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§ 616.11 Amendment of arrangement.

Periodically the Secretary shall review the operation of this arrangement, and shall propose such amendments to the arrangement as the Secretary believes are necessary or appropriate. Any State unemployment compensation agency or NASWA may propose amendments to the arrangement. Any proposal shall constitute an amendment to the arrangement upon approval by the Secretary in consultation with the State unemployment compensation agencies. Any such amendment shall specify when the change shall take effect, and to which claims it shall apply.

[36 FR 24992, Dec. 28, 1971, as amended at 71 FR 35515, June 21, 2006]

PART 617 [RESERVED]

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974, AS AMENDED

Subpart A—General

Subpart B—Petitions, Investigations, and Determinations

Subpart C—Employment and Case Management Services

Subpart D—Job Search and Relocation Allowances

Subpart E—Reemployment Trade Adjustment Assistance

Subpart F—Training Services

Subpart G—Trade Readjustment Allowances

Subpart H—Administration by Applicable State Agencies

Subpart I—Allocation of Funds to States for Training and Other Activities

AUTHORITY: 19 U.S.C. 2320; Secretary's Order No. 6–2010, 75 FR 66267 (Oct. 27, 2010).

SOURCE: 85 FR 51972, Aug. 21, 2020, unless otherwise noted.

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*, 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 × hours worked) × 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 × hours worked) × 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 AAWs. Customized training with the worker's current employer may only be approved for AAIWs if the training is for a position other than the AAIW's threatened position. See § 618.655(c)(2). AAIWs 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, non-profit, 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*); 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 AAIWs.* The State must not approve OJT for AAIWs.

(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 AAIWs, 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 longerterm 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 pre-arrangement 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

§ 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 AAIWs. 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.

APPENDIX A TO PART 618—STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES

EMPLOYMENT SECURITY MANUAL (PART V, SECTIONS 5000–5004)

5000–5099 *Claims Filing*

5000 *Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services*

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for:

''Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve.''

Section 3304(a)(4) of the Federal Unemployment Tax and section 303(a)(5) of the Social Security Act require that a State law provide for:

''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *''

Section 303(a)(1) of the Social Security Act requires that the State law provide for:

''Such methods of administration * * * as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due.''

B. *Secretary's interpretation of federal law requirements.*

1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for:

a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and

b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such States law.

5001 *Claim Filing and Claimant Reporting Requirements Designed To Satisfy Secretary's Interpretation*

A. *Claim filing—total or part-total unemployment*

1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly

or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person.

a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and

b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

(1) The conditions or circumstances of his separation from employment;

(2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or

(4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances:

a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person;

b. Conditions make it impracticable for the agency to take claims in person;

c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment;

d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

B. *Claim filing—partial unemployment.* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A 3, filing by mail must be permitted, and in the circumstances set forth in section A 2 b, filing in person may be required.

5002 *Requirement for Job Finding, Placement, and Other Employment Services Designed To Satisfy Secretary's Interpretation*

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency:

1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; *or*

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon

as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel required to so arrange and coordinate the contacts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) his failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 *Evaluation of Alternative State Provisions*

If the State law provisions do not conform to the ''suggested State law requirements'' set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated affect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.3.

[59 FR 943, Jan. 6, 1994. Redesignated at 85 FR 51972, Aug. 21, 2020.]

APPENDIX B TO PART 618—STANDARD FOR CLAIM DETERMINATIONS—SEPARATION INFORMATION

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

''Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due.''

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

''Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.''

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation. . . .

Section 3306(h) of the Federal Unemployment Tax Act defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.''

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria:*

A. *Investigation of claims*. The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts*. The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices:*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraph 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a

change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

NOTE: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wage is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits:*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

When claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law

or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions:*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2) (a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determinations.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, ''It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause,'' rather than merely the phrase ''voluntary quit.'' Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest,

or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, ''For other information about your (appeal), (protest), (redetermination) rights, see pages __ to __ of the __ (name of pamphlet or booklet) heretofore furnished to you.''

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria:*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker:*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, §601.5.

[51 FR 45848, Dec. 22, 1986. Redesignated at 59 FR 943, Jan. 6, 1994. Further redesignated at 85 FR 51972, Aug. 21, 2020]

APPENDIX C TO PART 618—STANDARD FOR FRAUD AND OVERPAYMENT DETECTION

7510 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

''Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due.''

Section 1603(a)(4) of the Internal Revenue Code and section 3030(a)(5) of the Social Security Act require that a State law include provision for:

''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . .''

Section 1607(h) of the Internal Revenue Code defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.''

7511 *The Secretary's Interpretation of Federal Law Requirements.* The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 *Criteria for Review of State Conformity With Federal Requirements.* In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. *Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?*

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both;

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agent for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are comonly made either by post-audit or by industry surveys. The so-called ''post-audit'' is a matching of central office wage-record files against benefit payments for the same period. ''Industry surveys'' or ''mass audits'' are done in some States by going directly to employers for pay-roll information to be checked against concurrent benefit lists. A plan of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. *Are adequate records maintained by which the results of investigations may be evaluated?*

Explanation. To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records

also will provide the basis for drawing a clear distinction between fraud and error.

C. *Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?*

Explanation. To meet this criterion, the State agency must issue adequate material of claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

*7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

[51 FR 45848, Dec. 22, 1986. Redesignated at 59 FR 943, Jan. 6, 1994. Further redesignated at 85 FR 51972, Aug. 21, 2020.]

PART 619—UNEMPLOYMENT COMPENSATION DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY

Sec.

AUTHORITY: 42 U.S.C. 1111; Section 2104(b) of Pub. L. 112–96; 42 U.S.C. 1302(a).

SOURCE: 79 FR 9411, Feb. 19, 2014, unless otherwise noted.

§ 619.1 Definitions.

As used in this part—

Administrator of the Office of Unemployment Insurance means the Department's Employment and Training Administration's chief administrative officer directly responsible for the operation of the Unemployment Insurance (UI) program and oversight of the Unemployment Compensation (UC) program and UC laws.

Department means the United States Department of Labor.

eXtensible Markup Language or *XML* means a markup language that defines a set of rules for encoding documents in a format designed to structure, store and transport data between applications or systems over the Internet. This term includes any future upgrades, iterations, or releases of XML-based language.

Federal funds or *Federally-funded* means funds that include, but are not limited to:

(1) Supplemental budget funds that are designated by the Department for State IT modernization efforts;

(2) General State UI administration funding for State program operations (an administrative grant issued by the Department at the beginning of each fiscal year); and

(3) Special UI funding distributions.

Interstate Connection Network or *ICON* means a secure multi-purpose telecommunications network that supports the transfer of data among the SWAs.

Interstate Wages and Benefits Inquiries/Responses means the ICON application which supports online transmission of interstate wages and benefits inquiries and responses between SWAs.

Major IT Modernization Project means conversion, re-engineering, rewriting, or transferring of an existing system to a modernized framework such as transferring a process from mainframe operations to Web-based operations, converting to modern computer programming languages, or upgrading software libraries, protocols, or hardware platform and infrastructure. These are projects to upgrade UI Benefits and