verb agreement in § 618.820.

#### **Section 618.804 Agreements With the Secretary of Labor**

Section 618.804 of the NPRM set forth the statutory requirement at section 239 of the Act that agreements between the States and the Secretary (known as Governor-Secretary Agreements) are required before a State may deliver TAA Program benefits and services. Proposed § 618.804 followed 20 CFR 617.59, but reordered the provisions and edited them for clarity. The final rule adopts § 618.804 as proposed, except for a nonsubstantive technical edit correcting the capitalization of “agreement” to “Agreement.”

A commenter supported continuing services even while the Department is in the process of amending Governor-Secretary Agreements. The Department has never ordered States to cease program operations while executing updated Agreements.

#### **Paragraph (h)**

The Department received one comment related to proposed paragraph (h) of this section. Proposed NPRM paragraph (h) provided a nonexhaustive list of mandatory terms for Governor-Secretary Agreements between the Secretary and States, including provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers (proposed paragraph (h)(4)).

A State workforce agency recommended revising § 618.804(h)(4) to state explicitly that the costs for services post certification “must” (rather than “should”) shift from WIOA and other programs to the TAA Program and to provide a reference to § 618.615(c) as the basis for this requirement. The services required to be provided to petitioners, prior to a petition determination, are funded from WIOA. These are the rapid response services and appropriate career services required by section 221(a)(2)(A) of the Act. The Department recognizes that there may be administrative reasons, from time to time, where allowing WIOA to continue providing these services after a certification as been issued utilizing WIOA funding is

preferred. The final rule adopts § 618.804(h)(4) as proposed.

The Department made a nonsubstantive edit to correct a cross-reference in paragraph (h)(2) of this section, including correcting the section heading of the section cited; otherwise, the final rule adopts this section as proposed.

#### **Section 618.808 State Rulemaking**

Section 618.808 proposed a modification from 20 CFR 617.54 and divided the section into paragraphs. This proposed section provided States with the authority and flexibility to establish laws, regulations, procedures, or other policies related to the administration of the TAA Program that are not inconsistent with Federal law or these regulations while ensuring the Department can still administer the uniform interpretation of the program throughout the United States. Proposed paragraph (a) reworded 20 CFR 617.54 and replaced the generic term “supplemental procedures” with specific references to the establishment of laws, regulations, procedures, or other policies not inconsistent with the Act, this part 618, or administrative guidance issued by the Department. Proposed paragraph (b) retained the requirement in 20 CFR 617.54 that certified copies of the proposed law, regulation, procedure, or other policy be provided to the Department, but removed the requirement for them to be submitted on a form supplied by the Department to accommodate the improvements in technology that make this process much easier. Proposed paragraph (c) was unchanged from 20 CFR 617.54 and required that all laws, regulations, procedures, or policies by the States be reviewed and approved by the Department before taking effect. It also authorized temporary approval by the Department, in cases of administrative necessity, for a period not to exceed 90 days. Proposed paragraph (d) allowed the Department, after providing the State notice of at least 30 days, to withdraw a previous approval. Proposed paragraph (e) differed from 20 CFR 617.54 and required States to follow State UI law requirements for public notice and opportunity for hearings on rulemaking. Proposed paragraph (e) more broadly also required the State to follow any other State or Federal law that may require such public notice and opportunity for hearing.

Two State workforce agencies asked how the Department would approve State rulemakings and asked for more clarity as to whether revisions to State regulations would require Departmental

approval, expressing concern that Departmental review could hinder TAA Program operations. The Department would like to reiterate that this provision regarding State rulemaking is in the previous regulations at 20 CFR part 617. This process is not as formal as grant modifications and the process should not be overly complicated or formal. States are directed to submit the information to their TAA Program contact at the regional office. The regional office will work with the Office of Trade Adjustment Assistance (OTAA) to review the information and provide a response to the States. This process can occur entirely by email. Only in rare circumstances have State rules required significant discussion within the Department. In general, the regional office and OTAA are able to provide a response to the majority of submissions made by States in a very reasonable amount of time. Stand-alone forms are not required to be submitted to the Department, although States are encouraged to follow the same process to receive feedback on any TAA Program-specific forms to ensure that they do not contain policy issues. The final rule adopts this section as proposed.

#### Section 618.812 Subpoenas

Section 618.812 of the proposed rule, authorizing States to issue and enforce subpoenas, was substantially the same as 20 CFR 617.53.

One commenter wrote that States might benefit from using subpoenas to obtain lists of workers from employers. The Department clarifies that States have always had this authority, although, until this final rule, it has been implied rather than express. The Department agrees that the explicit inclusion of this authority at paragraph (b) will improve the timeliness with which this information is provided by firms to the States. The final rule adopts this section as proposed.

#### Section 618.816 Trade Adjustment Assistance Program Benefit Information and Provision of Services to Workers

Proposed § 618.816 contained requirements the States must meet in providing TAA Program benefit information and services to trade-affected workers. The Department has revised the regulatory text in paragraph (e)(4) as discussed below and has made a nonsubstantive edit to correct a cross-reference to § 618.725 in paragraph (e)(2)(vi) of this section; otherwise, the final rule adopts the section as proposed.

#### Section 618.816(a)

Proposed paragraph (a) required States to provide general program information and advice to trade-affected workers, which was very similar to 20 CFR 617.4(a), and contained only minor language changes. This requirement derives from the obligation in section 225(a) of the Act to provide information to trade-affected workers about the benefits and services available to workers and their associated applications and timelines. The information provided to workers must cover all benefits and services available under the TAA Program, including the HCTC, if available.

Two State workforce agencies requested clarification regarding the requirement that States must provide information about TAA Program benefits, application procedures, and filing dates to workers applying for UI. Specifically, the State workforce agencies asked about timing (*i.e.*, pre- or post-certification), arguing that providing such workers with too much information pre-certification could confuse them because the petition for certification may fail or the certification may not cover all of the workers (*e.g.*, because they quit or were terminated). One of the States added that this requirement also could increase the risk of services being approved for those workers who were ineligible to receive such benefits. The Department clarifies that this is not a new requirement. It is also a statutory requirement, established at section 239(g)(1) of the Act. Most States meet this requirement with a statement on the web-based system used for UI claims or in the initial meeting or initial correspondence to new UI claimants. No changes have been made to proposed paragraph (a) and the final rule adopts the regulatory text as proposed.

#### Section 618.816(b)

In the NPRM, the Department proposed § 618.816(b) based on section 221(a)(2)(A) of the Act, which required States to ensure rapid response assistance and appropriate career services are made available, consistent with section 134 of WIOA, to all groups of workers covered by a petition filed under subpart B.

One commenter expressed several concerns about the new requirement for States to provide rapid response assistance and appropriate career services, consistent with WIOA section 134, to all groups of workers covered by a petition filed under subpart B. The commenter's concerns included the potential for the provision of services to

workers whose petitions do not result in certification or to workers incorrectly identified in a petition (*e.g.*, providing services to the entire company where only one subdivision of the company is the "firm" covered by the certification), as well as the potential for employers to become "disenchanted" with States that alarm and serve workers whose employment is not actually threatened. The same commenter suggested that the Department should amend the provision to require that States first investigate whether layoffs of workers in the group of workers are likely or have happened and, if they can reasonably determine that the petition is likely to be certified, then reach out to the impacted workers. The Department points out that this is not a new requirement. It is also a longstanding statutory requirement, found at section 221(a)(2)(A) of the Act. The requirement to provide rapid response and appropriate WIOA career services is statutory. The Department cannot reduce or qualify this requirement via regulations.

One commenter expressed concern that, without corresponding updates to the WIOA regulations, these proposed regulations will not be implemented correctly by WIOA Program staff. The States, under the Governor-Secretary Agreement, are bound to the implementation of these rules. The Governor-Secretary Agreement binds the entire executive branch of State governments to the terms and conditions of the Agreement and the implementation of the TAA Program. This includes the implementation of the rapid response requirement.

#### Section 618.816(e)(1) Through (3) and (5)

Proposed paragraph (e) required States to provide certain information and assistance to trade-affected workers after issuance of a certification covering their worker group. Proposed paragraph (e)(1), which was previously in 20 CFR 617.4(c), implemented section 225(a) of the Act and required States to inform the State board on vocational and technical education or equivalent agency, and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B and of projections, if available, of the needs for training under subpart F as a result of such certification. Proposed paragraph (e)(3) provided that it is permissible to obtain a list of workers that are partially or totally separated from adversely affected employment or threatened with separation via subpoena pursuant to proposed § 618.812. Proposed paragraph (e)(5) codified section 239(f) of the Act

and required that upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part 618. There is no direct similar provision in the previous rule.

Two State workforce agencies expressed concern about the practicality of the requirement in paragraph (e)(1) regarding the provision of benefit information post-certification to a variety of potentially interested parties. Specifically, one of the State workforce agencies said it would be administratively burdensome to effect such notice and maintained that States have “no way” to forecast a worker group’s training needs. The Department maintains that this requirement is best met through regular contact with State, local, and regional workforce development boards. Coordination with rapid response also will help in determining the training needs of worker groups and the demand in the local labor market. States also can use their own data to produce projections based on similar trade-affected workers already enrolled in the program or previously enrolled in the program. States are encouraged to contact the regional office for additional assistance in meeting this requirement. The final rule adopts the regulatory text as proposed.

One commenter expressed its understanding that the requirement in paragraph (e)(2) concerning notice to potential AAIWs means written notice, as required earlier in the same paragraph concerning notice to covered workers. The Department affirms that AAIWs must be provided a written notice.

With respect to paragraph (e)(2)(i), the same commenter recommended that the contents of the notice should include background information about the TAA Program in plain language to provide recipients with context for why they are receiving the notice. The Department agrees that plain language is always preferred whenever possible but has elected to allow States the flexibility to customize the overall content of the notice.

An LWDB suggested revising the requirement in paragraph (e)(3) to require firms to provide States with workers’ contact information at the time the petition is filed, rather than when a certification has been issued. The LWDB maintained that this revision would align the requirement better with the new requirement in paragraph (b) regarding rapid response activities and

appropriate career services, which applies at the petition stage. A different commenter recommended that if the Department obtains workers’ contact information in the course of its investigations, then it could share that information with the States, and the States could confirm with the firms that the information is still current. The same commenter said this approach would show the partnership between the Department and States when it comes to program administration. The Department does not request a worker list as part of its investigation because it is not needed for a determination to be made. The Department will, in its communication with firms during investigations, make them aware that such a list will need to be provided to the State if the petition is certified.

One commenter requested clarification of the terms “intake” and “orientation” as used in paragraph (e)(5). The same commenter said that different States interpret these terms differently. The Department concludes that the language in the preamble to the proposed rule, this preamble, and subpart C of this final rule is sufficient to address this concern and establish a standard to be met by all States.

#### Section 618.816(e)(4)

Proposed paragraph (e)(4) maintained the requirement from 20 CFR 617.4(d)(2)(i) that notice of certification be published in a newspaper of general circulation.

Two State workforce agencies and a State government employee called the proposed requirement for States to publish notice of certification via newspaper “antiquated” and recommended making it optional by changing the word “must” to “may” in the first sentence of paragraph (e)(4). A different State workforce agency suggested that the Department should revert to the previous requirement in 20 CFR 617.4(d)(2), which mandated newspaper notices only if the State could not substantiate that all workers covered by the certification have received written notice through the mail. The State workforce agency also said that placing legal notices in newspapers is “not cheap” and expressed concern that requiring such publication would waste both staff time and program funds for a method of communication that, in the commenter’s words, is “undoubtedly ineffective” as a way of reaching covered workers. A different State workforce agency also opposed the requirement, saying that many parts of the country do not have newspapers anymore and, where available, subscriptions can be costly.

The same State workforce agency added that for States with a high number of petitions, the requirement could impose time and cost burdens. The State recommended the Department give States flexibility around how to provide this notice, such as through public service announcements or electronic methods (e.g., LWDB websites), by accepting alternative means of notification in place of newspaper notices. Another State workforce agency asked the Department to keep the exemption from 20 CFR 617.4(d)(2), stating that it expected the proposed approach to increase program costs. The State workforce agency added that newspapers are increasingly not the most effective means of notification because many people consume news online, often from outlets not based in their area, and selectively view the content. One commenter responded to the Department’s request for comments related to the definition of “newspaper of general circulation.” The same commenter said that it defines a newspaper of general circulation as a combination of print and digital newspapers and public service announcements. The Department specifically requested comments on the requirement that notice of certifications be provided in a newspaper of general circulation and appreciates the responses. Many commenters responded that newspaper notices were an “antiquated” and costly method to notify workers of certifications. The requirement that a notice be published in a newspaper of general circulation is a statutory provision at section 225(b)(2) of the Act, so the Department may not change the requirement. However, after review the Department has concluded that notice may alternatively be placed in the online or digital version of a newspaper if it can be reasonably expected to reach the interested parties. The proposed regulatory text has been revised in the final rule to include this option.

#### Section 618.816(e)(6)

Proposed paragraph (e)(6) required, in addition to the written notices sent by mail, that States also use one method of modern electronic communication, such as email, to inform trade-affected workers of the certification.

Multiple commenters expressed concern about the practicality of the requirement that States, in addition to providing mailed written notice to workers covered by a certification of the benefits available to them, must provide electronic notice (e.g., text or email) to the workers. Several of the commenters recommended making this extra step

optional rather than required. One commenter requested clarification on whether the requirement could be met through communications on social media. Another commenter said that the requirement does not appear to include a mechanism for States to require that firms provide workers' mobile phone numbers or email addresses to them, such as the subpoena power in proposed § 618.812 by which States may obtain workers' names and mailing addresses. The same commenter also said that firms may not collect this information from their workers and some workers may not use mobile phones or email. Similarly, a different commenter stated that use of electronic communications is not universal among workers, and it expressed concern that the requirement would discriminate against those workers, such as older or lower skilled workers, who are not as "technology savvy" as others, such as younger or higher skilled workers. Another commenter said the requirement could result in "burdensome cost" for workers who have mobile phones but do not have unlimited messaging or data plans. The same commenter also raised the potential for this requirement to result in misdirected messages containing personal information for those workers who share electronic accounts. In contrast, a State workforce agency agreed with the requirement, saying it supported efforts to improve notification, promote experimentation with potentially more effective methods of engagement, and encourage a more technological and data-driven approach to program administration. The Department clarifies that the rule, as written, gives examples of alternative contact methods, including through an email or text message if the contact information is known. If the State does not have an email address or mobile phone number of the trade-affected worker, then other methods of electronic communication, including postings made to social media or a website, would satisfy this requirement. States must safeguard any personal data and ensure costs are reasonable.

One commenter also questioned how a State would document its electronic communications in the worker's file and asked whether it would require printing out all emails or texts sent to the worker. The Department clarifies that there is no requirement that a State print out emails or texts; case notes are often sufficient for documenting these activities. The State must comply with record retention requirements in the Uniform Guidance at 2 CFR part 200.

#### Section 618.816(f)(1)

Proposed paragraph (f) required States to provide specific benefit assistance to trade-affected workers. In addition to all of the benefits described in detail in this part 618, States must also include information on the HCTC, if available, as described in section 35(b)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 35(b)(1)(B)). Proposed paragraph (f)(1) was modeled on 20 CFR 617.4(e)(1) but was rephrased for clarity. One minor change from 20 CFR 617.4(e)(1) is that proposed paragraph (f)(1) omitted the reference to UI claimants because it might be confusing.

One commenter argued that, because not all trade-affected workers will want to be advised of what benefits are available and how to apply, it may be more "realistic" to instead require States to provide workers an opportunity to receive this information, similar to how proposed paragraph (f)(2) of this section addressed the possibility that a worker will decline an intake interview. The statute requires not only that all trade-affected workers be notified of the benefits and services available under the TAA Program, but that all UI claimants in the State be made aware of these benefits. Neither of these is a new requirement established by the final rule and both are required by statute. The final rule adopts the regulatory text as proposed, with edits to the use of pronouns in paragraphs (f)(1) and (2).

#### Section 618.824 Liable State and Agent State Responsibilities

Proposed § 618.824, concerning the respective responsibilities of a liable State and agent States, updated 20 CFR 617.26 to reflect sections 235, 237, 238, and 245 of the Act and reorganized the requirements.

Proposed paragraph (a) was largely unchanged from 20 CFR 617.26(a) but reordered information and divided it up into subordinate paragraphs. Proposed paragraph (a)(3)(i) added the requirement for liable States to provide rapid response and appropriate career services (as described in section 134 of WIOA) to a group of workers for whom a petition is filed as required by section 221(a)(2)(A) of the Act. Proposed paragraph (a)(3)(ii) was new and provided that career services established under other Federal laws must also be made available to the group of workers, to the extent authorized by those laws. Proposed paragraph (a)(3)(iii) was new and had no comparable counterpart in existing regulations or in administrative guidance. It clarified for the first time that, in some instances, the liable State

may seek assistance from one or more agent States in the provision of rapid response and appropriate career services, especially in situations where residency of the group of workers is divided into two or more States. Proposed paragraph (a)(4) updated language from 20 CFR 617.26(a) but has the same meaning.

Proposed § 618.824(b) was largely unchanged from 20 CFR 617.26(b) but reordered information and divided it up into subordinate paragraphs. Proposed paragraph (b)(7) was new and established that the agent State is responsible for the payment of job search and relocation benefits.

One commenter agreed with the intent but questioned the enforceability of paragraphs (a)(3)(i) and (ii) of this section, which require a liable State to provide workers covered by a petition with rapid response assistance and appropriate career services, including career services authorized under non-TAA Program Federal laws (e.g., WIOA). The requirement to provide rapid response and appropriate career services was established directly by WIOA section 512(hh). This is also enforceable under the Agreement executed between the Governor and the Secretary.

A State workforce agency said that the requirement in paragraph (a)(5) that a liable State must provide the IRS a list of eligible TAA Program recipients and eligible RTAA recipients for HCTC purposes would mean changing their reporting or data systems to make such information available. The State workforce agency commented that at present it provides the IRS a list of only those workers eligible for the TAA Program who have received RTAA, TRA, or UI payments. The Department explains that HCTC is a tax credit managed by the IRS, the details of which are not covered by this rule. The Department directs States to administrative guidance related to the HCTC, which provides explicit process-related reporting instructions. The Department encourages the commenter to contact the appropriate regional office for additional technical assistance.

Two commenters raised concerns about paragraph (b)(7) of this section, which establishes responsibility for payment of job search and relocation allowances with the agent State. One of the commenters asserted that involving the agent State could unnecessarily complicate the administration of these benefits. The other commenter said that sometimes workers request the allowances before departing the liable State. The commenter requested clarification about how States should respond in such cases. The Department

clarifies that there is only an agent State, other than the liable State, if the AAW has accessed services outside of the worker's liable State. No agent State exists if the worker is simply seeking to travel to another State under a job search allowance or is relocating to another State. Until such time as the worker seeks services in another State, the liable State is both the liable and agent State. The Department made nonsubstantive edits in paragraph (a)(4) of this section to correct two cross-references to the section headings of different sections; otherwise, the final rule adopts the section as proposed.

#### Section 618.832 Overpayments; Penalties for Fraud

Section 618.832 of the proposed rule, concerning overpayments, fraud, and penalties for fraud, generally repeated 20 CFR 617.55, but reorganized the section for clarity.

Proposed § 618.832(a)(3) provided that trade-affected workers be provided a reasonable opportunity to demonstrate that they were without fault and unable to repay their TAA Program overpayments and, therefore, a "financial hardship" exists if recovery of an overpayment would result in a person's (or their household's) loss of or inability to pay for ordinary and necessary living expenses.

Proposed § 618.832(e) discussed the State's responsibilities to recover overpayments.

A commenter wrote that the provisions on overpayments should align with those found in State and Federal UI laws. The same commenter added that the proposed overpayment rules could lead to more confusion and appeals. A different commenter said States should establish policies to ensure that program participants receive certificates from their training and should define financial hardship through their own policies. Another commenter stated that imposing a national standard for financial hardship is problematic, but recommended using standards for "hardship to repay," such as the IRS Collection Financial Standards. One commenter wrote that their State lacks a mechanism for retrieving training overpayments. Another commenter asked if States are required to collect overpayments. The Department explains that the requirement for States to collect overpayments is not a new one. The language used in this rule is based on the statute and previous regulations at 20 CFR 617.55(c). Overpayments for training, RTAA, supplemental assistance, etc. are subject to the same requirements as TRA overpayments.

The Department will provide training and technical assistance on this topic, but the final rule adopts the regulatory text as proposed, except for edits to the use of pronouns in paragraph (a).

Proposed paragraph (b) was substantially the same as 20 CFR 617.55(b), but reordered and slightly reworded the language. It provided the statutory requirement for a lifetime disqualification from receipt of benefits under the Act for anyone found to have knowingly provided a false representation or nondisclosure of material fact.

A few commenters wrote that this approach in paragraph (b) of permanent ineligibility for benefits as a result of fraudulent receipt of program benefits is overly aggressive as it would exacerbate the economic harm suffered by workers. Another commenter agreed and recommended that punishments for fraud be incrementally more severe, based on the number of violations committed. The Department clarifies that where fraud was committed in relation to the TAA Program, section 243 of the Act is clear that the trade-affected worker is no longer eligible for payments under the TAA Program. The Department explains that the lifetime ban on TAA Program benefits in the statute and in 20 CFR 618.832(b) is only related to fraud committed under the Act, not other instances of fraud under other State or Federal statutes. This is a statutory requirement, and the final rule adopts the regulatory text as proposed.

Proposed § 618.832(d) provided that when a trade-affected worker fails to complete a TAA Program approved training, job search, or relocation with good cause, any TAA Program payment or portion of a payment to such worker is not an overpayment. One commenter wrote that States should have policies in place to define "good cause" for failure to complete a training, job search, or relocation. The same commenter requested that the Department provide examples of failed RTAA activities. The Department explains that in most States, the determination of good cause is determined through case law and previous adjudications under applicable State law. With regard to failed RTAA activities, the Department provides examples such as the failure to provide the State with pay stubs or other required documentation to support continued eligibility and to ensure proper benefit payments. The Department adopts the regulatory text in this section in the final rule as proposed, except for a technical change to the language at § 618.832(h)(1)(i) where the Department changed the words "an agreement" to "a Govern-

Secretary Agreement" for added specificity.

#### Section 618.852 Recordkeeping and Disclosure of Information Requirements

Proposed § 618.852 repeated the requirements in 20 CFR 617.57 concerning recordkeeping and disclosure of information but made a few changes.

Proposed paragraph (a) was very similar to 20 CFR 617.57(a), with two changes. First, proposed paragraph (a) omitted a reference to reporting form ETA 563. This particular report is no longer required. Rather, required reporting will be governed by § 618.864 of the final rule. Second, proposed paragraph (a) added that States are required to maintain records that contain any information the Department determines to be appropriate in support of any reports the Department may require, including the reports specified in proposed §§ 618.860(f) and 618.864(e). Paragraph (a) also contained a cross-reference to the record retention requirements of the Uniform Guidance at 2 CFR 200.333. Per the Uniform Guidance, States are required to retain records, in general, for 3 years after the last action taken on that record (determination, appeal, payment, inclusion in a performance or financial report, etc.). Proposed paragraph (a)(4) required States to document that employment and case management services described in subpart C were provided or offered to a participant. This is not a new requirement; however, this was not previously explicitly stated in regulation. One commenter wrote that requiring program administrators to retain files indefinitely would be needlessly burdensome. The Department clarifies that there is no requirement for indefinite retention of records. Section 618.852 provides recordkeeping requirements to which States must adhere and refers to the Uniform Guidance at 2 CFR 200.333. If a trade-affected worker applies for a training benefit after records are no longer available, the worker can be asked to supply information that will verify that he or she was part of a certified worker group. The documentation burden would shift from the State to the worker. The Department made a nonsubstantive edit in paragraph (a)(2)(i) of this section to correct a cross-reference to the section heading of a different section; otherwise, the final rule adopts the section as proposed.

### Section 618.860 General Fiscal and Administrative Requirements and Cost Classification

Proposed § 618.860 was a new section that contained general fiscal and administrative requirements applicable to State administration of the TAA Program. It was modeled on WIOA regulations, but with significant differences. Proposed § 618.860 contained no requirements that States were not already required to meet. The final rule adopts the regulatory text as proposed.

Proposed paragraph (b) provided guidance on cost classification as administrative costs under the TAA Program, as authorized by section 235A of the Act and described in each TAA Program Annual Funding Agreement that States are required to submit annually. Paragraph (b)(1) provided that the Department will include each fiscal year's administrative cost limitation in grant documents or annual funding agreements. Proposed paragraph (b)(2) provided that the costs of administration in the TAA Program are the costs associated with performing the overall general administrative functions of the TAA Program, as described in paragraphs (b)(2)(i) through (xviii) of this section, and the coordination thereof within the American Job Center network established under WIOA.

One commenter requested examples of items under § 618.860(b)(2) that could be funded with employment and case management funds. Without additional context, the Department cannot provide a specific list. Employment and case management funds can be used for the costs of provision of activities found in § 618.310, among other things. The Department has technical assistance available on its website and will be providing training and additional technical assistance on this topic. To resolve individual case scenarios, we encourage contacting the appropriate regional office for additional assistance.

One commenter supported the provision at paragraph (i) that requires States to dedicate a portion of administrative and employment and case management funding to MIS development, saying its State's use of MIS indicates that other States could benefit from improving their MIS. The Department appreciates this support and the final rule adopts § 618.860 as proposed, with the exception of a spelling correction in paragraph (d)(2)(ii)(C).

### Section 618.864 Trade Adjustment Assistance Program Performance

Section 618.864 of the proposed rule contained TAA Program performance requirements, as established by section 239(j) of the Act. This provision uses the term "worker," consistent with the statute. For purposes of § 618.864, the term "worker" means a trade-affected worker. Proposed paragraph (a) required States to report specified data on TAA Program performance outcomes to the Department and required a description of the efforts made to improve outcomes for workers under the TAA Program. Specifically, States must report the primary indicators of performance identified in paragraph (b) of this section, which are very similar to those reported under WIOA. Paragraph (b)(2) related to the credential attainment indicator in paragraph (b)(1)(iv) and provided that, under the Act, workers who received benefits under the TAA Program and obtained a secondary school diploma or its recognized equivalent are only included in this indicator if they also obtained employment, or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

An LWDB stated that the credential attainment indicator in proposed § 618.864(b)(1)(iv) uses all TAA Program workers in its denominator, contrasting this calculation with the WIOA approach of including only workers of an education or training program in the denominator. The commenter stated that, based on the regulatory text, a worker that received only employment and case management services would be included in the credential measure. The Department clarifies that, under WIOA, only workers enrolled in an education or training program (excluding OJT and customized training) are counted in the denominator of this measure. The same LWDB said that § 618.864(b)(1)(iv), as drafted, does not align with 20 CFR 677.155(a)(1)(iv)(A) of the WIOA final rule because WIOA limits the measure to those in training. The Department has reviewed both statutes, the WIOA Final Rule, and the proposed regulatory text and concurs with the commenter that this should align with WIOA. Therefore, the Department has revised the regulatory text at § 618.864(b)(1)(iv) in the final rule to align with WIOA by limiting this measure to those in training and eliminated an unnecessary 'and' in 618.864(b)(ii).

### Section 618.876 Verification of Eligibility for Program Benefits

Section 618.876 of the proposed rule implemented the requirements at section 239(k) of the Act for States to verify a trade-affected worker is in satisfactory immigration status. Proposed paragraph (a) provided that a trade-affected worker must be authorized to work in the United States in order to be eligible to receive benefits under the TAA Program. This provision required States to verify the status of participants who are not citizens or nationals of the United States. Proposed paragraph (b) required initial verification by States of the immigration status of self-reporting aliens who apply for UI through the U.S. Customs and Immigration Service's Systematic Alien Verification for Entitlement (SAVE) program. Proposed paragraph (c) required States to reverify a participant's eligibility if the documentation upon which eligibility was based expires during the period in which TAA benefits are received.

One commenter asked whether verification of eligibility for program benefits is the responsibility of the liable State or the agent State. Verification is the responsibility of the liable State, which is the State in which the trade-affected worker establishes UI eligibility until such worker establishes eligibility in another State. If the worker is receiving services in the agent State, the agent State assists the liable State in the verification. Agent States should contact liable States (and vice versa) to confirm that an initial verification was conducted. The final rule adopts the regulatory text as proposed.

### Section 618.888 Equitable Tolling

Section 618.888 of the proposed rule originated from administrative guidance. Proposed paragraph (a) of this section provided that TAA Program deadlines may be equitably tolled when an extraordinary circumstance prevented a trade-affected worker's timely action and the worker otherwise acted with diligence.

Proposed paragraph (b) set out a burden-shifting framework for equitable tolling in one unique circumstance—when the State fails to give required notice to a trade-affected worker of a particular benefit (or potential benefit), thus permitting the deadline for that benefit (or potential benefit) to run without the worker's knowledge. In such an instance the failure to provide notice would constitute prima facie evidence of an extraordinary circumstance. Proposed paragraph (b) emphasized to States the importance of

complying with the notice requirements in this part 618. It should not be construed to otherwise lessen or lighten a worker's burden to show entitlement to equitable tolling in other circumstances.

Proposed paragraph (c) limited the time period for tolling to the period during which the extraordinary circumstance existed.

Finally, proposed paragraph (d) set a limit on how long a deadline may be equitably tolled: 36 Months. The 36-month limit strikes a balance between, on the one hand, fairness and equity for individual trade-affected workers and, on the other, the need for clarity and efficiency in the operation of the program as a whole.

Multiple commenters supported the inclusion of the equitable tolling provision and its 36-month limit. The Department appreciates this support.

One commenter asked under what circumstances a State could toll a deadline for 36 months. Other commenters generally asked for clarification on paragraph (d) of this section, which establishes the 36-month timeframe. One of the commenters recommended that States be allowed to exceed the 36-month deadline if funds are available. In creating the maximum extension period, the Department seeks both to allow claimants who were prevented from timely filing for TAA Program benefits due to extraordinary circumstances ample time to file and to ensure that the information States require to administer the TAA Program is still attainable following the passage of time. For example, where a trade-affected worker has not received notice of eligibility, the Department maintains that 36 months is a more than sufficient period of time for a reasonably diligent worker to discover his or her eligibility and apply for benefits. The Department has determined that, where equitable tolling of a deadline is applicable, a 36-month maximum extension period is a reasonable limit. The final rule adopts the regulatory text as proposed.

One commenter requested that the Department clarify the respective meanings of "required notice" and "actual notice" in paragraph (b)(2). The Department explains that in this example, a required notice would be the standard notice of benefits or eligibility issued under various subparts of this rule, versus actual notice, which could be a case manager informing the trade-affected worker of a deadline or other requirement during the provision of services. The final rule adopts the regulatory text as proposed.

#### Section 618.890 Staffing Flexibility

In 2010, the Department revised the TAA Program regulations by requiring, for the first time by regulation, that States administer the TAA Program strictly through staff meeting Federal merit personnel criteria.<sup>11</sup> As the Department noted then, "the Trade Act does not directly address merit staffing" and so the initial "promulgation of the merit staffing rule [was] within the discretionary authority delegated to" the Department "to interpret the Trade Act and administer the TAA program." 75 FR 16988, 16990 (Apr. 2, 2010). In § 618.890 of the NPRM, the Department proposed to exercise its discretion by removing this mandate on States except for certain positions. The NPRM gave several reasons for this discretionary policy change, chief among them that staffing flexibility could help States better integrate the TAA Program with WIOA services.

Many commenters supported the proposal. One commenter generally supported the proposed staffing flexibility. Another commenter stated that the proposal would allow for better integration of the TAA Program and WIOA services. Other commenters stated that the proposal would result in cost savings or financial flexibility. One commenter affirmed that staffing flexibility is appropriate for its needs and would provide cost savings to it with respect to the delivery of case management services. Another commenter stated that it would allow States to shift local area costs for case management and employment services from WIOA to the TAA Program. Another commenter similarly stated that the proposed flexibility would relieve the financial burden imposed by the co-enrollment requirement.

Several LWDBs commented that the proposed staffing flexibility does not provide enough flexibility and recommended that the Department follow the model of Michigan's pilot program. Under this pilot program, the State allocated TAA Program funds to LWDBs while requiring that merit staff provide services. The commenters advocated taking language from the Department's then-proposed Wagner-Peyser staffing rule<sup>12</sup> on staffing flexibility that emphasized the variety of staffing options available to States, including continued use of merit staff, and identified a number of staffing models that may fit States' needs better, such as the use of local area staff or

contractors. In developing these regulations, the Department considered all aspects related to merit staffing. The Department appreciates these comments and notes again that the flexibility provided by this rule permits States to use a wide variety of staffing models. No changes to the regulatory text have been made in response to these comments or those below.

#### General Comments Regarding the New Flexibilities

Other commenters had questions about or were opposed to this aspect of the Department's proposal. Some questioned the staffing flexibility proposal generally. One commenter characterized the proposal as aligning the Department's staffing policy with the Department's then-proposed Wagner-Peyser staffing rule and requested further analysis of TAA Program service delivery models before implementing the proposal. Another commenter cited administrative guidance as indicating that merit staffing is an important, longstanding element of the TAA Program. A different commenter argued that there were insufficient data to show that eliminating merit staffing would make the TAA Program more efficient. One commenter contended that privatization of government services has historically harmed public services in Texas and no evidence indicates the proposed flexibility would be any different. Likewise, other commenters cited studies for the proposition that privatization decreased efficiency in administering SNAP, where programs in Indiana and Texas provided fewer benefits at excessive costs. Another commenter provided what it viewed as other examples of privatized services' shortcomings, such as—according to the commenter—endemic corruption, failing to communicate with the served population, and neglecting to protect the privacy of records.

The offer of staffing flexibility to States is intended to allow them, where they see fit, to better integrate the TAA Program when helping workers. This integration includes allowing non-merit staff to charge their time to the TAA Program, including and especially at the one-stop delivery service level. In States that would like to do so, and where it is otherwise appropriate for them to do so, this better integration is expected to help service delivery in several ways. This change allows States to implement a seamless service delivery model where a trade-affected worker will not need to move from case manager to case manager depending on their merit staff status. Cost allocation of employment

<sup>11</sup> Merit staffing requirements had been part of the Governor-Secretary Agreements from 1975 to 2005.

<sup>12</sup> See 84 FR 29433 (June 24, 2019). The rule has since been finalized. See 85 FR 592 (Jan. 6, 2020).

and case management services costs will also be simpler as the merit staff status of case managers will be irrelevant for time-charging.

While the Department appreciates commenters' concerns derived from studies of two States' SNAP experience, SNAP is a different program with different statutory and regulatory requirements. States considering using this final rule's staffing flexibility are encouraged to consider the range of experiences other programs have had, including those noted in relevant research, or to conduct their own evaluations or pilot projects. States can also use lessons learned from other efforts as they decide whether to use the staffing flexibility in this final rule. States are in the best position to determine the staffing model that will best control their costs and serve their workers.

But regardless of how States choose to provide services under the TAA Program, they are still grantees of the TAA Program subject to the Department's oversight. States must oversee all operations of TAA Program activities and are still subject to the oversight and monitoring commitments at § 618.860(d)(2). The Department will continue to monitor States to ensure they are complying with all requirements of the TAA Program, this part 618, and 2 CFR parts 200 and 2900. The Department will hold States responsible for violations of regulations, the statute, and the Uniform Guidance.

Finally, the Department is not mandating that States change their staffing models, much less mandating privatization. In fact, many of the local area providers of WIOA services are municipal and county employees, not private-sector employees, and they would presumably remain so if used under the flexibilities provided by this rule. Where States have found that retaining Federal staffing criteria is the best approach for service delivery, they need not change that approach.

#### Staffing Models for Federal Entitlements

Multiple commenters argued that TAA Program service provision is an essential governmental function and only merit staffing can effectively deliver Federal entitlements such as TAA Program services. The same commenters quoted the 2010 rule that imposed Federal staffing requirements to argue that merit staff are unbiased, nonpartisan public servants who safeguard the interests of the population served and the public at large. These commenters further wrote that, in their view, merit staffing removes incentives for service providers to favor more

readily employable candidates in order to inflate their job placement numbers. The commenters stated that the 2010 rule's description of the TAA Program, with its emphasis on accountability and transparency, makes the program more analogous to merit staffed UI and ES programs than WIOA. Another commenter cited a study for the proposition that publicly administered services better reduce inequality than do privatized services, which incentivize competitors to prioritize whom to serve and how according to their contractual incentive structure. The same commenter also cited another study for the proposition that privatizing administrative services does not reduce costs, as competition for administrative services is subject to high barriers to entry, including the complex nature of administrative services work and the necessity of long-term contracts.

The Department believes that allowing non-merit staff to charge their time to the TAA Program does not reduce transparency or limit access to the benefits available under the Act. In many areas, this additional flexibility will increase the level and timeliness of services available to trade-affected workers by allowing States to deploy resources faster by accessing additional providers that would not have been previously available with TAA Program funding. And while some States may find that merit staff serve workers admirably and fairly, that does not mean that they are the only personnel who can do so. States can structure their staffing arrangements to avoid perverse incentives and to ensure that TAA Program staff perform their duties with fairness, equality, and professionalism. Any funds expended under the TAA Program are subject to the same oversight requirements regardless of which type of entity expends those funds and the States, as the recipients of the grants, are ultimately responsible for the expenditure of these funds.

#### Quality and Uniformity of Service

Some commenters contended that Federal merit personnel requirements foster uniform or quality service. One commenter argued that case management and employment functions are so closely intertwined with merit staffed eligibility and compliance functions that they also should be subject to Federal merit staffing mandates. The commenter also wrote that the complexity of the TAA Program, especially in TRA requirements, necessitates the use of trained and experienced personnel such as State merit staff. Another commenter disagreed with the proposed rule's

characterization of State merit staffing as "one-size fits-all," arguing that State merit staff provide professional services with a close understanding of the needs of their region. The commenter said that its State's individual staff and unit as a whole has greater experience because of merit staffing requirements, and that the staff adhere to statewide performance standards and provide consistent, high-quality service crucial to the TAA Program. Another commenter stated that, for the TAA Program, merit staffing delivers services more efficiently than local area delivery models. This commenter and others maintained that because TAA Program services are triggered by specific events and entail services distinct from those of WIOA, State merit staffing provides a timely surge of workers trained to provide services for TAA Program certifications. These commenters contrasted this to cross-training local area staff who would only periodically use TAA-specific rules. The commenters further argued that because funding for case management is very limited, splitting the funding among local areas is impractical.

This rule's flexibility does not require States to change their merit staffing arrangements if they are working well, as may be the case in these commenters' States. But the flexibility of this rule acknowledges that other staffing models can also provide high-quality services. States can make those decisions as they know their programs best, provided they continue to meet the Department's requirements for, among other things, efficiency and quality service. The Department expects all services provided through Federal funds to be consistent and high quality. This is a key focus of the Department's oversight of all the grants it administers. And it holds true regardless of the nature of the entity—public or private, State or local—that ultimately delivers services.

The Department's high expectations of staff provided under other models has been borne out by experience. There are already several States where nearly all employment and case management services are provided by non-merit staff. This has been accomplished through co-enrollment under WIOA. The Department's oversight of these States has not uncovered any of the potential problems raised by the commenters here. The Department concludes there is no additional appreciable risk of compliance issues by allowing employment and case management services to be fully funded by the TAA Program, regardless of which type of entity provides these services. In addition, this final rule requires that

determinations be rendered by State or State merit staff and all determinations rendered under the TAA Program be subject to review by the Department.

Finally, regarding the specific point about the need for a timely surge of staff, at times the Department has found merit staffing requirements to impede surge capacity. Beginning during the Great Recession, many Governors established hiring freezes at the State level, even if the positions were federally funded. This left many States understaffed and unable to respond to large dislocation events, especially in rural areas. This final rule provides States with additional flexibility to meet the needs of trade-affected workers.

#### Accountability

Multiple commenters stated that merit staffing provides a better system of accountability than other systems, writing that trade-affected workers can raise concerns to State officials who have direct authority over merit staff. Another commenter recommended that the Department ensure that private providers be accountable. One commenter proposed requiring that TAA Program service contracts name workers as third-party beneficiaries, giving them a private right of action to enforce the terms of the contract.

The Department believes that this final rule includes adequate safeguards for accountability and transparency. While employees are accountable to their State employers, so are contractors and others who implement State requirements. In turn, States remain responsible for monitoring service providers to ensure that funds are appropriately spent and services are appropriately provided. The Uniform Guidance at 2 CFR part 200 establishes the foundation of accountability for all entities that expend Federal funds and will continue to be applied here. In addition, the Governor-Secretary Agreement and the grant agreements executed by the States provide accountability and transparency.

#### Merit Staff and WIOA Co-Enrollment

Several commenters wrote that the current rules allow for integration between the TAA Program and WIOA services through co-enrollment and the provision of both TAA Program and WIOA services at one-stop centers. One commenter added that TAA Program services are already integrated with WIOA services into one-stop operations, with TAA Program funding providing for case management by State merit ES staff. The same commenter wrote that the relationship between ES and the TAA Program would make it easier for

current TAA Program merit staff to adapt to the proposed co-enrollment requirement. The Department has found that the combination of the changes to the merit staffing provisions and the requirement to co-enroll trade-affected workers in WIOA represents one of the most significant steps towards service integration since the original development of the one-stop service delivery model.

#### Other Comments on Staffing Flexibility

Several commenters stated that WIOA providers are not accustomed to processing appeals regarding a government service and WIOA providers have greater discretion in granting benefits. The Department clarifies that this final rule makes no changes to the handling of appeals. All appeals under the TAA Program are subject to the same process utilized for appeals under the UI program, which has a merit staffing requirement.

A different commenter asked if all determinations regarding program benefits would need to be approved by State merit staff only or by any State staff. Section 618.890(b) provides that determinations under the TAA Program can be made by either State merit staff or State non-merit staff subject to the restriction regarding redeterminations in § 618.890(a).

#### *I. Subpart I—Allocation of Funds to States for Training and Other Activities*

Subpart I revises the regulations currently found at 20 CFR 618.900 through 618.940. The Department first published these regulations on April 2, 2010 (75 FR 16988); they became effective May 3, 2010. Subpart I addresses the Act's provisions at sections 236(a)(2) and 245 and establishes how funds appropriated for TaOA are allocated by the Department to the States. Some highlights of changes to the regulation include introduction of a new term, TaOA; a statutory update of the annual funding limit; and an update to the reserve fund request process. This subpart I also addresses the recapture and reallocation provisions established by section 245(c) of the Act.

The Department received no comments relating to proposed §§ 618.900, 618.910, 618.920, 618.930 and 618.940. Accordingly, the Department adopts these provisions into the final rule as proposed. As discussed further below, the Department received only one comment in relation to subpart I.

#### Section 618.950 Recapture and Reallocation of Training and Other Activities Funds

Section 618.950 of the proposed rule provided the description of recapture and reallocation procedures that the Department may use to implement the recapture and reallocation provisions of section 245(c) of the Act.

One commenter expressed concern that recapture by the Department of allocated funds that remain unobligated after a certain period of time could leave States "very vulnerable" if, following recapture, a large petition is certified. The same commenter asked whether States could take back recaptured funds and argued a better approach would be to align the TAA Program recapture and reallocation provisions with the WIOA reallocation procedures found at 20 CFR 683.135. The Department clarifies that for unforeseen situations, a State may always request TAA Program reserve funds using the Reserve Funds Process set forth at § 618.920, TAA Program Reserve Funds. Unlike WIOA, the TAA Program is a mandatory entitlement with "capped" funds for training; however, 35 percent of FY training funds are held in reserve for exactly this reason (*i.e.*, States experience unexpected/unforeseen events that require additional funds). Further, the Department will only recapture funds after having consulted with the State. The final rule adopts the section as proposed.

#### IV. Agency Determinations

##### *A. Legal Authority*

The Act established the programs collectively known as the TAA Program (codified at 19 U.S.C. 2271 *et seq.*). This statute has been amended many times since its enactment, including multiple amendments since 2002 that have substantially affected the TAA Program (*e.g.*, Pub. L. 107-210 (2002); Pub. L. 111-5 (2009); Pub. L. 112-40 (2011); Pub. L. 114-27 (2015)). Until this final rule, the Department's regulations under the Act, codified at 20 CFR parts 617 and 618, and 29 CFR part 90, had not been fully updated in response to the various statutory amendments to the Act. As a result, some portions of the regulations may not have reflected current law. Section 248(a) of the Act (19 U.S.C. 2320(a)) requires that the Department prescribe such regulations as are necessary to carry out the provisions of the Act. Therefore, the Department is issuing this final rule to update and consolidate the regulations in order to fully implement all statutory amendments to the TAA Program.

*B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Under E.O. 12866, OMB’s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review (see 58 FR 51735, Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O. OMB has determined that this rule is significant under section 3(f) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has

designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

**Outline of the Analysis**

Section IV.B.1 describes the need for this final rule, and Section IV.B.2 describes the process used to estimate the costs of this final rule and the general inputs used, such as wages and number of affected entities. Section IV.B.3 discusses the public comments received in response to the NPRM. Section IV.B.4 explains how the provisions of this final rule will result in quantifiable costs, cost savings, and transfer payments, and presents the calculations the Department used to estimate them. In addition, Section IV.B.4 describes the qualitative costs, transfer payments, and benefits of this final rule. Section IV.B.5 summarizes

the estimated first-year and 10-year total costs, cost savings, net cost savings, and transfer payments of this final rule. Finally, Section IV.B.6 describes the regulatory alternatives that were considered during the development of this final rule.

**Summary of the Analysis**

The Department estimates that this final rule will result in costs, cost savings, and transfer payments. As shown in Exhibit 1, this final rule is expected to have an average annual cost of \$5,596 and a total 10-year cost of \$39,305 (with 7-percent discounting). This final rule is estimated to have annual cost savings of \$75,316 and total 10-year cost savings of \$528,988 (with 7-percent discounting). Cost savings associated with the rule are from revisions to the definition of “final determination” related to judicial appeals and from streamlining the reconsideration process. In addition, this final rule is estimated to result in annual transfer payments of \$898,927 and total 10-year transfer payments of \$6,313,684 (with 7-percent discounting). The Department estimates that this final rule will result in net cost savings of \$597,559 discounted at 3 percent and \$489,683 discounted at 7 percent, both expressed in 2019 dollars. For the purpose of E.O. 13771, the annualized net cost savings in 2016 dollars, over a perpetual time horizon, is \$50,902 discounted at 7 percent.<sup>13</sup>

**EXHIBIT 1—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COST SAVINGS, AND TRANSFER PAYMENTS OF THE NPRM**  
[2019 dollars]

	Costs	Cost savings	Net Cost savings <sup>a</sup>	Transfer payments
Undiscounted 10-Year Total .....	\$50,192	\$753,160	\$702,968	\$8,989,265
10-Year Total with 3% Discounting .....	44,902	642,461	597,559	7,668,025
10-Year Total with 7% Discounting .....	39,305	528,988	489,683	6,313,684
10-Year Average .....	5,019	75,316	70,297	898,927
Annualized with 3% Discounting .....	5,264	75,316	70,052	898,927
Annualized with 7% Discounting .....	5,596	75,316	69,720	898,927
Perpetuated Net Cost Savings <sup>a</sup> with 7% Discounting (2016 dollars) .....			\$50,902	

<sup>a</sup> Net Cost Savings = [Total Cost Savings] – [Total Costs].

The costs of this final rule are those associated with State staff needing to familiarize themselves with the new regulations, the development of IEPs for trade-affected workers, and the implementation of two IC forms (*i.e.*,

ETA Form 8561, Study of Domestic Industry, and ETA Form 9185, Application for Reconsideration). The largest contributors to the cost savings of this final rule are from revisions to the definition of “final determination”

related to judicial appeals and from streamlining the reconsideration process. See the cost and cost savings subsections of Section IV.B.4 (Subject-by-Subject Analysis) below for a detailed explanation.

<sup>13</sup> Based on OMB’s E.O. 13771 guidance memo, M–17–21, perpetuated net cost savings for the purposes of E.O. 13771 are presented in 2016 dollars. Net cost savings in 2019 dollars are converted to 2016 dollars using the GDP deflator from the Bureau of Economic Analysis. BEA.

(2019). “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.” Retrieved from: [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&select\\_all\\_years=0&nipa\\_table\\_list=13&series=a&first\\_year=2000&scale=-99&last\\_](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&select_all_years=0&nipa_table_list=13&series=a&first_year=2000&scale=-99&last_)

*year=2019&categories=survey&thetable=x*. The savings are then discounted by 4 years at 7 percent annually to reflect that the rule will not take effect until 2020.

The Department was unable to quantify one cost, three transfer payments, and the benefits of this final rule. We describe these costs and transfer payments, along with the rule benefits, qualitatively in Section IV.B.4 (Subject-by-Subject Analysis).

1. Need for Regulation

On June 29, 2015, the Trade Preferences Extension Act of 2015 (Pub. L. 114–27) was signed into law. Title IV reauthorizes the TAA Program for Workers program through 2021; it is known as TAARA 2015.

The regulations governing the TAA Program were last updated in 1994, with only minor changes made in 2007<sup>14</sup> and 2010. Since that time, multiple TAA Program amendments have occurred. In addition, a 2014 reform of the public workforce system, WIOA, reaffirms the TAA Program as a mandatory partner program in the one-stop delivery system.

Prior to this final rule, the Department had addressed all TAA Program amendments through administrative guidance. As a result, a combination of regulations and a patchwork of administrative guidance guided the worker-group certification process at the Federal level and the administration of individual benefits and services at the State level.

This final rule will promote transparency by setting out in binding regulation the major principles by which the TAA Program operates, which will provide the public and courts with the Department’s authoritative interpretation of the Act. This final rule also will include changes

that increase States’ flexibility to administer the program, improve service delivery, and reduce costs. In addition, this final rule will incorporate clarifications that draw upon the Department’s expertise gained from decades of experience operating the TAA Program.

Through this final rule, the Department seeks to modernize its TAA Program regulations to reflect changes to the workforce, technology, and the administration of the program that have occurred since the Department’s last comprehensive update to the regulations in 1994. The Department also seeks to consolidate all applicable program regulations into a single section of the CFR.

The goal of the TAA Program is to help each participating worker obtain, as quickly as possible, suitable employment when possible and nonsuitable employment otherwise. This goal will be accomplished by providing trade-affected workers access to training that will allow workers to compete for work at the highest skill levels and highest wages achievable, given the workers’ preexisting skill levels, abilities, and education, and the current and projected labor market, and do so as quickly as possible. The TAA Program includes the RTAA benefit, which may be available to workers 50 years of age or older. The TAARA 2015 amendment of the TAA Program restored the major expansions in TAA Program worker group eligibility to service sector workers and workers who are affected by trade from any country, including countries that do not have

Free Trade Agreements with the United States, including China and India.

2. Analysis Considerations

The Department estimated the costs, cost savings, and transfer payments of this final rule relative to the existing baseline; that is, the current practices for complying with, at a minimum, the TAA Program as currently codified at 20 CFR parts 617 and 618, and 29 CFR part 90, as well as in administrative guidance.<sup>15</sup> The Department explains how the required actions of States, government agencies, and other related entities were linked to the expected costs, cost savings, transfer payments, and benefits.

In accordance with the regulatory analysis guidance articulated in OMB Circular A–4 and consistent with the Department’s practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of this final rule (*i.e.*, costs, cost savings, transfer payments, and benefits that accrue to entities affected). The analysis covers 10 years (2020 through 2029) to ensure it captures major costs, cost savings, and transfer payments that accrue over time. With the exception of analyses required under E.O. 13771, the Department expresses all quantifiable impacts in 2019 dollars and uses 3- and 7-percent discounting following OMB Circular A–4.

Exhibit 2 presents the number of entities that will be affected by the requirements of this final rule. The Department provides these estimates and uses them throughout this analysis to estimate the costs, cost savings, and transfer payments of this final rule.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE <sup>a</sup>

Entity type	Number
States (total) <sup>b</sup> .....	52
Additional trade-affected workers that will require an IEP due to a comprehensive and specialized assessment (annual) <sup>c</sup> .....	24
Number of firms that will participate in domestic industry study each year (annual) <sup>d</sup> .....	12
Number of applications for reconsideration submitted each year (annual) .....	25

<sup>a</sup> Unless otherwise noted, the number of affected entities was obtained from Trade Act Participant Report (TAPR)—State quarterly reporting and record keeping information; Management Information System (MIS)—OTAA’s petition database. Data as of January 23, 2020.

<sup>b</sup> The 52 States used for purposes of this analysis consist of the 50 States, the District of Columbia, and Puerto Rico.  
<sup>c</sup> The Department derived this number by taking the average of the annual number of individuals who received training, job search, or relocation allowances (*i.e.*, program exiters) in FY 2013 through FY 2019.

<sup>d</sup> Since 1998, the Department has conducted three domestic industry studies. However, for purposes of this analysis, the Department estimates that it will conduct one study per year.

Estimated Number of Workers and Level of Effort <sup>16</sup>

The Department presents the estimated average number of trade-

affected workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. To derive these

estimates, Department TAA Program experts estimated the average levels of effort and the average number of workers needed for each activity to meet

<sup>14</sup> Minor changes were made to 29 CFR part 90.

<sup>15</sup> Current administrative guidance related to the TAA Program can be found at <https://www.doleta.gov/tradeact/law/directives-guidance/>.

<sup>16</sup> Trade Act Participant Report (TAPR)—State quarterly reporting and record keeping information; Management Information System (MIS)—OTAA’s petition database. (2020). Unpublished data.

the requirements relative to the baseline (i.e., the current practice under the TAA Program). These estimates are the national averages for all States; thus, some States could experience higher actual costs, cost savings, or transfer payments, while these impacts could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Department presents the labor and other costs associated with the implementation of the provisions of this final rule. Exhibit 3 presents the compensation rates for the occupational categories expected to experience a

change in the level of effort (workload) due to this final rule. We use BLS mean hourly wage rates for State government and private sector employees.<sup>17 18 19</sup> We use Office of Personnel Management (OPM) and U.S. courts wage rates for Federal employees.<sup>20 21</sup> We adjust the wage rates to reflect total compensation, which includes nonwage factors, such as overhead and fringe benefits (e.g., health and retirement benefits). For all labor groups (i.e., State government, private sector, and Federal Government), we use an overhead rate of 17 percent<sup>22</sup> and a fringe benefits rate based on the ratio of average total

compensation to average wages and salaries in 2019. For the State government employees, we use a fringe benefits rate of 61 percent.<sup>23 24</sup> For the private sector employees, we use a fringe benefits rate of 43 percent.<sup>25 26</sup> For the Federal Government, we use a fringe benefits rate of 63 percent.<sup>27</sup> We then multiply the loaded wage factor by the corresponding occupational category wage rate to calculate an hourly compensation rate.

The Department uses the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

EXHIBIT 3—COMPENSATION RATES  
(2019 dollars)

Position	Grade level	Average hourly wage rate a	Loaded wage factor components		Hourly compensation rate  d = a + (a × b) + (a × c)
			Overhead factor b	Fringe benefits factor c	
<i>Private Sector Employees:</i>					
Employment Counselor .....	N/A .....	\$21.70	0.17	0.43	\$34.72
Attorney .....		74.20			118.72
Individual Completing ETA Form 8561, Domestic Industry Study.		60.36			96.58
Individual Completing ETA Form 9185, Application for Reconsideration.		32.25			51.60
<i>State Government Employees:</i>					
Employment Counselor .....	N/A .....	24.83	0.17	0.61	44.20

<sup>17</sup> BLS. (2019). "May 2018 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation)." Retrieved from: [http://www.bls.gov/oes/current/naics4\\_999200.htm](http://www.bls.gov/oes/current/naics4_999200.htm). The May 2018 mean hourly wages were adjusted to September 2019 values using Employment Cost Indices (ECI) for State and local government workers. ECI data were obtained from "Table 7. Employment Cost Index for total compensation, for State and local government workers, by occupation and industry (not seasonally adjusted)." BLS. (2019). "Employment Cost Index Historical Listing—Volume V, Continuous Occupational and Industry Series, September 1975–September 2019 (December 2005=100)." Retrieved from: <https://www.bls.gov/web/eci/ecicois.pdf>.

<sup>18</sup> BLS. (2019). "May 2018 National Occupational Employment and Wage Estimates by Ownership: Cross-industry, private ownership only: SOC Major Groups in Cross-industry, private ownership only (OES designation)." Retrieved from: <https://www.bls.gov/oes/current/000001.htm>. The May 2018 mean hourly wages were adjusted to September 2019 values using ECI for private industry workers. ECI data were obtained from "Table 5. Employment Cost Index for total compensation, for private industry workers, by occupation and industry, Continuous occupational and industry series (not seasonally adjusted)." BLS. (2019). "Employment Cost Index Historical Listing—Volume V—Continuous Occupational and Industry Series, September 1975–September 2019 (December 2005=100)." Retrieved from: <https://www.bls.gov/web/eci/ecicois.pdf>.

<sup>19</sup> ETA Form 9185 (Application for Reconsideration) may be filed by a company official, a union representative, two workers, or a State. To estimate the average hourly wage rate for

the person completing ETA Form 9185, the Department used a weighted-average based on the percent of petitioners by type (in FY 2017) and the corresponding hourly rate: (1) Company/union officials account for 21% of petitioners at an hourly labor wage rate of \$60.36 per hour; (2) workers account for 17% of petitioners at an hourly labor wage rate of \$24.61 per hour; (3) States account for 62% of petitioners at an hourly labor wage rate of \$24.83 per hour. This calculation results in a weighted average of \$32.25 [(0.21×\$60.36) + (0.17×\$24.61) + (0.62×\$24.83)].

<sup>20</sup> OPM. (2019). "Salary Table 2019–DCB Incorporating the 1.4% General Schedule Increase and a Locality Payment of 29.32% for the Locality Pay Area of Washington-Baltimore-Arlington, DC–MD–VA–WV–PA." Retrieved from: [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf). Federal employee wage rates are used to estimate cost savings associated with reconsiderations and judicial appeals. Because these two processes are conducted by Headquarter staff, the Department uses DC–MD–VA–WV–PA wage rates to estimate labor costs.

<sup>21</sup> For District Court Judge: U.S. Courts. (2019). "Judicial Compensation." Retrieved from: <http://www.uscourts.gov/judges-judgeships/judicial-compensation>. For District Court Clerk: U.S. Courts. (2019). "Judiciary Salary Plan, New York-Newark, NY–NJ–CT–PA—Table NY, 33.06% Locality Payment Included, Effective January 7, 2019." Retrieved from: [https://www.uscourts.gov/sites/default/files/jsp\\_new\\_york\\_2019.pdf](https://www.uscourts.gov/sites/default/files/jsp_new_york_2019.pdf).

<sup>22</sup> Cody Rice, U.S. Environmental Protection Agency. (2002). "Wage Rates for Economic Analyses of the Toxics Release Inventory Program." Retrieved from: <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005>.

<sup>23</sup> BLS. (2019). "2019 Employer Costs for Employee Compensation." Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Total compensation for all workers. Average Series ID CMU301000000000D, CMU301000000000P. To calculate the average total compensation in 2019, we averaged the total compensation for all workers for Quarters 1 through 3.

<sup>24</sup> BLS. (2019). "2019 Employer Costs for Employee Compensation." Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Wages and salaries for all workers. Average Series ID CMU302000000000D, CMU302000000000P. To calculate the average wage and salary in 2019, we averaged the wages and salaries for all workers for Quarters 1 through 3.

<sup>25</sup> BLS. (2019). "2018 Employer Costs for Employee Compensation." Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Total compensation for all workers. Average Series ID CMU201000000000D, CMU201000000000P. To calculate the average total compensation in 2019, we averaged the total compensation for all workers for Quarters 1 through 3.

<sup>26</sup> BLS. (2019). "2018 Employer Costs for Employee Compensation." Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Wages and salaries for all workers. Average Series ID CMU202000000000D, CMU202000000000P. To calculate the average wage and salary in 2019, we averaged the wages and salaries for all workers for Quarters 1 through 3.

<sup>27</sup> Department of Labor. (2018). "DOL-Only Performance Accountability, Information, and Reporting System; OMB Control No. 1205–0521." Retrieved from: [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201802-1205-003](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201802-1205-003).

EXHIBIT 3—COMPENSATION RATES—Continued  
[2019 dollars]

Position	Grade level	Average hourly wage rate a	Loaded wage factor components		Hourly compensation rate d = a + (a × b) + (a × c)
			Overhead factor b	Fringe benefits factor c	
Attorney .....		44.98	.....	.....	80.06
<i>Federal Government Employees:</i>					
Investigator .....	GS-11, Step 5 .....	37.79	0.17	0.63	68.02
Certifying Officer .....	GS-14, Step 5 .....	63.64	.....	.....	114.55
Attorney .....	GS-14, Step 7 .....	74.20	.....	.....	121.28
District Court Clerk .....	GS-13, Step 1 .....	49.06	.....	.....	88.31
District Court Judge .....	N/A .....	101.39	.....	.....	182.50

Transfer Payments

The Department provides an assessment of transfer payments associated with the NPRM. In accordance with OMB Circular A-4, we consider transfer payments as payments from one group to another that do not affect total resources available to society.

3. Discussion of Comments

One State workforce agency expressed concern about the “soundness” of the Department’s analysis with respect to the effect of the staffing flexibility provisions. An advocacy group stated that “[n]o experience, evidence, or economic analysis” demonstrates that workers will benefit from the “privatization” of TAA Program services. The commenter said the Department’s estimate that the proposal would result in cost savings of “some half-million dollars” does not outweigh the risk that “tens of millions of dollars will be misspent.” Another State workforce agency expressed concern that outsourcing TAA Program services to non-merit staff would “double” the administrative costs faced by States. The agency said that State resources for program administration are already stretched thin and argued that the proposal would worsen the situation unless the Department provides States more funding to offset the increased costs.

The Department acknowledges these views and concerns, but this final rule does not privatize TAA Program services; rather, it provides flexibility to States to offer TAA Program services using the best staffing models available to them to provide these services, while the Department maintains oversight and long-established criteria for proper and efficient delivery of those services. States are encouraged to consider cost effectiveness when determining whether to use flexible staffing models for the delivery of TAA Program activities.

States also are encouraged to conduct evaluations of various service delivery models. The Department anticipates that States will choose the service delivery model that is the most cost effective in their State.

One advocacy group stated that the analysis may have underestimated the extent to which staffing flexibility would be adopted because it assumed that half of States would use non-merit staff and then took that assumption to mean that half of program participants would receive their services from non-merit staff. This commenter said that these assumptions do not account for States that have large participant populations. The commenter did not suggest an alternative assumption. The Department based its assumption on experiences with similar programs and has determined that with limited data available, its assumption is reasonable.

Multiple unions and advocacy groups said the analysis did not make clear what methodology (beyond what the commenters termed “an unspecified Departmental administrative guidance”) was used to estimate the costs of overhead for staff. The commenters stated that, without additional information about how the Department determined the costs of overhead and fringe benefits, it would be “impossible” to assess the costs associated with wages and compensation to compare salaries of public- and private-sector workers.

In the proposed rule, the Department doubled the base wage rate to account for fringe benefits and overhead costs. For State government employees, doubling the base wage rate reflected a fringe benefits rate of 59 percent and an overhead rate of 41 percent. For private sector employees, doubling the base wage rate reflected a fringe benefits rate of 43 percent and an overhead rate of 57 percent. For Federal Government employees, doubling the base wage rate reflected a fringe benefits rate of 63

percent and an overhead rate of 37 percent. In this final rule, the Department used updated ECEC data to calculate the fringe benefits rates and the results were: 61 percent for State government employees, 43 percent for private sector employees, and 63 percent for Federal Government employees. In response to public comments, the Department reevaluated the most appropriate overhead rate to use in the analysis. For this final rule, the Department lowered the overhead rate for all workers to 17 percent<sup>28</sup> to reflect the low marginal increase in overhead costs for a rule that will have minimal net impact on the number of individuals employed to administer the program. Using 17 percent for all workers will create a consistent benchmark between public- and private-sector workers and show that the differences in cost between public- and private-sector workers relate to compensation (wages and fringe benefits).

Multiple unions and advocacy groups stated that the economic analysis used inaccurately high wages for public sector employees, an assumption that they said goes against recent studies and the “actual experiences” of several States, a few examples of which they cited. They also stated that Occupational Employment Statistics (OES) data should not be relied on to compare the salaries of government and private sector workers. However, the commenters did not provide any alternative sources for wage data and the privatization examples provided were anecdotal. The Department continues to view OES as the best source available for wage data by occupation, industry, and State. No data source is perfect, but OES data are the

<sup>28</sup> Cody Rice, U.S. Environmental Protection Agency. (2002). “Wage Rates for Economic Analyses of the Toxics Release Inventory Program.” Retrieved from: <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005>.

most robust and reliable data available for the Department's analysis.

Multiple unions and advocacy groups commented that the analysis relies on "other questionable underlying assumptions," such that contractors will be able to comply with the requirements for use of funds in § 618.860(g), which specify that no less than 5 percent of funds may be spent on employment and case management services, while no more than 10 percent of funds may be spent on administration costs. The commenters stated that this assumption of compliance overlooks the "unique" and "distinct" monitoring and administration requirements that accompany contracted services and serve to inflate their administration costs. Citing data from the Government Finance Officers Association and Rutgers University, respectively, the commenters said that "standard" administration costs for contractors run from 10 to 20 percent and in some cases can even exceed 20 percent. The commenters expressed doubt that the Department's commitment to monitoring compliance with the use of funds requirements "throughout the grant life cycle" and enforcing them "during the closeout process" will be sufficient to maintain the high quality of services currently delivered by experienced merit staff, both in the TAA Program and in other Federal workforce development programs, if non-merit staff are used instead.

The Department acknowledges these data and recognizes that there would be costs associated with monitoring and administering a contract to deliver TAA Program services. There also would be a reduction in costs due to the diminished need for management and oversight of State employees. The Department does not have a way to reliably estimate the difference between the new administrative costs and the administrative cost savings, but addressed commenters' concerns to the extent possible by adjusting the overhead rate to a consistent benchmark for all public- and private-sector employees, as described above. Additionally, the Department remains committed to maintaining the high quality of services provided by the TAA Program, and, as described above, anticipates that States only will choose to contract with service providers when such a service delivery model is the most cost-effective in their State. Furthermore, as the commenters mentioned, the Department has many tools to monitor States' administration of the TAA Program. Regardless of whether and how States choose to use these new flexibilities, they must

continue to meet statutory and regulatory spending requirements.

One State workforce agency expressed disagreement with proposed alternative 1 (no action) and said proposed alternative 3 (more stringent, less flexible regulations with clarification provided in administrative guidance) would not provide enough flexibility for its State. The commenter said that of the three alternatives described, the second proposed alternative (reduced number and types of regulatory provisions) would most benefit the people of its State. The commenter does not provide sufficient context for the Department to determine whether the commenter prefers the second proposed alternative over the Department's preferred approach or just over the other two proposed alternatives. The Department has chosen not to pursue the second proposed alternative because, as described below, this regulatory alternative has the disadvantage of forcing the regulated community to follow statutory language for implementation, which comes with increased risk of noncompliance.

#### 4. Subject-by-Subject Analysis

The Department's analysis below covers the expected costs, cost savings, and transfer payments of this final rule.

The Department emphasizes that many of the provisions in this final rule were already requirements in regulation, statute, or administrative guidance. This final rule will codify these practices under one set of regulations and, therefore, they are not considered "new" burdens resulting from this final rule. Accordingly, the regulatory analysis focuses on new costs, cost savings, and transfer payments that can be attributed exclusively to this final rule.

#### Costs

The following sections describe the costs of this final rule.

#### Quantifiable Costs

##### a. Rule Familiarization

When this final rule takes effect, State staff will need to read and interpret the regulations. Through this review, State staff will familiarize themselves with the structure of the new regulation. Based on previous experience on similar rulemaking efforts, the Department anticipates that non-legal (program) staff will review the new regulations during the first year to identify any new provisions relevant to their operations. The Department also anticipates that legal staff will review the new regulations during the second year, as denials and other legal issues need to be

resolved. As a result, reviewing the new regulation will impose an initial one-time cost in each of the first 2 years.

To estimate the first year cost of rule familiarization, the Department multiplied the number of States (52) by the estimated number of non-legal staff that will conduct the activity (2 State employment counselors). The Department then multiplied this product by the amount of time required to review the rule (2 hours) and by the hourly compensation rate (\$44.20 per hour). This calculation results in a one-time undiscounted cost of \$9,194 in the first year of this final rule.

In the second year, the Department estimates that two-thirds of the States will have legal staff review the rule. Therefore, to calculate the one-time cost of rule familiarization in the second year, the Department multiplied the number of States (52) by two-thirds ( $\frac{2}{3}$  or 0.67) and by the estimated number of legal staff conducting the activity (two State attorneys). The Department then multiplied this product by the amount of time required to review the rule (2 hours), and by the hourly compensation rate (\$80.06 per hour). This calculation results in a one-time undiscounted cost of \$11,208 in the second year of this final rule.

The sum of these first- and second-year one-time costs yields a total average annual undiscounted cost of \$2,040. The total costs over the 10-year period are estimated at \$20,402 undiscounted, or \$19,491 and \$18,382 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$2,285 and \$2,617 at 3- and 7-percent discount rates, respectively.

##### b. Development of IEPs for Trade-Affected Workers Seeking Training or Job Search Allowances

Under § 618.350(a), States must make available an IEP to all trade-affected workers and establish an IEP for trade-affected workers who apply for training under subpart F, or AAWs who apply for a job search allowance under subpart D, prior to the worker receiving those benefits and services. An IEP is an individualized career service under WIOA section 134(c)(2)(A)(xii)(II) and is developed jointly by the WIOA program participant and career planner when determined appropriate by the one-stop center or one-stop partner. The IEP is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for workers to achieve their employment goals. To ensure efficient use of time and resources, this final rule provides that, if an IEP has been developed under

WIOA, or other partner program, it will be reviewed once the worker becomes a trade-affected worker to ensure it has certain components required by the TAA Program, as listed in § 618.350(c). If the IEP does not contain all required components, the IEP must be supplemented by the State in conjunction with the trade-affected worker to ensure it is fully compliant with the TAA Program requirements.

Based on program data, the Department estimates that, each year, States will need to develop or supplement IEPs for 24 trade-affected workers<sup>29</sup> that apply for training and job search allowances and do not yet have an IEP or whose IEP does not contain all of the required components.

To estimate the costs associated with developing or supplementing IEPs, as a result of requiring IEPs for training and job search allowance applicants, the Department multiplied the estimated number of affected trade-affected workers (24) by the cost per IEP (\$22.10).<sup>30</sup> This calculation results in an annual undiscounted cost of \$530. The total cost over the 10-year period is estimated at \$5,300 undiscounted, or \$4,521 and \$3,722 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$530 at both 3- and 7-percent discount rates.

#### c. Other Quantifiable Costs

Other quantifiable costs of this final rule stem from the implementation of two IC forms: (1) ETA Form 8561, Study of Domestic Industry; and (2) ETA Form 9185, Application for Reconsideration.

The Department is reactivating ETA Form 8561 A/B/C, Standard Questionnaire for Manufacturing Firms, by revising it as ETA Form 8561, Study of Domestic Industry. The Department will use ETA Form 8561 to collect information from firms within an industry subject to an investigation by the ITC under section 202 of the Act. The Department then will use the information collected to produce a report for the President, as required under section 224 of the Act. The report will contain information on the number of workers in the domestic industry producing the like, or directly competitive, article who have been, or are likely to be, certified as eligible for

adjustment assistance, and the extent to which the adjustment of such workers to the import competition may be facilitated using available programs. The Department anticipates conducting one industry study per year, and that each firm will submit one response. To estimate the costs associated with the implementation of ETA Form 8561, the Department multiplied the number of firms that will participate in each industry study (12) by the amount of time required to complete the form (1 hour) and by the hourly compensation rate (\$96.58 per hour). This calculation results in an annual undiscounted cost of \$1,159.

The Department also is implementing a new form: ETA Form 9185, Application for Reconsideration. ETA Form 9185 standardizes the information required by regulations for an aggrieved party to seek administrative reconsideration of a termination of investigation, termination or partial termination of a certification, or a negative determination of a petition. To estimate the costs associated with this form, the Department multiplied the estimated number of applications that will be submitted each year (25) by the amount of time required to complete the application (1 hour) and by the hourly compensation rate (\$51.60 per hour). This calculation results in an annual undiscounted cost of \$1,290.

The sum of these costs yields a total annual undiscounted cost of \$2,449. The total cost over the 10-year period is estimated at \$24,490 undiscounted, or \$20,890 and \$17,200 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$2,449 at both 3- and 7-percent discount rates.

#### Nonquantifiable Costs

##### a. Criteria for Certification of Worker Groups

This final rule provision at § 618.225 substantially updates 29 CFR 90.16(b) to describe the criteria the Department uses to certify worker groups, which have expanded significantly under section 222 of the Act. It also identifies factors under consideration in determining whether a criterion has been met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used. The new provisions reflect the requirements of the Act, Departmental practices, and, in some instances, thresholds for select criteria. The provision also includes teleworkers and staffed workers because they are frequently performing the same

work as other trade-affected workers in the subject firm or subdivision and are under the subject firm's control.

As a result of this change, the Department will need to spend de minimis time to update forms. The Department has no data to determine if the number of applications that will be submitted would change and, therefore, cannot quantify any potential cost related to a change in the number of applications due to this change.

#### Cost Savings

The following sections describe the cost savings of this final rule.

#### Quantifiable Cost Savings

##### a. Reconsideration

Currently, the process for reconsiderations (29 CFR 90.18) has two steps. Applicants request a reconsideration, and the Department either accepts or denies the request. Acceptance or denial results in a posting to the **Federal Register** and a notification to the applicant. If accepted, the reconsideration process begins, and a decision is reached. If denied, the petitioner likely will appeal to the USCIT.

This final rule will eliminate the step requiring the Certifying Officer to make and issue a determination on whether or not a reconsideration will be initiated (29 CFR 90.18(c)). The Department has concluded that eliminating this step would decrease time and burden, and simplify the process.

Under the new process in § 618.245, the Department will initiate an investigation on all valid reconsideration applications, conduct the required review, and post the results via the **Federal Register** and the Department's website. Although this new process will not eliminate reconsiderations, the Department estimates that it will reduce the processing time involved for all reconsiderations by approximately 33 percent, as there will be no initial review of the request or related notification. Thus, under the new process, the cost per reconsideration will be 67 percent of the cost under the current process. The Department estimates that the cost per reconsideration under the current process is \$2,022.<sup>31</sup> Under the new

<sup>29</sup>The Department derived this number by calculating the average of the annual number of workers who received training, job search, or relocation allowances (*i.e.*, program exiters) in FY 2013 through FY 2019.

<sup>30</sup>The cost per IEP is estimated by multiplying the hourly compensation rate of a State employment counselor (\$44.20 per hour) by the time spent developing the IEP (0.50 hours), resulting in a cost estimate of \$22.10.

<sup>31</sup>The Department estimates the cost to process a reconsideration based on the cost to process a full petition due to data availability. The Department estimates that the cost to process a reconsideration under the current process is 86 percent of the cost to process a full petition. This estimate is based on an average of 60 days to process a reconsideration compared to a median of 70 days to process a full petition (60/70=86 percent).

process, the Department estimates that the cost per reconsideration will be \$1,355 (0.67 × \$2,022 per reconsideration). Under the current and revised processes, approximately 25 reconsiderations are filed per year, and the Department concludes that will not change. To estimate the cost savings associated with this change, the Department subtracted the cost per reconsideration under the new process (\$1,355) from the cost per reconsideration under the current process (\$2,022) and then multiplied by the number of reconsiderations filed per year (25). This yields an average annual undiscounted cost savings of \$16,675. The total cost savings from the new reconsideration process over the 10-year period is estimated at \$166,750 undiscounted, or \$142,241 and \$117,118 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$16,675 at both 3- and 7-percent discount rates.

#### b. Judicial Appeals

Under previous regulations, all determinations the Department rendered are final determinations subject to judicial review. As a result, nearly any determination the Department rendered can be appealed to the USCIT (29 CFR 90.19).

In this final rule, the Department will define only determinations on

The Department estimates an investigator spends 100 percent of his or her time, or 2,080 hours, processing petitions. The investigator processes 85 petitions per year. Therefore, the cost per petition for an investigator to process is estimated by multiplying the hourly compensation rate (\$68.02 per hour) by the hours the investigator works per year (2,080 hours) and dividing by the number of petitions processed per year (85 petitions per year). This results in a cost per petition for an investigator of \$1,664. The Department estimates a Certifying Officer manager spends 75 percent of his or her time (1,560 hours) and a nonmanager Certifying officer spends 100 percent of his or her time (2,080 hours) processing petitions. Certifying Officers process an estimated 317 full petitions per year. Based on these data, a manager Certifying Officer spends 5 hours per petition (1,560/317) and a nonmanager Certifying Officer spends 7 hours per petition (2,080/317). The Department uses an average of nonmanager and manager hours per petition to estimate the average Certifying Officer's time to process a petition (6 hours). To estimate the cost per petition for a Certifying Officer, the Department multiplied the hourly compensation rate (\$114.55 per hour) by the number of hours spent processing a full petition (6 hours). This results in a cost per petition for a Certifying Officer of \$687.

The Department, therefore, estimates the full cost of processing a full petition as the sum of the cost for an investigator to process a petition and the cost for a Certifying Officer to process a petition. Summing these costs results in an estimated cost of \$2,351 to process a petition. The cost per reconsideration is, therefore, estimated as \$2,022 based on the cost per reconsideration being 86 percent of the cost of processing a full petition.

reconsideration issued under § 618.245(g) as final determinations and, therefore, only these determinations are subject to judicial review through the USCIT. This will reduce the time and effort spent by Department employees, petitioners, and the USCIT on appeals that have not yet been subject to the reconsideration process. These appeals require legal counsel for the Department and for the appellant, and associated fees are involved with the proceedings. By revising the definition of "final determinations" and through the revisions to the reconsideration process, the Department concludes that the number of judicial appeals will be reduced to two per year.

The Department estimates the cost savings from reducing the number of judicial appeals by subtracting the estimated number of judicial appeals under this final rule (two per year) from the current number of judicial appeals per year (five per year) and multiplying by the cost per appeal (\$19,547).<sup>32</sup> This yields average annual undiscounted cost

<sup>32</sup> The cost per appeal is estimated from the cost to the appellant, the Department, and the USCIT to process an appeal. Based on USCIT court fees (<https://www.cit.uscourts.gov/sites/cit/files/Schedule%20of%20Fees.pdf>), the appellant must pay fees for attorney admission (\$81), a filing fee (\$400), and a charge for each type of fee (\$304) for a total of \$785 in fees to appeal. The appellant also must have a private sector attorney prepare for the appeal and appear in court. The Department estimates this cost by multiplying the hourly compensation rate (\$118.72 per hour) by the sum of time the private sector attorney must spend to prepare (40 hours) and the time spent in court (12 hours). These estimates include time spent responding to filings and other actions outside of court proceedings. The result is a cost per appeal for the appellant of \$6,958.

The Department has a cost per appeal for a DOL and DOJ attorney to prepare and attend court, and a remand cost. The Department estimates the remand cost by multiplying the current cost per reconsideration (\$2,022) by 1.5, resulting in a remand cost of \$3,033. To estimate the cost of a DOL and DOJ attorney, the Department multiplied the hourly compensation rate (\$121.28 per hour) by the sum of time the DOL and DOJ attorney must spend to prepare (40 hours) and the time spent in court (12 hours). The result is a cost of \$6,306 for a DOL and DOJ attorney. The sum of the remand cost (\$3,033) and the cost for a DOL and DOJ attorney (\$6,306) yields a cost per appeal for the Department of \$9,339.

The cost to the USCIT is the court time for a district court judge and district court clerk. The Department estimates the cost of court time for a judge by multiplying the hourly compensation rate (\$182.50 per hour) by the time spent in court and the time spent reviewing the filings related to the appeal (12 hours), resulting in a cost estimate of \$2,190. The Department estimates the cost of court time for a clerk by multiplying the hourly compensation rate (\$88.31 per hour) by the time spent in court (12 hours), resulting in a cost estimate of \$1,060. The cost to the USCIT for an appeal is therefore estimated as \$3,250.

The cost per appeal is therefore estimated as the sum of the cost to the appellant (\$6,958), the cost to the Department (\$9,339), and the cost to the USCIT (\$3,250). This cost is \$19,547.

savings of \$58,641. The total cost savings from the reduction in judicial appeals over the 10-year period is estimated at \$586,410 undiscounted, or \$500,220 and \$411,870 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$58,641 at both 3- and 7-percent discount rates.

Relative to the baseline (*i.e.*, current practice under the TAA Program), the two issues described above are expected to result in average annual undiscounted cost savings of \$75,316. The total cost savings over the 10-year period is estimated at \$753,160 undiscounted, or \$642,461 and \$528,988 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is estimated at \$75,316 at both 3- and 7-percent discount rates.

#### Transfer Payments

The following sections describe the transfer payments of this final rule.

#### Quantifiable Transfer Payments

##### a. Merit Versus Non-Merit Staff

Currently, States must engage only State merit staff to perform TAA-funded functions undertaken to carry out the State's responsibilities under the Act (20 CFR 618.890). Non-merit staff that provide employment and case management services to trade-affected workers cannot charge their time to TAA Program funds.

In this final rule, the provision at § 618.890 on staffing flexibility amends the previous regulation to clarify that only certain activities under the TAA Program need to be performed by personnel covered by a system meeting the criteria of the Federal merit personnel system regardless of whether they are funded by the TAA Program. This results in a transfer payment because non-merit staff will be performing the same work at a lower wage than the currently used merit staff. As a result, providing employment and case management services by non-merit staff will result in transfer payments from employees to the States because there are no labor-hours freed and only a decline in wages.

The Department estimates that half the States, and therefore half the participants in the TAA Program, will take advantage of the flexibility provided by this final rule.

The Department estimates that the cost of providing employment and case management services by State merit staff is \$8,382,397 annually.<sup>33</sup> The

<sup>33</sup> To estimate the cost of State merit staff providing employment and case management

Department estimates the cost of providing employment and case management services by non-merit staff is \$6,584,544 annually, due to the lower hourly wage for the typical non-merit staff employee.<sup>34</sup> The Department, therefore, estimates transfer payments associated with removing the restriction to allow States to charge time for non-merit staff to TAA Program funds by subtracting the cost of non-merit staff (\$6,584,544) from the cost of State merit staff (\$8,382,397) and multiplying by 0.5 to account for the Department's estimate that half the States will use the flexibility provided by this final rule. This yields average annual undiscounted transfer payments of \$898,927. The total transfer payments from removing the restriction to allow States to charge time for non-merit staff to TAA Program funds over the 10-year period is estimated at \$8,989,265

services, the Department first estimated the amount of time spent providing the services. Of the 16,026 total exiters, on average, in FYs 2017–2019, 9,331 received training and 6,706 received only case management services. The average duration of training is 421 days, and the average duration of case management services is 263 days. Staff have a minimum contact requirement of 30 days, and contact is estimated to take 1 hour. Therefore, the Department estimated the time spent by staff providing training services to an exiter by dividing the average duration of training (421 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 14 hours. The Department, therefore, estimates the hours required for training services to all exiters that received training by multiplying the number of exiters receiving training (9,331) by the time spent by staff providing them services (14 hours), resulting in an estimate of 130,634 hours. The Department estimated the time spent by staff providing case management services only to an exiter by dividing the average duration of case management (263 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 8.8 hours per exiter receiving case management services. The Department, therefore, estimates the hours required for case management services to all exiters that received case management services only by multiplying the number of exiters receiving only case management services (6,706) by the time spent by staff providing them services (8.8 hours), resulting in an estimate of 59,013 hours.

To estimate the cost of State merit staff providing employment and case management services, the Department summed the time required to provide training services (130,634 hours) and the time required to provide case management services only (59,013 hours), which results in a total of 189,647 hours. The Department then multiplied the total hours by the hourly compensation rate of a State employment counselor (\$44.20 per hour) resulting in a cost estimate of \$8,382,397.

<sup>34</sup> To estimate the cost of non-merit staff in providing employment and case management services, the Department summed the time required to provide training services (130,634 hours) and the time required to provide case management services only (59,013 hours), which results in a total of 189,647 hours. The Department then multiplied the total hours by the hourly compensation rate of a private sector employment counselor (\$34.72 per hour), resulting in a cost estimate of \$6,584,544.

undiscounted, or \$7,668,025 and \$6,313,684 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$898,927 at both 3- and 7-percent discount rates.

#### Nonquantifiable Transfer Payments

##### a. Change in the Definition of “Group”

Under § 618.110 (definition of “group of workers”) in this final rule, the Department updates the definition of “group” to mean at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The definition also includes teleworkers and staffed workers, because they are frequently performing the same work as other trade-affected workers in the subject firm or subdivision and are under the subject firm's control. Separated workers are included in the definition because they, too, may be trade-affected workers. Because of a lack of data on the additional number of beneficiaries, the Department is unable to quantify the transfer. The Department expects the change to be small.

##### b. Suitable Work Versus Suitable Employment

In this final rule, the provision at § 618.400 explains the scope of the subpart, and is a provision not contained in current regulations. The provision at § 618.400 contains one substantive departure from current regulations in that it identifies the goal of providing job search and relocation allowances to help AAWs secure and, if necessary, relocate to “suitable employment” as defined in section 236 of the Act, instead of merely assisting AAWs in finding “suitable work” as current regulations have provided. In this final rule, the language at § 618.405 contains general provisions and revises and consolidates current 20 CFR 617.30 and 617.40. The provision at § 618.405(a) retains the content in 20 CFR 617.30, except that it replaces the reference to “securing a job” with “suitable employment” to align with the change to the goal of the subpart.

This change modifies the eligibility requirement, for both job search and relocation allowances, that there be no “suitable work” available in the local area to the requirement that there be no “suitable employment” available in the local area. “Suitable employment” is generally work at higher skill levels and wage rates than is “suitable work” (*i.e.*, a job is less likely to meet the higher “suitable employment” standard and such jobs will, therefore, be less likely to be available). Thus, this change will

simplify the operation of the TAA Program by using the same standard—suitable employment—as the factor for approval of training, job search allowances, and relocation allowances. Program performance data show that AAWs who relocate have a wage replacement rate exceeding 100 percent, which means that this change should have little or no impact on the number of AAWs and is not quantifiable.

##### c. Length of Training and Apprenticeships

In this final rule, the language at § 618.635(c) is new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the NAA, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of a recognized postsecondary credential, are approvable TAA Program training activities. These provisions are based on a combination of section 236(a)(5)(A)(iii) and (G) of the Act. The requirement that an apprenticeship lead to an industry-recognized credential differentiates an apprenticeship from regular OJT.

This final rule will revise TAA Program length of training requirements applicable to apprenticeships. In addition, under this final rule, TAA Program funds can be used to pay for the educational and instructional component of the apprenticeship until completion of the apprenticeship, which, in some cases, could be up to 5 years. In particular, the TAA Program will provide for reimbursement to the employer for the paid-work component of the apprenticeship for up to 130 weeks. Reimbursement can be up to 50 percent of the employer's training costs based on the wage rate of the trade-affected worker.

The increased flexibility in the use of TAA Program funds may result in an increase in apprenticeships; however, the Department is unable to quantify this and sought public comment. The Department received no comments on this issue. The Department expects that funding adjustments will need to be made for trade-affected workers requiring additional funding due to participation in a registered apprenticeship. In this final rule, the provision would result in transfers of funds between States and the Federal Government. The total amount of expenditures that may be accrued at the national level, however, will not change and is therefore not quantified.

### Other Key Changes With No Economic Impact

TGAAA and TAAEA introduced statutory program changes, and the TAARA 2015 amendments restored these improvements. This final rule codifies the provisions associated with these improvements, currently implemented via administrative guidance, into the TAA Program regulations. The Department analyzed these provisions to determine if they have any additional cost or result in transfer payments when compared to the baseline. Based on this analysis, the Department has determined that no costs or transfer payments are associated with the program improvement provisions.

a. A set of provisions requiring services to all trade-affected workers, including AAIIWs who have not yet separated from adversely affected employment but are threatened with separation (subpart A, § 618.110; subpart C, § 618.310; and subpart F, § 618.655).

Under this set of provisions, AAIIWs must be provided TAA Program services, as appropriate, before the worker's separation from employment, ideally allowing these workers to transition to new employment without experiencing a gap in employment or by reducing the amount of time needed to complete the training program after the separation, or both, and reducing the worker's overall period of unemployment. Under the current regulations, the Department could not begin providing services to serve AAIIWs until they are laid off. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

b. Provisions that expand trade-affected worker eligibility to include those workers in firms that supply service-sector workers, expanding coverage to the largest growing sector of the economy (subpart B, § 618.225(a) and (b)).

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

c. Provision that makes workers in firms identified in ITC "injury" determinations "automatically" certified (subpart B, § 618.225(c)).

No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

d. Provisions providing funding for individualized case management services (subpart C, §§ 618.310, 618.330, 618.335, 618.345, 618.350, and 618.360).

Employment counseling and reemployment services have been required under the TAA Program since implementation of chapter 2 of title II of the Act. The current requirements are found at 20 CFR 617.20 and 617.21. This set of provisions includes the development of an IEP and assessments. The language in the previous regulation, however, uses outdated terminology and this final rule updates it. Case managers are to ensure trade-affected workers receive job placement services, develop individual assessment-based employment and training programs, and provide career counseling. Under the current regulations, funds for individualized case management services are not authorized, requiring these services to be made available through partner programs, such as Wagner-Peyser or WIOA. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

e. Provisions that eliminate the requirement for AAAs to apply for and wait to attain a separate group certification to be eligible for the RTAA program (subpart E, §§ 618.500 and 618.505).

AAAs receiving RTAA can work full time or part time and receive training, which will allow this population to regain skills to stay competitive. RTAA replaces ATAA, a program piloted in the TAA Program under TAARA 2002. Neither RTAA nor ATAA are included in current regulations. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

f. Provisions that introduce Completion TRA and require trade-affected worker training benchmarks to monitor training progress regularly and allow for amendments of a training program to help ensure successful training outcomes (subpart F, § 618.660; and subpart G, § 618.755).

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

g. A provision that eliminates training waivers based on recall, marketable skills, and retirement (subpart G, § 618.725(b)).

No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

h. A set of provisions that expands the deadline for enrolling in training to qualify for TRA, providing trade-affected workers more time to consider their training options (subpart G, § 618.720(c)(1), (2), and (4)).

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

i. A provision that allows States to apply Federal "good cause" waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances (subpart G, § 618.720(c)(5)).

This provision allows States to apply Federal "good cause" waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

j. Subpart G, § 618.775.

This provision enables AAAs to elect TRA over UI based on a second UI claim in circumstances that result in lower WBAs from part-time or short-term work. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

### Qualitative Benefits Discussion

The TAA Program includes the RTAA benefit, which may be available to AAAs 50 years of age or older. Reauthorization of the program restored the major expansions in TAA Program worker group eligibility to service sector workers and to workers affected by trade from any country, including countries that do not have Free Trade Agreements with the United States including China and India.

A 2012 evaluation of the TAA Program showed that TAA Program participants who undertook training recorded better employment outcomes than those who received only income support and that TAA Program participants almost entirely closed the gap between their wages in the previous employment and their wages in the new employment within 4 years, and, by one measure, had pulled slightly ahead.<sup>35</sup> The evaluation also found that TAA Program participants were engaged in some form of productive activity at about the same rate as the comparison group.

### a. Streamlining and Consolidation of TAA Program Regulations

As stated above, the regulations governing the TAA Program have not been updated since 1994. Since that

<sup>35</sup> Social Policy Associates and Mathematica Policy Research. (2012). "The Evaluation of the Trade Adjustment Assistance Program: A Synthesis of Major Findings." Retrieved from: [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP\\_2013\\_08.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_08.pdf).

time, multiple amendments have occurred. All TAA Program amendments were implemented through administrative guidance. As a result, the States must use a combination of regulations and a patchwork of administrative guidance to operate the program.

This final rule provides a legally binding set of rules to guide the worker-group certification process at the Federal level and the individual benefit and training authorization process at the State level, and provides Federal and State courts with the Department’s authoritative interpretation of TAARA 2015. This final rule also updates the TAA Program and consolidates all applicable program regulations into a single section of the CFR.

**b. Support to American Workers That Have Lost Their Jobs as a Result of Foreign Trade**

The objective of the TAA Program is to provide trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to (re)build skills for future jobs. For over 40 years, the TAA Program has assisted U.S. workers who have lost or may lose their jobs as a

result of foreign trade. Benefits and services include: Employment and case management services (e.g., career counseling); training; out-of-area job search and relocation allowances; income support through TRA; RTAA for AAWs aged 50 and older; and, if available, the HCTC.

Since 1975, the TAA Program has served over 2 million U.S. trade-affected workers. In FY 2017, an estimated 94,017 trade-affected workers became eligible for TAA Program benefits and services. Nearly 75 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program, and over 90 percent of those who found work retained their jobs 6 months later.

Trade-affected workers come from a variety of backgrounds and industries, and therefore, many enter the program with a wide array of skills and experience. Most trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, an average age of 49, and an average of 12 years of experience in a specific job that may no longer exist.<sup>36</sup> The TAA Program is designed to serve the needs

of this unique population best, which it continues to do.

An ever-changing global marketplace drives the 21st-century economy. For America to outcompete other countries, its workers need to have the skills and support to take advantage of new opportunities the 21st-century economy presents. The TAA Program sets out to do that by providing the best opportunities for American workers to reenter the workforce.

**5. Summary of the Analysis**

Exhibit 4 summarizes the estimated total costs, cost savings, and transfer payments of this final rule over the 10-year analysis period. The annual costs, cost savings, and transfer payments do not reach \$100 million in any given year. Thus, this final rule is not economically significant.

The Department estimates the annualized costs of this final rule at \$5,596, the annualized cost savings at \$75,316, and the annualized transfer payments at \$898,927, at the 7-percent discount rate.

The Department estimates the net cost savings of this final rule at \$597,559 at a discount rate of 3 percent and \$489,683 at a discount rate of 7 percent.

**EXHIBIT 4—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COST SAVINGS, AND TRANSFER PAYMENTS OF THE NPRM**

[2019 dollars]

	Costs	Cost savings	Net cost savings <sup>a</sup>	Transfer payments
2020 .....	\$12,173	\$75,316	\$63,143	\$898,927
2021 .....	14,187	75,316	61,129	898,927
2022 .....	2,979	75,316	72,337	898,927
2023 .....	2,979	75,316	72,337	898,927
2024 .....	2,979	75,316	72,337	898,927
2025 .....	2,979	75,316	72,337	898,927
2026 .....	2,979	75,316	72,337	898,927
2027 .....	2,979	75,316	72,337	898,927
2028 .....	2,979	75,316	72,337	898,927
2029 .....	2,979	75,316	72,337	898,927
Undiscounted 10-Year Total .....	50,192	753,160	702,968	8,989,265
10-Year Total with 3% Discounting .....	44,902	642,461	597,559	7,668,025
10-Year Total with 7% Discounting .....	39,305	528,988	489,683	6,313,684
10-Year Average .....	5,019	75,316	70,297	898,927
Annualized with 3% Discounting .....	5,264	75,316	70,052	898,927
Annualized with 7% Discounting .....	5,596	75,316	69,720	898,927
Perpetuated Net Cost Savings <sup>a</sup> with 7% Discounting (2016 dollars) .....			\$50,902	

<sup>a</sup> Net Cost Savings = [Total Cost Savings] – [Total Costs]; discounted four years to reflect that the changes take effect in 2020.

**6. Regulatory Alternatives**

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O.

12866. The Department has considered three alternatives as part of determining whether to issue this final rule. These alternatives include: (1) To take no action; that is, make no regulatory changes; (2) to reduce the number and

types of provisions in the regulations; and (3) to propose more stringent, less flexible regulations and provide clarification in administrative guidance. Each alternative is discussed in more detail below.

<sup>36</sup> U.S. Department of Labor, ETA. (2018). “Trade Adjustment Assistance for Workers Program: Fiscal

Year 2017.” Retrieved from: [https://](https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf)

[www.doleta.gov/tradeact/docs/AnnualReport17.pdf](https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf).

The Department considered the “no action” alternative, thereby, leaving the regulations in three separate parts in the CFR (*i.e.*, 20 CFR parts 617 and 618, and 29 CFR part 90) and continuing to use administrative guidance to operate the TAA Program. This alternative has the disadvantage of forcing States to use a combination of outdated regulations and a patchwork of administrative guidance to operate the program. The TAA Program requirements have changed substantially since 1994. As a result, the implementation of new regulations is necessary to achieve program compliance, integrate the TAA Program with the workforce development and education systems, and reduce the Department’s and States’ legal burden concerning petition issues raised in court cases and appeals.

The Department also considered scaling back the number and types of provisions in the regulations, except for those areas where there are statutory requirements for the Department to promulgate regulations. Examples of provisions that could be excluded are: (1) The primary indicators of performance; (2) the expansion of State responsibility for providing employment and case management services; (3) the integration of the TAA Program into the one-stop delivery system under WIOA and alignment with the WIOA Final Rule; (4) the increase in the maximum limit for job search and relocation allowances; (5) the addition of the RTAA, which was established under the 2009 Program amendments; (6) the addition of Completion TRA; and (7) the study and notifications regarding certain affirmative determinations. This regulatory alternative has the disadvantage of forcing the regulated community to follow statutory language for implementation. Considering many of these provisions are new, the statutory language would not provide sufficient detailed guidance to implement the provisions effectively, thereby, increasing the risk of noncompliance.

Finally, the Department considered proposing more stringent, less flexible regulations and relying on administrative guidance to provide clarification. Examples of provisions where the Department could be more prescriptive are: (1) Worker group eligibility requirements (2) employment and case management services; (3) training (*e.g.*, approval, cost, and type); (4) job search and relocation allowances; (5) Completion TRA and training benchmarks; and (6) RTAA. This alternative has the disadvantage of not providing enough flexibility to mold the TAA Program to the evolving needs of

displaced workers and the changing economic landscape. Not only could this negatively impact trade-affected workers, it could cost States and the Department more through decreases in efficiency from having to adhere to more restrictive and complex regulations. This would ultimately lead to workers being underserved due to the time and budgetary burdens that more stringent regulations would impose. Also, administrative guidance is not legally binding, and, therefore, not as an effective tool as flexible regulations.

The Department considered the three options above in accordance with the provisions of E.O. 12866 and chose to publish this final rule to increase flexibility to States and trade-affected workers, improve outcomes, clarify overly technical or confusing language, update references and procedures, and codify elements from administrative guidance.

As discussed in Section IV.B.3 above, the Department received one comment on the regulatory alternatives. This comment is addressed in that section with the other discussions of public comments.

#### *C. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

Because the entities impacted by this final rule are the States, which do not qualify as small entities, the Department has determined that this final rule does not impact small entities. Based on this determination, the Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

#### *D. Paperwork Reduction Act (PRA)*

The purposes of the PRA, 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In accordance with the requirements of PRA the proposed regulation solicited comments on the ICs included therein.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public also is not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512(a)(1)).

The following ICs are part of the States’ administration of the TAA Program. They have been previously reviewed and approved. They have not been impacted by this rule:

OMB Control Number 1205–0275—  
Trade Adjustment Assistance Program  
Reserve Funding Request  
OMB Control Number 1205–0222—  
Unemployment Insurance Materials  
Transmittal  
OMB Control Number 1205–0521—  
DOL-Only Performance  
Accountability, Information, and  
Reporting System  
OMB Control Number 1205–0461—  
Employment and Training  
Administration Financial Report  
Form ETA–9130

The Department has determined that there is a new IC contained in this rule. This collection is related to an aggrieved party seeking administrative reconsideration of a negative determination under section 222 of the Act, and the domestic industry study required by section 202 of the Act.

In accordance with the requirements of PRA the proposed regulation solicited comments on this new IC. The **Federal Register** Notice announcing the proposed rule announced a 60-day comment period for this new IC. The IC comment period closed on January 6, 2020. The Department received two timely comments but they did not address the IC. The comments received on the proposed IC may be viewed at <https://www.regulations.gov> by entering docket number ETA-2019-0009.

**Petition Requirements; Investigations; Domestic Industry Study; Application for Reconsideration**

*Agency:* DOL-ETA.

*Title of Collection:* Petition

Requirements; Investigations; Domestic Industry Study; Application for Reconsideration.

*Type of Review:* New.

*OMB Control Number:* 1205-0NEW.

*Description:* The information contained in this collection is submitted by various parties, including individuals, company officials, unions, and State agencies. This information is collected in paper, by fax, via online forms, and by email. The information provided by these groups is used as part of an investigation by the Department to determine whether or not a group of workers has been adversely affected by foreign trade under the conditions and criteria established in section 222 of the Act. The Department is taking this opportunity to make changes to the forms in OMB Control Number 1205-0342 used in the petition and investigation process. These changes are designed to reduce burden, provide better instructions, and simplify the forms for use by the public. Form ETA-9185 is a new form used by aggrieved parties to seek administrative reconsideration of a negative determination. As part of this collection, the Department is reactivating Form ETA-8561 A/B/C, Standard, by renaming as Form ETA-8561, Study of Domestic Industry, and revising the content of the form. This was previously approved under OMB Control Number 1205-0194, and was in use until 1990 when it was discontinued. Form ETA-8561 is submitted by a firm within an industry subject to an investigation by the ITC under section 202 of the Act. This collection will eventually be

included in OMB Control Number 1205-0342; specifically, once all of the outstanding actions are complete, the Department intends to submit a nonmaterial change request to merge the collections so that the new requirements will be added to OMB Control Number 1205-0342. Once the nonmaterial change request has been approved by OMB, the new collection will be discontinued.

*Affected Public:* State, Local, and Tribal Governments.

*Obligation to Respond:* Required to Obtain or Retain Benefits.

*Estimated Total Annual Respondents:* 5,317.

*Estimated Total Annual Responses:* 5,497.

*Estimated Total Annual Burden Hours:* 12,977.

*Estimated Total Annual Other Burden Costs:* \$1,266,937.93.

*Regulations Sections:* 20 CFR 618.205, 618.210, 618.215, 618.220, 618.225, 618.230, 618.235, 618.240, 618.245, 618.250, 618.260.

Interested parties may obtain a copy free of charge of one or more of the ICRs submitted to OMB on the [reginfo.gov](http://www.reginfo.gov) website at <http://www.reginfo.gov/public/do/PRAMain>. From this web page select Department of Labor from the "Currently under Review" dropdown menu and look up the collection. You also may request a free copy of the IC by contacting the person named in the **ADDRESSES** section of this preamble.

**E. Executive Order 13132 (Federalism)**

E.O. 13132 requires Federal agencies to ensure that the principles of federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act (UMRA). Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

The Department has reviewed this final rule revising the operation of a Federal benefit program in accordance

with E.O. 13132 and found that this rulemaking has no federalism implications. The TAA Program is a nationwide program funded with Federal funds in which the States voluntarily participate. Thus, this final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

**F. Unfunded Mandates Reform Act of 1995**

UMRA (Pub. L. 104-4, codified at 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and on private industry, except to the extent the regulations incorporate requirements specifically set forth in law. Title II of the UMRA directs agencies to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in \$100 million or more expenditure (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

As explained in Section V.B above, this final rule does not include any Federal mandate that could result in increased expenditure by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. State governments administer the TAA Program as agents of the United States and are provided appropriated Federal funds for all TAA Program expenses.

**G. Executive Order 13175 (Indian Tribal Governments)**

E.O. 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. It requires Federal agencies to take certain actions when regulations have tribal implications. Required actions include consulting with tribal governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. E.O. 13175 defines regulations as having "tribal implications" when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes. Because this final rule addresses the worker-certification process at the Federal level, the individual benefit and training authorization process at the State level, State administration of the TAA Program, and the Department's distribution of TAA Program funds to the States, the Department concludes that it does not have tribal implications.

#### List of Subjects

##### 20 CFR Part 617

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements.

##### 20 CFR Part 618

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements, Trade adjustment assistance.

##### 29 CFR Part 90

Administrative practice and procedure, Grant programs—labor, Reporting and recordkeeping requirements, Trade adjustment assistance.

Under the authority of 19 U.S.C. 2320(a) and for the reasons discussed in the preamble, the Department of Labor amends 20 CFR parts 617 and 618 and 29 CFR part 90 as follows:

#### **PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974**

- 1. Revise the authority citation for 20 CFR part 617 to read as follows:

**Authority:** 19 U.S.C. 2320; Secretary's Order No. 6–2010, 75 FR 66267 (Oct. 27, 2010).

#### **Appendices A, B, and C to Part 617—[Transferred to Part 618 and Redesignated]**

- 2. Transfer appendices A, B, and C to part 617 to part 618 and redesignate the appendices as appendices A, B, and C to part 618.

#### **PART 617—[REMOVED AND RESERVED]**

- 3. Remove and reserve part 617.
- 4. Revise part 618 to read as follows:

#### **PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974, AS AMENDED**

##### **Subpart A—General**

Sec.

- 618.100 Purpose and scope.
- 618.110 Definitions.
- 618.120 Severability.

##### **Subpart B—Petitions, Investigations, and Determinations**

- 618.200 Scope.
- 618.205 Petitions.
- 618.210 Investigation.
- 618.215 Public hearings.
- 618.220 Use of subpoena.
- 618.225 Criteria for certification of a group of workers.
- 618.230 Evidence.
- 618.235 Determinations.
- 618.240 Termination of certification.
- 618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.
- 618.250 Amendments of certifications.
- 618.255 Judicial review of determinations.
- 618.260 Study regarding certain affirmative determinations by the Commission.
- 618.265 Availability of information to the public.

##### **Subpart C—Employment and Case Management Services**

- 618.300 Scope.
- 618.305 The Trade Adjustment Assistance Program as a one-stop partner.
- 618.310 Responsibilities for the delivery of employment and case management services.
- 618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.
- 618.330 Assessment of trade-affected workers.
- 618.335 Initial assessment of trade-affected workers.
- 618.345 Comprehensive and specialized assessment of trade-affected workers.
- 618.350 Individual employment plans for trade-affected workers.
- 618.355 Knowledge, skills, and abilities of staff performing assessments.
- 618.360 Employment and case management services for trade-affected workers in training.

##### **Subpart D—Job Search and Relocation Allowances**

- 618.400 Scope.
- 618.405 General.
- 618.410 Applying for a job search allowance.
- 618.415 Eligibility for a job search allowance.
- 618.420 Findings required for a job search allowance.
- 618.425 Amount of a job search allowance.
- 618.430 Determination and payment of a job search allowance.
- 618.435 Job search program participation.
- 618.440 Applying for a relocation allowance.
- 618.445 Eligibility for a relocation allowance.
- 618.450 Findings required for a relocation allowance.

- 618.455 Determining the amount of a relocation allowance.
- 618.460 Determinations and payment of a relocation allowance.

##### **Subpart E—Reemployment Trade Adjustment Assistance**

- 618.500 Scope.
- 618.505 Individual eligibility.
- 618.510 Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.
- 618.515 Continuing eligibility and timing of payments.
- 618.520 Benefits available to eligible adversely affected workers.
- 618.525 Determinations, redeterminations, and appeals.
- 618.530 Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.

##### **Subpart F—Training Services**

- 618.600 Scope.
- 618.605 General procedures.
- 618.610 Criteria for approval of training.
- 618.615 Limitations on training approval.
- 618.620 Selection of training program.
- 618.625 Payment restrictions for training programs.
- 618.630 Training of reemployed trade-affected workers.
- 618.635 Work-based training.
- 618.640 Supplemental assistance.
- 618.645 Voluntary withdrawal from a training program.
- 618.650 State standards and procedures for establishing reasonable cost of training.
- 618.655 Training for adversely affected incumbent workers.
- 618.660 Training benchmarks.
- 618.665 Amending approved training.

##### **Subpart G—Trade Readjustment Allowances**

- 618.700 Scope.
- 618.705 Definitions.
- 618.710 Categories of Trade Readjustment Allowances.
- 618.715 Applications for Trade Readjustment Allowances and payment.
- 618.720 Qualifying requirements for Basic Trade Readjustment Allowances.
- 618.725 Training enrollment deadlines.
- 618.730 Good cause.
- 618.735 Waiver of training requirement for Basic Trade Readjustment Allowances.
- 618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.
- 618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.
- 618.750 Maximum amount of Basic Trade Readjustment Allowances.
- 618.755 Eligibility period for Basic Trade Readjustment Allowances.
- 618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.
- 618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.
- 618.770 Special rule for justifiable cause.
- 618.775 Payment of Trade Readjustment Allowances during breaks in training.
- 618.780 Disqualifications.

**Subpart H—Administration by Applicable State Agencies**

- 618.800 Scope.
- 618.804 Agreements with the Secretary of Labor.
- 618.808 State rulemaking.
- 618.812 Subpoenas.
- 618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.
- 618.820 Determinations of eligibility; notices to individuals.
- 618.824 Liable State and agent State responsibilities.
- 618.828 Appeals and hearings.
- 618.832 Overpayments; penalties for fraud.
- 618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.
- 618.840 Uniform interpretation and application of this part.
- 618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.
- 618.848 Veterans' priority of service.
- 618.852 Recordkeeping and disclosure of information requirements.
- 618.856 Information, reports, and studies.
- 618.860 General fiscal and administrative requirements and cost classification.
- 618.864 Trade Adjustment Assistance Program performance.
- 618.868 Unemployment Insurance.
- 618.872 Travel under the Trade Adjustment Assistance Program.
- 618.876 Verification of eligibility for program benefits.
- 618.884 Special rule with respect to military service.
- 618.888 Equitable tolling.
- 618.890 Staffing flexibility.
- 618.894 Nondiscrimination and equal opportunity requirements.
- 618.898 Applicable State law.

**Subpart I—Allocation of Funds to States for Training and Other Activities**

- 618.900 Annual cap on funds available for Training and Other Activities.
- 618.910 Initial allocation of funds.
- 618.920 Reserve fund distributions.
- 618.930 Second distribution.
- 618.940 Insufficient funds.
- 618.950 Recapture and reallocation of Training and Other Activities funds.

**Authority:** 19 U.S.C. 2320; Secretary's Order No. 6–2010, 75 FR 66267 (Oct. 27, 2010).

**Subpart A—General****§ 618.100 Purpose and scope.**

(a) *Purpose.* The Act establishes a Trade Adjustment Assistance for Workers (TAA) Program. The goal of the TAA Program is to help each worker participating in the program obtain suitable employment whenever possible, and to return to employment as quickly as possible.

(b) *Scope.* Global trade impacts thousands of workers each year across the United States. The TAA Program provides trade-affected workers with

opportunities to obtain the skills, credentials, resources, and support necessary to become reemployed in a good job. The TAA Program's benefits and services include: employment and case management services, training, out-of-area job search and relocation allowances, income support through Trade Readjustment Allowances (TRA), the Reemployment Trade Adjustment Assistance (RTAA) benefit for workers aged 50 or older who find qualifying reemployment, and, if available, the Health Coverage Tax Credit (HCTC). Together with its workforce development partners in the one-stop delivery system authorized under the Workforce Innovation and Opportunity Act (WIOA), the TAA Program helps retrain, retool, and rebuild the American workforce. This part 618 applies for all workers determined eligible to apply for TAA except for those covered under certain provisions of the Trade Adjustment Assistance Reform Act of 2002 and the Trade and Globalization Adjustment Assistance Act of 2009, for which administrative guidance will continue to apply.

(c) *Effect.* The regulations in this part are issued to implement the Act.

**§ 618.110 Definitions.**

The following definitions apply solely in this part.

*Act* means chapter 2 of title II of the Trade Act of 1974, Public Law 93–618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended.

*Administrator* means the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Washington, DC, who has responsibility for administering the TAA Program, or his or her designee.

*Adversely affected employment* means employment in a firm or appropriate subdivision, if workers of the firm or appropriate subdivision are certified as eligible to apply for the TAA Program under subpart B of this part.

*Adversely affected worker* or *AAW* (also referred to, in combination with an AAIW, as a trade-affected worker) means an individual, including an employer, who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment.

*Adversely affected incumbent worker* or *AAIW* (also referred to, in combination with an AAW, as a trade-affected worker) means a worker who:

(1) Is a member of a worker group certified as eligible to apply for the TAA Program under subpart B of this part;

(2) Has not been totally or partially separated from adversely affected employment; and

(3) The Department determines, on an individual basis, is threatened with total or partial separation.

*Agent State* means a State, other than a liable State, that provides benefits or services to a trade-affected worker. A State can be both an agent State and a liable State.

*Applicable State law* means, for any worker, the State law of the State:

(1) In which such worker is entitled to Unemployment Insurance (UI) (whether or not such worker has filed a UI claim) immediately following such worker's first separation; or

(2) If the worker is not so entitled to UI under the State law of any State immediately following such first separation, or is entitled to UI under the Railroad Unemployment Insurance Act (RRUI), the State law of the State in which such first separation occurred.

*Appropriate subdivision* means an establishment, facility or facilities, an organizational department, a product line, a project team, an operational unit, or part or combination thereof. The appropriate subdivision is determined on a case-by-case basis and includes all workers or a subset of workers working at, or reporting to, the location(s) identified in the petition, or subsequently identified during the course of the investigation, whose employment is dependent upon the production of the specific article or supply of the specific service identified in the petition, or identified during the course of the investigation.

*Appropriate week* means the week in which the AAW's first separation occurred.

*Approved training* or *TAA approved training* means a training program approved under subpart F of this part (§ 618.610).

*Article* means a tangible good or an intangible good sold or produced by a firm. The good must be the subject of the sale or production, and not an object that is produced incidentally to the sale or production. An article can be measured in individual production units or commercial production units, such as with commodities. Sale of an article is the means by which revenue is generated, accumulated, or calculated.

*Average weekly hours* means the average hours worked by an AAW (excluding overtime) in the employment from which the worker has been or claims to have been separated in the 52 consecutive calendar weeks (excluding weeks during which the worker was sick or on vacation) immediately

preceding the worker's total separation or, for a partially separated worker, the week before the appropriate week. The average is obtained by dividing:

(1) Total hours worked (excluding overtime) in the 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation); by

(2) The number of weeks in such 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation).

*Average weekly wage* means one-thirteenth of the total wages paid to an AAW in the high quarter. For purposes of this computation, the high quarter is the quarter in which the worker's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately preceding the week in which total separation occurred or, in cases where partial separation is claimed, the appropriate week.

*Benefit period* means, with respect to an AAW:

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the worker is eligible for regular compensation, additional compensation, or extended compensation; or

(2) The equivalent to such a benefit year or ensuing period provided for under Federal UI law.

*Certification or affirmative determination or petition certification* means a determination issued under § 618.235(a), or an amendment under § 618.250, of eligibility to apply for the TAA Program, with respect to a specified worker group of a firm or appropriate subdivision. Excluded from this definition are "certifications" in sections 223(d), 236(a)(5)(H), 239(a)(3), and 247(19) of the Act, and "affirmative determinations" in sections 222(e) and 224 of the Act.

*Certification date or date of certification* means the date on which the Certifying Officer signs the certification. This is the date that the certification takes effect.

*Certification period* means the period of time during which total, partial, or threat of separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by a certification for worker groups eligible to apply for assistance under section 222(a) and (b) of the Act. It also means the period of time during which total or partial separations from adversely affected employment within a firm are covered by a certification for worker groups eligible to apply for assistance under section 222(e) of the Act. The certification period begins on

the impact date and, unless stated otherwise in the certification, ends 2 years after the certification date. A certification may expire sooner than 2 years after the certification date as a result of a termination under § 618.240, an amendment under § 618.250, or if a certification is based on a determination issued by the International Trade Commission (ITC) under section 222(e) of the Act.

*Certifying Officer* means an official, including the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for the TAA Program, and to perform such further duties as may be required.

*Co-enrollment* means enrollment in the TAA Program and at least one other program that operates as part of the one-stop delivery system, such as the dislocated worker program under title I of WIOA.

*Commission or International Trade Commission or ITC* means the U.S. International Trade Commission.

*Commuting area* means the area in which a trade-affected worker would be expected to travel to and from work on a daily basis as determined under the applicable State law.

*Completion of training or complete training or completed training* means that the trade-affected worker has finished all required coursework (including required externships or internships), testing, and professional licensing exams related to TAA approved training.

*Component part* means an input (tangible or intangible article) that is directly incorporated into the production of another article, although it need not retain its original form or characteristics.

*Confidential business information* means trade secrets and commercial or financial information received by the Department, or by the States on the Department's behalf, during an investigation under subpart B of this part, which the Department considers to be privileged or confidential as set forth in the Trade Secrets Act (18 U.S.C. 1905), 5 U.S.C. 552(b)(4), or 29 CFR part 70. It does not include publicly available business information, or business information with respect to which the firm or customer submitting the information had notice, at the time of submitting the information, that the information would be released by the Department or the States, or if the firm or customer subsequently consents to the release of the information.

*Contributed importantly* means a cause that is important but not necessarily more important than any other cause.

*Cooperating State agency or CSA* means the agency at the State level that will act as agent of the Department in receiving applications from and providing benefits and services to trade-affected workers in coordination with the State agency that administers the UI law, if applicable, and such other agency or agencies of the State as the Governor of the State may designate to cooperate with such CSA for performance accountability reporting and other purposes.

*Customized training* means work-based training that is:

(1) Designed to meet the special requirements of a single employer or group of employers;

(2) Conducted with a commitment by the employer or group of employers to employ a trade-affected worker upon successful completion of the training; and

(3) For which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training.

*Denial or negative determination or petition denial* means a determination issued under § 618.235(b) that a group of workers is not eligible for TAA Program benefits.

*Department of Labor or Department* means the U.S. Department of Labor.

*Downstream producer* means a firm that performs additional, value-added production processes or services, such as final assembly, finishing, testing, packaging, or maintenance or transportation services. The value-added production processes or services must be performed directly for another firm that has a worker group certified to apply for the TAA Program under § 618.225, and the production processes or services must be carried out with respect to the article or service on which the certification under § 618.225 was based.

*Eligible RTAA recipient* means, for HCTC purposes (see definition of HCTC), an AAW eligible for RTAA and who is participating in RTAA for a month and is receiving an RTAA benefit for that month.

*Eligible TAA recipient* means, for HCTC purposes (see definition of HCTC), an AAW who receives TRA for any day of the month or who would be eligible to receive TRA but for the fact that the worker has not exhausted his or her UI entitlement.

*Employer* means any individual or type of organization, including the Federal Government, a State

government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

*Employment* means any service performed for an employer by an officer of a corporation or by an individual for wages.

*Enrolled in training* means that a worker's application for training is approved by the State under subpart F of this part, and the training provider has furnished written notice to the State that the worker has been accepted in the approved training program, which is to begin within 30 calendar days of the date of such approval.

*Exhaustion of UI* means exhaustion of all rights to UI in a benefit period by reason of:

(1) Having received all UI to which a worker was entitled under the applicable State law or Federal unemployment compensation law with respect to such benefit period; or

(2) The expiration of such benefit period.

*Family* means the following members of an adversely affected worker's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(1) Spouse;

(2) Domestic partner;

(3) Children of the adversely affected worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the worker, of the worker's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the worker's effective date of transfer.);

(4) Dependent parents (including step and legally adoptive parents) of the worker, of the worker's spouse, or of the worker's domestic partner; and

(5) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

*Filing date* means the date on which the petition and attachments to the petition form are determined to be valid by the Department's Office of Trade

Adjustment Assistance, in accordance with § 618.205.

*Firm* means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, or receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons may be considered a single firm. Where the term "firm" appears in this part, it means "firm or appropriate subdivision." Firm also means an agricultural firm or service sector firm or an appropriate subdivision thereof. For purposes of subpart B of this part only, firm does not include a public agency or any subdivision of a public agency, as defined in 29 U.S.C. 203(x).

*First benefit period* means the benefit period established after the AAW's first qualifying separation or in which such separation occurs.

*Full-time training* means:

(1) Attendance in training in accordance with the training provider's established full-time hours in a day (or credit hours) and days in a week; and

(2) In the last semester of training, if the remaining course(s) to complete the training approved under subpart F of this part do not meet the training provider's usual definition of full-time, States must consider the participation in training as full-time training, if no additional training or coursework will be required to complete the training program.

*Group of workers* means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision thereof, including teleworkers and staffed workers, who file a petition for certification under subpart B of this part, or for whom a petition is filed.

*Health Coverage Tax Credit or HCTC* means the tax credit equal to a specific percentage of the costs of qualified health insurance premiums, which is administered by the Internal Revenue Service under section 35 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 35). When the tax credit is available, eligible TAA and RTAA recipients (see definitions of *eligible TAA recipient* and *eligible RTAA recipient*) and qualifying family members may apply for advance payment of the credit or claim the credit on their income tax return.

*Impact date* means the date stated in a certification of eligibility to apply for the TAA Program, on which the total or partial separations of the workers

covered by the certification began or threatened to begin, but in most cases, is not more than 1 year before the petition date.

*Increased imports* means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period will be 1 year consisting of the 4 quarters immediately preceding the date that is 12 months prior to the date of the petition.

*Individual employment plan or IEP* means a revisable document containing an ongoing strategy, jointly developed by the trade-affected worker and the State, identifying the worker's employment goals, appropriate achievement objectives, and appropriate services for the worker to achieve his or her employment goals, objectives, and benchmarks while in training or receiving employment and case management services.

*Job finding club* means a job search workshop that includes a period of 1 to 2 weeks of structured, supervised activity in which trade-affected workers attempt to obtain jobs.

*Job search program or JSP* means a job search workshop or job finding club.

*Job search workshop* means a short (1 to 3 days) seminar designed to provide workers with knowledge that will enable the workers to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

*Lack of work* means that the employer does not have work for the worker to perform or does not make that work available to the worker, and includes, but is not limited to, circumstances when:

(1) Work is unavailable because the employer suspends or ceases operations or institutes a lockout; or

(2) Work is unavailable because the employer downsizes the workforce by means of attrition or layoff.

*Layoff* means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of time.

*Liable State* means, with respect to a trade-affected worker making claims for TAA Program benefits, the State whose State UI law is the applicable State law. A State can be both an agent State and a liable State.

*Like or directly competitive* means, for articles, that articles have characteristics that are substantially identical in inherent or intrinsic characteristics (*i.e.*, material from which the articles are made, appearance, quality) or are used

for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable; and for services, services that have characteristics that are substantially identical in inherent or intrinsic characteristics (*i.e.*, processes and procedures that comprise the activity, sequence of steps or component elements required in the provision of the service or both) or are used for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable.

*Office of Trade Adjustment Assistance or OTAA* means the organization within the U.S. Department of Labor, Employment and Training Administration that administers the TAA Program, or OTAA's successor organization.

*One-stop delivery system* means the nationwide system of one-stop career centers, known as American Job Centers, which administer and deliver workforce development, educational, and training activities, as well as supportive services to workers and job seekers, in accordance with title I of WIOA.

*On-the-job training or OJT* means work-based training, provided—under contract with an employer in the public, nonprofit, or private sector—to an AAW who is employed by the employer.

*Partial separation or partially separated* means, with respect to an AAW who has not been totally separated, that:

(1) For purposes of subpart B of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm, or appropriate subdivision thereof during the period of investigation; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm, or appropriate subdivision thereof during the period of investigation.

(2) For this subpart and subparts C through I of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours in adversely affected employment during the certification period; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage in adversely affected employment during the certification period.

*Period of duty* means active duty served by an AAW before completing training under subpart F of this part for a period of more than 30 days under a call or order to active duty of more than

30 days or, in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, full-time National Guard duty under 32 U.S.C. 502(f), for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

*Petition date* means the date a petition form is signed by the petitioner(s). When petitioners sign on different dates, the petition date is the latest of those dates.

*Prerequisite education or prerequisite coursework or prerequisite training* means any coursework or training required by a training provider before entering an occupational training program designed to impart the skills and information required to perform a specific job or group of jobs.

*Program of remedial education or remedial education or remedial training* means coursework or training that is designed to enhance the employability of a trade-affected worker by upgrading basic academic knowledge through such courses as adult basic education (ABE), basic math and literacy, English language acquisition (ELA) for nonnative speakers, and high school equivalency (HSE) courses, among others.

*Qualifying separation* means any total or partial separation of an AAW from adversely affected employment within the certification period for the purposes of determining the AAW's eligibility to receive Basic TRA; 26-week period for enrollment in approved training; and Basic TRA eligibility period. The first qualifying separation is used to determine the weekly and maximum amounts of Basic TRA payable to an AAW.

*Reemployment Trade Adjustment Assistance or RTAA* means the TAA Program benefit available to certain AAWs 50 years of age and older who obtain qualifying reemployment.

*Regional Administrator* means the appropriate Regional Administrator of the U.S. Department of Labor's Employment and Training Administration.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

*Separation date* means:

(1) For a total separation:

(i) For a worker in employment status and not on employer-authorized leave, the last day worked; or

(ii) For a worker on employer-authorized leave, including leave for military service, the last day the worker

would have worked had the worker not been on the employer-authorized leave.

(2) For a partial separation, the last day of the week in which the partial separation occurred.

*Service* means the work performed by a worker for a service firm or appropriate subdivision. The work of a service firm is measured in units of time, labor, and tasks completed. Services may include the incidental production of an article, such as a license, ticket, certificate, permit, model, drawing, or prototype. Services are intangible but may involve the use of tangible objects during the supply of the service (such as textbooks in the supply of educational services). Where the revenue of the firm, or appropriate subdivision, is generated from the sale of a service, the firm, or appropriate subdivision, is deemed to be engaged in activity related to the supply of a service.

*Significant number or proportion of the workers* means:

(1) The lesser of 50 workers or 5 percent of the workers within a firm, or appropriate subdivision, have been totally or partially separated, or both, or are threatened with total or partial separation; or

(2) 2 or more workers within a firm, or appropriate subdivision, with a workforce of fewer than 50 workers, have been totally or partially separated, or both, or are threatened with total or partial separation.

*Staffed worker* means a worker directly employed by one firm to perform work under the operational control of another firm that is the subject of a petition investigation. These workers were previously referred to as "leased workers." The term excludes independent contractors.

*State* means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and the term "United States," when used in the geographical sense, includes the Commonwealth of Puerto Rico.

*State agency* means the agency at the State level that administers the State law.

*State law* means the UI law of a State under section 3304 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304).

*Successor-in-interest* means a firm, whether or not named on a certification issued under subpart B of this part, from which trade-affected workers are separated, or threatened with separation, and where most or all of the factors in paragraphs (1) through (7) of this definition are present, relative to a firm named on a determination issued under subpart B:

(1) There is continuity in business operations.

(2) There is continuity in location.

(3) There is continuity in the workforce.

(4) There is continuity in supervisory personnel.

(5) The same jobs exist under similar conditions.

(6) There is continuity in machinery, equipment, and process.

(7) There is continuity in product/service.

*Suitable employment* means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work that are not less than 80 percent of the worker's average weekly wage. Part-time, temporary, short-term, or threatened employment is not suitable employment.

*Supplier* means a firm that produces and supplies directly to another firm component parts for articles, or services, used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under § 618.225 of a worker group employed by such other firm. There is no direct supply where an intervening customer, supplier, or another entity receives the component parts, aside from in a delivery or bailment capacity, or in the case of a service supplier, if an intervening entity performs the service.

*Supportive services* means services such as local transportation, childcare, dependent care, and housing, provided through WIOA or other programs, that are needed to enable an individual to participate in activities authorized under the Act.

*Threatened to become totally or partially separated* means that there is evidence of intent to separate workers or that imminent separations are reasonably anticipated.

*Threatened to begin* means, in the context of reasonably anticipated total or partial separations, the date(s) on which imminent separations will begin.

*Total separation or totally separated* means:

(1) For purposes of subpart B of this part, the layoff or severance of an AAW from a firm or appropriate subdivision thereof; or

(2) For all other purposes under this part, the layoff or severance of a worker from adversely affected employment with a firm, or appropriate subdivision thereof.

*Trade Adjustment Assistance for Workers or Trade Adjustment Assistance or TAA Program* means chapter 2 of title II of the Act, Public

Law 93–618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended, which establishes the Trade Adjustment Assistance for Workers (TAA) Program. The benefits and services established under the Act, including RTAA, are collectively referred to as the Trade Adjustment Assistance Program (TAA Program) and provide assistance to workers adversely affected by foreign trade, as described in this part.

*Trade-affected worker* means both “adversely affected workers” and “adversely affected incumbent workers.”

*Trade Readjustment Allowances or TRA* means a weekly allowance payable to an AAW who meets the requirements of subpart G of this part. There are three types of TRA: Basic, Additional, and Completion, as described in § 618.710.

*Unemployment Insurance or UI* means the unemployment compensation payable to a worker under any State law or Federal UI law, including chapter 85 of title 5 of the U.S. Code and the RRUI. UI includes:

(1) *Regular compensation* means compensation payable to a worker under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

(2) *Additional compensation* means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(3) *Extended compensation* means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to a worker under those provisions of the State law that satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 (note)) with respect to the payment of extended compensation, including one-hundred percent federally funded unemployment compensation extensions.

*Value-added production processes or services* means such processes or services similar to and including final assembly, finishing, testing, packaging, or maintenance or transportation services.

*Wages* means:

(1) Remuneration as defined by State law; or

(2) For purposes of calculating a reemployment wage when determining the availability of suitable employment, the stated salary and—to the extent

known—the value of any compensation package that would be defined as remuneration under State law, as provided by an employer in a job posting or job offer.

*Wagner-Peyser Act* means the Wagner-Peyser Act, as amended (29 U.S.C. 49 *et seq.*).

*Week* means a week as defined in the applicable State law.

*Week of unemployment* means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal UI law.

*Worker group* means two or more workers of the same firm, or appropriate subdivision thereof, named in a certification rendered under subpart B of this part as eligible to apply for TAA Program benefits and services, inclusive of teleworkers and staffed workers.

*Workforce Innovation and Opportunity Act or WIOA* means the Workforce Innovation and Opportunity Act (Pub. L. 113–128, as amended).

#### § 618.120 Severability.

Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will not affect any other provision of this subpart.

#### Subpart B—Petitions, Investigations, and Determinations

##### § 618.200 Scope.

This subpart relates to petitions, investigations, and determinations of eligibility for a group of workers to apply for adjustment assistance under the Act. This subpart specifically applies to the initiation, conduct, and effective processing of petitions for certification of eligibility to apply for adjustment assistance. This subpart also contains general provisions with respect to filing of documents, public availability of documents, and the appeals process.

##### § 618.205 Petitions.

(a) *Who may file a petition.* A petition for certification of eligibility to apply for adjustment assistance for a group of workers, or a request to amend an existing certification under § 618.250, must be filed simultaneously with the Department and with the State in which such workers' firm is located, by any of the following:

(1) A group of two or more workers from the same firm, on whose behalf the petition is filed;

(2) A certified or recognized union, or other duly authorized representative of the group of workers;

(3) The employer(s) of the group of workers; or

(4) One-stop center operators or one-stop partners, including State workforce officials, employment security agencies, or dislocated worker unit and rapid response team members.

(b) *Form and contents.* Petitioners may obtain a petition form and instructions online at: <https://www.dol.gov/agencies/eta/tradeact>, at a one-stop center (also known as an American Job Center), or by writing to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210. A petition, which may include attachments, must provide the following information to be considered valid and for an investigation to commence:

(1) The name and contact information for each petitioner;

(2) The name of the firm;

(3) The address of the location(s) where the group of workers who have been totally or partially separated or threatened with separation report to work (for a teleworker, the address of the location to which they report);

(4) The name and contact information of an official within the firm or an individual authorized to provide information regarding the operation of the group of workers' firm;

(5) The article produced or service supplied by the firm;

(6) The actual or approximate date on which total or partial separations are threatened to occur or did occur;

(7) The actual or estimated total number of workers who have been or may be separated;

(8) A reason why the petitioner believes that worker separations have occurred or may occur at the firm due to foreign trade impacts, or a reason why a request to amend an existing and active certification should be granted; and

(9)(i) Every petition must be signed and dated by at least two members of the petitioning group of workers, or by an official of a certified or recognized union or other duly authorized representative of the group of workers, or by an official of the employer of the group of workers, or by a representative of one of the organizations listed in paragraph (a)(4) of this section.

(ii) Signing of a petition must constitute acknowledgement that the information provided on the petition form will be used for the purposes of determining worker group eligibility and providing notice to petitioners, workers, and the general public that the petition has been filed, and whether the worker group is eligible to apply for TAA Program benefits and services.

Knowingly falsifying any information on the petition form is a Federal offense (18 U.S.C. 1001) and a violation of the Act (19 U.S.C. 2316). For the petition to be valid, the petitioner(s) listed on the form must sign and date the form, attesting to the fact that they are authorized to file a petition.

(c) *Supplemental information.* Providing supplemental information, while not required, may assist the investigation. Attachments to the petition form are part of the petition.

(d) *Filing.* (1) Petitions should be filed electronically with the Office of Trade Adjustment Assistance, via <https://www.dol.gov/agencies/eta/tradeact>.

Individuals requiring assistance in filing online should contact their nearest one-stop center or the State's rapid response unit.

(2) Alternatively, petitions may be filed via email to [taa.petition@dol.gov](mailto:taa.petition@dol.gov), via fax at (202) 693-3584 or (202) 693-3585, or by mail to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(e) *Industry notification of ITC determinations.* Upon receiving notification from the ITC that it has issued an affirmative determination of injury or threat of injury under section 202 or 421 of the Act, under an applicable safeguard provision enacted to implement a trade agreement to which the United States is a party, or an affirmative final determination of material injury of threat thereof in investigation under section 705 or 735 of the Tariff Act of 1930, the Department will notify the affected parties listed in paragraph (e)(1) of this section. To the extent practicable, the Department may also notify other duly authorized representatives of the industry to which the ITC determination applies.

(1) Parties the Department will notify under paragraph (e) of this section include:

(i) Representatives of the domestic industry affected by the determination;

(ii) Firms publicly identified by name during the proceeding related to the ITC determination; and

(iii) Unions representing workers in firms covered by the determination.

(2) The notice provided by the Department under paragraph (e) of this section will include:

(i) A summary of the ITC determination;

(ii) Information about the workers' potential eligibility for TAA Program benefits;

(iii) The benefits and services available under the TAA Program;

(iv) Information regarding the process for filing of petitions; and

(v) The availability of assistance from the State for filing petitions.

(3) The Department will also notify the Governor of each State in which one or more firms covered by an ITC determination are located and will identify those firms to the State.

(f) *Acceptance of petitions.* The Department will review a petition, including attachments, to determine if it is valid within 2 business days of receipt of the petition by the Department. The date on which the petition is determined to be valid under paragraph (b) of this section is the filing date. The Department will not initiate the investigation until it has determined that the petition is valid.

(g) *Multiple petitions for same group of workers.* If the Department receives multiple petitions regarding the same group of workers, it will base the filing date upon the first petition received.

(h) *Publication of notice in the Federal Register.* The Department will publish a notice in the **Federal Register** and on the Department's website announcing the initiation of an investigation into all valid petitions filed.

(i) *Public access to petitions.* A petition, including attachments, is a record that is available, in redacted form, in accordance with the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), Executive Order 12600, and 29 CFR part 70. The Department will post all petitions, in redacted form, to the Department's website and make them available for review at the Office of Trade Adjustment Assistance, Washington, DC.

(j) *Receipt of petition by the State.* When the State receives a petition, the State must verify that the Department has also received the petition. If the petition has not been posted to the Department's website within 10 calendar days of receipt by the State, the State must forward the petition to the Department.

#### **§ 618.210 Investigation.**

(a) *Timing.* The Department will initiate an investigation once it has deemed the petition valid in accordance with § 618.205(f).

(b) *Period of investigation.* For purposes of this subpart, the period of investigation is the time period it takes to investigate each of the criteria that are part of the Department's determination. The period of investigation varies for some eligibility criteria; § 618.225 describes the period of investigation for each criterion.

(c) *Investigative process.* To determine whether the petitioning group of workers' eligibility criteria for certification have been met, the Department may take as many of the steps in paragraphs (c)(1) through (8) of this section during the investigation as it deems necessary to identify the group of workers and to reach a determination of eligibility to apply for TAA Program benefits for the identified worker group:

- (1) Verify information on the petition form by contacting the petitioner(s);
- (2) Provide the petitioner(s) the opportunity to submit additional evidence in support of the petition;
- (3) Obtain publicly available information about the workers' firm and industry;
- (4) Request information from the workers' firm;
- (5) Request information from the customers of the workers' firm;
- (6) Request information from the officials of certified or recognized unions or other duly authorized representatives of the group of workers;
- (7) Request information from one-stop center operators or one-stop partners; or
- (8) Use other available sources of information as necessary.

(d) *Protection of confidential business information.* (1) The Department will determine whether information submitted by a firm or customer is confidential business information in accordance with FOIA, as amended (5 U.S.C. 552), Executive Order 12600, the Trade Secrets Act (18 U.S.C. 1905), and 29 CFR part 70.

(2) The Department will not disclose confidential business information without the consent of the submitting firm or customer, unless under a court order to do so or as otherwise required by law.

(e) *Termination of investigation.* (1) The Department will notify the petitioner of the termination of an investigation, publish a Notice of Termination of Investigation in the **Federal Register**, and post on the Department's website. The Department may terminate an investigation if the investigation establishes one of the following:

- (i) The petition is invalid, which includes petitions identifying a nonexistent group of workers, filed under false pretenses, or perpetuating fraud;
- (ii) The petitioner has withdrawn the petition in writing;
- (iii) The group of workers identified in the investigation is the same as a group of workers identified in another pending investigation;
- (iv) The group of workers identified in the investigation already has been

issued a denial, and the period of investigation applicable to the current investigation and the previous denial is the same; or

(v) The group of workers identified in the investigation is already covered by a certification that does not expire within 90 calendar days of the determination.

(2) If appropriate to protect the interests of the group of workers covered by a petition filed and terminated under paragraph (e)(1)(i) or (ii) of this section, the Department may use the original impact date of the terminated petition for the identical group of workers covered under a later, valid, petition covering the identical group of workers, provided that it is filed within 30 calendar days of the filing date of the first petition. Under no circumstances will the Department use the impact date of an earlier petition when that petition was terminated for being invalid under paragraph (e)(1)(i) of this section because it was filed under false pretenses or to perpetuate a fraud.

(3) Section 618.245 describes reconsideration of a termination of investigation.

(f) *Investigative record.* The investigative record of a determination will include the petition that initiated the investigation, the documents and other materials provided to the Department in connection with the determination on the petition, research conducted by the Department, and records of investigation activities (including but not limited to telephone logs and email correspondence, and any determination under § 618.225(a), (b), or (c)). The investigative record excludes information that is privileged or otherwise exempt from disclosure. Personally identifiable information and confidential business information will be protected consistent with all Federal authorities and Departmental administrative guidance.

(g) *Site visits.* The investigation may include one or more site visits to confirm information furnished by the petitioner(s) and to elicit other relevant information, where other methods to obtain or confirm information or both, are unsuccessful.

#### **§ 618.215 Public hearings.**

(a) *When held.* (1) A public hearing must be held in connection with an investigation initiated under § 618.210 whenever, but not later than 10 days after the date of publication in the **Federal Register** of the notice of receipt of the petition, such a hearing is requested in writing by:

- (i) The petitioner; or

(ii) Any other person found by the Administrator to have a substantial interest in the proceedings.

(2) Such petitioner and other interested persons must be afforded an opportunity to be present, to produce evidence, and to be heard.

(3) An explanation of why the requestor is requesting the hearing must be provided to the Department.

(b) *Form of request.* A request for public hearing must be filed, in letter format, in the same manner as provided for other documents under § 618.205(d)(2). The request must contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing;

(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the petition's subject matter; and

(3) An explanation of why the person, organization, or requestor of the hearing is interested in the matter.

(c) *Time, place, and scope.* The time, place, and scope of a public hearing will be set by the presiding officers and published in the **Federal Register** a reasonable period of time before the scheduled hearing.

(d) *Presiding officer.* The Administrator, or his or her designee, must conduct and preside over public hearings.

(e) *Order of testimony.* Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, the presiding officer or an agent designated by the presiding officer may question the witness. Any person who has entered an appearance in accordance with paragraph (k) of this section may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) *Evidence.* Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) *Briefs.* Parties who have entered an appearance may file briefs regarding the evidence produced at the hearing. The briefs must be filed with the presiding officer within 10 days of the completion of the hearing.

(h) *Oral argument.* The presiding officer must provide opportunity for oral argument by parties listed in paragraphs (a)(1)(i) and (ii) of this section after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to

be allowed for argument and the allocation thereof.

(i) *Authentication of evidence.* Evidence, oral or written, submitted at hearings, will, upon order of the presiding officer, be subject to verification from books, papers, and records of the parties submitting such evidence and from any other available sources.

(j) *Transcripts.* All hearings will be transcribed or recorded in compliance with the standards of the Department. Persons interested in records of the hearings may inspect them at the U.S. Department of Labor in Washington, DC.

(k) *Appearances.* Any person showing a substantial interest in the proceedings may enter an appearance at a hearing, either in person or by a duly authorized representative.

#### § 618.220 Use of subpoena.

(a) The Administrator may require, by subpoena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official deems necessary to make a determination under this subpart.

(b) The Department will issue a subpoena to secure evidence from a firm, customer, petitioner, or other person who fails to provide requested information within 20 days of the request, unless the recipient of the subpoena demonstrates to the satisfaction of the Department that the information will be provided within a reasonable time. In making this determination, the Department will consider the following factors:

- (1) Submission of a portion of the required information;
- (2) Prompt cooperation with inquiries about the information;
- (3) Cooperation in previous responses to information requests;
- (4) Evidence of effort to obtain the required information; and
- (5) Other information the Department determines to be relevant.

(c) Witnesses subpoenaed under this section to appear in person must be paid the same fees and mileage as are paid for like services in the District Court of the United States within the jurisdiction of which the proceeding is taking place. The Department must pay the witness fees and mileage.

(d) Subpoenas issued under paragraph (a) of this section must be signed by the Administrator, or his or her designee, and must be served consistent with Rule 5(b) of the Federal Rules of Civil Procedure. The date for compliance must be 7 calendar days following service of the subpoena, unless otherwise indicated.

(e) If the recipient of the subpoena refuses to provide the requested information, the Department may petition the appropriate District Court of the United States to seek enforcement of the subpoena.

#### § 618.225 Criteria for certification of a group of workers.

(a) *Increased imports.* (1) This paragraph (a) includes criteria for certification of a group of workers based upon increased imports of:

(i) Articles like or directly competitive with the articles produced by the workers' firm;

(ii) Services like or directly competitive with the services supplied by the workers' firm;

(iii) Articles like or directly competitive with articles into which one or more component parts produced by the workers' firm are directly incorporated;

(iv) Articles like or directly competitive with articles that are produced directly using services supplied by the workers' firm; or

(v) Articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by the workers' firm.

(2) After review of the relevant information necessary to make a determination, the Certifying Officer must certify a worker group as eligible to apply for TAA Program benefits and services as impacted by increased imports if all four of the criteria in paragraphs (a)(2)(i) through (iv) of this section are met.

(i) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with such separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

- (1) A questionnaire;
- (2) State workforce agencies;
- (3) Unions;
- (4) Workers in the group of workers;
- (5) Public records; and
- (6) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

(1) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(2) Review of employment activity during the 1-year period prior to the petition date; and

(3) Review of evidence provided by the workers' firm regarding actual and

threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

(1) A Worker Adjustment and Retraining Notice (WARN) letter, or a notification issued under a similar State law;

- (2) A separation schedule;
- (3) Information provided to the public, such as a news release or notice on the workers' firm website;
- (4) Information provided to the worker group; or
- (5) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2.* Sales or production, or both, of the workers' firm has decreased during the 1-year period prior to the petition date.

(A) Information regarding sales or production may be collected from:

- (1) Questionnaires;
- (2) Public records; and
- (3) Other reliable sources.

(B) Analysis of sales or production data must generally consist of a comparison of sales or production data on the petition date to sales or production data on the date that is 1 year prior to the petition date.

(iii) *Criterion 3.* Imports of the article or service have increased during the 1-year period prior to the petition date.

(A) Information regarding imports may be collected from:

- (1) Questionnaires issued to the workers' firm or customer(s);
- (2) Public records; and
- (3) Other reliable sources.

(B) Analysis of the workers' firm import activity must generally consist of a comparison of the workers' firm import data on the petition date to the workers' firm import data on the date that is 1 year prior to the petition date.

(C) Analysis of customer import activity must generally consist of a comparison of the aggregate of customer import data on the petition date to the aggregate of customer import data on the date that is 1 year prior to the petition date.

(iv) *Criterion 4.* Increased imports have contributed importantly to worker separations, or threat of separation, and the decline in sales or production at the workers' firm.

(A) Analysis of the impact of increased imports on worker separations and declines in sales or production at the workers' firm must generally consist of determining:

(1) Whether there are one or more events, or factors, that lessen or sever the causal nexus between the increase in imports and worker separations or threat of separation, and the decline in

sales and production at the workers' firm;

(2) What percentage of the workers' firm sales or production declines was attributable to the firm's increased imports;

(3) What percentage of the workers' firm customer(s) sales or production declines was attributable to the firm's increased imports; and

(4) Whether there are other events or factors that mitigate or amplify the impact of increased imports on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(b) *Shift.* (1) This paragraph (b) includes criteria for certification of a worker group based on a shift:

(i) In production of like or directly competitive articles by the workers' firm to another country; or

(ii) In the supply of like or directly competitive services by the workers' firm to another country.

(2) After a review of relevant information necessary to make a determination, the Certifying Officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a shift in production or supply of service if all of the criteria in paragraphs (b)(2)(i) through (iii) of this section of are met.

(i) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

- (1) A questionnaire;
- (2) State workforce agencies;
- (3) Unions;
- (4) Workers in the group of workers;
- (5) Public records; and
- (6) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

(1) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(2) Review of employment activity during the 1-year period prior to the petition date; and

(3) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

- (1) A WARN letter, or a notification issued under a similar State law;
- (2) A separation schedule;

(3) Information provided to the public, such as a news release or notice on the workers' firm website;

(4) Information provided to the worker group; or

(5) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2.* There has been a shift in the production or supply of services by the workers' firm to a foreign country.

(A) Information regarding shift activity may be collected from:

- (1) A questionnaire;
- (2) Public records; and
- (3) Other reliable sources.

(B) Analysis of shift activity must generally consist of a:

(1) Comparison of shift data on the petition date to shift data on the date that is 1 year prior to the petition date;

(2) Review of shift activity during the 1-year period prior to the petition date; and

(3) Review of evidence provided by the workers' firm regarding shift activity scheduled to occur after the petition date.

(C) Evidence of future planned shift activity must include more than a stated intent to shift activity to a foreign country and includes, but is not limited to, a reassignment of production or service supply; a reassignment of discrete aspects or stages of production or service supply; securing a facility in a foreign country; shipping resources to a foreign country; or acquiring personnel in a foreign country.

(iii) *Criterion 3.* The shift to a foreign country has contributed importantly to worker separations or threat of separation.

(A) Analysis of impact of shift activity on worker separations must generally consist of determining:

(1) Whether there are one or more events or factors that sever or lessen the causal nexus between the shift activity and worker separations or threat of separation;

(2) What percentage of the workers' firm sales or production declines was attributable to the firm's shift activity;

(3) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than operations at the foreign facility or facilities; and

(4) Whether there are other events or factors that mitigate or amplify the impact of shift activity on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(c) *Foreign acquisition.* This paragraph (c) includes criteria for certification of a worker group based on

a foreign acquisition of like or directly competitive articles by the workers' firm from another country. After review of relevant information necessary to make a determination, the Certifying Officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a foreign acquisition of articles or services if all of the criteria in paragraphs (c)(1) through (3) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

- (A) A questionnaire;
- (B) State workforce agencies;
- (C) Unions;
- (D) Workers in the group of workers;
- (E) Public records; and
- (F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

- (A) A WARN letter, or a notification issued under a similar State law;
- (B) A separation schedule;
- (C) Information provided to the public, such as a news release or notice on the workers' firm website;
- (D) Information provided to the worker group; or
- (E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* There has been an acquisition of articles or supply of services by the workers' firm from an entity in a foreign country.

(i) Information regarding separations may be obtained from:

- (A) A questionnaire;
- (B) State workforce agencies;
- (C) Unions;
- (D) Workers in the group of workers;
- (E) Public records; and
- (F) Other reliable sources.

(ii) Analysis of acquisition data must generally consist of a:

(A) Comparison of acquisition data on the petition date to acquisition data on the date that is 1 year prior to the petition date;

(B) Review of acquisition data during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding acquisition activity scheduled to occur after the petition date.

(iii) Evidence of future planned acquisitions requires more than a stated intent to procure production of an article or supply of services from an entity in a foreign country and may include, but is not limited to, entering into a contract with a licensee; reassignment of production or service supply to a contractor or licensee; and a reassignment of discrete aspects or stages of production or service supply to a contractor or licensee.

(3) *Criterion 3.* The acquisition from a foreign country has contributed importantly to worker separations or threat of separation.

(i) Analysis of impact of acquisition data on worker separations must generally consist of determining:

(A) Whether there are one or more events or factors that lessen or sever the causal nexus between the acquisition activity and worker separations or threat of separation;

(B) What percentage of the workers' firm sales or production declines was attributable to the firm's acquisition activity;

(C) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than contractor or licensee operations in the foreign country; and

(D) Whether there are other events or factors that mitigate or amplify the impact of acquisition activity on the workers' firm.

(ii) The impact may be determined using a quantitative or qualitative analysis.

(d) *Supplier of component parts or services.* This paragraph (d) contains criteria for certification of a worker group as a supplier to a worker group. After review of relevant information necessary to make a determination, the Certifying Officer must certify a worker group as eligible to apply for TAA Program benefits and services as a supplier to a worker group if all of the criteria in paragraphs (d)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Workers in the group of workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter, or a notification issued under a similar State law;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm supplied component parts or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (d)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (d)(2) of this section was based on an article or service related to the component part produced or service supplied by the workers' firm.

(5) *Criterion 5.* The component parts supplied to the firm identified in paragraph (d)(2) of this section, represented at least 20 percent of the supplier's production or sales during the 1-year period prior to the petition date, or loss of business with the firm identified in paragraph (d)(2) of this section, during the 1-year period prior to the petition date, contributed importantly to separations or threat of separation at the workers' firm.

(e) *Downstream producer.* After review of relevant information necessary to make a determination, the Certifying Officer must certify a worker group as eligible to apply for TAA Program benefits and services as a downstream producer if all of the criteria in paragraphs (e)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or

appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from a questionnaire, State workforce agencies, unions, workers in the group of workers, public records, and other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter, or a notification issued under a similar State law;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm provided value-added production processes or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (e)(2) of this section was based on an article or service related to the value-added production processes or services supplied by the workers' firm.

(5) *Criterion 5.* Loss of business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date contributed importantly to separations or threat of separation at the workers' firm.

(f) *ITC determinations.* After review of relevant information necessary to make a determination, the Certifying Officer must certify a worker group as eligible to apply for TAA based on a determination issued by the ITC if all of the criteria in paragraphs (f)(1) through (3) of this section are met.

(1) *Criterion 1.* The ITC has publicly identified the workers' firm, by name, as a member of a domestic industry in an investigation resulting in:

(i) An affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

(ii) An affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2451(b)(1)); or

(iii) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)).

(2) *Criterion 2.* The petition is filed during the 1-year period beginning on the date on which:

(i) A summary of the report submitted to the President by the ITC under section 202(f)(1) of the Act with respect to the affirmative determination described in paragraph (f)(1)(i) of this section is published in the **Federal Register** under section 202(f)(3) of the Act; or

(ii) Notice of an affirmative determination described in paragraph (f)(1)(ii) or (iii) of this section is published in the **Federal Register**.

(3) *Criterion 3.* The workers have become totally or partially separated from the workers' firm within:

(i) The 1-year period described in paragraph (f)(2) of this section; or

(ii) The 1-year period preceding the 1-year period described in paragraph (f)(2) of this section.

(g) *Sales or production decline criteria.* For paragraphs (a) through (c) of this section, in assessing sales or production decline for the period 1 year prior to the petition date, the Department will use a comparison of the latest 2 full calendar year periods and will use a comparison of the year to date period (from the year the petition was filed) to the same year to date period from the prior year. This paragraph (g) does not apply to determining whether a significant number of workers have been separated or threatened with separation.

(h) *Oil and gas.* For workers employed by firms engaged in exploration or drilling for crude oil and natural gas:

(1) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas must be considered to be a firm producing oil or natural gas;

(2) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, must be considered to be producing articles directly competitive with imports of oil and with imports of natural gas; and

(3) The Department may conduct a parallel investigation to determine whether the group of workers meets the criteria for certification of worker groups under this section for the services provided by the group of workers. The Department will render a determination after all appropriate avenues are considered.

(i) *Staffed workers.* The Department considers staffed workers to be members of a worker group even if they are not specifically mentioned within the determination document issued under § 618.235. The Department will collect information from the workers' firm during the investigation to establish which leasing or staffing entity or entities the firm used under a contract. Once identified, an evaluation of operational control will occur. If a certification is rendered, the Department will notify States regarding the appropriate contact information of the known leasing or staffing entity or entities in order to expedite worker notification of their eligibility to apply individually for TAA Program benefits and services. Factors to be considered in evaluating operational control include:

(1) Whether the contract workers perform only tasks that are independent, discrete projects for the workers' firm (as opposed to performing tasks that are part of the regular business operations of the firm);

(2) Whether the workers' firm has the discretion to hire, fire, and discipline the contract workers;

(3) Whether the workers' firm has the ability to terminate the contract workers' employment with such firm through the staffing or leasing contracted firm;

(4) Whether the workers' firm exercises the authority to supervise the contract workers' daily work activities, including assigning and managing work, and determining how, where, and when the work of contract worker takes place (e.g., factors such as the hours of work, the selection of work, and the manner in which the work is to be performed by each contract worker are relevant);

(5) Whether the services of the contract workers are offered on the open market;

(6) Whether the contract workers work exclusively for the workers' firm;

(7) Whether the workers' firm is responsible for establishing wage rates and the payment of salaries of the contract workers;

(8) Whether the workers' firm provides skills training to the contract workers; and

(9) Whether there are other facts indicating that the workers' firm

exercises control over the contract workers.

(j) *Teleworkers.* The Department considers teleworkers (also known as remote, or home-based workers) to be members of a worker group even if they are not specifically mentioned within the determination document issued under § 618.235 when they would be a part of the worker group if they worked on-site. Teleworkers do not have to be physically based at the location of the subject firm or in the same city or same State of the location that is identified on the determination document to be members of the certified worker group.

(k) *Successor-in-interest.* The Department considers workers employed by a firm that is a successor-in-interest to be members of a worker group even if they are not mentioned specifically within the determination document issued under § 618.235.

#### § 618.230 Evidence.

(a) The Department will verify information obtained during an investigation before considering such information in support of a petition.

(b) Evidence may be accepted from such sources including, but not limited to, petitioners, company officials, current and former workers of the firm, customers of the firm, trade associations, union representatives, Federal agencies, and public sources such as State agencies and academic institutions.

(c) The Department may share affidavits, testimonials, news articles, and other types of information proffered in support of a petition with appropriate parties for verification.

#### § 618.235 Determinations.

Based on the findings of the investigation as set forth in § 618.230, a Certifying Officer will make a determination on a petition as provided under paragraph (a) or (b) of this section.

(a) *Affirmative determination or certification.* When the investigation establishes that a group of workers meets the eligibility criteria of § 618.225, the Certifying Officer will issue a certification of worker group eligibility to apply for TAA Program benefits and services. The certification will include the name of the firm or appropriate subdivision thereof at which the trade-affected workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j), the certification period, and the certification date.

(1) A certification covers any worker in the worker group eligible to apply for assistance under sec. 222(a) and (b) of the Act, whose last total or partial separation, or threat of a separation, from a firm or appropriate subdivision took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the petition date; and

(ii) On or before the day the certification expires, which is 2 years after the certification date, or an earlier date on which the Certifying Officer determines that separations from adversely affected employment may no longer be attributed to the conditions underlying the certification, as described in § 618.240, or the date identified in an amendment described in § 618.250.

(2) A certification covers any worker in the worker group eligible to apply for TAA Program benefits and services under section 222(e) whose last total or partial separation from a firm took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the ITC publication in the **Federal Register**; and

(ii) On or before the day the certification expires, which is the date 1 year from the ITC publication in the **Federal Register**.

(3) A trade-affected worker who is a member of the worker group covered by the certification may apply to the State for benefits and services under subparts C through G of this part.

(b) *Negative determination or denial.* When the investigation establishes that the group of workers does not meet the criteria for eligibility, as described in § 618.225, the Certifying Officer will issue a denial. The denial will include the name of the firm or appropriate subdivision thereof at which the workers covered by the denial have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j).

(c) *Determination.* The Certifying Officer issues a determination identifying the article(s) produced or service(s) provided and describing the worker group covered by the certification or denial and stating the reasons for the determination (excluding information designated as confidential business information). The Department will provide a copy of the determination to the petitioner(s) and to the State(s) covered by the determination. The Department will publish in the **Federal Register**, and on the Department's

website, a summary of the determination issued under paragraph (a) or (b) of this section, along with a general statement of the reasons for the determination (except for confidential business information).

(d) *Amended determination.* The Department may amend a certification for any of the purposes described in § 618.250(a), in response to a petition filed under § 618.205, or without an outside request for an amendment. An amended determination will not take effect until the previous determination becomes final, either after the period in which to request reconsideration has lapsed or after the Department makes a determination on reconsideration. Amended certifications are discussed in more detail in § 618.250.

(e) *Administrative action.* The Department may, with or without an outside request, reconsider actions taken under § 618.210(e), 618.235(b), 618.240, 618.245, or 618.250.

#### **§ 618.240 Termination of certification.**

(a) *Initiation.* Whenever the Administrator of the Office of Trade Adjustment Assistance has reason to believe, with respect to any nonexpired certification, that the total or partial separations or threat of separation from a firm, or appropriate subdivision thereof, are no longer attributable to the conditions specified in section 222 of the Act and § 618.225, the Administrator must promptly conduct an investigation.

(b) *Notice.* A notice of the initiation of an investigation to terminate a certification must be published in the **Federal Register**, and on the Department's website, and provided to the petitioner(s) of the certification under investigation, the firm official(s), and State(s) that contain the location(s) of the workers comprising the worker group covered by the certification. The State(s) must also promptly notify the workers in the worker group.

(c) *Opportunity for comment.* Within 10 calendar days after publication of the notice under paragraph (b) of this section, members of the worker group or any other person who has a substantial interest in the matter may provide evidence in writing supporting the continuation of eligibility of certification to show why the certification should not be terminated. If a hearing is requested, it will be conducted in accordance with § 618.215. If no evidence is provided by any interested party within 10 days from the date of publication to the **Federal Register** or on the Department's website, whichever is later, a determination must be issued once the

investigation is complete. Evidence (except at a timely requested hearing) and hearing requests submitted outside the 10-day period will not be accepted.

(d) *Investigation of termination of a certification.* The Department will conduct a review of the record on which the certification was based, any evidence timely filed under paragraph (c) of this section, and any data submitted with the petition or provided subsequent to the filing of the petition.

(e) *Determination to terminate or partially terminate a certification.* A determination to terminate a certification may cover the entire worker group specified in the certification or a portion of that group. Such termination or partial termination must apply only with respect to total or partial separations occurring after the termination date specified in the determination notice and must only take effect after the determination becomes final, either after the period in which to request reconsideration has lapsed or after a determination on reconsideration is made.

(1) Upon making a determination that the certification should be terminated for all or part of the worker group specified in the certification, the Department will issue a determination, which will contain the reasons for making such determination, and notify the petitioner(s) of the original certification, the firm official(s), and the State(s). The Department will also publish the notice in the **Federal Register**, and on the Department's website. The State will notify the worker group of the termination or partial termination.

(2) The termination date specified in the determination notice must not be earlier than the date of publication in the **Federal Register**.

(f) *Determination of continuation of certification.* After an investigation resulting in a decision that the certification should not be terminated, the Department will notify the petitioner(s) of the original certification, firm official(s), and the State(s). The State(s) will notify the worker group of the determination of continuation of certification. The Department will publish the determination in the **Federal Register** and on the Department's website. After receiving notice by the Department, the State(s) must notify the worker group of the continuation of certification.

(g) *Reconsideration of termination or partial termination of a certification.* Any party that is eligible under § 618.205 to submit a petition may file an application for reconsideration with

the Department, following the procedures described in § 618.245.

**§ 618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.**

(a) *Application for reconsideration; contents.* (1) Any party who is eligible to file a petition under § 618.205, and any worker in the group of workers, may file a written application seeking reconsideration of a termination of an investigation under § 618.210(e); a negative determination issued under § 618.235(b); or a termination or partial termination of certification issued under § 618.240, via email:

*reconsiderations.taa@dol.gov*; fax: (202) 693-3584 or (202) 693-3585; or mail: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(2) An application for reconsideration must contain the following information to be complete and valid:

(i) The name(s) and contact information of the applicant(s);

(ii) The name or a description of the group of workers on whose behalf the application for reconsideration is filed in the case of an application for reconsideration of a termination of an investigation or a negative determination, or the name or a description of the worker group on whose behalf the application for reconsideration of a termination or partial termination of a certification is filed;

(iii) The petition number identified on the petition or determination that is the subject of the application for reconsideration;

(iv) The reasons for believing that the termination of the investigation, negative determination, or termination or partial termination of a certification identified in paragraph (a)(1) of this section is erroneous, including any issues that the applicant asserts require further investigation;

(v) Any information that may support the application for reconsideration, including material not considered prior to the termination of the investigation, negative determination, or termination or partial termination of a certification; and

(viii) The signature(s) of the party, or representative thereof, requesting reconsideration.

(b) *Time for filing.* An application for reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification must be filed no later than 30 calendar days after the notice of the

termination of the investigation, negative determination, or termination or partial termination of a certification has been published in the **Federal Register**. If an application is filed after that time, it will be returned as untimely filed.

(c) *Return of incomplete applications for reconsideration.* The Department will review an application for reconsideration within 2 business days upon its receipt to determine if the application contains all of the necessary information required under paragraph (a)(2) of this section. The Department will not accept an incomplete application for filing, but will return it to the applicant with a brief statement explaining why it is incomplete. Should an applicant wish to refile an application for reconsideration, the refiling must occur no later than 30 calendar days after the notice of the determination has been published in the **Federal Register**, within the 30-day period identified in paragraph (b) of this section or, if the application is returned less than 5 days before the end of that period, within 5 days of receipt.

(d) *Notice of an application for reconsideration.* After receipt of a complete and timely application for reconsideration, the Department will notify the applicant and publish in the **Federal Register** and on the Department's website the notice of the application and the initiation of an investigation on reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification.

(e) *Opportunity for comment and submission of data on reconsideration.* Within 10 calendar days after publication of a notice under paragraph (d) of this section, any party who is eligible to file a petition under § 618.205 may make written submissions to show why the determination under reconsideration should or should not be modified.

(f) *Investigation on reconsideration.* The Department will conduct a review of the record on which the termination of the investigation, negative determination, or termination or partial termination of a certification was based, any comments timely filed under paragraphs (a)(2)(iv), (a)(2)(v), or (e) of this section, and any data submitted with the original petition or provided subsequent to the filing of the petition. The period of investigation under reconsideration will remain the same as the period of investigation for the original petition.

(g) *Determinations on reconsideration.* The Department will issue a final determination affirming,

reversing, or modifying the termination of the investigation, negative determination, or termination or partial termination of a certification within 60 days after the date of receiving a complete and valid application for reconsideration. The Department will notify the applicant(s), the petitioner(s) of the original petition, firm official(s), and the State(s); and publish notice in the **Federal Register** of the determination on reconsideration and the reasons for it (redacting confidential business information). The State continues to be responsible for notifying trade-affected workers in a certified worker group of their eligibility to apply for TAA, in accordance with § 618.820. If 60 days pass without a determination on reconsideration, the Department will contact the applicant to ascertain whether the applicant wishes the Department to continue the reconsideration investigation and issue a determination on reconsideration or wishes the Department to terminate the reconsideration investigation, which renders the initial determination as the Department's final determination.

**§ 618.250 Amendments of certifications.**

(a) *Reasons for amendments.* A Certifying Officer may amend a certification. The Department retains the authority to amend a certification without a petition, where it has determined that an amendment is appropriate. Amendments must not extend the impact date more than 1 year prior to the petition date unless there is a statutory exception, as described in § 618.235(a)(1)(ii). Reasons for amendments include, but are not limited to:

(1) Identifying an ownership change affecting the applicable firm;

(2) Correcting technical errors; or

(3) Clarifying the identification of the worker group.

(b) *Petition filing.* Amendments must be requested through the regular petition process described in § 618.205.

(c) *Notification of amendment.* The Department will publish the amended certification in the **Federal Register** and on the Department's website. The Department will also notify the affected States and the State must notify any additional certified trade-affected workers, as required by § 618.820.

**§ 618.255 Judicial review of determinations.**

(a) *General.* A worker, group of workers, certified or recognized union, or authorized representative of such worker or group may commence a civil action for review of the determination by filing a complaint with the United

States Court of International Trade (USCIT) within 60 days after the date of publication of the notice of a final determination in the **Federal Register**, as provided under section 284 of the Act (19 U.S.C. 2395).

(b) *Final determination.* Only determinations issued under § 618.245(g) are final determinations for purposes of judicial review.

(c) *Certified record of the Department.* Upon receiving a copy of the summons and complaint from the clerk of the USCIT, the Department will file with the court a certified record meeting the requirements of the rules of the USCIT. When the certified record contains confidential business information, the Department will file a public version of the record redacting the confidential business information, and a separate version that includes the confidential business information, in accordance with the rules of the USCIT.

(d) *Further proceedings.* Upon remand by the USCIT, the Department will conduct an additional investigation and the Certifying Officer will make new or modified findings of fact and will modify or affirm the previous determination. Upon making this subsequent determination, the Certifying Officer will publish a summary of the determination and the reasons for the determination in the **Federal Register**, redacting any confidential business information from the published summary. The Certifying Officer also will file the determination upon remand and the record on which the determination is based with the USCIT, in accordance with the rules of USCIT.

(e) *Standard of review.* The determination and findings of fact by the Certifying Officer are conclusive if the USCIT determines that they are supported by substantial evidence, as provided under section 284 of the Act (19 U.S.C. 2395).

(f) *Individual benefits denials.* Appeals of denials of individual benefits are not determinations under section 222 of the Act and are not subject to review by the USCIT under section 284 of the Act.

(g) *Manner of filing.* Requests for judicial review must be filed in accordance with the rules of the USCIT.

**§ 618.260 Study regarding certain affirmative determinations by the Commission.**

(a) Upon notification from the Commission that it has begun an investigation under section 202 of the Act with respect to an industry, the Department must immediately begin a study of:

(1) The number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, which includes, but is not limited to, analysis of:

(i) The estimated number of certified workers within the domestic industry named in the ITC affirmative determination;

(ii) Information obtained during the investigation of TAA Program determinations;

(iii) Responses from Domestic Industry Study;

(iv) Information obtained by consultation with ITC Commission industry experts; and

(v) Other pertinent workforce and trade-impact data of companies who are currently participating in the industry.

(2) The extent to which the adjustment of such workers to the import competition may be facilitated through the use of the TAA Program, other Departmental programs and resources, and programs administered by other Federal agencies.

(b) The report of the Department's study under paragraph (a) of this section must be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f)(1) of the Act. The Department will also publish the report in the **Federal Register** and on the Department's website.

**§ 618.265 Availability of information to the public.**

(a) *Information available to the public.* The Department posts all determinations on the Department's website at <https://www.dol.gov/agencies/eta/tradeact>. The Department also posts redacted versions of all petitions on the same website. Upon request to the Administrator of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with the Administrator, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this subpart, public notices concerning trade-affected worker assistance under the Act, and other reports and documents issued for general distribution, in accordance with the Department's record retention schedule, FOIA, and the Privacy Act.

(b) *Information not available to the public.* Confidential business information must not be made available to the public.

**Subpart C—Employment and Case Management Services**

**§ 618.300 Scope.**

This subpart describes the employment and case management services that the State must make available to trade-affected workers, either directly through the TAA Program or through arrangements with partner programs. This subpart requires States, under the Governor-Secretary Agreement at § 618.804, to integrate the provision of benefits and services available to trade-affected workers under the TAA Program with the delivery of employment services and other assistance provided through the one-stop delivery system (established under title I of WIOA), as required by sections 235 and 239(a), (e), and (g) of the Act. It also implements the requirements of section 221(a)(2)(A) of the Act for the provision of rapid response assistance and appropriate career services described in §§ 682.300 through 682.370, and 680.150 of this chapter, respectively, for workers upon receipt of a petition filed covering a group of workers.

**§ 618.305 The Trade Adjustment Assistance Program as a one-stop partner.**

(a) As provided by WIOA section 121(b)(1)(B)(vii), the TAA Program is a required one-stop partner under WIOA.

(b) The State must ensure that the TAA Program complies with WIOA's one-stop partnership requirements at WIOA section 121(b)(1)(A)(i) through (v). This includes, among the other requirements, paying infrastructure costs where the TAA Program is being carried out.

(c) The TAA Program must also comply with, and be a party to, the memorandum of understanding required under the regulations implementing WIOA at § 678.500 of this chapter, where the TAA Program is being carried out.

**§ 618.310 Responsibilities for the delivery of employment and case management services.**

(a) The State is responsible for providing information to workers about the TAA Program, as required in § 618.816;

(b) As part of the delivery of services, the State must:

(1) Conduct intake, which includes interviewing each trade-affected worker and reviewing suitable training opportunities reasonably available to each worker under subpart F of this part;

(2) Inform trade-affected workers of the employment services and

allowances available under the Act and this part, including the application procedures, the filing requirements for such services, and enrollment deadlines for receiving TRA, as described in subpart G of this part;

(3) Determine whether suitable employment, as defined in § 618.110, is available, and assist in job search activities related to securing suitable employment;

(4) Accept applications for training;

(5) Provide information on which training providers offer training programs at a reasonable cost and with a reasonable expectation of employment following the completion of such training, and assist in acquiring such training;

(6) Monitor the progress and attendance of trade-affected workers in approved training programs;

(7) Develop and implement a procedure for determining whether to issue a training waiver and to review waivers to determine whether the conditions under which they were issued have changed, in compliance with subpart G of this part;

(8) Provide access to workshops and other resources related to job search strategies, resume building, interviewing, and other topics available through the TAA Program or through the one-stop delivery system; and

(9) Coordinate the administration and delivery of additional appropriate employment services, benefits, training, supportive services, and supplemental assistance for workers with partner programs for which the trade-affected worker may be eligible.

(c) The State must make available the employment and case management services in paragraphs (c)(1) through (7) of this section to trade-affected workers who apply for or are seeking receipt of TAA Program benefits and services, and ensure that those workers are informed of the availability of:

(1) Comprehensive and specialized assessment of skill levels and service needs, including through:

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(2) Development of an individual employment plan (IEP) to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(3) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965, as

amended (HEA) (20 U.S.C. 1070a–16), where applicable, and notifying workers that they may request that financial aid administrators at institutions of higher education (as defined in section 102 of HEA (20 U.S.C. 1002)) use the administrators' discretion under section 479A of HEA (20 U.S.C. 1087tt) to use current-year income data, rather than preceding-year income data, for determining the amount of the workers' need for Federal financial assistance under title IV of HEA (20 U.S.C. 1070 *et seq.*).

(4) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare trade-affected workers for employment or training.

(5) Individual and group career counseling, including job search and placement counseling, during the period in which the worker is receiving a trade adjustment allowance or training under this chapter, and after receiving such training for purposes of job placement and employment retention.

(6) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

(i) Job-vacancy listings in such labor market areas;

(ii) Information on the job skills necessary to obtain the jobs identified in the job-vacancy listings described in paragraph (c)(6)(i) of this section;

(iii) Information relating to local occupations that are in demand and the earning potential of those occupations; and

(iv) Skills requirements for local occupations described in paragraph (c)(6)(iii) of this section.

(7) Information relating to the availability of supportive services, available through partner programs, including services relating to childcare, transportation, dependent care, housing assistance, and needs related payments that are necessary to enable a trade-affected worker to participate in training.

(d) To make available, with respect to the employment and case management services described in paragraph (c) of this section, means:

(1) That the State must inform the trade-affected worker of the full suite of services available; and

(2) That the State must offer and provide appropriate services to the trade-affected worker, as requested by the worker or deemed appropriate for the worker; and

(3) That the State must document each service provided to the trade-affected worker and document the reason any service listed in paragraph (c) of this section was not provided. The documentation must be included in the worker's case file, either through case notes or as a stand-alone document.

#### **§ 618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.**

(a)(1) A State must co-enroll trade-affected workers who are eligible for WIOA's dislocated worker program. Workers may choose to decline co-enrollment in WIOA. A State cannot deny such a worker benefits or services under the TAA Program solely for declining co-enrollment in WIOA.

(2) A State must also make co-enrollment available to trade-affected workers who are eligible for other one-stop partner programs to ensure that all necessary and appropriate services, including supportive services, are available to the worker.

(b)(1) *Trade-affected worker dislocated worker eligibility.* Most trade-affected workers meet the eligibility criteria of a dislocated worker defined at WIOA section 3(15).

(2) *Partially separated worker and AAIW dislocated worker eligibility.* In certain circumstances, such as a general announcement of a closure, partially separated workers and AAIWs may meet the eligibility criteria as a dislocated worker under WIOA and must also be co-enrolled.

(3) *Trade-affected worker dislocated worker ineligibility.* Some trade-affected workers are ineligible for the WIOA dislocated worker program, including those that do not meet the Selective Service registration requirement, and will be exempt from the co-enrollment requirement in this section.

#### **§ 618.330 Assessment of trade-affected workers.**

(a) The assessment process forms the basis for determining which TAA Program benefits and services, including training, are most appropriate to enable trade-affected workers to successfully become reemployed.

(b) The State must schedule an initial assessment that provides sufficient time and information for the trade-affected worker to consider, request, and enroll in training or obtain a waiver of the training requirement in § 618.720(g) to protect the worker's eligibility to receive TRA under subpart G of this part.

(c) Assessments are administered with the cooperation of the trade-affected worker and should include discussion of the worker's interests, skills, aptitudes, and abilities.

(d) The results of assessments must be documented in the case file, either through case notes or as a stand-alone document.

(e) If an assessment has already been administered by a partner program, it must be reviewed once a worker becomes a trade-affected worker to ensure it has the required components as listed in § 618.335 for an initial assessment and, if necessary, § 618.345 for a comprehensive and specialized assessment. If the assessment(s) does not contain the required components, the assessment(s) must be supplemented by the State, in conjunction with the trade-affected worker, to ensure it is fully compliant with TAA Program requirements in this part.

(f) The State must make the trade-affected worker aware of the advantages of receiving an assessment(s). However, a worker may refuse an assessment. Since portions of the assessment(s) are necessary to determine eligibility for certain TAA Program benefits, a worker's refusal to provide necessary information, either as part of the assessment or outside of the assessment process, may result in a denial of a those benefits. This is detailed further in the applicable benefit sections throughout this part.

**§ 618.335 Initial assessment of trade-affected workers.**

(a) A State must carry out an initial assessment for each trade-affected worker as part of the intake process described in section 239(g) of the Act. When applicable, a State must use the results of an assessment developed by a partner program, supplemented if necessary, as described in § 618.330(e).

(b) The results of the initial assessment will determine the best service strategy to assist the trade-affected worker in obtaining reemployment and provide insight into which benefits and services under the TAA Program and partner programs would be most beneficial to the worker. The initial assessment of the availability of suitable employment to the worker in the local labor market must take into consideration the following factors:

(1) Prevailing local labor market conditions, including the unemployment rate, local employer skill demands and hiring prerequisites;

(2) The worker's knowledge, skills, and abilities from his or her education and previous employment;

(3) Transferable skills that the worker may possess that would be of interest to other local employers;

(4) Evaluation of a worker's skill levels (including literacy, numeracy, and English language proficiency),

aptitudes, abilities (including skills gaps), and supportive service needs; and

(5) Any barriers to the worker's reemployment, such as:

(i) Lack of applicability of skills from the worker's present occupation to other occupations;

(ii) Skills that are in excess supply in the labor market area; or

(iii) Other barriers as outlined in WIOA section 3(24).

(c) Based upon the information gathered in the initial assessment, described in paragraph (a) of this section, the State may:

(1) Determine that suitable employment is available to the trade-affected worker, and if so, the State must make available employment and case management services. If the worker disagrees with the determination, the State must make available to the worker a comprehensive and specialized assessment (under § 618.345) to obtain additional information to determine whether the initial assessment was correct.

(2) Determine that no suitable employment is available to the worker and, if so, the State must make available services as described in § 618.310 (responsibilities for the delivery of employment and case management services) and a comprehensive and specialized assessment (as described in § 618.345) to develop a comprehensive service strategy for the trade-affected worker.

(d) If the State determines under paragraph (c) of this section that suitable employment is not available to a trade-affected worker, even with additional employment and case management services, the State must advise the worker to apply for training under subpart F of this part.

**§ 618.345 Comprehensive and specialized assessment of trade-affected workers.**

(a) The State must make available a comprehensive and specialized assessment to all trade-affected workers.

(b) The comprehensive and specialized assessment must take into account the trade-affected worker's goals and interests as they relate to employment opportunities either in the worker's commuting area or, where there is no reasonable expectation of securing employment in the worker's commuting area and the worker is interested in relocation, the employment opportunities and demand in the area to which the worker proposes to relocate.

(c) The comprehensive and specialized assessment must expand upon the initial assessment regarding the trade-affected worker's interests,

skills, aptitudes, and abilities. This may include use of diagnostic testing tools and instruments and in-depth interviewing and evaluation to identify barriers to employment and appropriate employment goals. The in-depth interviewing of trade-affected workers must include discussion of training opportunities reasonably available to each trade-affected worker, as described in subpart F of this part; reviewing the opportunities with each trade-affected worker; and informing each trade-affected worker of the requirements for participating in training, including the enrollment deadlines required for TRA eligibility.

(d) The State may use information from the comprehensive and specialized assessment to determine whether the trade-affected worker has met the six criteria for approval of training listed in subpart F of this part.

**§ 618.350 Individual employment plans for trade-affected workers.**

(a) A State must:

(1) Make available an IEP; and

(2) Document an IEP for any trade-affected worker seeking training under subpart F of this part or a job search allowance under subpart D of this part, before the worker receives those benefits and services.

(b) An IEP must use the results of the initial and, if available, comprehensive and specialized assessments to assist in documenting a strategy to provide the trade-affected worker with the services needed to obtain employment, including the items listed in paragraph (c) of this section.

(c) An IEP must document:

(1) The trade-affected worker's employment goal, including the targeted occupation and industry;

(2) The training program proposed, if any;

(3) Any services that will be needed by the worker to obtain suitable employment, including career services, supportive services provided through partner programs, and post-training case management services;

(4) If applicable, any supplemental assistance (subsistence or transportation payments) required for participation in training and the basis for their calculation; and

(5) The worker's responsibilities under the plan.

(d) If an IEP has been previously developed with a trade-affected worker by a partner program, it must be reviewed once the worker becomes TAA Program-eligible to ensure it has the components required by paragraph (c) of this section. If the IEP does not contain the components, the IEP must be

supplemented by the State in conjunction with the worker to ensure it is fully compliant with the TAA Program requirements in this part.

(e) The State must monitor the progress of the trade-affected worker in meeting the worker's responsibilities as listed in the IEP, including attendance and achievement in approved training programs.

(f)(1) The State must modify the IEP as necessary to facilitate a successful performance outcome for the trade-affected worker.

(2) The modification must be done with the worker's input.

(3) At a minimum, the IEP must be modified when there is a change in the training program, receipt of supplemental assistance, or both.

(g) The State must make the trade-affected worker aware of the advantages of receiving an IEP. However, a worker may refuse to complete an IEP. Since portions of the IEP are necessary to determine eligibility for job search allowances under subpart D of this part and training under subpart F of this part, a worker's refusal to provide necessary information, either as part of the IEP or outside of the IEP process, may result in a denial of a those benefits and services. This is detailed further in subparts D and F of this part.

**§ 618.355 Knowledge, skills, and abilities of staff performing assessments.**

(a) Staff performing either the initial or comprehensive and specialized assessment must possess the following knowledge and abilities:

(1) Knowledge of the local labor market;

(2) Knowledge of local employer and occupation skill demands and hiring prerequisites, such as educational requirements and professional certifications;

(3) The ability to identify transferable skills that a trade-affected worker may possess that would be of interest to other local employers outside of the worker's present occupational area;

(4) The ability to evaluate quickly a worker's ability to conduct a self-directed job search; and

(5) The ability to identify barriers to a worker's employment that could be overcome with training and case management services.

(b) The staff performing these initial and comprehensive and specialized assessments may be from any partner program.

(c) Funds under section 235A(1) of the Act may be used to improve and maintain the knowledge and abilities of staff conducting assessments for trade-affected workers.

**§ 618.360 Employment and case management services for trade-affected workers in training.**

The State must make employment and case management services available, including placement and referrals to supportive services and follow-up services available through partner programs, to trade-affected workers during training, and after completion of training, and for AAWs on a waiver from training.

**Subpart D—Job Search and Relocation Allowances**

**§ 618.400 Scope.**

This subpart sets forth the conditions under which an AAW may apply for and receive a job search allowance to help the worker secure suitable employment outside the commuting area but within the United States. This subpart also sets forth the conditions under which an AAW may apply for and receive a relocation allowance to help the worker relocate to suitable employment secured outside the commuting area but within the United States.

**§ 618.405 General.**

(a) A State must grant a job search allowance to an AAW to help the worker secure suitable employment within the United States if the AAW meets the requirements in this subpart. A job search allowance for activities outside of the worker's commuting area may be provided for costs including, but not limited to:

(1) Travel to and attendance at job fairs and interviews;

(2) Travel to and attendance at prevocational workshops;

(3) Making an in-person visit with a potential employer who may reasonably be expected to have openings for suitable employment;

(4) Completing a job application in person with a potential employer who may reasonably be expected to have openings for suitable employment;

(5) Going to a local one-stop, copy shop, Post Office, or similar entity to print, copy, mail, email, or fax a job application, cover letter, and/or a resume;

(6) Going to a local one-stop, public library, community center, or similar entity to use online job matching systems, to search for job matches, request referrals, submit applications/resumes, attend workshops, and/or apply for jobs; and,

(7) Attending a professional association meeting for networking purposes.

(b) A State must grant a relocation allowance to an AAW to help the

worker and the worker's family relocate within the United States if the AAW meets the requirements in this subpart. A State may grant a relocation allowance to a worker only once under a certification. A State may grant a relocation allowance to only one member of a family for the same relocation, even if there are multiple AAWs in the same family. If more than one member of a family applies for a relocation allowance for the same relocation, then the State must pay the allowance to the AAW who files first, if that AAW is otherwise eligible.

**§ 618.410 Applying for a job search allowance.**

(a) *Forms.* To receive a job search allowance, an AAW must apply to the State, using the State's process.

(b) *Submittal.* An AAW must apply for a job search allowance before beginning a job search to be funded by such an allowance.

**§ 618.415 Eligibility for a job search allowance.**

(a) *Conditions.* To be eligible for a job search allowance an AAW must:

(1) File an application before either:

(i) The later of the 365th day after either the date of the certification under which the AAW is covered, or the 365th day after the AAW's last total separation; or

(ii) The 182nd day after the date of concluding approved training;

(2) Be an AAW totally separated from the job covered under the certification when beginning the job search;

(3) Receive a determination by the State that the AAW:

(i) Cannot reasonably expect to secure suitable employment in the commuting area; and

(ii) Can reasonably expect to obtain, in the area of the job search, either:

(A) Suitable employment; or

(B) Employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the definition of suitable employment;

(4) Receive a determination by the State that the worker cannot reasonably expect to secure suitable employment by alternatives to being physically present in the area of the job search, such as by searching and interviewing for employment by means of the internet and other technology;

(5) Not previously have received a relocation allowance under the same certification; and

(6) Complete a State-approved job search within 30 calendar days after the worker leaves the commuting area to begin the job search.

(b) *Completion of job search.* (1) An AAW has completed a job search when the worker either:

(i) Obtains a bona fide offer of employment; or

(ii) Has, with State verification, as provided in § 618.420(a)(2), contacted each employer the worker planned to contact, or to whom the State or other one-stop partner referred the worker as part of the job search.

(2) The job search is complete when one of the actions in paragraph (b)(1) of this section occurs, whichever comes first. For purposes of paragraph (b)(1)(i) of this section, “bona fide” means the offer of suitable employment is made in good faith by a prospective employer.

**§ 618.420 Findings required for a job search allowance.**

(a) *Findings by liable State.* Before a liable State may approve final payment of a job search allowance, the liable State must:

(1) Find that the AAW meets the eligibility requirements for a job search allowance specified in § 618.415(a)(1) through (6); and

(2) Verify that the worker contacted each employer the State certified or to whom the State or one-stop center referred the worker as part of the job search and must find that the worker completed the job search, as described in § 618.415(b) within the time limits stated in § 618.415(a)(6).

(b) *Assistance by agent State.* (1) When an AAW files an application for a job search allowance to conduct a job search in an agent State, the agent State in which the worker conducts the job search is responsible for assisting the worker in conducting the job search, for assisting the liable State by furnishing any information required for the liable State’s determination of the claim, and for paying the job search allowance.

(2) The agent State must cooperate fully with the liable State in carrying out its activities and functions with regard to such applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

**§ 618.425 Amount of a job search allowance.**

(a) *Computation.* The job search allowance is 90 percent of the total costs of an AAW’s travel (as defined in paragraph (a)(1) of this section) and lodging and meals (as defined in paragraph (a)(2) of this section), up to the limit in paragraph (b) of this section:

(1) *Travel.* The worker’s allowable travel expenses may not exceed 90

percent of the prevailing cost per mile by privately owned vehicle under 41 CFR chapters 300 through 304, the Federal Travel Regulation (FTR), found at <https://www.gsa.gov/>, for round trip travel by the usual route from the worker’s home to the job search area, though other forms of transportation may be utilized.

(2) *Lodging and meals.* The worker’s allowable lodging and meals costs cannot exceed the lesser of:

(i) The actual cost for lodging and meals while engaged in the job search; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at <https://www.gsa.gov/>, for the worker’s job search area.

(b) *Limit.* The AAW’s total job search allowance under a certification may not exceed \$1,250, no matter how many job searches the worker undertakes. If the worker is entitled to be paid or reimbursed by another source for any of these travel, lodging, and meals expenses, the State must reduce the job search allowance by the amount of the payment or reimbursement.

(c) *Choice of mode of transportation.* With respect to the limits established in paragraph (a)(1) of this section, an AAW may elect to use a different mode of transportation than the one for which the State calculated the applicable reimbursement amount. However, the State must limit the reimbursement to the worker to the amount calculated under paragraph (a)(1) of this section.

**§ 618.430 Determination and payment of a job search allowance.**

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW’s eligibility for a job search allowance. Sections 618.820 (determinations of eligibility; notices to individuals) and 618.828 (appeals and hearings) apply to these determinations. States must include copies of such applications and all determinations by the State in the AAW’s case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment promptly after the worker has completed a job search and complied with paragraph (d) of this section, provided that funds are available for job search allowances.

(c) *Advances.* Once the State determines that the AAW is eligible for a job search allowance, it may advance the worker up to 60 percent of the estimated amount of the job search allowance subject to the limit in § 618.425(b), but not exceeding \$750, within 5 days before the commencement

of a job search. The State must deduct the advance from any payment under paragraph (b) of this section.

(d) *Worker evidence.* After the AAW completes a job search, the AAW must certify to the State as to the employer contacts made and must provide documentation of expenses in accordance with FTR and Uniform Guidance at 2 CFR part 200. This may include receipts for all lodging, purchased transportation, or other expenses. If an advance the worker received was more or less than the actual allowance, the State must make an appropriate adjustment and pay the balance entitled, or the worker must repay the excess received.

**§ 618.435 Job search program participation.**

(a) *Requirements.* An AAW who participates in an approved job search program (JSP), may receive reimbursement for necessary expenses of subsistence and transportation incurred for the worker’s participation in the approved JSP, regardless of the worker’s approval for, or receipt of, a job search allowance under §§ 618.420 and 618.430.

(b) *Approved JSP.* A State may approve a JSP if:

(1) The JSP is provided through WIOA, the public employment service, or any other Federal- or State-funded program, and meets the definition provided in § 618.110; or

(2) The JSP is sponsored by the firm from which the AAW has been separated.

(c) *JSP allowances.* Subsistence and transportation costs, whether inside or outside the AAW’s commuting area, must be approved for workers participating in JSPs in accordance with § 618.640(a) and within available State funding levels.

**§ 618.440 Applying for a relocation allowance.**

(a) *Forms.* To receive a relocation allowance, an AAW must apply to the State using the State’s process.

(b) *Submittal.* An AAW must apply for a relocation allowance and the State must approve the worker for a relocation allowance before the relocation begins. The State must make a timely determination on a relocation application submitted to allow the worker to promptly begin the relocation.

**§ 618.445 Eligibility for a relocation allowance.**

(a) *Conditions.* To be eligible for a relocation allowance, the AAW must:

(1) File an application before either:

(i) The later of the 425th day after the date of the certification under which the

worker is covered, or the 425th day after the date of the worker's last total separation; or

(ii) The 182nd day after the date the worker concluded training;

(2) Be an AAW totally separated from adversely affected employment when the relocation begins;

(3) Not have already received a relocation allowance under the same certification;

(4) Relocate within the United States but outside the worker's commuting area;

(5) Receive a determination by the State that the worker has no reasonable expectation of securing suitable employment in the commuting area, and has obtained either suitable employment or employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the suitable employment requirements, or a bona fide offer of such employment, in the area of intended relocation;

(6) Begin the relocation as promptly as possible after the date of certification but no later than:

(i) 182 days after the worker filed the application for a relocation allowance; or

(ii) 182 days after the conclusion of an approved training program, if the worker entered a training program that received supplemental assistance approved under § 618.640(c) (subsistence payments) and (d) (transportation payments), for training outside the worker's commuting area; and

(7) Complete the relocation, as described in § 618.460(f), within a reasonable time as determined in accordance with FTR with the State giving consideration to, among other factors, whether:

(i) Suitable housing is available in the area of relocation;

(ii) The worker can dispose of the worker's residence;

(iii) The worker or a family member is ill; and

(iv) A member of the family is attending school, and when the family can best transfer the member to a school in the area of relocation.

(b) *Job search allowances.* The State may not approve a relocation allowance and a job search allowance for an AAW at the same time. However, if the worker has received a job search allowance, the worker may receive a relocation allowance at a later time or receive a relocation allowance as a result of a successful job search for which the worker received a job search allowance.

**§ 618.450 Findings required for a relocation allowance.**

(a) *Findings by liable State.* Before the liable State may approve final payment of a relocation allowance, the liable State must make the following findings:

(1) That the AAW meets the eligibility requirements for a relocation allowance specified in § 618.445(a)(1) through (7) and is not also simultaneously receiving a job search allowance as specified in § 618.445(b);

(2) That the worker submitted the application for a relocation allowance within the time limits specified in § 618.445(a)(1);

(3) That the worker began and completed the relocation within the time limitations specified in § 618.445(a)(6) and (7); and

(4) That the worker obtained suitable employment, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 618.445(a)(5). The liable State must verify (directly or through the agent State) the suitable employment, or the bona fide offer, with the employer.

(b) *Assistance by agent State.* (1) When an AAW relocates to an agent State, the agent State is responsible for:

(i) Assisting the worker in relocating to the State, completing an application for a relocation allowance with the liable State, and paying the relocation allowance; and

(ii) Assisting the liable State by furnishing any information required for the liable State's determination on the claim.

(2) The agent State must cooperate with the liable State in carrying out its activities and functions with regard to relocation applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

**§ 618.455 Determining the amount of a relocation allowance.**

The AAW's relocation allowance includes the information in paragraphs (a) through (c) of this section, as applicable:

(a) *Reimbursement—(1) Travel.* (i) The State may reimburse the AAW for up to 90 percent of the prevailing cost per mile by privately owned vehicle under the FTR, found at <https://www.gsa.gov/>, for travel from the AAW's old home to the AAW's new home.

(ii) Separate travel of a family member or members who, for good cause and with the approval of the State, must travel separately to their new home, may also be reimbursed. For purposes of

this paragraph (a)(1)(ii), good cause includes, but is not limited to, reasons such as a family member's health, schooling, job, or economic circumstances.

(2) *Lodging and meals.* The State may reimburse the worker for 90 percent of lodging and meal expenses for the worker and his or her family while they are in transit, but such costs may not exceed the lesser of:

(i) The actual lodging and meals cost to the worker and his or her family while they are traveling; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at <https://www.gsa.gov/>, for the relocation area for those days while the worker and his or her family are traveling.

(3) *Movement of household goods.* (i) The State may reimburse the worker for 90 percent of the allowable costs of moving the workers and family's household goods and personal effects in accordance with the FTR (41 CFR chapter 302). This includes 90 percent of the costs of moving by the most economical commercial carrier the State can reasonably expect the worker to use, moving by rental truck or trailer (for rental, mileage, and fuel), or moving a house trailer or mobile home. It also includes 90 percent of the costs of temporary storage of household goods for up to 60 days. In approving the move of a house trailer or mobile home, the State must follow the specific requirements of the FTR, found at <https://www.gsa.gov/>.

(ii) For a commercial carrier move of household goods or house trailer or mobile home, the worker must obtain an estimate of the moving cost and provide this to the liable State. The estimate may include the cost of insuring such goods and effects for their actual value or \$40,000 as delineated in the FTR, whichever is less, against loss or damage in transit.

(iii) If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. No such arrangement releases a carrier from liability otherwise provided by law or contract for loss or damage to the worker's goods and effects. Any contract for moving and insuring an AAW's household goods must provide that the United States must not be or become liable to either party for personal injury or property loss damage under any circumstances.

(iv) The maximum net weight of the household goods relocated from the

worker's old home to the relocation area may not exceed that set by the FTR.

(4) *Lump sum.* As part of the relocation allowance, the worker will receive a lump sum equivalent to three times the worker's average weekly wage, not to exceed \$1,250.

(b) *Reduction.* If the AAW is eligible to receive or has received moving expenses from any other source for the same relocation, the State must deduct the amount received from the amount of the relocation allowance as determined in paragraphs (a)(1) through (3) of this section.

(c) *Limitation.* In no case may the State pay a travel allowance for the AAW or a family member more than once for a single relocation.

**§ 618.460 Determinations and payment of a relocation allowance.**

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW's eligibility for a relocation allowance. Sections 618.820 (determinations of eligibility; notices to individuals) and 618.828 (appeals and hearings) apply to these determinations. The State must include copies of such applications and all determinations by the State in the AAW's case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment as promptly as possible.

(c) *Travel allowances—(1) Payment.* The State must pay the allowances computed under § 618.455 no earlier than 10 days in advance of, and no later than at the time of, the AAW's scheduled departure to begin relocation. The State must make the payment for a family member approved for separate travel 10 days in advance of, or at the time of that family member's scheduled departure.

(2) *Worker evidence.* After an AAW completes the relocation, the AAW must certify to the State the expenses associated with the relocation, in accordance with the FTR and Uniform Guidance in 2 CFR part 200. This may include receipts for all lodging, purchased transportation, or other expenses. If an advance the worker received was more or less than the actual allowance, the State must make an appropriate adjustment and pay the balance entitled, if any, or the worker must repay any excess received, if any.

(d) *Movement of household goods.* The State must pay the amount equal to 90 percent of the estimate of the costs of moving the AAW's household goods by the most economical commercial carrier the State can reasonably expect

the worker to use (as described in § 618.455(a)(3) (determining the amount of a relocation allowance) as follows:

(1) *Commercial carrier.* If a commercial carrier moves the worker's household goods and personal effects, the State must provide the worker with an advance equal to 90 percent of the estimated cost of the move, including any other charges that the State has approved, such as insurance. The State must advance the funds to the worker no earlier than 10 days in advance of, and no later than at the time of, the scheduled shipment. If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer subject to the conditions of § 618.455(a)(3)(iii). The State must deliver payment to the carrier and insurer no earlier than 10 days in advance of, and no later than at the time of, the scheduled shipment.

(i) On completion of the move, as determined under paragraph (f) of this section, the worker must promptly submit to the State a copy of the carrier's bill of lading, including a receipt showing payment of moving costs.

(ii) If the amount the worker received as an advance is greater than 90 percent of the actual approved moving costs, the worker must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must reimburse the worker for the difference.

(2) *Private truck and trailer, rental truck or trailer, or house trailer move—*  
(i) *Private vehicle with trailer.* If the move is by private vehicle and trailer, the State must advance 90 percent of the estimated cost for the use of the private vehicle within 10 days in advance of the scheduled move.

(ii) *Truck and trailer rental.* If the move is by rental truck or rental trailer, the State must advance 90 percent of the estimated rental cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental company.

(iii) *House trailer.* If a house trailer or mobile home is moved by commercial carrier, the State must advance 90 percent of the approved estimated cost to the worker within 10 days in advance of the scheduled move. The State may make payment to either the worker or the carrier.

(iv) *Itemized receipt.* Upon completion of the move, the worker

must promptly submit an itemized receipt to the State for payment of the rental charges and fuel costs. If the amount the worker received as an advance is greater than 90 percent of the actual moving costs, the worker must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must pay the worker for the difference.

(3) *Temporary storage.* If temporary storage, not to exceed 60 days, of household goods and personal effects is necessary for the relocation, then the State must advance 90 percent of the approved estimated cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental agency.

(e) *Lump sum allowance.* The State must pay the lump sum allowance provided in § 618.455(a)(4) when arrangements for the relocation are finalized, but not more than 10 days before the earlier of the AAW's anticipated departure from his or her old home, or the anticipated date of shipment of the worker's household goods and personal effects.

(f) *Relocation completed.* An AAW completes a relocation when the worker and family, if any, along with household goods and personal effects are delivered to the new residence in the area of relocation or to temporary storage. If the worker moves no household goods and personal effects, then a worker completes relocation when the worker and family, if any, arrive in the area of relocation and establish a residence in the new area. When a family member is approved for separate travel, the later arrival of such family member does not alter the date on which the State must consider the relocation completed.

**Subpart E—Reemployment Trade Adjustment Assistance**

**§ 618.500 Scope.**

This subpart provides the rules for RTAA. RTAA, authorized under section 246 of the Act, provides 50 percent of the difference between the wages received by the AAW at the time of separation from adversely affected employment and the wages received by the worker from reemployment for workers aged 50 and older who meet the eligibility criteria described in this subpart. This subpart identifies the eligibility criteria and the benefits available to AAWs who are eligible for RTAA.

**§ 618.505 Individual eligibility.**

(a) *Eligibility criteria.* An AAW from a worker group certified under § 618.225

may elect to receive RTAA benefits if the AAW:

(1) Is at least 50 years of age;  
 (2) Earns not more than, or is projected to earn not more than, \$50,000 in reemployment wages each year during the eligibility period, as further defined in § 618.520(a);

(3) Earns less than, or is projected to earn less than, the AAW's annualized wages at separation, as further defined in § 618.520(a);

(4)(i) Is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in any training program approved under subpart F of this part; or

(ii) Is employed at least 20 hours per week and is enrolled in a TAA approved training program; and

(5) Is not employed at the firm, as further defined in paragraph (b) of this section, from which the worker was separated.

(b) *Eligibility-relevant definitions.* For purposes of RTAA, the following definitions apply:

(1) *Firm.* The State must determine on a case-by-case basis what constitutes the "firm" for purposes of determining RTAA eligibility based on the certification. If the Department issues the certification under subpart B of this part for a worker group in an appropriate subdivision of a firm, an AAW in that group is not eligible for RTAA upon a return to employment within that subdivision, but may be eligible for RTAA upon a return to employment at another subdivision of the firm. If, however, the Department issues the certification for a worker group composed of all workers from the firm rather than from a subdivision, then the worker is not eligible for RTAA based on a return to employment in any subdivision of that firm.

(2) *Successor-in-interest.* The State must determine if the firm now employing the AAW is the same firm as the one from which the AAW was separated.

(i) In making its determination, the State should first review the certification under which the worker was covered, look for any amendments to the certification, and compare the name and address of the firm in the certification to the name and address of the firm in which the worker has found reemployment. If they are the same, this is, in most cases, dispositive: The firms are the same and the worker is not eligible for RTAA.

(ii) If, despite the information gathered under paragraph (b)(2)(i) of this section, it nonetheless remains unclear whether the firms are the same,

the State may need to obtain further information about the firm reemploying the worker, from the employer and otherwise, to make that determination.

To do so, the State should determine whether the firm at which the worker found reemployment is a "successor-in-interest" to the firm from which the worker was separated. If the reemploying firm merged with, acquired, or purchased the assets of the firm from which the worker was separated, then the reemploying firm is a successor-in-interest.

(iii) If the reemploying firm does not meet the criteria in paragraph (b)(2)(ii) of this section, or if that information is unavailable, then the State should consider the factors identified in paragraphs (b)(3)(i) through (vii) of this section to determine whether the reemploying firm is a successor-in-interest. If the State determines that the worker returned to employment with a successor-in-interest to the firm from which the worker was separated, then the worker is not eligible for RTAA. The State must make the determination based on the individual application of the worker. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially owned by substantially the same persons, is considered a single firm. If the State determines that the reemployment is with a successor-in-interest the State also must seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA Program, as provided in § 618.816(e).

(3) *Successor-in-interest factors.* A State may consider a firm a successor-in-interest to another firm, if a majority of the following factors are present:

(i) There is continuity in business operations.  
 (ii) There is continuity in location.  
 (iii) There is continuity in the workforce.  
 (iv) There is continuity in supervisory personnel.

(v) The same jobs exist under similar conditions.

(vi) There is continuity in machinery, equipment, and process.

(vii) There is continuity in product/service.

(4) *Year.* For purposes of RTAA, a year represents the 12-month period beginning with the first full week of qualifying reemployment.

(c) *Full-time employment.* For purposes of RTAA, full-time employment is defined per State law in which the reemployment occurs.

(1) If there is no State law addressing the definition of full-time employment

referenced under paragraph (a)(4)(i) of this section, the State must issue a definition of full-time employment for RTAA purposes.

(2) The State must verify reemployment and do so in accordance with State policies.

(3) Where an AAW seeks to establish RTAA eligibility based upon more than one job, the State must combine employment hours in order to determine whether the worker has the number of hours needed to qualify for RTAA.

(4) If the AAW is employed in more than one State, the State must determine full-time employment for the entire duration of the AAW's RTAA eligibility under a single certification under the law of the State in which the AAW has the lowest threshold of hours required to meet the definition of full-time employment.

(d) *Relevance of UI eligibility.* UI eligibility is not a requirement for RTAA eligibility.

(e) *Eligible employment.* (1) Employment for purposes of paragraph (a)(4) of this section must be covered employment under State law; however, employment may not include activity that is unlawful under Federal, State, or local law.

(2) Work involving wages plus commission or piece work may be considered qualifying employment for the purpose of establishing RTAA eligibility, if it otherwise meets the criteria in paragraph (e)(1) of this section.

(3) For purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section, employment may include one or more jobs unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the AAW is employed provides otherwise.

(4) A State must count hours in which an AAW is on employer-authorized leave as hours of work for purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the worker is employed provides otherwise.

**§ 618.510 Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.**

(a) *Adversely affected worker who has not received TRA.* (1) In the case of an AAW who has not received TRA, the worker may receive benefits as described in § 618.520(a) for a period not to exceed 104 weeks beginning on the earlier of:

(i) The date on which the worker exhausts all rights to UI based on the

separation of the worker from the adversely affected employment that is the basis of the certification; or

(ii) The date on which the worker first begins qualifying reemployment as described in § 618.505(e).

(2) Where a worker has more than one separation from adversely affected employment, the relevant separation for determining the date on which the “worker exhausts all rights to UI” referenced in paragraph (a)(1)(i) of this section is the worker’s last separation from adversely affected employment that qualifies the worker as an AAW. The Department uses the last separation because that separation is the one that triggers the worker’s application for RTAA. Accordingly, the State must determine the worker’s last separation for lack of work from adversely affected employment before the RTAA application. This principle applies only to the determination of the eligibility period and does not apply to the calculation of RTAA payments, where wages at separation are defined as the annualized hourly rate at the time of the most recent separation, as explained in § 618.520(a).

(b) *Adversely affected worker who has received TRA.* In the case of an AAW who has received TRA, the worker may also receive RTAA benefits based on the same certification for a period of 104 weeks beginning on the date on which the worker first begins qualifying reemployment, reduced by the total number of weeks for which the worker received such TRA.

(c) *Applicable dates.* To make the RTAA determination, the State will need to know the applicable dates for the AAW: The date of reemployment and either the date the worker exhausted all rights to UI, or the dates the worker began and ended receipt of TRA before the date of reemployment. These dates must occur within the 104-week eligibility period identified in the Act.

(d) *Age of AAW when obtaining RTAA-qualifying employment.* An AAW may obtain employment before turning 50 years old and receive RTAA benefits after turning 50 years old, if the employment is determined to be RTAA-qualifying reemployment, as provided at § 618.505(e), and the RTAA eligibility period established after obtaining such employment has not expired when the individual turned 50 years old.

(e) *Exception to filing deadline and eligibility periods.* The filing deadline and eligibility periods in paragraphs (a) and (b) of this section do not apply where:

(1) A negative determination on a petition filed under subpart B of this part has been appealed to the USCIT;

(2) A certification of the worker group covered by that petition is later made; and

(3) The delay in the certification is not attributable to the petitioner or the AAW.

(f) *Reasonable accommodation of filing deadline and eligibility periods.* In the event the filing deadline and eligibility periods in paragraphs (a) and (b) of this section do not apply because the certification meets the conditions in paragraph (e) of this section, the filing deadline and eligibility periods for RTAA will be extended by the State for the period necessary to make RTAA reasonably available to AAWs.

**§ 618.515 Continuing eligibility and timing of payments.**

(a) *Continuing eligibility for RTAA.* (1) Changing jobs during reemployment does not disqualify an otherwise eligible AAW from receiving subsequent RTAA payments for the remainder of the 104-week (2-year) eligibility period if the new reemployment meets the requirements of § 618.505.

(2) An AAW already receiving RTAA payments who has a period of unemployment will not be eligible to receive RTAA for that period. Upon reemployment, the AAW must notify the State. If the new reemployment meets the requirements of § 618.505 and the worker meets all other eligibility requirements in this part, the AAW will be eligible to receive RTAA in accordance with the requirements of this section for the remaining portion of the 104-week (2-year) eligibility period.

(3) If during a year during the 2-year eligibility period an AAW’s cumulative wages exceed, or are projected to exceed, \$50,000, the AAW will no longer be eligible to receive additional RTAA payments within that year. The AAW will be eligible for RTAA benefits in the next year and RTAA payments will resume until wages exceed, or are projected to exceed, \$50,000, or until the \$10,000 benefit limit is reached.

(4) If the worker is employed part-time (at least 20 hours per week) and receiving RTAA while in TAA approved training, the State must verify participation in training on a monthly basis. Verification of participation in TAA approved training will be conducted in accordance with State policies. States may use training benchmarks, described at § 618.660, as a method of verification of participation.

(b) *Timing of RTAA payments.* The State must make RTAA payments on a regular basis, either weekly, biweekly,

or monthly, for no more than a 104-week (2-year) period for an AAW under any one certification, beginning no earlier than the first day of reemployment that satisfies the requirements of § 618.505. An AAW may receive retroactive payments, in a lump sum, for payments for which the AAW was eligible, but for which the AAW had not yet applied.

(c) *Periodic verification of employment and reemployment wages.* No less than once a month, the State must review whether an AAW receiving RTAA payments continues to meet the eligibility requirements of § 618.505 and determine whether changes have occurred in the AAW’s reemployment wages, as described in § 618.520(a).

(d) *Change in reemployment wages.*

The State must recompute the appropriate amount of the RTAA payments if, during its review under paragraph (c) of this section, it determines that an AAW’s reemployment wages have changed.

(1) If reemployment wages exceed, or are projected to exceed, \$50,000 in a year during the eligibility period, then the State must immediately issue a determination that the AAW is ineligible for further RTAA payments, notify the AAW of this determination, and cease such RTAA payments.

(2) If reemployment wages change but do not exceed \$50,000 in a year during the eligibility period then the RTAA payment must be recomputed every time such a change in reemployment wages occurs. The State must then continue periodic verification in accordance with paragraph (c) of this section, or recommence periodic verification if RTAA payments resume in the second year after such scenario as described in paragraph (a)(3) of this section occurs.

**§ 618.520 Benefits available to eligible adversely affected workers.**

(a) *Payment.* A RTAA-eligible AAW may receive a maximum of \$10,000 over a period of not more than 104 weeks (2 years). If the AAW received TRA, each week of TRA received reduces the total weeks of RTAA available by 1 week and reduces the total RTAA payment amount available in proportion to the reduction in the number of total weeks.

(1) *Total amount of benefits.* RTAA supplements a worker’s wages for up to 104 weeks (2 years) (reduced by the number of weeks of TRA received) or \$10,000 (reduced in proportion to the reduction in the number of total weeks of TRA received), whichever occurs first, by an amount equal to the annualized wage differential as computed under paragraph (a)(2) of this

section for an AAW employed full-time or paragraph (a)(3) of this section for an AAW employed less than full-time.

(2) *Annualized wage differential for initial eligibility of an AAW employed full-time.* This amount is equal to 50 percent of: The AAW's annualized separation wages (as computed under paragraph (a)(2)(i) of this section) minus the amount of the AAW's annualized reemployment wages (as computed under paragraph (a)(2)(ii) of this section).

(i) Annualized separation wages are the product of the AAW's hourly rate during the last full week of the AAW's regular schedule in adversely affected employment, multiplied by the number of hours the AAW worked during the last full week of such employment, multiplied by 52. The computation of annualized wages at separation excludes employer-paid health insurance premiums and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay. [(hourly rate  $\times$  hours worked)  $\times$  52]

(ii) Annualized reemployment wages are the product of the AAW's hourly rate during the first full week of reemployment, multiplied by the number of hours the AAW worked during the first full week of such reemployment, multiplied by 52 [(hourly rate  $\times$  hours worked)  $\times$  52]. If the AAW's wages from reemployment change during the eligibility period, then the State must recompute the AAW's annualized wages from reemployment at the new hourly wage and must likewise recompute the appropriate RTAA payment as required by § 618.515(d). The computation of annualized wages from reemployment excludes employer-paid health insurance premiums and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay.

(3) *Annualized wage differential for initial eligibility of an AAW employed less than full-time.* This amount, for an AAW employed at least 20 hours per week and enrolled in TAA approved training, is the annualized wages as computed under paragraph (a)(2) of this section multiplied by the ratio of the AAW's number of weekly hours of reemployment to the AAW's number of weekly hours of employment at the time of separation, but in no case more than 50 percent.

(4) *Adjustment to total amount of RTAA benefits for AAWs who received TRA.* A State must adjust of the maximum RTAA benefit for an RTAA-

eligible AAW who has received TRA. The RTAA-eligible AAW may receive up to the adjusted RTAA benefit as described in this section within the eligibility period as provided in § 618.510(b). RTAA eligibility is terminated once the AAW reaches either the number of weeks permitted pursuant to § 618.510 or the adjusted RTAA benefit. The adjusted RTAA benefit is calculated by subtracting the number of TRA paid weeks from the 104-week RTAA eligibility period to determine the percentage of reduced weeks that payments may be made. The maximum payable benefit of \$10,000 is then reduced by the same percentage. Once the reduction in RTAA payable weeks and the reduction in the RTAA total payable are reduced by the same percentage, they become the new maximum number of payable weeks and maximum payable benefit.

(b) *Training and related services.* Recipients of RTAA are eligible to receive training approved under subpart F of this part and employment and case management services under subpart C of this part.

(c) *Job search and relocation allowances.* Recipients of RTAA are eligible to receive job search and relocation allowances under subpart D of this part, subject to the eligibility requirements and rules of subpart D.

(d) *HCTC.* Recipients of RTAA are eligible to apply for or claim the HCTC, if available.

(e) *TRA.* Once an AAW has received a payment under RTAA, the AAW is no longer eligible for TRA under the same petition. Receipt of TRA prior to RTAA will result in a reduction of RTAA benefits as described at paragraph (a)(4) of this section.

#### **§ 618.525 Determinations, redeterminations, and appeals.**

(a) *Determinations, redeterminations, and appeals.* States must apply the requirements of §§ 618.820 (determinations of eligibility; notices to individuals) and 618.828 (appeals and hearings), respectively, to all determinations, redeterminations, and appeals under this subpart.

(1) Before issuing a determination or redetermination, the State must verify and document the AAW's age, reemployment, and wages in determining whether the worker has met eligibility requirements of § 618.505(a).

(2) A determination of eligibility issued to an AAW must include a notice that the benefit amount will be regularly recomputed (as required by § 618.515(d)) and will change if the

eligible AAW's reemployment wages change.

(3) An AAW denied individual eligibility based on nonqualifying reemployment may file a new application for a subsequent reemployment.

(4) A State may approve an RTAA payment retroactively if an AAW becomes reemployed before the Department issues a certification under subpart B of this part, provided that the AAW otherwise meets the eligibility requirements of § 618.505(a).

(b) *Recordkeeping requirements.* The recordkeeping and disclosure of information requirements of § 618.852 apply to the State's administration of RTAA.

#### **§ 618.530 Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.**

(a) *Ordered child support payments.* State laws regarding deductions of payments from UI, TRA, and RTAA must comply with the Social Security Act (SSA). SSA section 303(e)(1) defines child support obligations as only including obligations which are being enforced pursuant to a plan described in section 454 of SSA which has been approved by the Secretary of Health and Human Services under part D of title IV of SSA. SSA does not otherwise permit deductions for alimony or for child support.

(b) *Priority of UI payments.* RTAA does not fit into priority of payments under UI because RTAA is related to employment, not unemployment. UI and RTAA are two separate programs that operate independently of one another.

#### **Subpart F—Training Services**

##### **§ 618.600 Scope.**

This subpart sets forth the conditions and procedures under which a trade-affected worker may apply for and receive training to help secure reemployment. Training provided under this subpart must, at a reasonable cost and as quickly as possible, assist a trade-affected worker in obtaining the necessary skills to have a reasonable expectation of reemployment. All else being equal, States should prefer training that replaces 100 percent or more of a trade-affected worker's wages in adversely affected employment or that qualifies as suitable employment.

##### **§ 618.605 General procedures.**

(a) *Assessments.* The State must ensure and document that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment is made

available, as described in subpart C of this part. If a worker refused to take an assessment, the information necessary to determine eligibility for training must be documented. If a trade-affected worker has an IEP, the assessment results must support the training program set out in the worker's IEP, as described in subpart C of this part, before an application for training is approved. As with assessments, if a worker refused to develop an IEP, the information necessary to determine eligibility for training must be documented.

(b) *Applications.* Applications for training, including requests for TAA Program-funded transportation and subsistence payments, must be made to the State in accordance with any policies and procedures established by the State.

(c) *Determinations.* Decisions on selection for, approval of, or referral of a trade-affected worker to training, including whether to provide TAA Program-funded transportation and subsistence payments, under this subpart, or a decision with respect to any specific training or nonselection, nonapproval, or nonreferral for any reason is a determination to which §§ 618.820 (determinations of eligibility; notices to individuals), 618.824 (liable State and agent State responsibilities), and 618.828 (appeals and hearings) apply.

(d) *Training opportunities.* (1) The State must explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find alternatives when local training resources cannot adequately train trade-affected workers for reemployment. Training resources may be inadequate when they cannot train workers quickly, or at a reasonable cost, or equip workers with skills that meet the demands of the job market.

(2) When available training is inadequate, TAA Program funds may be used to create customized, group training opportunities in response to a particular dislocation event. Funds may be used for trainings that provide intensive remedial education classes, English language training, or contextualized occupational training, which combines academic and occupational training. These group trainings must adhere to the principles described in § 618.600.

(3) States are required to coordinate with other public and private agencies, in cooperation with local workforce development boards (LWDBs) established under WIOA, to ensure a

wide-range of training opportunities are available to trade-affected workers in demand occupations.

(e) *Timing of application and approval of training.* A trade-affected worker may apply for training and a State may approve training at any time after the certification date on which his or her worker group is certified under subpart B of this part, without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

#### § 618.610 Criteria for approval of training.

The State must consult the trade-affected worker's assessment results and IEP, if available, as described respectively under §§ 618.345 and 618.350, before approving an application for training. Training must be approved for a trade-affected worker if the State determines that all of the criteria in paragraphs (a) through (f) of this section are met:

(a) *Criterion 1.* There is no suitable employment available for the trade-affected worker.

(1) There is no suitable employment available for a trade-affected worker in either the commuting area or another area outside the commuting area to which the worker intends to relocate, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future.

(2) If a training program, or an application for training, is denied under paragraph (a)(1) of this section, the State must document the availability of suitable employment through traditional and real-time labor market information including, but not limited to, projections data, job postings, and job vacancy surveys.

(b) *Criterion 2.* The trade-affected worker would benefit from appropriate training.

(1) The worker would benefit from appropriate training when training, skills training, or remedial education would increase the likelihood of obtaining employment. Appropriate training should improve the worker's chances of obtaining employment at higher wages than in the absence of training or place the worker on a pathway to do so.

(2) The worker must have the knowledge, skills, and abilities to undertake, make satisfactory progress in, and complete the training program.

(c) *Criterion 3.* There is a reasonable expectation of employment following completion of such training. Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable

expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(1) "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 program. When initially approving such training, there must be a projection, based on labor market information, of employment opportunities expected to exist at the time of completion of the training program.

(2) The State must measure expected job market conditions using pertinent labor market data, including but not limited to job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. This labor market information should be documented in the trade-affected worker's case file. The State should also work with the LWDBs and their one-stop partners, especially business team members, to understand current labor market conditions and opportunities for work-based learning.

(3) When a worker desires to relocate within the United States, but outside the worker's present commuting area, upon completion of training, the State must document the labor market information, described in paragraph (c)(2) of this section, for the area of the planned relocation.

(4) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in an area to which the worker desires to relocate. A limited demand for such an occupation does not preclude the approval of training in an occupation where the State has determined that there is a reasonable expectation that the worker can secure employment in that occupation. States must verify with businesses in the commuting area or in the area of intended relocation that demand exists for an individual with such training. These efforts must be documented in the trade-affected workers case file. Before approving training in occupations with limited demand, the State must consider the number of individuals currently enrolled in training that are likely to meet that

demand before enrolling additional workers in training for that occupation.

(5) A State may approve a training program in an occupation if it finds that there is a reasonable expectation that the training will lead to self-employment in the occupation for which the worker requests training and that such self-employment will provide the worker with wages or earnings at or near the worker's wages in adversely affected employment.

(6) Training programs that consist solely of OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with section 236(c)(1)(B)(i) of the Act.

(d) *Criterion 4.* Training is reasonably available to the trade-affected worker. In determining whether training is reasonably available, States must first consider training opportunities available within the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the training program must be available at a reasonable cost as prescribed in paragraph (f) of this section.

(e) *Criterion 5.* The trade-affected worker is qualified to undertake and complete such training. States must ensure the following:

(1) The worker's knowledge, skills, abilities, educational background, work experience, and financial resources are adequate to undertake and complete the specific training program being considered.

(2) Any initial assessment, comprehensive and specialized assessment, and IEP developed under subpart C of this part must be consulted to support the trade-affected worker's ability to undertake and complete the training program.

(3) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d). In making this determination, the State must consider:

(i) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed training program;

(ii) Other sources of income support available to the worker, including severance, earnings of other family members, and other family resources;

(iii) Other fixed financial obligations and expenses of the worker and family;

(iv) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance including, but not limited to, nongovernmental scholarships, awards, or grants; and

(v) Whether or not the worker is employed while attending training.

(4) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the training program that exceeds the duration of UI and TRA payments.

(5) If a worker has insufficient financial resources to complete the worker's proposed training program that exceeds the duration of UI and TRA payments, then the State must not approve that training program and must instead consider other training opportunities available to the worker.

(f) *Criterion 6.* Such training is suitable for the trade-affected worker and available at a reasonable cost.

(1) *Suitable for the worker.* The training program being considered must address the criteria set out in paragraphs (e)(1) and (2) of this section and be determined by the State to be appropriate given the worker's knowledge, skills and abilities, background, and experience relative to the worker's employment goal, and criteria set out in paragraph (c) of this section.

(2) *Available at a reasonable cost.* (i) Costs of a training program may include, but are not limited to, tuition and related expenses (e.g., books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the approved training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(A) The State must ensure and document that the training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(B) Related expenses must be necessary for the worker to complete the training program. Other options should be explored before purchasing equipment or related materials.

(ii) Available at a reasonable cost means that training must not be approved at one provider when, all

costs being considered, training better or substantially similar in quality, content, and results can be obtained from another provider at a lower total cost within a similar time frame. Training must 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. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(iii) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (f)(2)(ii) of this section applies.

(iv) Approval of training under paragraph (f) of this section (Criterion 6) is also subject to the provisions of § 618.650.

#### **§ 618.615 Limitations on training approval.**

(a) *One training program per certification.* (1) Except as provided under paragraph (d)(4) of this section, no trade-affected worker may receive more than one approved training program under a single certification.

(2) A training program may be amended, as needed, in compliance with § 618.665.

(3) A training program may consist of multiple forms of training, including any or all of the types of training identified in § 618.620, subject to any restrictions or eligibility requirements that may exist.

(b) *Full-time or part-time training.* A State may approve a training program on a full-time or part-time basis. A trade-affected worker's approved training program may consist of either part-time or full-time training, or a combination of both. A worker may switch from part-time to full-time training or from full-time to part-time training during the period of the worker's participation in the program. The training program must be amended each time this occurs, in accordance with § 618.665.

(1) *Full-time.* Full-time training means that the training is in accordance with the definition of *full-time training* provided in § 618.110.

(2) *Part-time.* (i) A State may approve part-time training. Part-time training is any training program that is not full-

time in accordance with the established standards of the training provider. The maximum duration for approved training provided in paragraph (d)(3)(i) of this section also applies to part-time training.

(ii) A worker enrolled in part-time training is not eligible for TRA under subpart G of this part, including a worker who ceases full-time training to engage in part-time training. The training approval requirements found in this section also apply to part-time training.

(iii) A worker may participate in part-time training while employed in either part-time or full-time employment.

(iv) The State must clearly inform the worker, before the worker chooses part-time training, that TRA is not available to workers in approved part-time training and that the worker may lose eligibility for the HCTC, if available, while engaged in part-time training.

(v) As provided in § 618.780(b)(1)(i), a worker may not be determined to be ineligible or disqualified for UI, because the worker is enrolled in training approved under § 618.610, including part-time training.

(vi) As further described at § 618.780(b)(1)(ii), State or Federal UI statutes relating to the able, available, or active work search requirements as well as refusal to accept work will not disqualify a worker for UI or other program benefits, during any week of training approved under § 618.610, including part-time training.

(c) *Previous approval of training under other law.* When a TAA Program petition has been filed by or on behalf of a group of workers but a determination of group eligibility has not been made, training may be approved for a worker under another State or Federal law or other authority. Training approved for a worker under another State or Federal law or other authority is not training approved under § 618.610. After eligibility has been determined, any such training may be approved under § 618.610 (criteria for approval of training), if it meets all of the requirements and limitations of § 618.610 and the other provisions of this subpart. Such approval must not be retroactive for any of the purposes of this part, including payment of the costs of the training and payment of TRA to the trade-affected worker participating in the training, except in the case of a redetermination or decision reversing a training denial as addressed in § 618.828(d), in which case the approval must be retroactive to the date of that denial. Systems must be in place to accommodate a change in funding seamlessly, as appropriate, after TAA

Program training program approval is obtained. The cost of training must shift to the TAA Program at the next logical break in training—such as the end of a semester—for workers who become eligible for the TAA Program and whose training is approved under the TAA Program. Training approved under other programs may be amended by the TAA Program to allow a worker additional training in order to meet additional retraining needs identified in the worker's IEP.

(d) *Length of training.* The State, in determining whether to approve a training program, must determine the appropriateness of the length of training, as follows:

(1) *Time necessary to achieve desired skill level.* The training must be of suitable duration to achieve the desired skill level in the shortest possible time, and not in excess of, the limits established in paragraph (d)(3) of this section.

(2) *Factors.* Factors that may impact the length of training include, but are not limited to, the trade-affected worker's employment status (full- or part-time) under § 618.630 (Training of reemployed trade-affected workers), the need for supportive services from partner programs, and breaks in training due to class schedules and availability.

(3) *Duration.* (i) Except as otherwise provided for OJT, apprenticeship, and the exception provided in paragraph (d)(4) of this section, the maximum duration for approvable training under the TAA Program is 130 weeks.

(ii) Only weeks spent in actual training are counted. Scheduled breaks in training, as provided in § 618.760, are not counted.

(iii) If a training program satisfies the duration requirement of paragraph (d)(3)(i) of this section but will extend beyond the period during which TRA is available, the State must determine, under § 618.610(e)(3) (criteria for approval of training), whether the worker has sufficient personal resources (*i.e.*, funds for the worker's living expenses) to support himself or herself while completing the training, while not requiring the worker to obtain such funds as a condition of training approval. The worker must attest to the State that he or she has sufficient resources to sustain himself or herself while in training.

(4) *Exception for certain workers who perform a period of duty in the Uniformed Services.* A member of one of the reserve components of the U.S. Armed Forces who serves a period of duty will have the period for training, under paragraph (a)(3) of this section, suspended upon being called up to

duty, provided the requirements specified in paragraphs (a)(4)(i) through (iii) of this section are met. Any such reserve component member may either resume training upon discharge from active service for the training period that remained at the time the reservist left the training program to report for active duty, or be allowed to repeat portions of the training if doing so is necessary for completion of the approved training program or, where appropriate, begin a new approved training program. Where the reservist repeats a training program or begins a new training program, the reservist will be entitled to a new 130-week period to complete approved training. To be eligible to resume, repeat, or begin a new approved training program, the reservist must meet the following requirements:

(i) Before completing training under this subpart, the worker has given prior oral or written notice of the active duty service to the State, unless providing such notice is precluded by military necessity or is otherwise impossible or unreasonable.

(ii) The returning service member must apply to the State for training within 90 days following release from active duty service.

(iii) For purposes of the exception in this paragraph (d)(4), period of duty means:

(A) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(e) *Training outside the United States.* A trade-affected worker must not be approved for training under this subpart for any training that is conducted totally or partially at a location outside the United States or if the worker is physically located outside the United States while participating in training. For distance training, this means both the provider and participant must be located within the United States.

#### § 618.620 Selection of training program.

(a) *Standards and procedures for selection of training.* The State must document the standards and procedures used to select training providers and training(s) in which the training

program under this subpart will be approved.

(1) In determining the types of training to be approved and provided under the standards, the State should consult with partner agencies, including State partner agencies (e.g., State apprenticeship agencies or Federal Offices of Apprenticeship located in the States), WIOA one-stop partners, local employers, appropriate labor organizations, local educational organizations, the LWDB, State and local apprenticeship programs, local advisory councils established under the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224 (2018), as codified at 20 U.S.C. 2301 *et seq.*), and postsecondary institutions.

(2)(i) States may choose an eligible training provider (ETP) established under WIOA section 122 without establishing additional standards or procedures under the TAA Program.

(ii) As provided in section 236 of the Act, States must not limit training approved under this section to only programs on the ETP list under title I of WIOA.

(b) *Training types.* Eligible trade-affected workers must be provided training using either one, or a combination of, the following methods:

(1) Work-based training, such as apprenticeships, OJT, or customized training, may be approved for AAIs. Customized training with the worker's current employer may only be approved for AAIs if the training is for a position other than the AAIs's threatened position. See § 618.655(c)(2). AAIs must not be approved for OJTs. See § 618.655(c)(1). The State must inform the worker of the potential negative effects of work-based training on TRA and the HCTC, if available; or

(2) Institutional training, including training at public area career and technical education schools, as well as community colleges, may be approved alone or in combination with work-based training. This also includes distance learning, including online training, where a worker may complete all or part of an educational or vocational program in a geographical location apart from the institution hosting the training program, and where the final certificate or degree conferred is equivalent in standard of achievement and content to the same program completed on campus or at another institutional training location.

(i) A provider of the distance learning must be based in the United States for training provided to be approved. In addition, the worker must be physically within the United States when

participating in distance learning to remain eligible for benefits under the Act.

(ii) Distance learning is subject to all training approval criteria described in this subpart.

(iii) The State must establish and monitor the milestones of a distance-learning program based on the worker's IEP, as described in subpart C of this part, if available.

(iv) A worker who does not meet the requirements or milestones of a distance-learning program may be determined to have ceased participation in training, as described in § 618.780(b)(3)(ii).

(3) Higher education includes any training or coursework at an accredited institution, as described in section 102 of the Higher Education Act of 1965, as amended (20 U.S.C. 1002), including training or coursework for the purpose of obtaining a degree or certification, or for completing a degree or certification that the worker had begun previously at an accredited institution of higher education. Higher education may be approved alone or in combination with work-based training. The distance learning requirements in paragraph (b)(2) of this section also apply to this paragraph (b)(3).

(c) *Other training.* In addition to the training programs discussed in paragraph (b) of this section, training programs that may be approved under § 618.610 (criteria for approval of training) include, but are not limited to:

(1)(i) Any program of remedial education, including ABE courses and other remedial education courses, ELA courses, and HSE preparation courses.

(ii) Remedial education may occur before, or while participating in, the requested training program;

(2) Career and technical education;

(3) Any training program approvable under § 618.610 for which all, or any portion, of the costs of training the trade-affected worker are paid:

(i) Under any other Federal or State program other than the TAA Program; or

(ii) From any source other than this part;

(4) Any training program provided by a State pursuant to title I of WIOA or any training program approved by an LWDB established under section 102 of WIOA;

(5) Any program of prerequisite education or coursework required by a training provider before advancing to further training; or

(6) Any other training program approved by the State that complies with this subpart.

(d) *Advanced degrees.* Training programs that will lead to an advanced

degree may be approved; however, the time limits described at § 618.615(d)(3) must be met. States may not restrict access to advanced degrees where the other criteria of this subpart are met. All training programs must be evaluated on their individual merit.

**§ 618.625 Payment restrictions for training programs.**

(a) *Funding of training programs.* The costs of a training program approved under the Act may be paid:

(1) Solely from TAA Program funds;

(2) Solely from other public or private funds; or

(3) Partly from TAA Program funds and partly from other public or private funds.

(b) *No duplication of costs allowed.*

(1) Any use of TAA Program funds to duplicate the payment of training costs by another source is prohibited.

(2) When the payment of the costs of training has already been made under any other Federal law, or the costs are reimbursable under any other Federal law and a portion of the costs has already been paid under other such Federal law, payment of such training costs may not be made from TAA Program funds.

(3) When the direct costs of a training program approvable under § 618.610 (criteria for approval of training) are payable from TAA Program funds and are also wholly or partially payable from any other source, the State must establish procedures to ensure TAA Program funds will not duplicate funds available from the other source(s). This preclusion of duplication does not prohibit and should not discourage sharing of costs under prearrangements authorized under paragraph (c)(2) of this section.

(c) *Cost sharing permitted.* (1) TAA Program funds are the primary source of Federal assistance to trade-affected workers, as identified in § 618.804(h)(4). If the costs of training a trade-affected worker can be paid under the TAA Program, no other payment for such costs may be made under any other provision of Federal law.

(2) States may share training costs with authorities administering other non-Federal, State, and private funding sources. Sharing training costs with other Federal sources may only occur if TAA Program funds are not available to cover the total cost of training, as described in paragraph (d)(2)(ii) of this section.

(3) Sharing the future costs of training is authorized where prior costs were paid from another source, but this paragraph (c)(3) does not authorize reimbursement from TAA Program

funds of any training costs that were accrued before the date the training program was approved under the TAA Program.

(4) When a mix of TAA Program funds and other funds are used for paying the costs of a training program approved under this subpart, the State must enter into a prearrangement with any entity providing the other source of funds. Any such prearrangement must contain specific commitments from the other authorities to pay the costs they agree to assume and must comply with the nonduplication provisions contained in this part.

(i) Agreements may be entered into on a case-by-case basis to address specific training situations of workers or they may be part of an overall statewide strategy to effectively use and maximize available resources from the TAA Program, workforce development, and other programs.

(ii) Where training costs are shared between the TAA Program and any other funding source, the State must enter into a prearrangement with the other funding source to agree upon the proportion of TAA Program funds and other funds to be used to pay the costs of a training program. A prearrangement must be a specific, binding agreement with the other source(s) to pay the costs they agree to assume, and must be entered into before any TAA Program funds are obligated. If, after TAA Program funds are already committed to a training program, other funds become available to pay for that training, the State may decide to share the costs of the remainder of training program or the State may continue funding the training program in full using TAA Program funds. If the State decides to share the costs, it must enter into a prearrangement with respect to the newly available funds. If the State makes a change to how the training program will be funded going forward, the existing training program must be amended in accordance with § 618.665.

(iii) Before approving any training program under this subpart, which may involve the sharing of training costs under the authority of paragraph (a)(3) of this section, the State must require the worker to enter into a written agreement with the State, under which TAA Program funds will not be applied for or used to pay any portion of the costs of the training the worker has reason to believe will be paid by any other source.

(5)(i) A State may not take into account Federal student financial assistance, including Pell Grants, or any funds provided under any other provision of Federal law that are used

for purposes other than the direct payment of training costs, even though they may have the effect of indirectly paying all or a portion of the training costs.

(ii) States must ensure that upon the approval of a training program under this subpart, payments of Federal student financial assistance cease to be applied to the training participant's tuition or other training-related costs covered by TAA Program funds.

(iii) If payments of Federal student financial assistance or other training allowances from other Federal funding sources were made to the training provider instead of the worker and were applied towards the worker's approved training costs, the State must deduct the amount of those other payments from the amount of TAA Program funds payable to the training provider in order to prevent duplication in the payment of training costs.

(iv) A worker may use Federal student financial assistance for other expenses, as allowable under applicable rules for such financial assistance.

(6) If the worker's trade-affected firm agrees to fund all or a portion of the worker's training costs, the State must, if the training is otherwise approvable, enter into a prearrangement with the firm to assume any unfunded training costs on the worker's behalf.

(d) *No training fees or costs to be paid by trade-affected worker from TAA Program funds.* (1) A training program must not be approved if the trade-affected worker is required to reimburse any portion of the costs of such training program from TAA Program funds, or from wages paid under such training program.

(2)(i) A training program must not be approved if the trade-affected worker is required to pay any of the costs of the training program from funds belonging to the worker, including funds from relatives or friends, or from personal or educational loans that will require repayment.

(ii) As required by § 618.940, if the Department determines that the amount of funds necessary to provide Training and Other Activities (TaOA) will exceed the annual cap under § 618.900 in a fiscal year, the Department will promptly inform the States. If a State estimates that it will exceed all available TAA Program training funds (including TaOA funds remaining from current or prior fiscal years) then the State must seek funding from other sources (other than from trade-affected workers), including WIOA national dislocated worker grants under part 687 of this chapter to cover the costs of training approved under § 618.610. To the extent

that a State is unable to fund training costs from those other sources, the agency may approve training where the worker pays those unfunded costs. Where the worker chooses to pay those unfunded costs under this paragraph (d)(2)(ii), the State is not liable for paying those costs and must document this prearrangement in the worker's case file. Where the worker chooses not to pay the unfunded costs, the State must waive the training requirement in § 618.720(g) on the basis that training is not available, in order to preserve any remaining Basic TRA eligibility under § 618.735(b)(3) (waiver of training requirement for Basic TRA).

#### **§ 618.630 Training of reemployed trade-affected workers.**

(a) An AAW who obtains new employment and who has been approved for a training program may elect to terminate the employment, reduce the hours worked in the employment, or continue in full- or part-time employment. Such a worker is not subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment. A worker who continues such full- or part-time employment while a participant in training is considered to be in training under § 618.780(b) (disqualifications). If the worker continues in full- or part-time employment while a participant in an approved training program, the State must inform the worker in writing that such employment may have negative effects on UI and TRA benefit amounts and duration due to income earned from the employment (and also because a worker participating in part-time training is not eligible for TRA), which could also lead to the loss of the HCTC, if available. The State must apply the earnings disregard provisions in subpart G of this part, as appropriate.

(b) An AAW who has been totally separated as described in paragraph (a) of this section may also be eligible for job search and relocation allowances under subpart D of this part.

#### **§ 618.635 Work-based training.**

(a) *OJT—(1) Description.* OJT is work-based training provided under contract with an employer in the public, nonprofit, or private sector to an AAW who is employed by the employer. OJT may be approved if the worker meets the requirements under §§ 618.610, 618.615, and 618.665. The State must determine that the OJT in question:

(i) Can reasonably be expected to lead to suitable employment with the employer offering the OJT;

(ii) Is compatible with the skills of the worker;

(iii) Includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) Can be measured by standards or targets that indicate the worker is gaining such knowledge or skills.

(2) *Related education.* Related skills training provided as part of the OJT contract and sponsored by the employer may be provided in conjunction with the OJT. Such training may be provided at the employment site, or at educational institutions, or other locations. TAA Program funds can be used to pay the OJT participant's expenses associated with the educational or instructional component (e.g., classroom and distance learning, tools, uniforms, equipment, and books) for an AAW's participation in an OJT program.

(3) *Duration.* The OJT contract with the employer must specify the duration of the OJT. The duration of the OJT must be appropriate to the occupational goal for which the AAW is being trained, taking into consideration the skills requirements of the job for which the AAW is being trained, the academic and occupational skill level of the AAW, and the work experience of the AAW, as documented in the worker's IEP, if available. The duration of the training must be long enough for the worker to become sufficiently proficient in the occupation for which the training is being provided to enable the worker to perform as well as workers in comparable positions within the firm. The OJT:

(i) Must not exceed the specific vocational preparation required for the occupation, as listed on O\*NET ([www.onetonline.org](http://www.onetonline.org)); and

(ii) Must not exceed 104 weeks in any case.

(4) *Exclusion of certain employers.* The State may not enter into a contract for OJT with an employer that exhibits a pattern of failing to provide workers receiving OJT from the employer with:

(i) Continued long-term employment as regular employees; and

(ii) Wages, benefits, and working conditions that are equivalent to the wages, benefits and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving the OJT from the employer.

(5) *Reimbursement.* (i) Pursuant to the OJT contract, the employer is provided reimbursement of not more than 50 percent of the wage rate of the OJT

participant, for the costs of providing the training and additional supervision related to the training.

(ii) The reimbursement for OJT must be limited to the duration of approved training as specified in the OJT contract.

(6) *Approval of the costs of OJT.* OJT costs for an AAW may be approved by a State only if a determination is made that:

(i) No currently employed individual is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the AAW;

(ii) Such training does not impair existing contracts for services or collective bargaining agreements;

(iii) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(iv) No other individual is on layoff from the same or any substantially equivalent job for which the AAW is being trained;

(v) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy by hiring the AAW;

(vi) The job for which the AAW is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(vii) The training is not for the same occupation from which the AAW was separated with respect to which the AAW's worker group is covered under a certification rendered under subpart B of this part;

(viii) The employer has not received payment under the TAA Program or under any other Federal law for any other OJT provided by such employer that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(ix) The employer has not taken, at any time, any action that violated the terms of this section with respect to any other OJT provided by the employer for which the State has made a payment under the TAA Program.

(7) *Payment of the costs of OJT.* The costs of OJT that are paid from TAA Program funds must be paid in monthly installments.

(8) *TRA eligibility during OJT.* Under § 618.780(c), an AAW may not be paid TRA for any week during which the worker is in OJT and, therefore, may be ineligible for the HCTC, if available.

(9) *RTAA eligibility during OJT.*

Participants enrolled in OJT may be eligible for RTAA. All the requirements at subpart E of this part must be met.

(10) *Use of WIOA funds for OJT.* TAA Program funds may be leveraged with WIOA funds to provide a reimbursement rate equal to that allowable under WIOA. See WIOA section 134(c)(3)(H) (29 U.S.C. 3174(b)(3)(H)).

(11) *No OJT for AAIs.* The State must not approve OJT for AAIs.

(b) *Customized training.* (1) Customized training is designed to meet the special requirements of a single employer or a group of employers. The training may be conducted by a training provider, a single employer, or group of employers.

(2) Customized training must be conducted with a commitment by the employer or group of employers to employ an AAW upon successful completion of the training. For purposes of customized training, a commitment by the employer(s) to employ a worker upon successful completion of the training, as required by section 236(f)(2) of the Act, means that the employer(s) must enter into an agreement with the State that describes the conditions that must be met for successful completion of the training and the expectation of employment after the training is completed.

(3) The employer must pay at least 50 percent for the cost of the training.

(4) For AAIs, approval is limited to customized training for a position other than their current position in adversely affected employment. See § 618.655(c)(2).

(c) *Apprenticeship.* Apprenticeship includes registered apprenticeships under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*), as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of a recognized postsecondary credential, which includes an industry-recognized credential.

(1) *Duration.* Apprenticeships are not subject to the 104-week statutory duration of OJT training limit. The length of the paid work-based learning component must not exceed 130 weeks. However, the length of the educational or instructional training component of the apprenticeship may exceed 130 weeks and continue through the scheduled completion of that specific apprenticeship training.

(2) *Eligible apprenticeship expenses.* TAA Program funds can be used to pay for:

(i) The expenses associated with the educational or instructional component (e.g., classroom and distance learning, tools, uniforms, equipment, and books) for the apprentice; and

(ii) The employer may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the training and additional supervision related to the work-based learning component provided by the employer.

(3) *Exclusion of certain employers.* The State may not enter into a contract for apprenticeship with an employer that exhibits a pattern of failing to provide apprentices with successful attainment of an industry-recognized credential or the apprenticeship completion certificate in the case of registered apprenticeship, as issued by the U.S. Department of Labor or State apprenticeship agency.

(4) *Approval of the costs of apprenticeship—(i) Registered apprenticeships under the National Apprenticeship Act.* Costs for an apprenticeship program may be approved by a State only if the requirements of the National Apprenticeship Act, 29 CFR parts 29 and 30, and Departmental administrative guidance are met.

(ii) *Other apprenticeships.* Costs for an apprenticeship program may be approved by a State only if a determination is made that:

(A) No currently employed worker is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the apprentice;

(B) Such training does not impair existing contracts for services or collective bargaining agreements;

(C) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(D) No other worker is on layoff from the same or any substantially equivalent job for which the apprentice is being trained;

(E) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring the apprentice;

(F) The job for which the apprentice is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed workers;

(G) The training is not for the same occupation as the apprentice's adversely affected employment;

(H) The employer has not received payment under the TAA Program or under any other Federal law for any other apprenticeship provided by such employer that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(I) The employer has not taken, at any time, any action that violated the terms of this section with respect to any other apprenticeship provided by the employer for which the State has made a payment under the TAA Program.

(5) *TRA and HCTC eligibility during apprenticeships.* Workers enrolled in an apprenticeship program, in most cases, will not be able to access TRA income support due to their income earned through wages, but the State must still make individual determinations on TRA benefits. This could also impact HCTC eligibility, if HCTC is available. States must advise workers considering this training option of these issues.

(6) *RTAA eligibility during apprenticeships.* AAWs age 50 or older enrolled in an apprenticeship program may be eligible for RTAA under subpart E of this part.

(7) *State contract with apprenticeship employer.* The State must enter into a contract with the employer that provides the terms and conditions of the apprenticeship.

#### **§ 618.640 Supplemental assistance.**

(a) *General.* Supplemental assistance in the form of subsistence and transportation payments must be provided to a trade-affected worker whose training program has been approved under § 618.610 (Criteria for approval of training), to defray reasonable subsistence and transportation expenses while the worker attends training at a facility outside the worker's commuting area. The need for such subsistence and transportation payments must be documented on the worker's IEP, if available, or in the worker's case file. Subsistence and transportation payments may also be documented on a training approval form, or other such form as the State chooses, to ensure that the supplemental assistance is documented in the worker's case file.

(b) *Applications for supplemental assistance.* A trade-affected worker must submit an application for subsistence or transportation payments in accordance with subpart H of this part and processes established by the State. A determination on an application submitted under this section is subject

to §§ 618.820 (determinations of eligibility; notices to individuals) and 618.828 (appeals and hearings).

(c) *Subsistence payments—(1)*

*General.* Subsistence payments must be made for the reasonable costs of meals and incidental expenses, and of separate maintenance, which means maintaining temporary living quarters, when the training facility is located outside the trade-affected worker's commuting area.

(2) *Requirements for subsistence payments.* (i) A trade-affected worker must be reimbursed for subsistence only for the period when the worker is not receiving or authorized to receive reimbursement or separate payments for such costs from any other source.

(ii) Subsistence payments must not be made for any day such worker receives a daily commuting transportation payment from TAA Program funds or from any other source, except as specified in paragraph (e) of this section.

(iii) Subsistence payments must not be made for any day of unexcused absence from the training program, as certified by the training provider.

(3) *Amount of subsistence payments.* The State may make a subsistence payment to a trade-affected worker only for the lesser of:

(i) The worker's actual per diem expenses for subsistence; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the FTR (see 41 CFR chapters 300 through 304) for the location of the training facility.

(4) *Timing of subsistence payments.* The State must make subsistence payments upon a worker's completion of a week of training, but may advance a subsistence payment for a week if the State determines that such advance is necessary to enable the worker to participate in the approved training.

(d) *Transportation payments.* A trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation expenses, funded by the TAA Program, are payable only for the actual days traveled. Mileage eligible for reimbursement is, round-trip, from the first mile outside the boundary of the worker's commuting area to the location of the training facility.

(1) Transportation payments must not be paid when:

(i) Transportation is arranged and paid for by the State for one or more workers;

(ii) Such payments are being provided under any other law; or

(iii) The worker is authorized to be paid or reimbursed for such expenses from any other source.

(2) The daily transportation payment may not exceed the amount of a daily subsistence payment that would be payable under paragraph (c)(3) of this section if the worker resided temporarily in the area of the training.

(3) In addition, while other forms of transportation may be used, transportation payments to a worker may not exceed the cost per mile at the prevailing personal vehicle mileage rate authorized under the FTR. See <http://www.gsa.gov>.

(4) A worker must receive transportation payments promptly after completion of a week of approved training, but at a minimum on a monthly basis. These payments also may be made in advance in order to facilitate the worker's attendance at the training.

(e) *When payment can be made for both subsistence and transportation.* A trade-affected worker receiving subsistence payments may also receive transportation payments only:

(1) At the beginning of the training that the worker is attending outside the worker's commuting area and at the end of the training for travel back to the worker's commuting area; or

(2) When the worker fails, for justifiable cause, as described in § 618.780(b)(3)(iii), to complete the training outside the worker's commuting area, and must return home before the scheduled end of the training.

(f) *Adjustments to subsistence and transportation payment advances.* If the State advances subsistence or transportation funds, the State must adjust subsequent subsistence and transportation payments to take into account the amount of the advance that is more or less than the amount that the trade-affected worker is entitled to receive under paragraphs (c) and (d) of this section.

(g) *Worker evidence.* The trade-affected worker must provide receipts for all lodging, purchased transportation expenses, and meals.

**§ 618.645 Voluntary withdrawal from a training program.**

(a)(1) The State must advise a trade-affected worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart H of this part, result in an overpayment.

(2) The State must advise a worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the

requirements in subpart G of this part, result in loss of eligibility for TRA.

(b) A trade-affected worker who qualifies for an exception for service in the Uniformed Services, under the criteria set out in § 618.615(d)(4), may voluntarily withdraw from a training program.

(c) A trade-affected worker who ceases participation in training for justifiable cause, as described in § 618.780(b)(3)(iii) (disqualifications), may resume the approved training program.

(d) The trade-affected worker's eligibility for job search and relocation allowances will not be affected by the decision to withdraw from training. To be eligible for these allowances, the worker must meet all eligibility requirements for these benefits as set forth in §§ 618.410 (job search allowances) and 618.440 (relocation allowances).

(e) If the trade-affected worker obtains suitable employment before training is completed yet remains in his or her training program:

(1) The State must continue funding the approved training program if training benchmarks, described at § 618.660, continue to be satisfactorily met.

(2) The State must consider whether to amend the worker's training program; and

(3) The State must discuss with the worker whether the training program continues to serve a useful purpose.

**§ 618.650 State standards and procedures for establishing reasonable cost of training.**

(a) A State is not prohibited from setting a statewide limit or limits for local workforce development areas on the amount of training costs considered reasonable and appropriate for training programs. Any limit(s) must reasonably take into account the costs of training available in the local workforce development areas throughout the State and the expenditure must be prudent under the standards of the Office of Management and Budget's (OMB's) Uniform Guidance (2 CFR 200.404) and its attendant interpretive administrative guidance. Additionally, States must comply with the standards for reasonableness in § 618.610(f)(2), including those permitting States to allow training other than the least-cost option if the extra cost is justified by better trade-affected worker outcomes or a faster return to the workforce. If the State chooses to implement a statewide limit, it must arrive at a reasonable limit based upon training costs throughout the State, recognizing that costs may vary significantly between urban areas

and rural areas. The State must also develop and implement a method to exceed the limit(s), which must require the local area to secure State approval, as described in paragraph (b) of this section, before training is approved.

(b) The State must develop transparent standards and procedures that provide for prompt consideration of any request for approval of training costs that exceed the established training cost limit(s) set by the State under paragraph (a) of this section. The review standards developed by the State under this paragraph (b) must allow for approval of costs that exceed the applicable training cost limit when a training program that exceeds the cost limit(s) will provide the most reasonable way of returning a particular trade-affected worker to employment at higher wages—or on a pathway to do so—than in the absence of training.

(c) The State must propose an alternative training program consistent with the reasonable cost criteria, as described at § 618.610, when a training program is not approvable under the established limits and does not meet the requirements in paragraph (b) of this section.

(d) The State must review any limits established under paragraph (a) of this section on an annual basis to determine whether they are still appropriate, and change or end such limits when they no longer reasonably reflect the average cost of training available in the local workforce development areas throughout the State.

(e) Whenever a State establishes, changes, or ends State-established limits on training costs payable under paragraph (a) of this section, the State must provide written notice and full documentation supporting its action to the Department for review.

(f) States are not required to establish a limit on training costs.

**§ 618.655 Training for adversely affected incumbent workers.**

(a) *AAIW training.* Pursuant to sections 236(a)(1) and 247(18) of the Act, a State may approve training for an AAIW, or training for a worker before separation occurs. An AAIW may apply for training and a State may approve training at any time after the date on which the AAIW is determined to be individually threatened with layoff without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

(b) *Threat of layoff.* A State may determine that a worker has been individually threatened with total or partial separation when the worker has

received a notice of termination or layoff from employment. Other documentation of a threat of total or partial separation from the firm or other reliable source may be accepted.

(c) *Approval of training.* Except as specified in this section, the provisions of this subpart extend to AAIWs. The following exceptions to the training approval requirements apply to AAIWs:

(1) The State may not approve OJT under § 618.635(a) for AAIWs.

(2) Customized training for AAIWs under § 618.635(b) may be approved only if the training is for a position other than the AAIW's adversely affected position.

(d) *Disqualification and restrictions.*

(1) The State must periodically verify that the threat of total or partial separation continues to exist for the AAIW for the duration of the approved training. This may be accomplished by verifying with the AAIW's employer that the threat of separation still exists before funding each subsequent portion of the training.

(2) Funding of a training program must cease upon the removal of the threat. The AAIW must cease the training upon the conclusion of the most recently funded portion, semester or quarter for which expenses have already been accrued. No additional funding will be available while the threat of separation is removed. Funding may resume for the original training program that had been previously approved upon a determination by the State that the threat of separation has been reestablished, or upon total or partial separation from adversely affected employment, if the requirements under § 618.610 are still met. The AAIW's approved training program must be amended, as appropriate, in compliance with § 618.665.

(3) The one training program per certification rule, as described under § 618.615, is applicable to AAIWs. Thus, a training program begun prior to separation and while under a threat of layoff constitutes the one allowed training program available to that AAIW.

(4) The duration of training limitations, at § 618.615(d)(3) are applicable to AAIWs.

(5) An AAIW will not be eligible for a new training program when total or partial separation occurs; however, the existing training may be amended under the provisions of § 618.665.

(6) The State must not consider the AAIW's threatened employment to be suitable employment under § 618.610(a).

(e) *Separation from threatened employment.* (1) Upon a total or partial separation from threatened employment, an AAIW becomes an AAW under the following conditions:

(i) The separation must occur prior to the expiration of the certification period under which the worker was determined to be threatened; and

(ii) The total or partial separation must be for lack of work.

(2) When an AAIW becomes an AAW under the conditions in paragraph (e)(1) of this section:

(i) The State must amend the worker's approved training program, as described in § 618.665; and

(ii) The State must determine what other benefits under the TAA Program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the duration limits contained in § 618.615.

#### **§ 618.660 Training benchmarks.**

(a) *Requirement for training benchmarks.* A State must establish and document training benchmarks, as provided in paragraph (f) of this section, for individual AAWs so that they can meet Completion TRA eligibility requirements, described at § 618.765. The benchmarks must be established when the worker enrolls in an approved training program, so that the State can monitor the worker's progress toward completing the approved training duration limits established at § 618.615.

(b) *Scope of requirement.* Training benchmarks must be established for all but short-term training programs.

(c) *Measurement against training benchmark.* To review the AAW's progress against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc. The case manager may attest to the worker's progress after consultation with the training provider and the worker.

(d) *Must be included in IEP.* The training benchmarks must be described in the AAW's IEP, if available, or otherwise documented in the worker's case file.

(e) *Benchmark qualities.* Benchmarks must be flexible enough to allow for some variability, and both practical and measurable enough to allow administration across a broad spectrum of training scenarios.

(f) *Review of benchmarks.* The State must evaluate and document satisfactory progress against the benchmarks in paragraphs (f)(1) and (2) of this section at intervals of not more

than 60 days, beginning with the start of the approved training program:

(1) The AAW is maintaining satisfactory academic standing (e.g., not on probation or determined to be "at risk" by the instructor or training provider); and

(2) The AAW is on schedule to complete training within the timeframe identified in the approved training program.

(g) *Actions following failure to meet a benchmark.* (1) Upon failure to meet a benchmark, the State must provide a warning to the AAW that his or her eligibility for Completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker's case file. In consultation with the worker, the State may amend a worker's training program as described in § 618.665.

(2) If a worker who has previously failed to meet a benchmark under paragraph (g)(1) of this section fails to meet a benchmark during a subsequent review under paragraph (f) of this section, the State must notify the worker of his or her ineligibility for Completion TRA. The worker may elect to continue in the approved training but will not receive any Completion TRA payments; or the training program must be amended, according to § 618.665, and Completion TRA may resume.

#### **§ 618.665 Amending approved training.**

(a) *Conditions for amending approved training.* The State must, with the cooperation of the trade-affected worker, amend a worker's approved training program under the following conditions:

(1) The State determines that one or more of these conditions are present:

(i) A course or courses designed to satisfy unforeseen needs of the worker, such as remedial education or new employer skills requirements, are necessary;

(ii) A course or courses added to the training program will enhance and complement the worker's original training program, such as preparatory courses to obtain an industry-recognized credential, certification, or license that will improve the worker's chance of being hired;

(iii) Additional assistance such as tutoring or the use of translators would benefit the worker, keep the worker qualified for the training in which he or she is enrolled, and be sufficient for the worker to complete the training program;

(iv) Approval of a longer term training program that will improve the likelihood of employment upon the completion of such training;

(v) The originally approved training program cannot be successfully completed by the worker;

(vi) The originally approved training program is determined to be of inferior quality;

(vii) Training in another occupation will lead to a greater likelihood of training completion or a better employment outcome, as a result of a change in labor market conditions or the worker's experience in the originally approved training program, or other similar factor;

(viii) The worker is moving from full-time training to part-time training or from part-time training to full-time training;

(ix) An AAIW has been separated from adversely affected employment and has transitioned to become an AAW, or an AAIW is continuing training after a threat of separation was first removed, then resumed; or

(x) An additional source of funding becomes available for which a prearrangement is required under § 618.625(c)(4).

(2) The combination of time spent in the originally approved training program and the time it will take to complete the amended training program will not exceed the duration of training limit for the type of training included in the training program, as provided at § 618.615(d)(3).

(3) Amending the approved training program occurs before a worker finishes the originally approved training program and prior to the originally scheduled date of completion.

(b) *Criteria for amending a training program.* The State must determine that the following criteria are met before amending a training program:

(1) *Criterion 1: A reasonable expectation of employment following completion of such training continues to exist.* Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(i) "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.

(ii) The State must review the expected job market conditions using

pertinent labor market data in the worker's case file to ensure it continues to apply to the amended training program and the worker's occupational goal as identified on the worker's IEP, if available, and in the worker's case file.

(iii) When a worker desires to relocate within the United States but outside the worker's present commuting area upon completion of training, the State must ensure the labor market information (described in § 618.610(c)(2)) supports the determination that a reasonable expectation of employment continues to exist within the area of the planned relocation. The labor market information must be in the area of planned relocation.

(iv) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in the area to which the worker desires to relocate. The State must determine that there continues to be a reasonable expectation that the worker can secure employment in the limited demand occupation.

(v) A State may approve an amended training program in an occupation if it finds that there is a reasonable expectation that the additional training will lead to self-employment in the occupation for which the worker requests training, and that such self-employment will provide the worker with wages or earnings at or near the worker's wages in adversely affected employment.

(vi) Amended training programs that consist of solely OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with section 236(c)(1)(B)(i) of the Act.

(2) *Criterion 2: Training continues to be reasonably available to the worker.* In determining whether training continues to be reasonably available to the worker, the State must first consider training opportunities available in the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the amended training program must be available at a reasonable cost as prescribed in paragraph (b)(4) of this section.

(3) *Criterion 3: The worker continues to be qualified to undertake and complete such amended training.* States must ensure the following:

(i) The worker's knowledge, skills, and abilities, educational background, work experience, and financial

resources remain sufficient to undertake and complete the specific amendment to the training program being considered.

(ii) The initial assessment or comprehensive and specialized assessment, and IEP, if available, developed under subpart C of this part are to be consulted in order to support the trade-affected worker's ability to undertake and complete the proposed amended training program.

(iii) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the amended training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d) (limitations on training approval). In making this determination, the State must consider:

(A) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed amended training program;

(B) Other sources of income support available to the worker including severance, earnings of other family members, and other family resources;

(C) Other fixed financial obligations and expenses of the worker and family;

(D) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance, including, but not limited to, nongovernmental scholarships, awards, or grants; and

(E) Whether or not the worker is employed while attending training.

(iv) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the amended training program that exceeds the duration of UI and TRA payments.

(v) If a worker has insufficient financial resources to complete the proposed amended training program that exceeds the duration of UI and TRA payments, then the State must not approve that amended training and must instead consider resuming the originally approved training program or other training opportunities available to the worker.

(4) *Criterion 4: Such amended training continues to be suitable for the worker and available at a reasonable cost—(i) Suitable for the worker.* The amended training being considered must address the criteria set out in paragraph (b)(3) of this section (Criterion 3), this paragraph (b)(4), and be determined by the State to be appropriate given the worker's knowledge, skills, and abilities, background, and experience relative to

the worker's employment goal, and criteria set out in paragraph (b)(1) of this section (Criterion 1).

(ii) *Available at a reasonable cost.* (A) Costs of an amended training program may include, but are not limited to, tuition and related expenses (e.g., books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the amended training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(1) The State must ensure and document that the amended training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(2) Related expenses must be necessary for the worker to complete the amended training program. Other options should be explored before purchasing equipment or related materials.

(B) Available at a reasonable cost means that amended training must not be approved at one provider when, all costs being considered, training better or substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. Amended training must 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. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(C) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the amended training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (b)(4)(ii)(B) of this section applies.

(D) Approval of amended training under paragraph (b)(4) of this section (Criterion 4) is also subject to the provisions of § 618.650.

### Subpart G—Trade Readjustment Allowances

#### § 618.700 Scope.

This subpart explains the requirements for eligibility, amounts, and duration of Basic TRA, Additional TRA, and Completion TRA, all of which are income support in the form of cash payments for an AAW.

#### § 618.705 Definitions.

(a) For purposes of TRA, an AAW is "participating in approved training" if:

(1) The worker is either attending and taking part in all scheduled classes, required activities, and required events in a given week, or the training provider has excused the worker's absence or failure to take part in accordance with its written policies.

(2) In the case of distance learning, the worker is either meeting all the requirements of the training provider in a given week in accordance with its rules, regulations, and standards, or the training provider has excused the worker's failure to meet those requirements in accordance with its written policies.

(b) For purposes of TRA, the term "training allowance" means any assistance or payment, excluding Federal student financial assistance, that can be used for the same purpose as funds for the costs of training covered by the TAA Program, and that is given or paid directly to the AAW.

(c) For purposes of TRA, the term "adversely affected employment" includes employment at a successor-in-interest, and such wages reported to the State or received by an AAW from a successor-in-interest are included as wages under § 618.720(c).

#### § 618.710 Categories of Trade Readjustment Allowances.

(a) *Basic TRA.* Basic TRA is payable to an AAW who meets the requirements of § 618.720. Basic TRA is payable for weeks of unemployment after the worker meets the criteria for exhaustion of UI under § 618.720(e) and, consistent with § 618.725, for weeks of unemployment during which the worker either is enrolled in, is participating in, or has completed approved training, or has received a waiver of the training requirement under § 618.735.

(b) *Additional TRA.* Additional TRA is payable to an AAW who meets the requirements of § 618.760. Additional TRA is payable only for weeks of unemployment during which the worker is participating in approved training.

(c) *Completion TRA.* Completion TRA is payable to an AAW who meets the

requirements of § 618.765. Completion TRA is payable only for weeks of unemployment during which the worker is participating in approved training. Completion TRA is payable only after the worker has exhausted all rights to Basic and Additional TRA.

#### § 618.715 Applications for Trade Readjustment Allowances and payment.

(a) *Timing of applications.* (1) An initial application for TRA must be filed after certification of the appropriate worker group has been made.

(2) An application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

(b) *Applicable procedures.* Applications must be filed in accordance with this subpart and on forms furnished to AAWs by the State. The State's procedures for filing applications for TRA, and for reporting, must be consistent with this part and the Department's "Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services," Employment Security Manual, part V, sections 5000 through 5004 (appendix A to this part), except that such procedures may allow for the filing and processing of applications by paper, telephone, the internet, or other similar methods as provided for in paragraph (e)(2) of this section.

(c) *Treatment of determinations.* Determinations on TRA applications are determinations to which §§ 618.820 (determinations of eligibility; notices to individuals), 618.824 (liable State and agent State responsibilities), and 618.828 (appeals and hearings) apply. Copies of such applications for TRA and all determinations by the State on such applications must be included in the AAW's case file.

(d) *Payment of TRA.* (1) A State must not make any payment of TRA until a certification is issued and the State determines that the AAW is a member of a worker group covered under the specified certification.

(2) An AAW, if he or she otherwise meets the eligibility requirements of this subpart, including exhaustion of UI, may be entitled to TRA for any week of unemployment that begins on or after the date of the applicable certification.

(3) An AAW may receive only one form of TRA (Basic, Additional, or Completion) for any given week.

(e) *Taking of applications.* (1) An initial application is required for TRA and a separate application is required for Completion TRA.

(2) Applications may be filed and processed by any means allowed for UI claims in the State.

(3) States must provide notice to the worker when a worker begins receipt of Additional TRA. That notice must include the eligibility requirements under which Additional TRA is payable.

**§ 618.720 Qualifying requirements for Basic Trade Readjustment Allowances.**

To qualify for Basic TRA for a week of unemployment, an AAW must meet each of the requirements in paragraphs (a) through (g) of this section:

(a) *Certification.* The AAW must be a member of a worker group certified under subpart B of this part.

(b) *Separation.* The AAW must have experienced a qualifying separation during the certification period of the certification in paragraph (a) of this section.

(c) *Wages and employment.* The AAW must meet the following wage and other requirements:

(1) In the 52-week period (*i.e.*, 52 consecutive calendar weeks) ending with the week of the AAW's total or partial separation from adversely affected employment during the certification period, the worker must have had at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or, where there is more than one subdivision, the appropriate subdivision of that firm. Evidence that the worker meets the requirement in this paragraph (c)(1) must be obtained as provided in § 618.740. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(2) The categories of weeks in paragraphs (c)(2)(i) through (iv) of this section also must be treated as weeks of employment at wages of \$30 or more (for purposes of paragraph (c)(1) of this section), regardless of whether the AAW actually receives any wages during such weeks:

(i) All weeks, up to a maximum of 7 weeks, during which the AAW is on employer-authorized leave for vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(ii) All weeks, up to a maximum of 7 weeks, during which the AAW had adversely affected employment interrupted to serve as a full-time representative of a labor organization in the firm or subdivision referenced in paragraph (c)(1) of this section;

(iii) All weeks, up to a maximum of 26 weeks, during which the AAW has a disability compensable under a workers' compensation law or plan of a State or the United States; and

(iv) All weeks, up to a maximum of 26 weeks, during which the AAW is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States, if such active duty is "Federal service" as defined in 5 U.S.C. 8521(a)(1), but not more than 7 weeks, in the case of weeks described in paragraph (c)(2)(i) or (ii) of this section that occur during the active duty. States may waive provisions of this paragraph (c)(2)(iv) consistent with § 618.884.

(d) *Entitlement to UI.* The AAW must have been entitled to (or would have been entitled to if the worker had applied therefor) UI for a week within the first benefit period.

(e) *Exhaustion of UI.* The AAW must meet the following requirements:

(1) The AAW must have exhausted all rights to any UI, except additional compensation that is funded by a State and not reimbursed from any Federal funds to which such worker was entitled (or would have been entitled had such worker applied therefor), and not have any unexpired waiting period applicable to the worker for any such UI, except as provided at § 618.720(e)(2).

(2) The AAW may elect to receive TRA instead of UI during any week with respect to which the worker:

(i) Is entitled and is able to receive UI as a result of a new benefit year based on employment in which the worker engaged after establishing TRA eligibility following a total separation from adversely affected employment. The entitlement must be after the first UI benefit period. It must also be based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment that established such first UI benefit period. This new employment may include the same adversely affected employment; and

(ii) Is otherwise entitled to TRA, except that the AAW need not have exhausted all rights to UI in the new benefit year.

(3) For AAWs meeting the requirements in paragraph (e)(2) of this section, the State must provide the AAW a summary of his or her potential UI benefits and potential TRA benefits in writing and document the AAW's choice in the case file.

(4) State law governs the status of the UI claim in the second benefit year when the AAW elects to receive TRA instead of UI.

(5) If the AAW elects to receive UI benefits in the second benefit year or any subsequent benefit period thereafter in which the option is available, the

AAW must exhaust all UI entitlement before resuming TRA eligibility.

(6) The AAW must have no unexpired waiting period applicable to such worker for any UI.

(f) *Extended Benefits (EB) work test.* The AAW must be able to work and be available for work, as defined in the EB work test in the applicable State law for UI claimants, and must be furnished a classification and a determination as to his or her job prospects as required by 20 CFR 615.8(d). The EB work test must be met for each week by the means described in this paragraph (f), unless an exception in paragraph (f)(2) of this section applies.

(1) *Criteria.* The EB work test requirement must be met by:

(i) Registering for work with the State, in accordance with the applicable provisions of State law that apply to EB claimants and that are consistent with part 615 of this chapter;

(ii) Actively engaging in seeking work;

(iii) Furnishing the State with tangible evidence of work search efforts each week; and

(iv) Accepting any offer of suitable work, including those referred by the State.

(2) *Exceptions.* The able and available requirement and the EB work test requirement in this paragraph (f) do not apply for purposes of TRA eligibility:

(i) When the AAW is enrolled in or participating in approved training;

(ii) During a break in training; or

(iii) With respect to claims for TRA for those weeks of unemployment beginning before the filing of an initial claim for TRA, or for any week that begins before the AAW is notified of coverage by a certification and is fully informed of the EB work test requirements. Before such notification and advice, the worker must not be subject to the EB work test requirements for TRA eligibility purposes, nor to any State timely filing requirement, but must be required to be unemployed and able to work and available for work under State law with respect to any such week except as provided in paragraphs (f)(2)(i) and (ii) of this section for AAWs enrolled in or participating in approved training.

(3) *Suitable work.* (i) For purposes of this subpart, suitable work means, with respect to a worker, whichever of the following laws is applicable:

(A) Suitable work as defined in the applicable State law for claimants for regular compensation; or

(B) Suitable work as defined in applicable State law provisions consistent with section 202(a)(3) of EUCA.

(ii) Regardless of which of the laws in paragraph (f)(3)(i)(A) or (B) of this section apply, suitable work does not in any case include self-employment or employment as an independent contractor.

(g) *Participation in approved training.*

(1) As a condition for receiving Basic TRA, except as provided for in § 618.730, the AAW, after a total or partial separation from the adversely affected employment within the certification period, and by the applicable deadlines in § 618.725 must:

(i) Be enrolled in training, as defined in subpart A of this part;

(ii) Be participating in approved training (as defined in § 618.705); or

(iii) Have a waiver granted under § 618.735 in effect.

(2) An AAW who has not met the requirements in paragraph (g)(1) of this section may, if otherwise eligible, receive Basic TRA before expiration of the applicable training enrollment deadline in § 618.725. Once the training enrollment deadline is reached, the training requirements in paragraph (g)(1) of this section must be met. Basic TRA payments must cease beginning the first week for which the requirements in paragraph (g)(1) of this section were required but not met.

(3) The requirements in paragraph (g)(1) of this section do not apply to an AAW with respect to claims for Basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA after publication of the certification of the appropriate worker group as provided in § 618.715(a), nor for any week that begins before the AAW is notified that he or she is covered by a certification and is fully informed of the requirements of this section.

(4) An AAW who meets the participation in approved training requirement in paragraph (g)(1) of this section by the applicable deadlines in § 618.725 may continue to receive Basic TRA after the AAW has completed training, even if such participation in training was on a part-time basis, provided that the worker meets all other eligibility requirements for Basic TRA.

**§ 618.725 Training enrollment deadlines.**

(a) *Training enrollment deadlines.* As a condition for receiving Basic TRA, an AAW must meet the participation in approved training requirement in § 618.720(g)(1) no later than the latest of:

(1) The last day of the 26th week after the AAW's most recent qualifying separation;

(2) The last day of the 26th week after the week in which the certification was issued; or

(3) 45 days after the later of the dates specified in paragraph (a)(1) or (2) of this section, if there are extenuating circumstances that justify an extension of the enrollment period. Extenuating circumstances that justify the 45-day extension are circumstances that would constitute good cause, as established by § 618.730; that is, circumstances under which the AAW acted diligently yet was unable to enroll because of exigent circumstances.

(4) In the case of an AAW who fails to enroll by the date required by paragraph (a)(1), (2), or (3) of this section due to a failure by the State to provide the AAW with timely information regarding the applicable training enrollment deadline, the AAW must be enrolled in training or obtain a waiver by the Monday of the first week occurring 60 consecutive calendar days following the date the worker was properly notified; or

(5) The Monday of the first week occurring 30 consecutive calendar days (or, if the State is closed that last day because that day falls on a weekend or holiday or for any other reason, the next business day) following the day of termination, whether by revocation or expiration or revocation of a waiver under § 618.735.

(b) *Exceptions—(1) Extended training enrollment deadline for delayed approval of application for TRA.* (i) The training enrollment deadlines of paragraph (a) of this section do not apply where:

(A) A State's negative determination on an initial application for TRA under § 618.715 has been reversed through redetermination or appeal;

(B) The AAW is unable to meet the training enrollment deadline because of the delay in obtaining the reversal of the negative determination; and

(C) The delay in obtaining the reversal is not attributable to the AAW.

(ii) Where the conditions of paragraph (b)(1)(i) of this section are met, the AAW will have until the last day of the 26th week following the date on which the negative determination was reversed to enroll in training or have a training waiver in effect.

(2) *Extended training enrollment deadline for period of duty in military service.* If an AAW who is a member of a reserve component of the Armed Forces and has served a period of duty during the AAW's Basic TRA eligibility period but before enrolling in training, the AAW's training enrollment deadline will be the last day of the 26th week

following the last day of the AAW's period of duty.

(3) *Good cause.* The training enrollment deadline may be extended for good cause as provided for in § 618.730.

**§ 618.730 Good cause.**

(a) States must waive the time limitations with respect to an application for TRA, enrollment in training, or receipt of a training waiver in this subpart if the AAW shows good cause.

(b) Good cause exists if the AAW acted diligently yet was unable to complete in a timely manner the relevant task at issue described in paragraph (a) of this section because of exigent circumstances.

(c) The State must determine good cause on a worker-by-worker basis.

**§ 618.735 Waiver of training requirement for Basic Trade Readjustment Allowances.**

(a) *Waiver for Basic TRA.* A State may issue a waiver of the requirement in § 618.720(g) that an AAW be enrolled in or participating in approved training as a condition of Basic TRA eligibility upon a finding that training for such worker is not feasible or appropriate for one or more reasons identified in paragraph (b) of this section. The waiver must contain the information required in paragraph (c) of this section. No waiver of the training requirement is permitted for Additional TRA or Completion TRA eligibility. Waivers must be issued no later than the latest of the applicable deadlines described in § 618.725.

(b) *Bases for a waiver.* The State, in order to issue a written waiver to an AAW, must conclude after assessing the worker that training is not feasible or appropriate for one or more of the reasons in paragraphs (b)(1) through (3) of this section, which must be cited on the waiver:

(1) *Health.* The worker is unable to participate in training due to the health of the worker. A waiver granted for this reason does not exempt the worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(2) *Enrollment unavailable.* The first available enrollment date for approved training is within 60 consecutive calendar days after the date on which a waiver determination is made or, if later, there are extenuating circumstances, as determined under the criteria in § 618.725(a)(3), that apply to the delay in enrollment in training.

(3) *Training not available.* Approved training is not reasonably available to

the worker from governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Strengthening Career and Technical Education for the 21st Century Act (20 U.S.C. 2302), and employers), or suitable training is not available at a reasonable cost, or no training funds are available.

(c) *Contents of a waiver.* (1) A waiver issued under this section may not take effect unless it contains, at a minimum, the following information:

(i) The AAW's name and a unique identifying designation used by the State;

(ii) The name and location of the worker group and the petition number under which the AAW's group was certified;

(iii) A statement of the reasons why training is not feasible or appropriate for the AAW, citing to one or more reasons identified in paragraph (b) of this section;

(iv) The effective date and expiration date of the waiver;

(v) A statement that the waiver must be revoked immediately upon a determination that the basis or bases for the waiver no longer apply; and

(vi) The signature of an official of the State authorized to grant the waiver, and the signature of the AAW or other evidence of the worker's acknowledgement of receipt of the waiver.

(2) Waivers and the required signatures may be issued and maintained electronically.

(d) *Request for a waiver.* States may analyze whether an AAW may qualify for a waiver as part of the AAW's initial assessment, as described in subpart C of this part. An AAW may also request a waiver from the State before the applicable deadline in § 618.725.

(e) *Denial of a waiver.* In any case in which a determination is made to deny a waiver under this section, the AAW to whom the denial pertains must be furnished with a notice of the denial of waiver. The notice of denial of waiver must contain, at minimum, the information in paragraphs (c)(1)(i), (ii), and (vi) of this section; the specific reason(s) for the denial; the date of the denial; and notice of the AAW's appeal rights.

(f) *Duration of a waiver.* (1) A waiver issued under this section may be for a period not to exceed 6 months, or the AAW's period of Basic TRA entitlement, whichever ends first;

(2) Notwithstanding the 6-month limitation in paragraph (f)(1) of this section, a State may extend an AAW's waiver beyond 6 months if:

(i) Training continues not to be feasible or appropriate for such worker for one or more of the reasons described in paragraph (b) of this section; and

(ii) Such worker has not yet exhausted his or her Basic TRA entitlement.

(3) Waivers must be reviewed 3 months after the date on which the State issues the waiver to determine if one or more of the bases in paragraph (b) of this section continue to apply, and every 30 consecutive calendar days thereafter.

(g) *Revocation of a waiver.* The State must revoke a waiver issued under this section if the waiver criteria are no longer met. The State must notify the AAW of the revocation. The notice of revocation must be appealable and must contain the same information as a denial of waiver issued under paragraph (e) of this section.

(h) *Submission of waivers and notices.* The State must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, and must submit to the Department, only upon specific request, a record or copy of any or all waivers issued under this section together with a statement of reasons for each such waiver, and a record or copy of any or all notices of revocation of waiver issued under this section together with a statement of reasons for each such revocation. The statements of reason required under paragraphs (c)(1)(iii) and (e) of this section, as applicable, fulfill the requirement for a statement of reasons under this paragraph (h). Electronic records and copies are acceptable.

**§ 618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.**

(a) *State action.* When an AAW applies for Basic, Additional, or Completion TRA, the State having jurisdiction under § 618.820 (determinations of eligibility; notices to individuals) must obtain information necessary to establish:

(1) Whether the AAW meets the qualifying requirements in § 618.720 for Basic TRA, in § 618.760 for Additional TRA, or in § 618.765 for Completion TRA; and

(2) For a partially separated AAW, the average weekly hours and average weekly wage in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State records or from any employer, the State must require the AAW to submit a signed statement setting forth such information as may be required for the State to make

the determinations required by paragraph (a) of this section.

(c) *Verification.* A statement made under paragraph (b) of this section must be certified by the AAW to be true to the best of the worker's knowledge and belief and must be supported by evidence including W-2 forms, paycheck stubs, union records, income tax returns, or statements of fellow workers, and must, whenever possible, be verified by the employer.

(d) *Determinations.* The State must make the necessary determinations on the basis of information obtained under this section, except that if, after reviewing information obtained under paragraphs (b) and (c) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it must make the determination on the basis of the best available information.

(e) *Timing.* The State must follow the established method used for processing regular UI claims. If an employer does not respond within the timeframe established for UI claims, then the State must act on the best available information.

**§ 618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.**

(a) *TRA amount.* The amount of Basic, Additional, or Completion TRA payable for a week of unemployment (including a week of approved training) is an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the AAW for a week of total unemployment preceding the worker's first exhaustion of UI following the worker's first qualifying separation, except that:

(1) Where a State calculates a base period amount of UI and calculates dependents' allowances on a weekly supplemental basis, TRA weekly benefit amounts must be calculated in the same manner and under the same terms and conditions as apply to claimants for UI except that the base amount must not change.

(2) For partially separated workers, the weekly amount of TRA must be calculated as determined under the applicable State law.

(b) *Workers who are undergoing training.* Any AAW in approved training who is thereby entitled for any week to TRA and a training allowance (as defined in § 618.705) under any other Federal law for the training of workers, will be paid for each week in which the AAW is undergoing approved training, TRA in the amount (computed for each week) equal to the amount computed under paragraph (a) of this section or, if

greater, the amount of any weekly allowance for such training to which the AAW would be entitled under any other Federal law for the training of workers, if the AAW applied for such allowance. TRA must be paid in lieu of any payment for training made directly to the AAW to which the AAW is entitled under such other Federal law.

(c) *Reductions to the TRA weekly amount.* The weekly amount of TRA payable under this section will be reduced (but not below zero) by:

(1) Income that is deductible from UI under the disqualifying income provisions of the applicable State law or Federal UI law, except that in the case of an AAW who is participating in approved training, such income must not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the UI payable to the worker for a week of total unemployment preceding the worker's first exhaustion of UI (as determined for purposes of section 231(a)(3)(B) of the Act).

(2) If the amount of a training allowance as defined in § 618.705 (including a training allowance referred to in paragraph (b) of this section) under any Federal law that the AAW receives for such week is less than the amount of TRA otherwise payable to the AAW for a week, the AAW must, when applying for TRA for the week, be paid TRA in an amount not to exceed the difference between the AAW's regular weekly TRA amount, as determined under § 618.745(a) (regular allowance), and the amount of the training allowance paid to the AAW for the week.

(3) Except as provided in paragraph (c)(4) of this section, if a training allowance under any Federal law other than the Act, is paid to an AAW for any week of unemployment with respect to which the AAW would be entitled (determined without regard to any disqualification under paragraph (b) of this section) to TRA, if the AAW applied for TRA, each such week must be deducted from the total number of weeks of TRA otherwise payable to the AAW when the worker applies for and is determined to be entitled to TRA. If such training allowance paid directly to the worker for any week of unemployment is less than the amount of TRA to which the AAW would be entitled if the worker had applied for it, the AAW must receive (when the worker applies for and is determined to be entitled to TRA) TRA for such week equal to such difference.

(4) If the training allowance (as defined in § 618.705) referred to in paragraphs (c)(2) and (3) of this section

is Federal student financial assistance, then the amount of TRA will not be reduced. In the case of an AAW to whom the Federal student financial assistance is available, the State will rely on prearrangements for the sharing of training costs under § 618.625(c)(2) (payment restrictions for training programs) in order to harmonize the provision of Federal student financial assistance with the worker's TRA.

(5) Any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law that applies to AAWs in approved training.

**§ 618.750 Maximum amount of Basic Trade Readjustment Allowances.**

(a) *General rule.* Except as provided in paragraph (b) of this section, the maximum amount of Basic TRA payable to an AAW is the product of 52 multiplied by the TRA weekly amount for a week of total unemployment, calculated under § 618.745(a) (weekly amounts of TRA), reduced by the total sum of UI (except State-funded additional compensation) that the AAW was entitled or would have been entitled to had the worker applied in such worker's first benefit period.

(b) *Exceptions.* The maximum amount of TRA determined under paragraph (a) of this section does not include:

(1) The amount of dependents' allowances paid as a supplement to the base weekly amount determined under § 618.745; or

(2) The amount of the difference between the AAW's weekly increased allowances determined under § 618.745(b) and such worker's weekly amount determined under § 618.745(a).

**§ 618.755 Eligibility period for Basic Trade Readjustment Allowances.**

(a) Except as provided in paragraph (b) of this section, an AAW is ineligible to receive Basic TRA for any week of unemployment beginning after the close of the 104-week period beginning with the first week following the week in which the AAW's most recent qualifying separation occurred or after certification, whichever is later.

(b) A State may not count any period during which a judicial or administrative appeal is pending with respect to a denial of a petition filed under subpart B of this part for the purpose of calculating the period of separation described in paragraph (a) of this section. The separation will be deemed as having occurred on the certification date and the Basic TRA eligibility period will begin on the week that follows the certification date.

**§ 618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.**

(a) *Qualifying requirements for Additional TRA.* An AAW is eligible to receive Additional TRA for any week only if:

(1) The worker meets all qualifying requirements for receipt of Basic TRA in § 618.720; and

(2) Except as provided in § 618.775 for a break in training, the AAW is participating in approved training.

(b) *Timing and duration of Additional TRA.* Additional TRA is payable for up to 65 weeks during the 78 consecutive calendar week period that:

(1) Immediately follows the last week of entitlement to Basic TRA otherwise payable to the AAW;

(2) Begins with the first week of approved training, if such training begins after the last week described in paragraph (b)(1) of this section; or

(3) Begins with the first week in which such training is approved under subpart F of this part, if such training is approved after the training already has commenced (although Additional TRA or training costs may not be paid for any week before the week in which the TAA approved training was approved).

**§ 618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.**

(a) *Qualifying requirements for Completion TRA.* An AAW is eligible to receive Completion TRA if such worker meets all qualifying requirements for receipt of Basic TRA in § 618.720 and Additional TRA in § 618.760, and if the eligibility criteria in paragraphs (a)(1) through (3) of this section are met for that week. The requirements in this paragraph (a) are applied at the time the State approves payment for a week of Completion TRA. The eligibility criteria are:

(1) Payment of Completion TRA is necessary for an AAW to complete the approved training described in paragraph (a)(2) of this section.

(2) The AAW is participating in approved training each week that leads to the completion of a degree or industry-recognized credential and the worker's training program will extend for a period longer than the periods during which Basic and Additional TRA are payable under §§ 618.755 (eligibility period for Basic TRA) and 618.760 (qualifying requirements for, timing and duration of, Additional TRA), and the requested weeks are necessary for the worker to complete training.

(3) The worker—

(i) Has substantially met the performance benchmarks in § 618.660

(training benchmarks) established as part of the approved training under subpart F of this part;

(ii) Is expected to continue to make progress toward the completion of the approved training; and

(iii) Will complete the approved training during the period of eligibility described in paragraph (c) of this section.

(4) If, during the period in which an AAW is eligible to receive Completion TRA, the worker ceases to meet any of the eligibility criteria in paragraphs (a)(1) through (3) of this section, no further Completion TRA is payable to such worker.

(b) *Weeks payable.* A total of up to 13 weeks of payments are allowable during the period of eligibility described in paragraph (c) of this section.

(c) *Eligibility period.* Completion TRA may be payable during the period of 20-week consecutive calendar period that begins with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended if justifiable cause exists, in accordance with § 618.770(a).

(d) *Start date of Completion TRA.* The State must have a process to take applications for Completion TRA. States must not automatically establish the 20-week period for Completion TRA as the week following either expiration of the eligibility period for Additional TRA, or the exhaustion of Additional TRA; filing a claim after either of those first weeks is permitted. Since training that leads to a degree or industry-recognized credential must be completed during the eligibility period described in paragraph (c) of this section, the first week of Completion TRA claimed should be carefully considered in coordination with case management while the AAW's training program is being developed.

**§ 618.770 Special rule for justifiable cause.**

(a) The eligibility period during which Basic, Additional, and Completion TRA are payable to an AAW may be extended for justifiable cause, which has the same meaning as good cause in § 618.730.

(b) While the eligibility period for Basic, Additional, and Completion TRA may be extended for justifiable cause as determined by the State, the maximum benefit amount and number of weeks this benefit may be received must not change.

**§ 618.775 Payment of Trade Readjustment Allowances during breaks in training.**

(a) Basic and Additional TRA are payable to an otherwise eligible AAW

during breaks in training (periods within or between courses, terms (quarters or semesters), and academic years) that do not exceed 30 days (counted in accordance with paragraph (b) of this section), only if:

(1) The AAW participated in approved training of this part immediately before the beginning of the break in training;

(2) The break in training was provided in the established schedule of the training provider; and

(3) The AAW resumes participation in the approved training immediately after the break ends.

(b) For the purpose of determining whether a break in training is within the 30-day maximum allowed under this section, all calendar days beginning with the first day of the training break and ending with the last day of the break, as provided in the published schedule of the training provider, must be counted. However, any Saturday, Sunday, or official State or national holiday occurring during the scheduled break in training is excluded from the 30-day count if training normally would not be scheduled in the training program during those days if there was no break.

(c) For Completion TRA, breaks in training are permissible during the 20-week eligibility period. However, payments during breaks in training are not allowed.

**§ 618.780 Disqualifications.**

(a) *General rule.* Except as stated in paragraph (b)(1) or (c) of this section and in § 618.832(b)(2) (overpayments; penalties for fraud), an AAW may not be paid TRA for any week of unemployment such worker is or would be disqualified from receiving UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law that apply to EB claimants and are consistent with EUCA.

(b) *Disqualification of trainees—(1) State law inapplicable.* A State law may not be applied to disqualify an AAW from receiving UI or TRA because:

(i) Such worker is enrolled in or participating in an approved training program;

(ii) Such worker refuses work to which the State referred such worker because such work either would require discontinuation of approved training or interfere with successful participation in TAA approved training, except that this paragraph (b)(1)(ii) does not apply to an AAW who is ineligible under paragraph (b)(2) of this section;

(iii) Such worker quits work that was not suitable employment and it was

reasonable and necessary to quit in order to begin or continue approved training. This includes temporary employment the worker may have engaged in during a break in training;

(iv) Such worker continues full-time or part-time employment while participating in approved training; or

(v) Such worker leaves OJT within the first 30 days because the OJT is not meeting requirements of section 236(c)(1)(B) of the Act.

(2) *Disqualifications.* An AAW who, without justifiable cause (as described in paragraph (b)(3)(iii) of this section), fails to begin participation (as described in paragraph (b)(3)(i) of this section) in approved training, or ceases participation (as described in paragraph (b)(3)(ii) of this section) in such training, or for whom a waiver is revoked under § 618.735(f) (waiver of training requirement for Basic TRA), may not receive Basic TRA for any week in which such failure, cessation, or revocation occurred. The disqualification will continue for any succeeding week thereafter until the week in which such worker begins or resumes participation in an approved training program. A worker who has justifiable cause (as described in paragraph (b)(3)(iii) of this section) for such failure to begin, or for ceasing, participation in training may receive Basic TRA for any week in which such failure or cessation occurred if the worker otherwise meets the requirements of this subpart. Such failure, cessation, or revocation normally does not change the eligibility periods defined in §§ 618.755, 618.760(b), and 618.765(b) and (c).

(3) *Disqualification conditions.* For determining the disqualification of trainees for all TAA approved training, the following provisions apply:

(i) *Failed to begin participation.* A worker will be determined to have failed to begin participation in an approved training program when the worker fails to attend one or more scheduled training classes and other training activities in the first week of the approved training program, without justifiable cause.

(ii) *Ceased participation.* A worker will be determined to have ceased participation in an approved training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training provider in any week of the approved training program, without justifiable cause.

(iii) *Justifiable cause.* For purposes of this section, justifiable cause has the same meaning as good cause under § 618.730, except that good cause for

absence also includes an absence excused under a training provider's written policy.

(c) *Disqualification while in OJT.* An AAW may not be paid any TRA for any week during which such worker is engaged in OJT, in accordance with § 618.635.

(d) *Disqualification while in part-time training.* An AAW may not be paid any TRA for any week in which the worker is participating in approved training that is part-time. Part-time training is any approved training that does not meet the definition of "full-time training" as defined in § 618.110.

#### Subpart H—Administration by Applicable State Agencies

Sec.	
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#### Subpart H—Administration by Applicable State Agencies

##### § 618.800 Scope.

This subpart covers the general administrative requirements a State must follow in providing the benefits and services available under the TAA Program. The requirements in this subpart include: The provision of rapid response and appropriate career services

to groups of workers for whom a petition is filed, delivering TAA Program benefits and services to trade-affected workers, assisting in the filing of petitions for those likely to be eligible for benefits under this part, conducting outreach to groups of workers covered under a petition for TAA filed under subpart B of this part, and notifying UI claimants of the TAA Program.

##### § 618.804 Agreements with the Secretary of Labor.

(a) *Authority.* A State or CSA must, before performing any function or exercising any jurisdiction under the Act and this part, execute an Agreement meeting the requirements of the Act with the Secretary.

(b) *Execution.* (1) An Agreement under paragraph (a) of this section must be signed and dated on behalf of the State or the CSA by an authorized official whose authority is certified by the State Attorney General or counsel for the CSA, unless the Agreement is signed by the Governor or the chief elected official of the State. In the event that a State does not execute an Agreement under paragraph (a) of this section, then section 3302(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3302(c)(3)) (loss of unemployment tax credits under section 3302(a) and (b)), applies.

(2) A State or CSA must execute an amended Agreement with the Secretary, upon the request of the Secretary, in response to legislative or regulatory changes to the TAA Program.

(3) The Secretary will execute an Agreement on behalf of the United States.

(c) *Public access to Agreements.* The CSA must make available for inspection and copying, an accurate copy of its Agreement under this section to any individual or organization that requests it. The CSA may furnish copies of the Agreement upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the CSA.

(d) *Agent of the United States.* A State that has executed an Agreement under this section is an agent of the United States for purposes of receiving applications for and providing payments on the basis provided in this part and must carry out fully the purposes of the Act and this part.

(e) *Breach.* If the Secretary determines that the State or CSA has not fulfilled its commitments under its Agreement stated in this section, the Secretary may terminate the Agreement. The Secretary must provide the State or CSA reasonable notice and an opportunity for a hearing before the Secretary makes

a finding that the State has not fulfilled its commitments under its Agreement. In the event that the Secretary determines the State or CSA has not fulfilled its commitments under its Agreement, section 3302(c)(3) of the Internal Revenue Code of 1986, as amended (regarding loss of unemployment tax credits under section 3302(a) and (b)), applies.

(f) *Review of State and CSA compliance.* The Department is responsible for monitoring and reviewing State and CSA compliance with the Agreement entered into under the Act and this section.

(g) *Merit staffing.* States must comply with the staffing flexibility provisions contained in § 618.890.

(h) *Contents.* Each Agreement under this section must contain provisions including, but not limited to, the following:

(1) Provisions consistent with the requirements of section 239 of the Act (19 U.S.C. 2311);

(2) Authorization for the State to issue waivers under § 618.735 (waiver of training requirement for Basic TRA) and the requirement that the State submit, upon request, to the Department a copy of each such waiver and, if not already contained within each waiver, a statement of the reasons for such waiver;

(3) The requirement that the State supply data to the Department on national TAA Program performance goals identified in applicable regulations, the Department's written directives, or any other written means used to communicate such goals; and

(4) Provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers. This means that following certification of a petition under subpart B of this part, the costs for providing services to a worker group should shift from WIOA and other programs to the TAA Program.

(i) *Administration absent State Agreement.* (1) In any State in which no Agreement under this section is in effect, the Secretary will administer the Act and this part through appropriate arrangements made by the Department.

(2) The Secretary will administer TAA in accordance with this part and the provisions of the applicable State law, except to the extent that such State law is inconsistent with this part, section 303 of SSA (42 U.S.C. 503), or section 3304(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304(a)).

(3) The Secretary will provide for a fair hearing for any individual whose application for TAA is denied. A final determination as to eligibility for TAA

will be subject to review as provided in 42 U.S.C 405(g), as required by section 240(b) of the Act.

(4)(i) The Department will issue administrative guidance providing additional detail on the operation of the TAA Program within that State.

(ii) Prior to providing administrative guidance, the Department will consult with the Governor, other State agencies, neighboring States, and other organizations to determine how best to ensure access to the TAA Program within that State. Options to administer the program that the Department may consider include, but are not limited to:

(A) Executing an agreement with another State to operate the TAA Program;

(B) Executing an agreement with a qualified organization within the State that adheres to all TAA Program requirements in this part to operate the TAA Program; and

(C) Directly administering the TAA Program.

(j) *Program coordination.* State agencies providing employment and case management services under subpart C of this part and training under subpart F of this part must, in accordance with their Agreements under this section, coordinate such services and payments with programs and services provided by WIOA and with the State agency administering the State law. Any agency of the State jointly administering such provisions under this Agreement must be considered to be a CSA for purposes of this part.

#### **§ 618.808 State rulemaking.**

(a) A State may establish laws, regulations, procedures, or policies, not inconsistent with the Act or this part, or administrative guidance issued by the Department.

(b) The State must submit the exact text of such proposed law, regulation, procedure, or policy, certified as accurate by a responsible official, employee, or counsel of the State, to the Department.

(c) No law, regulation, procedure, or policy proposed under paragraph (a) of this section may become effective unless and until approved by the Department. The Department may grant approval on a temporary basis, not to exceed 90 days, in cases of administrative necessity.

(d) The Department may withdraw approval at any time with reasonable notice of no less than 30 days to a State.

(e) If public notice and opportunity for hearing would be required under State law for adoption of a similar law, regulation, procedure, or policy

involving UI or other State or Federal law, the State must provide such public notice and opportunity for hearing.

#### **§ 618.812 Subpoenas.**

(a) A State may require by subpoena the attendance of witnesses and production of evidence necessary for use in the determination of an individual's eligibility for TAA Program services and benefits or to obtain information needed to assist the Department in the petition determination process.

(b) This power includes the ability of the State to subpoena an employer for information necessary to determine whether a certification covers a worker, including the name, address, and Social Security number of the worker.

(c) The State may enforce compliance with subpoenas as provided under State law and, if a State court declines to enforce a subpoena issued under this section, or the State does not attempt a subpoena under State law, the State must petition for an order requiring compliance with such subpoena to the District Court of the United States with jurisdiction over the proceeding.

#### **§ 618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.**

(a) *Providing information to workers.* State agencies must provide information to each worker who applies for UI about the benefit allowances, training, and other services available under this part, and about the application procedures, and the appropriate filing dates, for such allowances, training, and other services.

(b) *Rapid response and appropriate career services.* States must ensure that rapid response assistance and appropriate career services, as described in section 134 of WIOA, are made available to members of a group of workers for whom a petition under subpart B of this part has been filed.

(c) *Providing reemployment services.* (1) For trade-affected workers covered by a certification, States must:

(i) Make available employment and case management services described in subpart C of this part, including testing, counseling, assessment, and placement services; and

(ii) Provide referrals to, assistance in securing of, and approvals of training under subpart F of this part.

(2) If funds provided to carry out this part are insufficient to make such services available, States must arrange to make such services available through other Federal programs.

(d) *Petition filing assistance.* (1) States must facilitate the early filing of

petitions for a group of workers that the State considers are likely to be eligible for TAA Program benefits.

(2) For purposes of paragraph (d)(1) of this section, "likely to be eligible" means the State has a reasonable belief that a certification will be issued for the group of workers based on observations made by State staff; existence of certifications within the same industry, sector, or supply chain; or information or statements from the firm, union, workers, media coverage, or other reports.

(3) States must provide assistance to enable individuals and other entities eligible to file to prepare petitions or applications for program benefits.

(4) Petitions must be filed under paragraph (d)(1) of this section even if the firm, a union, elected officials, or members of the group of workers oppose the filing.

(e) *Providing information after issuance of a certification.* (1) States must inform the State's board on vocational and technical education (also called the eligible agency, as defined in 20 U.S.C. 2302(12)) or the equivalent agency in the State and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B of this part and of projections, if available, of the needs for training under subpart F of this part as a result of such certification.

(2) Upon receipt of a certification issued under subpart B of this part by the Department, the State must provide a written notice through the mail, of the benefits available under this part to each worker known to be covered by the certification when the worker becomes partially or totally separated or as soon as possible after the certification is issued if the worker is already partially or totally separated from adversely affected employment. The State must also provide notice to all workers threatened with separation who may be AAIIWs. These notices must contain the following information:

(i) The worker group(s) covered by the TAA certification and the article(s) produced or services rendered as specified in the copy of the certification furnished to the State;

(ii) The name and the address or location of workers' firm;

(iii) The impact, certification, and expiration dates in the certification document.

(iv) A summary of benefits and services available to the workers;

(v) An explanation of how, when, and where the workers may apply for TAA Program benefits and services;

(vi) The training enrollment deadlines (set forth in § 618.725) for TRA qualification;

(vii) Whom to contact to get additional information on the certification; and

(viii) A Babel notice (a short notice in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages).

(3) In order to identify these workers, the State must obtain from the firm, or another reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the agency received the certification, and of all workers who are thereafter partially or totally separated or threatened with separation within the certification period. Provision of this information may be compelled under the subpoena provisions at § 618.812.

(4) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the State must publish a notice of the certification in a newspaper of general circulation in areas in which such workers reside. The published notice must include the same information identified in paragraphs (e)(2)(i) through (viii) of this section. The notice may be filed in a print version of the newspaper, or in the online or digital version of the newspaper if it can be reasonably expected to reach the interested parties.

(5) Upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part.

(6) In addition to the mailed written notice under paragraph (e)(2) of this section, States must also give notice to each worker by at least one method of modern electronic communication reasonably calculated to reach each worker. For example, States may give notice via email to a worker with a known email address, or by text to a worker with a known mobile phone number.

(7) States may also use other modern methods of communication, such as websites and social media, to reach members of certified worker groups.

(f) *Specific benefit assistance to workers.* States must:

(1) Advise each trade-affected worker, as soon as practicable after the worker is separated from adversely affected employment or, if later, after a certification is issued, or upon notice of

the worker's threatened status, of the benefits and services available under this part, including the qualifying requirements, procedures, and deadlines for applying for such benefits and services.

(2) Perform an intake interview for each trade-affected worker (unless the worker declines the interview) as soon as practicable after the worker is separated from adversely affected employment, after a certification is issued, or upon notice of the worker's threatened status. The interview must be scheduled in time for the worker to meet the training enrollment deadline set forth in proposed § 618.725(a). During the interview, States must provide information about all of the benefits available under this part.

**§ 618.820 Determinations of eligibility; notices to individuals.**

(a) *Determinations on initial applications.* The State whose State law is the applicable State law must, upon the filing of an initial application by an individual, promptly determine the individual's eligibility for TAA Program benefits under this part and may accept for such purposes information and findings supplied by another State.

(b) *Determinations on subsequent applications.* The State must, upon the filing of an application for payment of TRA, RTAA, subsistence and transportation, job search allowance, or relocation allowance, promptly determine whether the individual is eligible for such payment and, if eligible, the amount of such payment.

(c) *Redeterminations.* The provision for redeterminations under the applicable State law applies to determinations of eligibility for any benefit under this part.

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 618.820, a State must apply the regulations in this part. As to matters committed by this part to be decided under the applicable State law, a CSA, a hearing officer, or a State court must apply the applicable State law and regulations thereunder, including the procedural requirements of the applicable State law or regulations, except that no provision of State law or State regulations on good cause for waiver of any time limit, or for late filing of any claim, will apply to any time limitation referred to or specified in this part, unless such State law or regulation is made applicable by a specific provision of this part. However, States must follow the good cause provision at § 618.730.

(e) *Notices to individuals.* The State must notify individuals in writing of any determination or redetermination of eligibility to TAA Program benefits. Each determination or redetermination must inform the individual of the reason for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of entitlement to UI are subject to redetermination or appeal under the applicable State law.

(f) *Promptness.* States must make full payment of TAA Program benefits when due with the greatest promptness that is administratively feasible.

(g) *Procedure.* Except where otherwise required by the Act or this part, the procedures for making and furnishing determinations, the promptness standards, and written notices of determinations to individuals, must be consistent with the Department's "Standard for Claim Determinations—Separation Information," Employment Security Manual, part V, sections 6010 through 6015 (appendix B of this part).

(h) *Successor-in-interest.* (1) States are authorized to determine whether a firm is a successor-in-interest to a firm named as the employer of a worker group on a determination issued under subpart B of this part.

(2) The factors to be used to determine whether or not there is a successor-in-interest are established in § 618.110.

(3) If, after reviewing the successor-in-interest factors, the State believes that a denial of benefits is warranted, the State must file a new petition requesting an amendment to the certification under § 618.250.

**§ 618.824 Liable State and agent State responsibilities.**

(a) *Liable State.* The liable State, as defined in § 618.110, is responsible for:

(1) Making all determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, including job search and relocation allowances under subpart D of this part; RTAA under subpart E of this part; training under subpart F of this part; subsistence and transportation payments under subpart F of this part; Basic, Additional, and Completion TRA under subpart G of this part; and waivers and revocations of waivers under subpart G of this part;

(2) Providing workers with general program information and assistance under § 618.816;

(3)(i) Providing rapid response assistance and appropriate career services, as described under section 134 of WIOA, to the group of workers in the State covered by the petition upon

receiving notice of any such workers for whom a petition is filed.

(ii) This includes making career services authorized under other Federal laws available to the workers covered by the petition to the extent authorized under such laws.

(iii) In certain situations, based on the residency of the group of workers, it may be appropriate for agent States to also be involved in the provision of these services, but in all instances the liable State must be ultimately responsible for ensuring the provision of these services;

(4) Providing information and assistance to trade-affected workers under § 618.816(c) (providing reemployment services), (e) (providing information after issuance of a certification), and (f) (specific benefit assistance to workers) upon receiving a certification issued by the Department with respect to affected workers at a firm or appropriate subdivision in the State;

(5) Providing a list of eligible TAA recipients and eligible RTAA recipients, for HCTC purposes, to the Internal Revenue Service if HCTC is available; and

(6) Assisting in other activities and functions required by the Governor-Secretary Agreement at § 618.804, including assisting the Department in the review of petitions by verifying such information and providing such other assistance as the Department may request.

(b) *Agent State.* The agent State, as defined in § 618.110, is responsible for:

(1) Providing interstate claimants with general program information and assistance under § 618.816(a) and petition filing assistance under § 618.816(d);

(2) Cooperating fully with and assisting the liable State in carrying out its responsibilities, activities, and functions, including the provision of rapid response and appropriate career services, as needed;

(3) Cooperating with the liable State in taking applications and claims for TAA Program benefits under this part;

(4) Providing employment and case management services, as described in subpart C of this part, to trade-affected workers covered by a certification issued by the Department under this part;

(5) Cooperating with the liable State by providing information that the liable State needs for it to issue determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, as described in paragraph (a)(1) of this section;

(6) Securing, and paying the cost of, any approved training under subpart F of this part, and payment of subsistence and transportation under subpart F of this part, according to determinations issued by the liable State;

(7) Paying costs under subpart D of this part for job search and relocation allowances; and

(8) Assisting in other activities and functions required by the Agreement under § 618.804, including assisting in the review of petitions by verifying information and providing such other assistance as the Department may request.

(c) *Responsibilities under this section.* In most instances, the liable State and agent State will be the same State and is responsible for all of the activities and functions described in paragraphs (a) and (b) of this section.

#### § 618.828 Appeals and hearings.

(a) *Applicable State law.* Except as provided in paragraph (b) of this section, a determination or redetermination under this part (other than a determination on the eligibility of a group of workers under subpart B of this part, which is subject to review by the USCIT) is subject to review in the same manner and to the same extent as determinations and redeterminations under the applicable State law, and only in that manner and to that extent.

Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of other determinations or redeterminations under the applicable State law where convenient or necessary. The right of appeal and opportunity for fair hearing for these proceedings must be consistent with section 303(a)(1) and (3) of SSA (42 U.S.C. 503(a)(1) and (3)).

(b) *Allegations of discrimination.* Complaints alleging that a determination or redetermination under this part violates applicable Federal nondiscrimination laws administered by the U.S. Department of Labor must be handled in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and 38, as applicable, and as provided in § 618.894 (nondiscrimination and equal opportunity requirements).

(c) *Appeals promptness.* Appeals under paragraph (a) of this section must be decided with a degree of promptness meeting the Department's "Standard for Appeals Promptness—Unemployment Compensation" (20 CFR part 650). Any provisions of the applicable State law for advancement or priority of UI cases on judicial calendars, or other provisions intended to provide for

prompt payment of UI when due, must apply equally to proceedings involving eligibility for TAA Program benefits and services under this part.

(d) *Retroactivity.* In the case of a redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed. However, no costs of training may be paid unless such costs actually were incurred for training in which the individual participated. In addition, if a TRA application was filed and denied as a result of the training denial, TRA may only be paid with respect to any week during which the individual was actually participating in the training.

#### § 618.832 Overpayments; penalties for fraud.

(a) *Determinations and repayment.* (1) If a State, the Department, or a court of competent jurisdiction determines that any person has received any payment under this part to which the person was not entitled, including a payment referred to in paragraph (b) of this section, such person is required to repay such amount to the State or the Department, as appropriate, except that the State or the Department must waive such repayment if such State or the Department determines that:

(i) The payment was made without fault on the part of such person; and

(ii) Requiring such repayment would cause a financial hardship for the person (or the person's household, if applicable).

(2) States must provide persons determined to have received TAA overpayments a reasonable opportunity to demonstrate their eligibility for waiver under the criteria in paragraphs (a)(1)(i) and (ii) of this section.

(3) A financial hardship exists if recovery of the overpayment would result in the person's (or the person's household's) loss of or inability to pay for ordinary and necessary living expenses. This determination must take into account the income and resources (including liquid financial resources) reasonably available to the person (and the person's household).

(4) Fault exists for purposes of paragraph (a)(1)(i) of this section if any of the following criteria are met:

(i) Whether a material statement or representation was made by the person or individual in connection with the application for TAA that resulted in the overpayment, and whether the person knew or should have known that the statement or representation was inaccurate;

(ii) Whether the person failed or caused another to fail to disclose a material fact in connection with an application for TAA that resulted in the overpayment, and whether the person knew or should have known that the fact was material;

(iii) Whether the person knew or should have known that the person or individual was not entitled to the TAA payment;

(iv) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the person or of which the person or individual had knowledge, and that was erroneous or inaccurate or otherwise wrong; or

(v) Whether there has been a determination of fraud under paragraph (b) of this section.

(b) *False representation or nondisclosure of material fact.* In addition to any other penalty provided by law, a person will be permanently ineligible for any further payments under this part if a State, the Department, or a court of competent jurisdiction determines that:

(1) Such person:

(i) Knowingly made, or caused another to make, a false statement or representation of a material fact; or

(ii) Knowingly failed, or caused another to fail, to disclose a material fact; and

(2) As a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part to which the person was not entitled.

(c) *Notice of determination, fair hearing, and finality.* Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a)(1) of this section by the State or the Department, as appropriate, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) *Training, job search and relocation allowances, and RTAA.* (1) If a trade-affected worker fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under this part to such person or individual properly and necessarily expended in attempting to complete such training, job search, or relocation is not an overpayment.

(2) If a trade-affected worker fails, without good cause, to complete training, a job search, or a relocation, then the portion of a payment for the noncompleted component of a benefit is

an overpayment. Costs for the completed portions of the training program, job search, or relocation are not an overpayment.

(3) For purposes of this paragraph (d), good cause exists if the worker acted diligently yet was unable to complete training, a job search, or relocation because of exigent circumstances. The State must determine good cause on a worker-by-worker basis.

(4) An overpayment established under this paragraph (d) must be recovered or waived as provided in this section.

(5) For RTAA, an individual meets the “earns not more than \$50,000 each year in wages from reemployment” requirement in section 246 of the Act for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made. Payments derived from the annualized wage projection based on complete and accurate information at the time are valid payments that the individual was entitled to and are not overpayments.

(e) *Overpayment recovery of TAA Program funds by offset.* Unless an overpayment is otherwise recovered or is waived, the State—

(1) Must, subject to the limitation in paragraph (e)(3) of this section, recover the overpayment by deduction from any sums payable to such person under:

(i) This part;

(ii) Any Federal UI law administered by the State; or

(iii) Any other Federal law administered by the State that provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(2) Must recover the overpayment from UI payable to such person under the applicable State law.

(3) Must not allow any single deduction under this paragraph (e) to exceed 50 percent of the amount otherwise payable to the person; except that if the applicable State law provides for an overpayment recovery deduction that is less than 50 percent of the amount otherwise payable, such recovery must be equal to that lesser percentage.

(f) *Fraud detection and prevention.* State procedures for the detection and prevention of fraudulent overpayments of TAA benefits must be, at a minimum, the same as the procedures adopted by the State with respect to State unemployment compensation, and consistent with the Department’s “Standard for Fraud and Overpayment Detection,” Employment Security Manual, part V, sections 7510 through 7515 (appendix C to this part).

(g) *Person.* For purposes of this section and § 618.836 (recovery of debts due the United States or others by TAA offset), a person includes, in addition to a trade-affected worker or other individual, any employer or other entity or organization as well as the officers and officials thereof, including any training provider as well as the officers and officials thereof, who may bear individual responsibility for the overpayment.

(h) *Criminal penalties.* (1) Any person who makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact under the circumstances described in paragraph (h)(1)(i) or (ii) of this section, must be imprisoned for not more than 1 year, fined under title 18, United States Code, or both.

(i) For the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under the Act or pursuant to a Governor-Secretary Agreement under section 239 of the Act; or

(ii) When providing information during an investigation of a petition under section 221 of the Act.

(2) Whenever a violation under paragraph (h)(1) of this section is suspected, the State or the Department must refer the conduct to the U.S. Department of Labor Office of the Inspector General.

#### **§ 618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.**

(a) *Debt due the United States.* Notwithstanding any other provision of this part, the State must apply TAA benefits, payable under this part to a person (as described in § 618.832(g)), for the recovery by offset of any debt due the United States from the person.

(b) *Debt due to others.* The State must not apply TAA Program benefits for the payment of any debt of any person to any State or any other entity or person, except for TRA and RTAA benefits as required by Federal UI law.

#### **§ 618.840 Uniform interpretation and application of this part.**

(a) *First rule of construction.* The implementing regulations in this part will be construed liberally to carry out the purposes of the Act.

(b) *Second rule of construction.* The implementing regulations in this part will be construed to assure, insofar as possible, the uniform interpretation and application of the Act and this part throughout the United States.

(c) *Effectuating purposes and rules of construction.* (1) To effectuate the purposes of the Act and this part and to

assure uniform interpretation and application of the Act and this part throughout the United States:

(i) A State must, upon request, forward to the Department, not later than 10 days from the date of the request, a copy of any administrative ruling on an individual's eligibility to TAA benefits under this part.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, a State must forward to the Department a copy of any determination or redetermination on an individual's eligibility to TAA benefits under this part appealed to the State's highest UI administrative appeals authority.

(iii) A State must forward to the Department a copy of notice of the institution of a State or Federal court proceeding and any State or Federal court ruling on an individual's eligibility to TAA Program benefits under this part, within 10 days of the notice or ruling.

(2) If the Department concludes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State of the Department's view. Thereafter, the State must issue a redetermination or appeal if possible and must not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings that involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State must inform the claims deputy or hearing officer or court of the Department's view and must make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department concludes that a determination, redetermination, or decision is patently and flagrantly violates of the Act or this part, the Department may at any time notify the State of the Department's view. If the determination, redetermination, or decision in question denies TAA to an individual, the State must follow the steps outlined in paragraph (c)(2) of this section. If the determination, redetermination, or decision in question awards TAA to an individual, the benefits are "due" within the meaning of section 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. However, the State must take the steps outlined in paragraph (c)(2) of this section, and

payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of TAA and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than 2 weeks after the redetermination action is taken. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the 2-week limit, or any redetermination or decision or order is issued that affirms the determination, redetermination, or decision awarding TAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (c)(2) or (3) of this section, is treated as a precedent for any future application for TAA, the Secretary will decide whether the Agreement with the State entered into under the Act and this part will be terminated and § 618.804(e) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part, including any determination, redetermination, or decision referred to in paragraph (c)(2) or (3) of this section, the Secretary will decide whether the State must restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State will be terminated and § 618.804(e) applied and whether other action must be taken to recover such sums for the United States.

(5) A State may request, in writing, within 10 calendar days of receiving a notice under paragraph (c)(2) or (3) of this section, reconsideration of the notice. The State will have an opportunity to present its views and arguments if desired. The State must submit such a request to the Secretary and may include views and arguments on the matters the Secretary is to decide under paragraph (c)(3) of this section. The Secretary must respond to the State's reconsideration request within 30 calendar days of receiving the request.

(6) Concurrence of the Department with a determination, redetermination, or decision must not be presumed from the absence of a notice issued pursuant to this section.

(d) *Payment when due.* If the determination, redetermination, or decision in question awards TAA Program benefits to an individual, the benefits are "due" within the meaning of section 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. Payments to the individual may be temporarily delayed if a redetermination is issued not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the State seeks an expedited appeal decision within not more than 2 calendar weeks after the appeal is filed. If the redetermination is not issued or the appeal is not filed within the time limit in the preceding sentence, or the decision on appeal is not obtained within the 2-calendar week limit in the preceding sentence, or any decision on appeal is issued that affirms the determination, redetermination, or decision awarding benefits under this part or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

**§ 618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.**

(a) Except as specifically provided in this part, the rights of individuals to TAA Program benefits will be protected in the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law. Such measures must include protection of applicants for TAA Program benefits from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to TAA Program benefits, except as provided in §§ 618.832 (overpayments; penalties for fraud) and 618.836 (recovery of debts due the United States or others by TAA offset).

(b) In the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law, individuals must be protected from discrimination and obstruction in regard to the right to seek, apply for, and receive any TAA Program benefit.

**§ 618.848 Veterans' priority of service.**

The State must give priority for approval and funding of TAA Program benefits (including training, where the approval of training criteria are met) to a trade-affected worker meeting the veterans' priority of service criteria established under 38 U.S.C. 4215.

**§ 618.852 Recordkeeping and disclosure of information requirements.**

(a) *Recordkeeping.* (1) Each State must make and maintain such records pertaining to the administration of the

Act as the Department requires and must make all such records available for inspection, examination, and audit by such Federal officials as the Department may designate or as may be required by law.

(2)(i) States must maintain records that contain any information that the Department determines to be appropriate in support of any reports that the Department may require, including those reports specified in §§ 618.860(f) (general fiscal and administrative requirements and cost classification) and 618.864(e) (TAA Program performance).

(ii) States must maintain records as required by 2 CFR 200.333 for 3 years, or as indicated at 2 CFR 200.333(a) through (f).

(3) States must comply with the records requirements established in the Uniform Guidance at 2 CFR 200.333 through 200.337.

(4) States must document that they provided or offered the employment and case management services described in subpart C of this part to all trade-affected workers, either in a paper-based or electronic case management system. States must make these systems available for review upon request by the Department. Additionally, the case management file of each participant must demonstrate that the State notified each worker of the training enrollment deadlines set forth in proposed § 618.725(a).

(b) *Disclosure of information.* (1) Information in records maintained by a State in administering the Act must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information must not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the employer or other person for the purposes of this part. The provision in this paragraph (b)(1) on the confidentiality of information maintained in the administration of the Act does not apply in the following circumstances:

(i) Disclosures to the Department;

(ii) For the purposes of § 618.832 or paragraph (a) of this section;

(iii) For providing information, reports, and studies required by § 618.856 (information, reports, and studies); or

(iv) Where nondisclosure would be inconsistent with the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a).

(2) Where a State obtains confidential business information as part of assisting in an investigation under subpart B of this part, it must protect that information as required under that subpart.

(c) *Format of records and forms.* Forms and records used and maintained by States in the administration of this part may exist in paper or electronic form or a combination thereof. Regardless of the medium, these records must be available and accessible as required under paragraph (a)(1) of this section for oversight purposes.

(d) *Electronic signatures.* Electronic signatures are allowed where such use is in accordance with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229).

#### **§ 618.856 Information, reports, and studies.**

A State must furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the Act and this part.

#### **§ 618.860 General fiscal and administrative requirements and cost classification.**

(a) *Uniform fiscal and administrative requirements.* (1) Each State receiving funds allocated for the TAA Program from the Department as an agent of the United States, must administer the TAA Program in accordance with the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900 and with the funding agreement.

(2) A State may expend funds awarded to it during a Federal fiscal year to carry out TAA Program activities under sections 235 through 238 of the Act during that Federal fiscal year and the succeeding 2 Federal fiscal years.

(3) Equipment, as described in 2 CFR 200.33 and computing devices, as described in 2 CFR 200.20, includes equipment acquired with TAA funds under both current and prior Agreements.

(4) The addition method, described at 2 CFR 200.307, must be used for all program income earned under TAA grants. When the cost of generating program income has been charged to such grant, the gross amount earned must be added to such grant. However, when these costs have not been charged to such grant, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under such grant.

(b) *Administrative costs.* (1) The administrative cost limit for the fiscal year program funding allocation for

training, job search assistance, and relocation allowances is included in the TAA Program Annual Funding Agreement, with which States must comply.

(2) For purposes of the TAA Program, the costs of administration are the costs associated with performing the overall general administrative functions of the TAA Program in paragraphs (b)(2)(i) through (xviii) of this section and the coordination thereof within the American Job Center network established under WIOA:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(x) Processing applications for benefits under the Act;

(xi) Rendering and issuing eligibility determinations under the Act;

(xii) Performing oversight and monitoring responsibilities related to administrative functions;

(xiii) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(xiv) Travel costs incurred for official business in carrying out administrative activities or the overall management of the TAA Program;

(xv) Costs of information systems related to administrative functions (*i.e.*, personnel, procurement, purchasing, property management, accounting, and payroll systems), including the purchase, systems development, and operating costs of such systems;

(xvi) Processing waivers of training requirements under subpart G of this part;

(xvii) Collecting, validating, and reporting data required under the Act; and

(xviii) Providing RTAA under subpart E of this part.

(3) Awards to subrecipients or contractors that are solely for the performance of administrative functions constitute administrative costs.

(4) Personnel and related nonpersonnel costs of staff that perform

both administrative functions specified in paragraph (b)(2) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(5) Costs of the information systems in paragraphs (b)(5)(i) through (iii) of this section, including the purchase, systems development, and operational costs, are charged to the program category:

(i) Tracking or monitoring of participant and performance information, including employment and case management services and activities;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information. States must leverage existing resources provided under other Federal programs; and

(iii) Maintenance and enhancement of the systems specified in paragraphs (b)(5)(i) and (ii) of this section.

(6) Wherever possible, States must make efforts to streamline the administrative activities and services listed in this section by minimizing duplication and effectively using information technology to improve services and leveraging resources across programs.

(c) *Prior approval.* (1) Equipment purchases under the TAA Program are subject to the provisions at 2 CFR 200.313. In compliance with 2 CFR 2900.16, prior approval is hereby provided for equipment purchases under the TAA Program.

(2) As provided in 2 CFR 200.439(b)(1), the Department retains the prior approval requirement related to capital expenditures (2 CFR 200.13) and for capital assets (2 CFR 200.12) other than equipment.

(d) *Audit and oversight requirements.* (1) All States, local governments, nonprofit organizations, and for-profit entities that are recipients or subrecipients of TAA Program funds must follow the audit requirements under 2 CFR 200.500 through 200.521 and 2 CFR 2900.20.

(2)(i) *Oversight and monitoring.* Each recipient and subrecipient of funds under the Act must conduct regular oversight and monitoring of its program and those of any subrecipients and contractors, as required under section 239(i) of the Act, as well as under 2 CFR part 200, including 2 CFR 200.328, 200.330, and 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(A) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in the Act, the regulations in this part, and administrative guidance;

(B) Determine whether there is compliance with other provisions of the Act, the regulations in this part, and administrative guidance;

(C) Assure compliance with 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900; and

(D) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of section 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(ii) *Resolution of subrecipient-level findings.* (A) The Governor is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through the Act.

(B) A State must use the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(C) If a State does not have such written procedures as described in paragraph (d)(2)(ii)(B) of this section, it must prescribe standards and procedures to govern this grant program.

(D) For subrecipients awarded funds through a recipient of grant funds, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(iii) *Resolution of State findings.* (A) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under the Act.

(B) The Secretary will use the Department's audit resolution process, consistent with 2 CFR part 2900, subpart F.

(C) A final determination issued by a Grant Officer under the process in this paragraph (d)(2)(iii) may be appealed to the DOL Office of Administrative Law Judges under the procedures in 2 CFR 2900.22.

(e) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All TAA Program fund recipients and subrecipients must comply with the Government-wide requirements for debarment and suspension under subparts G and H of 2 CFR part 180 and

the Government-wide requirements for a drug-free workplace at 29 CFR part 98.

(f) *Fiscal reporting requirements for States.* (1) In accordance with 2 CFR 200.327 and 2 CFR 2900.14, each State must submit a quarterly financial report to the Department as specified in the reporting instructions approved by OMB.

(2) States must report financial data on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities as specified in the reporting instructions as approved by OMB.

(3) If the State's accounting system is not on the accrual basis of accounting, the State must develop accrual information through best estimates based on an analysis of the documentation on hand.

(4) The State must:

(i) Obligate funds on not less than a quarterly basis; and

(ii) Periodically review obligations and, in an appropriate and timely manner, de-obligate funds when a participant drops, completes, or is no longer eligible for training.

(g) *Use of funds.* Of the funds awarded to the States to carry out sections 235 through 238 of the Act for a fiscal year, the State must use:

(1) Not more than 10 percent for the costs of administration, provided in paragraph (b)(2)(i) of this section; and

(2) Not less than 5 percent for employment and case management services under section 235 of the Act.

(h) *Technology.* States must maintain sufficient and effective technology for the purpose of tracking and reporting required participant data, and to provide appropriate services under the TAA Program.

(i) *Designation of resources for Management Information Systems (MIS) development.* States are required to dedicate an appropriate portion of administrative and employment and case management funding under TAA for management information systems development, upgrades, and ongoing maintenance.

#### **§ 618.864 Trade Adjustment Assistance Program performance.**

(a) *General rule.* Each State must report to the Department comprehensive performance accountability measures, to consist of:

(1) The primary indicators of performance described in paragraph (b) of this section;

(2) The additional indicators of performance established under paragraph (c) of this section, if any; and

(3) A description of efforts made to improve outcomes for workers under

the TAA Program that promote efficient and effective program performance as provided in this section.

(b) *Primary indicators of performance*—(1) *Primary indicators.* The primary indicators of performance shall consist of:

(i) The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the second calendar quarter after exit from the program;

(ii) The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the fourth calendar quarter after exit from the program;

(iii) The median earnings of workers who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of those participants enrolled in a training program under subpart F (excluding those in OJT and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program; and

(v) The percentage and number of workers who received benefits under the TAA Program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.

(2) *Indicator relating to credential attainment.* For purposes of paragraph (b)(1)(iv) of this section, a worker who received benefits under the TAA Program who obtained a secondary school diploma or its recognized equivalent is included in the percentage counted for purposes of paragraph (b)(1)(iv) of this section only if the worker, in addition to obtaining such a diploma or its recognized equivalent, has obtained or retained employment or is in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

(c) *Additional indicators.* The Department and a State may agree upon additional indicators of performance for the TAA Program, as appropriate.

(d) *Use of wage records.* States must, consistent with State law, use quarterly wage record information, as defined in 20 CFR 677.175, in measuring the progress on program performance

indicators in paragraphs (b) and (c) of this section.

(1) The use of Social Security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(2) States that participate in data sharing agreements for the purposes of obtaining wage record information may use such data sharing agreements to obtain wage record information for workers who received benefits under the TAA Program.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of the participant.

(e) *Reporting requirements*—(1) *Data required.* States must report TAA Program demographics, performance, and services data, identified in paragraphs (b) and (c) of this section, to the Department on such forms and in such manner as the Department may prescribe.

(2) *Data reliability and validity.* States are required to establish procedures that are consistent with administrative guidance the Department issues to ensure the data States submit are valid and reliable.

(f) *Publication of performance results.* The Department will publish, annually, through electronic means, including posting on the Department's website, the TAA Program performance results of the States.

(g) *Control measures*—(1) *In general.* Each State must implement effective control measures to effectively oversee the operation and administration of the TAA Program and ensure the accurate collection of program data.

(2) *Location.* The control measures must be internal to a system used by the State to collect data.

(3) *Purpose.* States will implement these control measures in order to:

(i) Oversee the operation and administration of the TAA Program under this part;

(ii) Improve the timeliness and verifiability of reported data; and

(iii) Verify the accuracy of reported data, and must require:

(A) Periodic staff training;

(B) Participation in data validation and integrity efforts, as directed by the Department;

(C) Data analysis and monitoring on a quarterly basis to identify inaccurate data input;

(D) Data analysis and monitoring on a quarterly basis to identify missing data; and

(E) Resubmission of required reports upon correcting data the State identifies

as a result of paragraphs (g)(3)(iii)(B) through (D) of this section.

(4) *Monitoring program.* In order to ensure the effective and efficient operation of the TAA Program, States must adopt a formal monitoring program designed to review and audit worker files.

(i) The monitoring program must be designed to identify and share best practices, identify and correct deficiencies, and identify and address staff training needs.

(ii) A minimum quarterly random sample of 20 cases must be audited as part of the monitoring program and must include cases from at least 2 certifications issued under subpart B of this part.

(iii) The four quarterly samples within a calendar year must also cover at least four different areas of the State administering the program.

(iv) If circumstances preclude a State from meeting the criteria in paragraphs (g)(4)(ii) and (iii) of this section, the State must contact the appropriate ETA regional office to design a monitoring program that better suits the TAA Program in that State, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

(h) *Data on benefits received, training, outcomes, rapid response activities, and spending.* Data submitted by the States must be sufficient to provide, at a minimum, the information required in section 249B of the Act, including the following information:

(1) The number of workers receiving benefits under the TAA Program;

(2) The number of workers receiving each type of benefit, including employment and case management services, training, job search and relocation allowances, TRA (Basic, Additional, and Completion) and RTAA payments, and, to the extent feasible, the HCTC, if available;

(3) The average time during which such workers receive each type of benefit;

(4) The average number of weeks TRA were paid to workers;

(5) The number of workers who report that they have received benefits under a prior certification in any of the 10 fiscal years preceding the fiscal year for which the data are collected under this section;

(6) The number of workers who received TAA approved training, classified by major types of training, including but not limited to, classroom training, training through distance learning, training leading to an associate's degree, remedial education, prerequisite education, OJT, and customized training;

(7) The number of workers who exited TAA approved training, including who received prelayoff training or part-time training at any time during that training;

(8) The average duration of training and the average duration of training that does not include remedial or prerequisite education;

(9) The number of training waivers granted, classified by type of waiver;

(10) The number of workers who exited training and the average duration of such training;

(11) The number of workers who do not complete training and the average duration of the training such workers completed;

(12) The average cost per worker of receiving TAA approved training;

(13) The percentage of workers who received TAA approved training and obtained unsubsidized employment in a field related to that training;

(14) The age, preprogram educational level, and post-program credential attainment of the workers;

(15) The median earnings of workers during the second calendar quarter after exit from the program, expressed as a percentage of the median earnings of such workers before the calendar quarter in which such workers began receiving benefits under this part;

(16) The sectors in which workers are employed after receiving benefits under this part;

(17) Whether rapid response activities were provided with respect to each petition filed;

(18) The total amount of funds used to pay for TRA by the State; and

(19) The total amount of the TaOA payments to the State.

#### **§ 618.868 Unemployment Insurance.**

UI payable to an AAW shall not be denied or reduced for any week by reason of any right to a payment of TAA under the Act and this part.

#### **§ 618.872 Travel under the Trade Adjustment Assistance Program.**

(a) TAA Program participants are subject to the FTR at 41 CFR chapters 300 through 304 for all travel paid for with TAA Program funds.

(b) Except for the definition of "commuting area," States may not apply State or local travel policies and restrictions to TAA Program participants receiving reimbursements for travel under the Act.

(c) In instances where the FTR is silent or defers to the Federal agency's travel policies, the State must apply the relevant policies of the Department.

#### **§ 618.876 Verification of eligibility for program benefits.**

(a) *Overall program eligibility.* In addition to all other eligibility criteria contained in this part, an individual must also be authorized to work in the United States to receive benefits under the TAA Program. States are required to verify the status of participants who are not a citizen or national of the United States.

(b) *Initial verification.* All States are required, under section 1137(d) of SSA (42 U.S.C. 1320b-7(d)), to initially verify the immigration status of self-reporting aliens who apply for UI through the system designated by the U.S. Customs and Immigration Service (or USCIS), currently the Systematic Alien Verification for Entitlement (or SAVE) program. No further verification is required except as described in paragraph (c) of this section.

(c) *Reverification.* (1) Once a State has verified satisfactory immigration status initially, the State must reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subchapter.

(2) The State must conduct such redetermination in a timely manner, using the immigration status verification system described in section 1137(d) of SSA (42 U.S.C. 1320b-7(d)) or by review of other documentation, as described in that provision.

#### **§ 618.884 Special rule with respect to military service.**

(a) *In general.* Notwithstanding any other provision of this part, a State may waive any requirement of this part that the States determines is necessary to ensure that an AAW who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (b) of this section is eligible to receive a trade readjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(b) *Period of duty described.* An AAW serves a period of duty described in paragraph (a) of this section if, before completing training under section 236 of the Act, the worker:

(1) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(2) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time

National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

#### **§ 618.888 Equitable tolling.**

(a) A TAA Program deadline must be equitably tolled when:

(1) An extraordinary circumstance prevented an individual's timely action; and

(2) The individual otherwise acted with diligence.

(b)(1) When an individual fails to take timely action because the State failed to give notice required under this part, that failure is prima facie evidence of an extraordinary circumstance.

(2) If the individual did not receive the required notice, but otherwise received actual notice with sufficient time to take timely action, the lack of receipt of the required notice is not evidence of an extraordinary circumstance.

(c) A TAA Program deadline equitably tolled under this section is tolled for the time period during which the extraordinary circumstance exists. Once that circumstance is resolved, the time period that was tolled begins to run again.

(d) Equitable tolling may extend an otherwise expired TAA Program deadline by no more than 36 months.

#### **§ 618.890 Staffing flexibility.**

(a) Staff employed under a merit personnel system as provided in section 303(a)(1) of the Social Security Act must be used for all reviews of benefit determinations under applicable State law.

(b) All determinations on eligibility for TAA Program benefits must be made by State staff, with the exception of the functions in paragraph (a) of this section, which must be made by staff meeting the criteria in paragraph (a) of this section.

(c) All other functions under the TAA Program, not subject to paragraphs (a) and (b) of this section, may be provided under a variety of staffing models.

#### **§ 618.894 Nondiscrimination and equal opportunity requirements.**

(a) States and subrecipients of financial assistance under the TAA Program are required to comply with the nondiscrimination and equal opportunity provisions codified in the Department's regulations at 29 CFR parts 31, 32, 35, and 36.

(b) States and subrecipients of financial assistance under the TAA

Program are required to comply with the nondiscrimination and equal opportunity requirements of WIOA section 188 and its implementing regulations at 29 CFR part 38 if the agency or subrecipient:

(1) Operates its TAA programs and activities as part of the one-stop delivery system established under the WIOA; or  
(2) Otherwise satisfies the definition of “recipient” in 29 CFR 38.4(zz).

(c) Questions about the nondiscrimination requirements cited in this section may be directed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue NW, Washington, DC 20210.

(d)(1) This section does not affect the rights and protections (and exceptions thereto) available under any other Federal law or regulation regarding discrimination.

(2) This section does not affect the rights and protections (and exceptions thereto) available under any other State or local law or regulation regarding discrimination, except as provided in paragraph (d)(3) of this section.

(3) No State may discriminate on any basis protected by 29 CFR parts 31, 32, 35, 36, and 38 (and exceptions thereto), as applicable, in determining an individual’s eligibility for any of the following:

- (i) Receiving aid, benefits, services, training, or employment;
- (ii) Participating in any TAA program or activity;
- (iii) Being employed by any State; or
- (iv) Practicing any occupation or profession.

**§ 618.898 Applicable State law.**

(a) The applicable State law for an AAW remains the applicable State law for such worker until such worker becomes entitled to UI under the State law of another State (whether or not such worker files a UI claim in that other State).

(b) For purposes of determining the applicable State law for UI entitlement:

(1) A worker is deemed entitled to UI under a State law if such worker satisfies the base period employment and wage qualifying requirements of such State law;

(2) In the case of a combined-wage claim, UI entitlement must be determined under the law of the paying State; and

(3) In case of a Federal UI claim, or a joint State and Federal UI claim, UI entitlement must be determined under the law of the applicable State for such claims.

**Subpart I—Allocation of Funds to States for Training and Other Activities**

**§ 618.900 Annual cap on funds available for Training and Other Activities.**

(a) The total amount of funds made available for the costs of carrying out sections 235 through 238 of the Act, referenced here as Training and Other Activities (TaOA), will not exceed the annual cap established under section 236(a)(2)(A) of the Act. For each of Fiscal Years (FYs) 2015 through 2021, this cap is \$450,000,000.

(b) Funds obligated during a fiscal year to carry out activities under sections 235 through 238 of the Act may be expended by the State receiving such funds during that fiscal year and the succeeding 2 fiscal years.

**§ 618.910 Initial allocation of funds.**

(a) *Initial allocation.* In the initial allocation for a fiscal year, the Department will allocate 65 percent of the funds available under section 236(a)(2)(A) of the Act for that fiscal year. The Department will announce the amount of each State’s initial allocation of funds, determined in accordance with the requirements of this section, at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the total funds available under the annual cap for that year, even if the full amount has not been appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year’s appropriation of funds for TaOA. If the full year’s appropriated amount for TaOA is less than the annual cap on funds available for TaOA, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, or required by the appropriation, in no case will the amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation of less than \$100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive an initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance

with this section. A State that does not receive an initial allocation may apply to the Department under § 618.920(b) for reserve funds to obtain funding for TaOA.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is \$100,000 or more will have its initial allocation adjusted up to its hold harmless amount in accordance with paragraph (c) of this section. If a State’s unadjusted allocation is less than \$100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section, and those funds will be distributed among the other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and, in addition, will receive an adjustment equal to the State’s share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) Any initial allocation funds remaining after the adjustments to initial allocations are applied as described in paragraph (e)(2)(i) of this section will be distributed among the States with unadjusted initial allocations that were no less than their respective hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by using the formula in paragraph (f) of this section. This recalculation will disregard States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) Factor 1: The trend in the number of trade-affected workers covered by certifications during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight

to the most recent quarters, giving those quarters a larger share of the factor;

(ii) Factor 2: The trend in the number of workers participating in training during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) Factor 3: The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of workers in training for the State determined in paragraph (f)(1)(ii) of this section by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of workers in training for the fiscal year, using the projection methodology underlying the Department's most recent budget submission or update; and

(iv) Factor 4: The amount of funding estimated to be necessary to provide TAA approved training to such workers during the fiscal year. The estimate will be calculated by multiplying the estimated number of training participants in paragraph (f)(1)(iii) of this section by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent 4 quarters by the average number of training participants for the same time period.

(2) The four factors listed in paragraphs (f)(1)(i) through (iv) of this section are given equal weight.

(3) For each of the factors in paragraphs (f)(1)(i) through (iv) of this section, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these factors, the Department will determine the percentage that the State will receive of the total amount available for initial allocation for that fiscal year. The percentages of the initial allocation amount for all States combined will total 100 percent of the total amount of the initial allocation.

#### **§ 618.920 Reserve fund distributions.**

(a) The 35 percent of the TaOA funds for a fiscal year that remains after the initial allocation will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions to States during the remainder of the fiscal year, including distributions to those States that did not receive an initial allocation. The amount of any distributions of reserve funds will be determined by the Department within the time frame described in

§ 618.930, as appropriate, considering the information provided in reserve fund requests submitted by States as described in paragraph (b) of this section and the level of reserve funds available.

(b) A State requesting reserve funds must demonstrate that:

(1) At least 50 percent of its TaOA funds from the current year (if any were received) and previous fiscal years have been expended; or

(2) The State needs additional TaOA funds to meet demands for services due to unusual and unexpected events, which includes an unexpected increase in the number of trade-affected workers eligible for TaOA.

(c) A State requesting reserve funds under paragraph (b) of this section also must provide a documented estimate of funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining TaOA funds the State has available.

#### **§ 618.930 Second distribution.**

The Department will distribute at least 90 percent of the total TaOA funds (including § 618.920 reserve funds) for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. After these requests are satisfied, any funds remaining will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910. Any funds remaining after the second distribution will be available for allotment under § 618.920.

#### **§ 618.940 Insufficient funds.**

If, during a fiscal year, the Department estimates that the amount of funds necessary to provide TaOA will exceed the annual cap under § 618.900, the Department will decide how the available funds that have not been distributed at the time of the estimate will be allocated among the States for the remainder of the fiscal year, and will communicate this decision to States through administrative guidance.

#### **§ 618.950 Recapture and reallocation of Training and Other Activities funds.**

(a) The Department may:

(1) Recapture funds that were allocated to any State to carry out

sections 235 through 238 of the Act and that remain unobligated by the State during the second or third fiscal year after the fiscal year in which the funds were provided to the State; and

(2) Reallocate recaptured funds to States to carry out sections 235 through 238 of the Act, in accordance with procedures established in this section.

(b) The Department may recapture and reallocate funds as authorized by paragraph (a) of this section if the Department determines:

(1) There are, or are projected to be, insufficient funds in a State or States to carry out the activities described in sections 235 through 238 of the Act for a fiscal year; or

(2) The recapture and reallocation of funds would likely promote the more efficient and effective use of funds among States to carry out the activities described in sections 235 through 238 of the Act for a fiscal year.

(c) If the Department makes a determination described in paragraph (b)(1) of this section for a fiscal year, the Department may recapture funds, to the extent needed, from one or more of the State or States that have the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States, as determined by the Department, and reallocate those funds to the States with, or projected to have, insufficient funds. In making the determination that a State has or is projected to have insufficient funds to carry out the activities described in sections 235 through 238 of the Act for a fiscal year, the Department may consider a request submitted by the State in accordance with information required under § 618.920(b) or base such determination on other information the Department determines is appropriate.

(d) If the Department makes a determination described in paragraph (b)(2) of this section for a fiscal year, the Department may recapture funds from the State or States that have the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds were initially allocated to such States, as determined by the Department, and reallocate those funds to:

(1) The States with the lowest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States as determined by the Department, based on such additional factor or factors as the Department determines is or are appropriate; or

(2) All States from which funds are not being recaptured, in accordance with the formula factors described in § 618.910(f), relating to the initial distribution of funds.

(e) If the Department determines to recapture and reallocate funds pursuant to this section, an administrative notice must be issued to the States describing the methodology used and the amounts to be recaptured from and reallocated to

each affected State, not less than 15 business days in advance of the recapture of funds.

(f) The reallocation of funds under this section does not extend the period of availability for the expenditure of those funds, which expenditure period remains 2 fiscal years after the fiscal year in which the funds were initially allocated by the Department to the State from which the funds are recaptured.

**PART 90—[REMOVED AND RESERVED]**

- 5. Remove and reserve 29 CFR part 90.

Signed at Washington, DC

**John P. Pallasch,**

*Assistant Secretary for Employment and Training, Labor.*

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