DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 617, 618, 665, 671

RIN 1205–AB32

Trade Adjustment Assistance for Workers, Workforce Investment Act; Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: On August 6, 2002, President Bush signed into law the Trade Adjustment Assistance Reform Act of 2002 (the Reform Act), which amended the Trade Act of 1974, as amended (Act or Trade Act). The Reform Act reauthorized the Trade Adjustment Assistance (TAA) program through fiscal year 2007 and made significant amendments to the TAA program, which generally took effect on November 4, 2002. The Employment and Training Administration (ETA) of the United States Department of Labor (Department or DOL) is publishing this proposed rule to implement the amended TAA program.

DATES: The Department invites written comments on this proposal. Comments must be submitted by October 24, 2006.

ADDRESSES: You may submit written comments, identified by the proposed rule's Regulatory Identification Number (RIN) 1205–AB32, on the proposed rules by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regulations.TAA@dol.gov.* Include RIN 1205–AB32 in the subject line of the message. Your comment must be in the body of the e-mail message; do not send attached files.
- *Fax:* (202) 693–3584 (this is not a toll-free number). Only comments of ten or fewer pages (including a Fax cover sheet and attachments, if any) will be accepted by Fax.
- *Mail:* Submit comments (preferably with three copies) to Erica Cantor, Director, Division of Trade Adjustment Assistance, ETA, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking: RIN 1205–AB32. If commenters transmit comments by Fax or through the Internet and also submit a hard copy by mail, please indicate that it is a duplicate copy of the Fax or Internet transmission.

All comments will be available for public inspection and copying during normal business hours at the Division of Trade Adjustment Assistance, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–5311, Washington, DC 20210. Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is available on the Internet at the Web address *http://www.doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Erica Cantor, Director, Division of Trade Adjustment Assistance, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–5311, Washington, DC 20210. Telephone: (202) 693–3560 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–3584; e-mail: *regulations.TAA@dol.gov.*

SUPPLEMENTARY INFORMATION: The Reform Act expanded the scope of the TAA program and increased benefit amounts available under that program, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA–TAA) program, provided a health coverage tax credit (HCTC) administered by the Internal Revenue Service (IRS) to subsidize private health insurance costs for qualified workers, and enacted a pilot program for Alternative Trade Adjustment Assistance for older workers (ATAA). These amendments were designed to augment and improve the delivery of benefits and services to certain workers adversely affected by foreign trade.

To incorporate into regulations the substantial changes to the TAA program, including the introduction of ATAA, the Department proposes creating a new 20 CFR Part 618. The proposed Part 618 consists of nine subparts: subpart A—General; subpart B—Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance [Reserved]; subpart C—Delivery of Services through the One-Stop Delivery System; subpart D—Job Search Allowances; subpart E-Relocation Allowances; subpart F—Training Services; subpart G—Trade Readjustment Allowances (TRA); subpart H—Administration by Applicable State Agencies; and subpart I—Alternative Trade Adjustment Assistance for Older Workers [Reserved]. Because of the complexity of the subject matter and the States' need for definitive instructions on providing TAA benefits, the rulemaking for Part 618 is divided into three parts. This Notice of Proposed Rulemaking covers the general provisions (subpart A) and TAA benefits portions (subpart C through subpart H) of the regulations. Separate notices of proposed rulemaking (RIN 1205–AB40 covering subpart I and RIN 1205–AB44 covering Subpart B) will be published at a later date.

Consistent with the Reform Act, the Department proposes that the TAA regulations codified at 20 CFR Part 617 be amended to apply only to adversely affected workers whose certifications of eligibility to apply for TAA are based on petitions filed before the effective date of the amendments, whether the certifications were issued before or after that date. However, eligible workers covered by Part 617 will be able to use the HCTC, and the Department proposes to amend Part 617 to require the States to advise adversely affected workers covered by that Part of the qualifying requirements for the HCTC and related health insurance assistance. The Department also proposes revising the regulations governing Statewide Workforce Investment Activities, and National Emergency Grants, 20 CFR Parts 665 and 671, respectively. These revisions will incorporate into the Workforce Investment Act of 1998 (WIA) regulations the new statutory requirement that States provide rapid response assistance to workers as soon as they have filed petitions, or petitions have been filed on their behalf, for certification of eligibility to apply for TAA. A new section will be added to Part 671 to incorporate the new statutory authority for the use of funds made available under WIA to make grants to provide health insurance coverage assistance to certain adversely affected workers under the Trade Act and others.

This preamble is divided into five sections. Section I provides general background information on the TAA program. Section II describes the changes that the Reform Act made to the TAA program. Section III discusses the Department's guiding principles for implementing reform of the TAA program through the proposed rule. Section IV discusses the proposed rule. Section V discusses administrative requirements for this proposed rulemaking, as mandated by statute and executive order.

I. Background

The Reform Act amended chapter 2 of title II of the Trade Act of 1974 (Pub. L. 93–618), as amended. The TAA program, established by the Act in 1974 to provide improved assistance for workers injured or threatened with injury from increased imports, was changed extensively by amendments in 1981 (title XXV of Pub. L. 97–35), 1984 (sections 2671 and 2672 of Pub. L. 98–369), 1986 (Part 1 of subtitle A of title XIII of Pub. L. 99–272), 1988 (Part 3 of subtitle D of title I of Pub. L. 100–418), and 1993 (section 506 of Pub. L. 103–182).

Before the TAA program's most recent amendment in August 2002, the Department conducted a fact-finding investigation in response to its receipt of a petition for TAA from a group of workers (or their representative). If the investigation resulted in the finding that a group of workers of a firm (or subdivision) had been adversely affected by import competition, then an ETA certifying officer issued a certification stating that workers in the identified worker group were eligible to apply for TAA benefits with the Cooperating State Agency (CSA).

Then, as now, State agencies administered the TAA program as agents of the federal government through agreements signed by the Secretary and Governors of the States. State agencies notified certified workers of potential TAA benefits and services, made eligibility determinations for individuals, and delivered benefits and services. Individual workers who were members of the certified worker group applied for benefits and services at a local office of the State's One-Stop delivery system.

Individual workers who met the qualifying criteria could receive up to 104 weeks of job training, generally up to 52 weeks of income support in the form of Trade Readjustment Allowances (TRA), job search allowances, and relocation allowances. In addition, all workers covered by a certification were eligible for basic reemployment services, including assistance in writing resumes, job referrals, and participation in job clubs.

On December 8, 1993, the President signed into law the NAFTA Implementation Act of 1993, which created the NAFTA–TAA program (section 250 of subchapter D of chapter 2 of title II of the 1974 Act). Certifications of worker groups under the NAFTA–TAA program were made only if imports from Canada and/or Mexico caused the import impact, or if the workers' firm shifted production of an article to either Canada or Mexico. Workers (or their representatives) filed petitions with the Governor of the State in which they were employed, not directly with the Department. The State performed a preliminary investigation upon receipt of a NAFTA–TAA petition. If the workers appeared to be impacted by imports from Canada or Mexico or a shift of production to Canada or Mexico and the firm's (or subdivision's) sales or production decreased absolutely, then the State undertook rapid response activities under WIA. The State transmitted all information gathered in its preliminary investigation to DOL, which issued the final determination on whether to certify the group of workers as eligible to apply for NAFTA–TAA benefits. In order to qualify for TRA, a worker certified under the NAFTA–TAA program had to be enrolled in approved training within specific time limits; no waivers from this requirement were allowed. However, the TAA program allowed waivers of ''basic'' TRA (*i.e.*, the first 26 weeks of TRA) if training was ''not feasible or appropriate'' for the worker.

As part of its passage of the NAFTA Implementation Act, Congress approved the Administration's Statement of Administrative Action (SAA). NAFTA, H.R. Doc. No. 103–159, vol. 1, at 10 (1993). The SAA committed the Department to provide assistance under the Job Training Partnership Act (and, after the repeal of that act, under WIA) to ''secondary'' workers who lost their jobs as a result of the loss of business with a primary firm that was directly affected by imports, but who were not directly impacted by trade with Canada or Mexico. *See id.* at 450 (1993). Workers would receive assistance if their firm supplied components to, or performed finishing operations for, a firm that was directly impacted by trade with Canada or Mexico. These ''secondary workers'' either filed a petition for certification under both the TAA program and the NAFTA–TAA program or filed a petition just under the NAFTA–TAA program. The Department initiated an investigation into their eligibility under the SAA if their certification was denied following the investigation of a NAFTA–TAA petition. The Department determined whether the worker group was impacted indirectly or ''secondarily'' by imports from Canada and/or Mexico or a shift of production to Canada or Mexico. If the Department made an affirmative determination, then workers in the group were eligible to apply for benefits and services delivered through the dislocated worker program, even though they did not qualify for assistance under the NAFTA–TAA program.

II. How the Reform Act Changed the TAA Program

The TAA program has been a required partner in the workforce investment system since the enactment of WIA in 1998. The Reform Act expressly directed the Secretary and the States to coordinate the TAA program with the workforce investment system created under WIA to help adversely affected workers return to the workforce as quickly as possible.

The Reform Act expanded the coverage of the TAA program and increased the benefits provided to adversely affected workers, in part by consolidating the TAA program and the NAFTA–TAA program. As a result, there is a uniform set of requirements that replaces the often different and confusing sets of rules and procedures that applied to the two programs when they were separate. Before the enactment of the Reform Act, only workers whose firms (or subdivisions) were directly affected by increased imports could be certified as eligible to apply for TAA. Eligibility requirements for the NAFTA–TAA program were more inclusive. Workers whose firms (or subdivision) were directly affected by either increased imports from or a shift in production to Mexico or Canada of an article that is like or directly competitive with the article their firm (or subdivision) produced could be certified as eligible to apply for NAFTA–TAA benefits. The Reform Act expanded eligibility even further by retaining the TAA program's eligibility for workers who were directly affected by increased imports from any country and adding provisions to include workers who lose their jobs when their firms (or subdivisions) shifted production to: a country that is a party to a free trade agreement with the United States (such as, but not limited to, NAFTA); a country that is a beneficiary under certain specified legislation enacted by Congress involving trade relations; or to any other foreign country when there has been or there is likely to be an increase in imports of articles that are like or directly competitive with the articles produced by their firm (or subdivision).

In addition, the Reform Act expanded TAA program eligibility to include two categories of secondary workers in the stream of commerce: those who perform work upstream in the production of a trade-impacted article and those who perform work downstream in that production. The first category covers workers who perform activities for a

firm (or subdivision of a firm) that supplies component parts for the article produced by a ''primary firm'' (*i.e.*, a firm that employed a certified group of workers). The Act requires that, if a significant number or proportion of such secondary workers have been separated (or threatened with separation), then they will be certified as eligible to apply for TAA if either the component parts sold to the primary firm constituted at least 20 percent of the sales of the supplier, or the loss of business with the primary firm contributed importantly to the loss of jobs at the supplying firm.

The second category of secondary workers includes workers employed by ''downstream producers,'' defined as firms (or subdivisions) providing additional, value-added production processes, such as finishers or final assemblers of articles produced by a primary firm. These workers will be certified as eligible to apply for TAA when: workers of the primary firm were TAA-certified due to increased imports from or shifts in production to Mexico or Canada of the articles that were the basis for the TAA certification; a significant number or proportion of the workers in the secondary workers' firm (or applicable subdivision) were separated or threatened with separation; and the secondary workers' firm's (or subdivision's) loss of business from the primary firm (or appropriate subdivision) contributed importantly to their separation (or threatened separation). Both the upstream ''supplier'' and the ''downstream producer'' categories of secondary workers, although not covered by the NAFTA–TAA program, may have been eligible under the SAA to receive adjustment assistance initially through the Job Training Partnership Act and later through WIA.

The Reform Act made a number of changes in administrative requirements under the TAA program. One-Stop operators, One-Stop partners, including certain State agencies as well as employers of workers, are specifically added to the categories of entities who may file a petition, though previously these entities could have filed petitions only if they were duly authorized representatives of a group of workers. To inform workers more quickly of the availability of assistance and to facilitate reemployment, rapid response assistance under WIA is now triggered by the concurrent submission of a petition to the Governor and the Secretary. The Department must now make a determination on whether a petition for certification meets the approval criteria within 40 days instead of 60 days from the date of filing of the petition.

To promote adjustment and accelerate reemployment, the Reform Act provides that eligibility for TRA, which is additional income support after unemployment insurance (UI) is exhausted, will be contingent on a worker's enrollment in training not later than 16 weeks after separation from employment or 8 weeks after the petition for eligibility has been approved, whichever date is later. In extenuating circumstances, these deadlines for enrollment in training may be extended up to 45 days; and a waiver of the enrollment in training requirement to receive basic TRA may be issued only under limited and specified conditions. The Reform Act also increased the length of time that TRA is available to an adversely affected worker who is in training by increasing the availability of ''additional'' TRA from 26 to 52 weeks and by further adding up to 26 additional weeks of TRA if a worker is enrolled in a course of remedial education. The primary purpose of this extended income support is to minimize workers' financial hardship until they complete training. By requiring that workers expeditiously enroll in training as a condition of receiving TRA, the Reform Act amendments provide that workers will be more likely to complete the training within the duration of that income support.

The Reform Act also established ATAA, a pilot program designed to encourage the rapid reemployment of workers aged 50 or older. Petitioners seeking ATAA certification for a group of workers on whose behalf TAA certification is sought should make their request on the TAA petition form they submit to the Department. In determining whether to certify a group of workers as eligible to apply for ATAA, the following criteria must be considered: (1) Whether a significant number of workers in the workers' firm are 50 years of age or older; (2) whether the workers in the workers' firm possess skills that are not easily transferable; and (3) the competitive conditions within the workers' industry.

A qualified worker in a group certified as eligible to apply for ATAA may choose to receive payments of 50 percent of the difference between their pre-layoff wages and their reemployment wages in lieu of all other benefits available under the TAA program except the HCTC. A worker may receive payments for up to a two-year period, but the maximum amount paid may not exceed $10,000. In order to qualify, a worker must be at least 50 years of age, become reemployed within 26 weeks of separation, and be reemployed at annual wages of less than $50,000 in a full-time job that is not the job from which he or she was laid off. The termination date for ATAA is August 6, 2008, five years after the date of its implementation. However, participants may continue to receive the balance of the payments for which they were eligible after the termination date.

The Reform Act amended the Internal Revenue Code (IRC) to authorize the HCTC for certain eligible individuals in the new and old TAA programs and in the NAFTA–TAA program. The Reform Act added a new section 35 to the IRC, establishing the HCTC which is a tax credit covering 65 percent of the cost paid by the individual for coverage of the individual and the individual's qualified family members under qualified health insurance. Potentially eligible individuals fall into three groups: (1) ''eligible TAA recipients,'' meaning individuals who are receiving TRA or who would be eligible to receive TRA if they had exhausted their UI; (2) ''eligible alternative TAA recipients,'' meaning individuals who are receiving a benefit under the ATAA program; and (3) ''eligible PBGC pension recipients,'' meaning individuals who are at least age 55 and receiving pension benefits paid, at least in part, by the Pension Benefit Guaranty Corporation (PBGC). The credit has been available on an advance basis since August 1, 2003. With respect to advance payments of the credit, the Reform Act requires the Secretary of Labor to certify an individual as an eligible TAA recipient, eligible ATAA recipient, or eligible PBGC pension recipient to enable potentially eligible recipients to seek the credit from the IRS. The IRS then determines whether the other HCTC eligibility criteria have been met. The Department is coordinating administration of this responsibility and other aspects of the HCTC with the Department of the Treasury, the Department of Health and Human Services, the PBGC, and the CSAs administering the TAA program.

The Reform Act also added two new aspects to the National Emergency Grant (NEG) program administered by the DOL under WIA to assist the States in providing health insurance coverage assistance to eligible individuals. One type of NEG is available primarily to provide health insurance coverage assistance to eligible individuals and to pay the administrative and startup costs of enrolling such individuals, which includes the processing of the eligibility certificates necessary for the tax credit. The other type of NEG is available

primarily to provide interim health insurance coverage assistance and supportive services (such as transportation, child and dependent care, and income assistance) to individuals eligible for the tax credit, including eligible TAA recipients under the old TAA and NAFTA–TAA programs.

The Reform Act also amended the Employee Retirement Income Security Act, the Public Health Service Act, and the IRC to allow a temporary 60-day extension of the period during which individuals who are ''TAA-eligible recipients'' may elect Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage under the layoff employer's health insurance plan. The temporary extension provided under the Reform Act begins on the day the individual first meets the TAA eligibility requirements. The TAA-eligible worker must elect to receive the temporary extension within six months after the date of the TAA-related loss of coverage, which the statute defines as the loss of health benefits coverage associated with the separation of the TAA-eligible individual from employment. If a worker elects to receive the extension, then either the tax credit or the NEG would be available to assist the worker to make the payments for the continuation coverage.

Aspects of the tax credit that are administered by the Internal Revenue Service and the Department of the Treasury are not addressed in the proposed regulations. However, the Department proposes amendments to WIA regulations at 20 CFR Part 671 to reflect the new tax credit-related changes to the NEG programs. Funds made available to States under WIA section 174 will be used to provide health insurance coverage assistance to eligible TAA recipients, eligible ATAA recipients and eligible PBGC pension recipients under WIA section 173(f) and (g).

The Reform Act also created a separate TAA for Farmers program. Eligibility determinations for that program are the responsibility of the Secretary of Agriculture. Agricultural commodity producers entitled to cash benefits under that program are entitled to the same basic reemployment services and training as other workers covered by the TAA program, but they may not receive TRA, job search or relocation allowances, or the HCTC. The Department of Labor provides funding for the employment services and the Secretary of Agriculture oversees the payment of cash assistance (up to $10,000 per year) provided to eligible agricultural commodity producers under the Department of Agriculture's certification. The Secretary of Agriculture issued regulations implementing the Department of Agriculture's function in the TAA for Farmers program on August 20, 2003 (68 FR 50048) and November 1, 2004 (69 FR 63317–01).

III. Guiding Principles for the TAA Program Under Proposed 20 CFR Part 618

The Secretary seeks to ensure that States use effective strategies to assist adversely affected workers in rapidly obtaining sustainable employment through the operation of the TAA program and the demonstration ATAA program for older workers. State agencies must increase their focus on early intervention, upfront assessment and reemployment services for adversely affected workers. The initiation of rapid response activities upon the filing of a petition for certification of eligibility to apply for TAA allows State agencies the opportunity to provide workers with early assessment and identification of their marketable skills. A CSA's first priority should be to provide job search assistance and other reemployment services to improve the likelihood of these workers obtaining sustainable employment quickly. Where training is appropriate, it should be designed to return the worker to employment as quickly as is consistent with the worker's training goals.

Career centers in the One-Stop delivery system will become the main point of participant intake and delivery of benefits and services by the States. This approach encourages coordination among workforce investment and other One-Stop partner programs including the TAA program, which will better serve workers and promote efficiencies in the workforce investment system.

Fiscal integrity and performance accountability will be monitored to ensure that the money allocated for TAA and ATAA is used to assist workers and thereby strengthen the economy. Improved participant outcome measures for the program will assist the Department and the States in reaching these goals.

IV. Summary and Discussion of Regulatory Provisions

The rules proposed in this NPRM, covering TAA program benefits and administration, are based largely on the current regulations codified at 20 CFR Part 617 (Trade Adjustment Assistance for Workers under the Trade Act of 1974). The proposed Part 618 regulations also incorporate amendments to the TAA program effectuated by the Reform Act, and simplify the language adopted from the current regulations in compliance with the Presidential directive that Federal agencies write new regulations in plain language (63 FR 31885, June 10, 1998). In accordance with the Reform Act, the claims of workers covered by petitions filed before November 4, 2002 continue to be governed by the rules of the TAA and NAFTA–TAA programs prior to that date. These rules will continue to be codified at 20 CFR Part 617. In addition, the NAFTA–TAA operating instructions previously issued by DOL, General Administrative Letter No. 7–94 (59 FR 3871, January 27, 1994) and changes 1, 2, and 3 (69 FR 60898, October 13, 2004; 69 FR 67963–03, November 22, 2004) will continue to apply to eligible participants of the TAA and NAFTA–TAA programs until superseded by these regulations.

The proposed amendments to 20 CFR Part 617 and to the WIA regulations, codified at 20 CFR Parts 665 and 671, respectively, reflect both the Reform Act requirements for coordination between the workforce investment system and the TAA program and changes to the NEG program relating to the HCTC.

Part 617—Trade Adjustment Assistance Under the Trade Act of 1974 for Workers Certified Under Petitions Filed Before November 4, 2002

The proposed revisions to Part 617 include changing the title to clearly identify that this Part applies only to workers certified as eligible to apply for trade adjustment assistance under petitions filed before the Reform Act changed the TAA program. Proposed § 617.1 amends this section to provide further clarification that the provisions for TAA assistance under this Part 617 will continue to apply after the effective date of Part 618 only to adjustment assistance, TRA, and other allowances available to adversely affected workers covered by certifications issued under petitions filed with the Secretary before November 4, 2002, the effective date of the Reform Act amendments to the TAA programs. Proposed § 617.10 adds a new paragraph (e) to that section to require CSAs to advise adversely affected workers subject to the requirements of the TAA program in effect before November 4, 2002 of the qualifying requirements for the health coverage tax credit (HCTC) and related health insurance assistance established by the Reform Act.

Part 618—Trade Adjustment Assistance Under the Trade Act of 1974 for Workers Certified Under Petitions Filed After November 3, 2002.

Subpart A—General

Subpart A describes the TAA program and the contents of all the subparts. In addition, it defines all relevant terms used in other subparts. (Several definitions related to subpart B (Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance) are held in reserve for publication with subpart B.) Several definitions have been modified and simplified to clarify their meanings, or eliminated in response to statutory changes in the TAA program. In addition, definitions of new terms have been added to describe the amended TAA programs, including the new ATAA program. Use of these definitions in the NPRM is intended to facilitate the integration of the TAA programs into the One-Stop system under the WIA and to describe and implement new concepts introduced into the TAA programs by the Reform Act, such as the HCTC. Major changes include:

- The goal of the program has been defined as providing workers, so as quickly as possible, with assistance to return them to work that will use the highest skill levels and pay the highest wages given the workers' preexisting skill levels and education and the condition of the labor market.
- The definition of adversely affected worker has been clarified to include the owner of a small business adversely affected by foreign trade.
- A new definition of customized training has been added.
- Definitions necessary for HCTC processing have been added.

Proposed § 618.100 describes the purpose of the program, which the Department, based on past experience, has modified to reflect achievable outcomes for a worker. Under the current statement of purpose at 20 CFR 617.2, the stated goal of the TAA program is to return workers to suitable employment as quickly as possible. In this context, ''suitable employment'' means that after the worker received services under the TAA program, the worker would be re-employed at 80 percent of his or her former salary. While that goal has not changed, the Department has revised the wording of the goal to make it clear that finding ''suitable employment'' is a goal, not a requirement of the Act.

Although the ''suitable employment'' standard is a worthy goal, and one that the Department intends to continue to pursue, it is merely a goal and not a program requirement. Unfortunately, there are situations in which workers may be unable to obtain ''suitable employment'' either in the local labor market or as a result of training. This may occur because the workers are experienced workers for whom few jobs at their former wages are available, because of a depressed local labor market in which there are few available jobs, or because the workers have substantial barriers to reemployment. These factors significantly constrain the training opportunities that are available for these workers, and therefore, their employment prospects as well. Yet providing training, especially in a stagnant labor market, may significantly increase a worker's chances for obtaining a decent job with career advancement prospects or of succeeding in the labor market.

The Department's goal is to provide the best possible outcome for each worker participating in the program. Therefore, the Department is committed to providing training that will allow a worker to compete for the highest paying employment achievable given the worker's pre-existing skills, abilities, and education, and the current job market. The proposed purpose section accurately reflects the Department's goal.

Proposed § 618.105 sets forth the effective dates for various aspects of the TAA program, the ATAA program, and HCTC, as provided by the Reform Act. Until these regulations at Part 618 take effect, Training and Employment Guidance Letter (TEGL) No. 11–02 and its changes will continue to govern determinations on certifications and benefits for workers covered under petitions filed after November 3, 2002. Similarly, TEGL No. 2–03, and its changes, continue to govern determinations on ATAA certifications and benefits made before the effective date of this Part 618. Part 617 will continue to apply to the operational and benefit provisions of the TAA program for petitions filed before November 4, 2002 and certifications granted under those petitions. General Administrative Letter (GAL) No. 7–94 (59 FR 3871, January 27, 1994) and its changes (69 FR 60898–60903, October 13, 2004) continue to apply to NAFTA–TAA petitions filed before November 4, 2002, even when determinations on those petitions are issued after that date.

The terms defined in proposed § 618.110 apply to both the petition process and the benefit provisions of the TAA program. They derive from six basic sources: the Act prior to the Reform Act amendments, the Reform Act, 20 CFR Part 617, 29 CFR Part 90, the WIA and its implementing regulations at 29 CFR Part 652, *et seq.* Several definitions used in 20 CFR Part 617 and 29 CFR Part 90 have been modified and simplified to clarify their meanings, amended to reflect current TAA statutory language or eliminated in response to TAA statutory changes.

The particular definitions are explained as they appear in this section, in *alphabetical order*, as follows.

Act—The citation for the Trade Act in the proposed definition is updated from the citations in 29 CFR Part 90 and 20 CFR 617.3(a) to include all amendments to the Act through the date of publication of this notice.

Additional compensation—This proposed term was included in the description of unemployment compensation in 20 CFR 617.3(oo). The proposed definition of this term is the same as § 617.3(oo)(2).

Adversely affected employment—This proposed definition is based on the statutory definition, which was codified in 20 CFR 617.3(a), and, although the definition has been revised for clarity, no substantive change from that definition is intended.

Adversely affected worker—This proposed definition modifies the definition in 20 CFR 617.3(c) to clarify the Department's interpretation of this statutory term. Under this proposed definition, an employer may be considered an adversely affected worker when the employer is also an employee of a business that closes or experiences a reduction in operation. In this circumstance, if the employer becomes totally or partially separated from his or her employment, the employer is an ''adversely affected worker.'' The proposed definition also changes the definition in 20 CFR 617.3(c) to include the applicable periods during which the worker's separation must occur in order for that worker to be eligible to apply for TAA, or TAA and ATAA: the period from the impact date to two years after the date on which the certification is signed or earlier if the certification is terminated before it expires after two years.

Agent State—This proposed definition is substantively unchanged from the definition and description of agent State codified in 20 CFR 617.3(aa)(2) and 617.16(e).

Alternative Trade Adjustment Assistance, Alternative TAA or *ATAA*—This proposed term refers to the assistance provided under the demonstration program introduced by the Reform Act to provide an alternate path for adversely affected workers over the age of 50 years to elect to receive benefits under the Act, as discussed in

subpart I (reserved for publication at a later date).

Applicable State law—This proposed definition is substantially the same as in 20 CFR 617.16. The wording has been changed slightly to make the definition more easily understood, and the separate paragraph addressing adversely affected workers entitled to UI under the Railroad Unemployment Insurance Act (RRUI) has been dropped because it is duplicative of paragraph (a)(2) of this definition in 20 CFR 617.16, which also applies to adversely affected workers entitled to UI under the RRUI.

Average weekly hours—This proposed definition is the same as in 20 CFR 617.3(e).

Average weekly wage—This proposed definition is substantively the same as in 20 CFR 617.3(f). However, it replaces the phrase ''the individual's appropriate week'' with the phrase ''the week in which the individual's first separation occurred.'' This change eliminates the definition of ''appropriate week,'' which was referenced only one time in the definition of ''average weekly wage'' at 20 CFR 617.3(f). Therefore, the Department proposes to remove the term ''appropriate week,'' as defined at 20 CFR 617.3(d), from this proposed Part 618. This definition otherwise did not change substantively.

Benefit period—This proposed definition is the same as in 20 CFR 617.3(h).

Bona fide application for training—This proposed definition is the same as the definition in 20 CFR 617.3(i), except that it no longer includes the direction to the CSA that the form must be signed and dated upon receipt and the form used is not required to contain the local office number of the CSA. Instead, proposed § 618.605(b)(2) directs a representative of the CSA to sign and date the application upon receipt. Access to CSAs and their contact information via telephone directories and information assistance and the Internet obviates the need for a bona fide application for training to contain the local office telephone number, which may soon be outdated.

Certification—This proposed definition modifies the definition in § 617.3(j)(1) to include a reference to ATAA. The procedures for obtaining a certification will be described in the proposed subpart B [reserved].

Certification period—This proposed definition is the same as in 20 CFR 617.3(j)(2).

Certifying officer—This proposed definition is updated from the definition in 20 CFR Part 617 by changing ''Office'' to ''Division'' and ''Part 90'' to ''Part 618.''

Co-enrollment—This proposed term refers to an individual who is participating in a TAA program and is also enrolled in another program administered through a State's WIA One-Stop delivery system.

Commuting area—This proposed definition is the same as in 20 CFR 617.3(k).

Confidential business information—This proposed definition replaces the definition at 29 CFR 90.33(a), and provides a more precise statutory basis, under the Trade Secrets Act, 18 U.S.C. 1905, for withholding from disclosure commercial and financial data received by the Department during its investigation of petitions for certification of worker eligibility to apply for TAA, or TAA and ATAA. Section 90.33(a) identifies the Freedom of Information Act, 5 U.S.C. 552 (FOIA), and the Department's regulations implementing FOIA, 29 CFR Part 70, as the bases for designating confidential commercial information as ''privileged or confidential.'' FOIA exemption (b)(4) exempts from mandatory disclosure under FOIA certain commercial or financial information that is the subject of a FOIA request. The Trade Secrets Act affirmatively prohibits the disclosure of confidential business or commercial information, in the absence of legal authority. The term ''confidential business information'' is used in connection with disclosure of information by the Department and by the States, as in proposed § 618.865(b).

Cooperating State agency or CSA—This proposed term is added to accurately identify the agency or agencies at the State level that carry out provisions of the Act because of the new emphasis on coordination between the TAA programs and the One-Stop delivery system. While the proposed definition includes the ''State agency,'' as that term was defined in 20 CFR 617.3(ii), it also includes the State Workforce Agency and other State or local agencies that cooperate in the administration of the TAA programs under an agreement between the Governor and the Secretary.

Customized training—This proposed term is newly defined to identify a type of training previously not referenced in the Act. While the Reform Act generally did not amend the job retraining provisions of the Act, it changed the reference to ''on-the-job training'' to ''employer-based training, including (i) on-the-job training and (ii) customized training.'' The proposed definition of customized training refers to § 618.635(b) which describes customized training similarly to the definition for such training under WIA.

Date of certification—This proposed term means the same as the term ''date of issuance'' in 29 CFR 90.2, but has been expanded and renamed to avoid any suggestion that the date on which the certification is signed may be different from the date on which the certification is issued. The phrase ''for a group of adversely affected workers at a firm or subdivision'' is added to the proposed definition to indicate that the certification will identify the group of workers to whom it applies.

Date of filing—This proposed definition is modified from the definition in 29 CFR 90.2. The current office handling petitions under the TAA programs, DTAA, is substituted. The definition also makes clear that a petition is only considered filed on the date on which DTAA receives a complete petition.

Date of separation—This proposed definition is intended to have the same meaning as 20 CFR 617.3(l), but is rephrased slightly for clarity and is stated in the disjunctive to make it clear that the three situations listed are alternatives.

Department of Labor or *Department* or *DOL*—This proposed term identifies the Department of Labor. The abbreviations are added to simplify references to the agency.

Director—This proposed definition differs from the definition in 29 CFR 90.2 by using the term Division rather than Office to reflect the current ETA organizational structure, and by including any person who is designated to act in the place of the Director.

Division of Trade Adjustment Assistance or *DTAA*—This proposed definition refers to the name of the organization within the Employment Training Administration of the Department with responsibility for administering the TAA programs. CSAs work under the direction of DTAA to provide services and benefits under the TAA programs.

Eligible ATAA recipient, Eligible PBGC pension recipient and Eligible TAA recipient—These proposed definitions incorporate the definitions the categories of persons who may be eligible to qualify for the health coverage tax credit under section 35 of the Internal Revenue Code and health insurance coverage assistance under section 173(g) of the WIA, 29 U.S.C. 2918, as amended by the Reform Act. These categories are defined in sections 35(c)(3), 35(c)(4) and 35(c)(2) of the Internal Revenue Code, 26 U.S.C. 35(c)(3), (c)(4) and (c)(2). The CSA must send a list of eligible ATAA and TAA recipients to the Internal Revenue Service (IRS). However, only the IRS

can make a determination that an individual who is on that list is eligible to receive the HCTC.

Employer—This proposed definition is the same as in 20 CFR 617.3(n).

Employment—This proposed definition is the same as in 20 CFR 617.3(o).

Extended compensation or *Extended Benefits* or *EB*—This proposed term was included in the description of unemployment compensation in 20 CFR 617.3(oo). The proposed definition of this term has been revised to simplify and update § 617.3(oo)(3).

Family—This proposed definition is the same as the definition of this term in 20 CFR 617.3(q), which is based on the Internal Revenue Code definition, except for updating the date of the Internal Revenue Code from ''1954'' to ''1986.''

Federal student financial assistance—This proposed term is added to describe the various types of student financial assistance authorized by title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 *et seq.*) and Bureau of Indian Affairs student assistance programs which may be available to adversely affected workers.

Federal supplemental compensation—This proposed term was included in the description of unemployment compensation in 20 CFR 617.3(oo). The proposed definition of this term has been revised to simplify and update the language used in § 617.3(oo)(4).

Firm—This proposed definition is substantially the same as in 29 CFR 90.2. The definition is intended to be broad enough to encompass all kinds of organizations and to include closely related or affiliated organizations. The definition is, however, limited by basic rules of corporate and organizational law to entities that share the indicia of common ownership or control.

First benefit period—This proposed definition is substantively the same as in 20 CFR 617.3(r). To achieve consistency in proposed Part 618, the term ''worker'' is used instead of ''individual,'' which is used in this definition in Part 617.

First qualifying separation—This proposed definition is substantially changed from 20 CFR 617.3(t)(3), which defines this term one way for purposes of determining the weekly and maximum amounts of basic TRA, and another way for all the other purposes of Part 617. For simplification, the proposed definition of this term applies solely for the purpose of determining the weekly and maximum amounts of basic TRA and is substantively the same as at 20 CFR 617.3(t)(3)(ii). The other purpose for which this term is used in 20 CFR 617.3(t)(3)(i) is now covered in the proposed definition of ''qualifying separation'' at proposed § 618.110.

First separation—This proposed definition is the same as in 20 CFR 617.3(t)(1), except that the cross reference has been deleted as unnecessary.

Health Coverage Tax Credit or *HCTC*—This proposed term is added to describe the tax benefit under section 35 of the Internal Revenue Code of 1986 (26 U.S.C. 35) that the Reform Act makes available to qualified TAA and ATAA recipients.

Impact date—This proposed definition slightly revises the definition of this term at 20 CFR 617.3(v) for simplicity. The impact date is stated in the certification for eligibility of covered workers to apply for TAA. As required by section 223(b)(1) of the Act, the impact date may not be more than one year before the date of the petition on which such certification was granted.

Individual employment plan (IEP)—This is a new definition. Generally, an IEP is prepared after conducting a comprehensive assessment of the worker's employment goals and strategies to achieve those goals. An IEP means an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals.

Job finding club—This proposed definition is the same as the definition of this term in 20 CFR 617.3(y).

Job search program or *JSP*—This proposed definition is the same as the definition of this term in 20 CFR 617.3(w).

Job search workshop—The proposed wording of this term varies slightly from 20 CFR 617.3(x) to provide a clearer description, but the meaning is intended to be the same.

Lack of work—This term is used in the definitions of ''adversely affected worker'' in section 247(2) of the Act, as well as in the definitions of ''adversely affected worker'' and ''layoff'' in these proposed regulations. Thus, the term is defined here to clarify its meaning. The definition includes situations where the employer is downsizing the workforce by attrition or offering severance benefits to encourage workers to leave the workforce voluntarily, and where a worker's hours of employment have been reduced because sufficient work to maintain that worker's customary hours of work is not available. A worker who is separated from employment under these circumstances may be covered as an ''adversely affected worker'' and be eligible to receive TAA, or TAA and ATAA. It should be noted that some workers will meet this definition of a ''lack of work'' separation, but will be disqualified for UI under State voluntary quit provisions. The UI disqualification will make these workers ineligible for TRA, although they may qualify for other forms of TAA.

Layoff—This proposed definition follows the definition in 20 CFR 617.3(z) and contains two minor changes to the definition of this same term in 29 CFR 90.2. The phrase ''suspension or separation from employment'' used in § 617.3(z) is adopted instead of the phrase ''suspension from pay status'' used in the definition of this term in § 90.2 because the Department intends for ''layoff'' to include persons separated from employment who receive severance pay and therefore may be considered to be in a pay status. This definition may be an issue for some States, and some workers will be able to get TAA services other than TRA, for which they may be disqualified based upon the receipt of severance pay. The Department proposes using the phrase ''expected to be for a definite or indefinite period of not less than seven (7) consecutive days'' from 20 CFR 617.3(z) rather than the phrase ''expected to last for no less than seven (7) consecutive calendar days,'' which is used in the definition of this term in 29 CFR 90.2. Use of the Part 617 language will remove any ambiguity about whether a suspension or separation from employment may be for a definite or indefinite period and still be a ''layoff'' for TAA purposes. Additionally, use of the Part 617 language will notify CSAs that they must continue to measure the duration of a suspension or separation from employment as they have been under Part 617.

Liable State—This proposed definition follows 20 CFR 617.3(aa) but is revised for simplicity. The term ''Agent State'' is now separately defined at proposed § 618.110.

One-Stop delivery system—This proposed term refers to the system of entities within a State operating under WIA and its implementing regulations to provide employment and training activities, including coordination of services to eligible dislocated workers as defined under section 101(9) of WIA. WIA section 121(b)(1)(B)(viii) requires the TAA program to be a partner in the One-Stop delivery system.

On-the-job training (OJT)—This proposed definition, unlike the

definition in 20 CFR 617.3(bb), defines this term by reference to the on-the-job training provision at proposed § 618.635(a)(1) (enrollment in on-the-job and customized training).

Partial separation—This proposed definition combines the slightly different definitions of this term in 20 CFR 617.3(cc) and 29 CFR 90.2. The definition of this term in § 90.2 applies to separations ''at the firm or appropriate subdivision thereof,'' referring to workers who have not yet been certified as eligible to apply for TAA. After they have been determined to be eligible to apply for TAA, the workers' ''partial separation'' is referred to in § 617.3(cc) as being ''in adversely affected employment,'' the term that the Trade Act uses in section 247(6) of the Act to describe the two measures of ''partial separation.'' The proposed combined definition retains the statutory criteria of ''partial separation'' to refer to both workers on whose behalf a petition has been filed and workers who are covered by a certification. The proposed definition also clarifies the meaning of the term by specifying that, in order for the worker to be counted as partially separated from adversely affected employment, the reduction of hours must have occurred during a week ending on or after the impact date specified in a certification.

Program of remedial education—This new proposed term is used to refer, as the Reform Act does, to education designed to upgrade the basic knowledge of adversely affected workers through such courses as adult basic education, basic math and literacy, English-as-a-second-language, and high school equivalency.

Qualifying separation—This term, as defined at 20 CFR 617.3(t)(2), is used to determine whether an individual qualifies as an adversely affected worker and for basic TRA. Under the proposed definition of this term, it applies for both those purposes as well as for determining the 16-week period for enrollment in approved training and the basic TRA eligibility period.

For the purpose of determining the basic TRA eligibility period under proposed § 618.745(a), an adversely affected worker's eligibility for basic TRA ends at ''the close of the 104-week [or, under the Reform Act amendments, if necessary to complete an approved training program that includes remedial education, the 130-week] period beginning with the first week following the week in which the adversely affected worker's most recent qualifying separation (defined in proposed § 618.110) occurred.'' Thus, every time an adversely affected worker has a ''qualifying separation,'' he or she begins a new basic TRA eligibility period, as provided in section 233(a)(2) of the Act.

This ''movable basic TRA eligibility period'' is the same under proposed Part 618 as it is under Part 617 because the Reform Act did not amend it. However, the Part 618 regulations achieve the same result in a simpler fashion. Section 617.15(a) of 20 CFR provided a 104-week ''eligibility period.'' This term is defined at 20 CFR 617.3(m)(1)(ii) in reference to the ''first total qualifying separation,'' which is a ''first qualifying separation'' under 20 CFR 617.3(t)(3)(i)(B). However, the definition of ''eligibility period'' in Part 617 provides that if an individual has a ''subsequent total qualifying separation within the certification period of the same certification,'' that individual would have a new 104-week eligibility period. Thus, the Part 617 regulations provide for a movable basic TRA eligibility period, through several steps by running the eligibility period from the ''first total qualifying separation,'' and then restarting it where the adversely affected worker had a ''subsequent total qualifying separation.'' The Part 618 regulations achieve the same result, but more simply, by running the eligibility period from the most recent ''qualifying separation'' (defined as, among other things, a total separation).

The definition of ''qualifying separation'' is used also for the purpose of determining the 16-week period for enrollment in approved training as a condition of TRA, a deadline added by the Reform Act. Proposed § 618.720(b)(2) establishes this deadline as the ''last day of the 16th week after the adversely affected worker's most recent qualifying separation as defined in § 618.110,'' thus establishing a ''movable'' 16-week period for enrollment in approved training, as provided in section 231(a)(5)(A)(ii)(I) of the Act.

As noted in the preamble explanation of the definition of ''first qualifying separation'' at proposed § 618.110, that definition applies only for the purposes of determining the weekly and maximum amount of basic TRA. The proposed definition of ''qualifying separation'' also modifies the 20 CFR 617.3(t)(2) definition by eliminating outdated provisions.

Regional Administrator—This proposed definition is substantively unchanged from 20 CFR 617.3(dd).

Regular compensation—This proposed term was included in the description of unemployment compensation in 20 CFR 617.3(oo). The proposed definition of this term is the same as § 617.3(oo)(1).

Secretary—This proposed term, used to refer to the Secretary of Labor, United States Department of Labor, is the same as in 20 CFR 617.3(ff).

State—This proposed definition is the same as the definition of this term in 20 CFR 617.3(hh).

State agency—This proposed definition revises the definition of this term used in Part 617 by incorporating the statutory definition of ''the agency of the State which administers the State law.'' The proposed definition of ''CSA'' in proposed § 618.110 is the same as the 20 CFR 617.3(ii) definition of ''State agency,'' except that current terminology is used instead of ''State Employment Security Agency.''

State law—This proposed definition is the same as in 20 CFR 617.3(jj), except that the reference to the Internal Revenue Code has been updated.

Suitable employment—The proposed definition of ''suitable employment'' comes from section 236(e) of the Act, defining it as ''work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.'' That section expressly states that its definition of this term applies for purposes of section 236. Section 236 uses the term ''suitable employment'' only in section (a)(1)(A) (the first criterion for the approval of training), providing for approval where ''there is no suitable employment * * * available for an adversely affected worker.''

The term ''suitable employment'' also is used in section 231(c)(1)(B) of the Act to permit waiver of the training requirement for receiving TRA where an adversely affected worker has marketable skills for ''suitable employment'' and there is a reasonable expectation of employment at equivalent wages in the foreseeable future. Section 231 of the Act neither incorporates the definition of ''suitable employment'' in section 236(e) of the Act nor provides a different definition of the same term. The Department has determined that it is appropriate to apply the section 236(e) definition of the term in implementing section 231 of the Act because these provisions are interrelated. Where ''suitable employment'' is available for an adversely affected worker, approval of training will be denied under section 236(a)(1)(A) of the Act. However, the worker may need income support while looking for that ''suitable employment,'' which may depend upon a waiver of the training requirement. Using the same

definition of ''suitable employment'' for purposes of section 231(c)(1)(B) of the Act allows CSAs to decide whether to deny training and to grant waivers on the same basis.

Sections 237(a)(2)(B) and 238(a)(2)(B) of the Act require, as conditions for receipt of job search and relocation allowances, that ''the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.'' In implementing these provisions, the Department proposes in subparts D and E to use the same definition of the term ''suitable employment.'' This is a departure from the current regulations at 20 CFR 617.32(a)(4) (on job search allowances) and 617.42(a)(6) (on relocation allowances) which interpret ''suitable employment'' to mean ''suitable work'' as defined in 20 CFR 617.3(kk)(1) and (2), whichever is applicable to the individual. ''Suitable employment'' is generally work at higher skill levels and wage rates than is ''suitable work.'' By changing the interpretation of ''suitable employment'' to have the same meaning for purposes of eligibility for relocation and job search allowances that it has in proposed subpart F of Part 618 on training, the Department intends to encourage workers to use these benefits in a manner consistent with the purpose of the program to encourage workers to seek new jobs with compensation levels near the levels of those jobs from which they were separated. This proposed regulatory change may increase the number of workers who qualify for job search allowances in areas where ''suitable employment'' opportunities are limited. On the other hand, using ''suitable employment'' in the eligibility criteria for relocation allowances could restrict the jobs for which relocation allowances may be paid.

The Department invites comment on whether it should instead define ''suitable employment'' for purposes of job search and relocation allowance eligibility as a job at lower wages than ''suitable employment'' as defined in section 236(e) of the Act for job training approval. A lower standard for ''suitable employment'' would have the beneficial effect of increasing the number of jobs for which a worker might obtain a job search or relocation allowance. On the other hand, approval for either of these allowances requires that there be no reasonable expectation of securing ''suitable employment'' in the commuting area. Therefore, a lower standard would make it more likely that a disqualifying ''suitable employment'' would be available locally. The Department also invites comment on what level would be appropriate, and why.

The proposed definition of ''suitable employment'' differs slightly from the definition in 20 CFR 617.22(a)(1)(i) by expressly requiring the CSA to take into consideration the value of fringe benefits, including health insurance, in determining whether the level of wages for work is at least 80 percent of the adversely affected worker's average weekly wage in the adverse employment from which the worker was separated. The broad definition of the term ''wages'' in 20 CFR 617.3(pp) and proposed paragraph 618.110, which includes ''all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash,'' is the basis for emphasizing to the CSAs that they must consider fringe benefits as part of the total wage package factor in making determinations as to whether ''suitable employment'' is available to an adversely affected worker. Comments on this change in definition are specifically requested.

Suitable work—The definition proposed for Part 618 is the same as the definition of this term in 20 CFR 617.3(kk)(1) and (2), that is, either as suitable work as defined in the applicable State law for claimants for regular compensation, or suitable work as defined in applicable State law provisions consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970. State unemployment insurance laws define ''suitable work'' in terms of a worker's job prospects. The better the job prospects, the higher the level of work considered suitable. Further, where a worker's job prospects are not good, the EUCA considers any work within the worker's capabilities to be suitable. Lastly, the proposed definition, as well as the Part 617 definition, excludes self-employment or employment as an independent contractor. Thus, if self-employment or employment as an independent contractor is the only available employment in the worker's commuting area, the worker may be eligible for a job search or relocation allowance as he or she will not be disqualified for this reason.

Supportive services—This proposed new term is used to refer to such services as transportation, childcare, dependent care, and housing that are needed to enable an individual to participate in activities authorized under the Act.

Total separation—This proposed definition combines the definitions currently codified in 20 CFR 617.3(ll) and 29 CFR 90.2. The definition of ''total separation'' in 29 CFR Part 90 refers to an individual's layoff or severance ''from a firm or an appropriate subdivision thereof;'' the 20 CFR Part 617 definition refers to an individual's layoff or severance from ''employment with a firm in which, or in a subdivision of which, adversely affected employment exists,'' and therefore refers to a determination that the individual is covered by a certification of eligibility to apply for TAA. The proposed definition recognizes that a ''total separation'' is the same whether or not the worker group involved is covered by a certification.

Trade adjustment assistance or *TAA*—The proposed definition of TAA has been revised to refer to the services and allowances to help adversely affected workers become reemployed. They include TRA, training and other reemployment services, job search allowances and relocation allowances, and HCTC.

Trade adjustment assistance for Farmers program or *TAA for Farmers program*—This term is added to refer to the program of adjustment assistance added to the Act by subtitle C of the Reform Act to provide benefits and services to agricultural commodity producers through a certification process administered by the United States Department of Agriculture under regulations codified at Part 1580 of title 7 of the Code of Federal Regulations. Employment services and training under the TAA program are available to agricultural commodity producers determined by the Department of Agriculture to be eligible to receive a cash benefit under that program.

Trade readjustment allowance or *TRA*—This proposed definition is substantively unchanged from 20 CFR 617.3(nn).

Unemployment insurance or *UI*—This proposed definition has been revised to simplify, update and clarify the language in 20 CFR 617.3(oo). The four types of UI defined in 20 CFR 617.3(oo) (regular compensation, additional compensation, extended compensation or extended benefits or EB, and Federal supplemental compensation) are separately defined in this section.

Wages—This proposed definition is the same as the definition of this term in 20 CFR 617.3(pp).

Wagner-Peyser Act—This new proposed term refers to the Wagner-Peyser Act, as amended (29 U.S.C. 49 *et seq.*).

Week—This proposed definition is the same as the definition of this term in 20 CFR 617.3(qq).

Week of unemployment—The proposed definition follows the definition of this term in the Act, and differs from the definition but not the meaning of this term in 20 CFR 617.3(rr) by using the phrase ''Federal unemployment insurance law'' instead of ''Federal unemployment compensation law'' to accord with the proposed definition of UI in paragraph (b)(80) of § 618.110.

Workforce Investment Act or *WIA*—This proposed term refers to the Workforce Investment Act of 1998, under which the Department provides States and local Workforce Investment Areas with funds for employment and training activities for adults and dislocated workers and for youth activities.

Subpart C—Delivery of Services Through the One-Stop Delivery System

Proposed subpart C is an entirely new subpart that sets forth requirements for CSAs to assist individuals who are covered by a petition but not yet certified, as well as adversely affected workers. This subpart provides a road map for CSAs of their responsibility for providing reemployment services, whether they are provided through the TAA program, through the WIA One-Stop delivery system, or through any other federal law. It covers rapid response assistance and access to WIA core and intensive services, as well as supportive and other services. It emphasizes the integration of the TAA program into the WIA One-Stop delivery system. Subpart C is added in response to amendments made by the Reform Act, so it does not have an exact counterpart in Part 617 of the DOL regulations. Major points include:

- CSAs must ensure that their TAA program administration complies with the One-Stop partnership requirements.
- Individuals covered by a petition must be offered rapid response assistance and WIA core and intensive services.
- A needs assessment is required for each TAA applicant and a comprehensive assessment for any recipient entering training.
- CSAs must make every reasonable effort to secure for adversely affected workers counseling, testing, and placement services as well as supportive and other services provided for under any other Federal law.
- Co-enrollment is encouraged as a strategy for delivering services.
- CSAs are required to prepare an individual employment plan (IEP).
- Worker benefit eligibility is protected by requiring CSAs to take timely action on training waivers when appropriate.
- CSAs are required to provide employment services to individuals entitled to cash benefits under the TAA for Farmers program administered by the U.S. Department of Agriculture.

Proposed § 618.300 discusses the scope of this new subpart, which focuses on the requirement that TAA program benefits and services be integrated to the extent possible with the reemployment services provided through the WIA-funded One-Stop delivery system. Consistent with the Reform Act, Subpart C is intended to provide individuals with a seamless delivery of services necessary for each to return to employment as quickly as possible by requiring and promoting the integration activities and services described below.

The Act requires cooperating State agencies to provide reemployment services to two classes of participants: (1) Individuals covered by a petition for TAA filed by, or on behalf of, a group of workers and, (2) adversely affected workers who are covered by a petition that has already been certified. Under section 221(a)(2)(A) of the Act, the Governor must offer individuals covered by a petition rapid response assistance and WIA core and intensive services. Adversely affected workers must be offered core and intensive services, including counseling, testing and placement services and supportive and other services provided for under any other Federal law, including the Wagner-Peyser Act and the WIA. This requirement is based on new language in section 235, 239(a), (e) and (g) of the Act and the Congressional Declaration of Policy in section 125(a) of the Reform Act. These services must be coordinated with workforce activities and services under Title I of WIA. Section 239(e) and (g) provides the Secretary with the authority to establish the responsibilities and requirements for such coordination.

Proposed § 618.305 requires CSAs to ensure that the TAA program, as a required partner in the One-Stop delivery system, complies with One-Stop partnership requirements such as sharing staff, materials, and/or financial resources. The partnership activities help ensure the seamless delivery of necessary services, including a comprehensive array of appropriate services not funded under the Trade Act, to both individuals covered by petitions and adversely affected workers.

Proposed § 618.310 explains the CSAs' responsibilities for delivering employment services not funded by the Act. Proposed paragraph (a) addresses such employment services that CSAs must make available to workers covered by a petition. It implements section 221(a)(2)(A) of the Act, which requires that, upon the filing of a petition for TAA, the Governor ensure that covered workers have available to them WIA rapid response activities (as described in 20 CFR 665.300 and 665.310) and WIA core and applicable intensive services not funded under the Act. The timely provision of core and intensive services is an important step toward improving both the efficiency and the effectiveness of TAA. Further, immediately beginning the process of employment needs assessment improves participation rates and allows workers covered by a petition, whether or not the petition is certified, more time to consider all of the options available to them. Early intervention services that will benefit covered workers and adversely affected workers may include orientation; initial assessment of skill levels, aptitudes, and abilities; provision of labor market information; job search assistance; financial management workshops; and other services.

Proposed § 618.310(b) lists services that CSAs must make every reasonable effort to provide to workers after TAA certification, as required under section 235 of the Act. Because the TAA program does not fund a comprehensive program of reemployment services, it must be supplemented by services provided through the One-Stop delivery system: (1) Wagner-Peyser Act labor exchange system services described at 20 CFR 651.3 to facilitate the matching of workers seeking jobs and employers seeking to fill jobs; and (2) WIA core and intensive services such as assessment, vocational testing, employment counseling, case management, placement and follow-up services, and development of individual employment plans (IEPs), as well as supportive services such as transportation and child care assistance.

Proposed § 618.310(c) implements section 235 of the Act by requiring CSAs to make every reasonable effort to ensure the provision of services for adversely affected workers under other Federal laws. This provision comports with Congress' statutory design not to duplicate efforts by requiring the Secretary and CSAs to seek other available funding streams for the provision of reemployment services to adversely affected workers.

Proposed § 618.310(d) permits adversely affected workers to receive

employment services from another program if they meet the eligibility requirements of that program, even if that program is funded under the Wagner-Peyser Act or WIA, or the program is not exclusively federally-funded, in accordance with the descriptions of One-Stop partners in 20 CFR 662.200 and 20 CFR 662.210. CSAs should explore the wide variety of services available through such One-Stop partners as economic development agencies, and community-based and faith-based organizations in developing a comprehensive service strategy for workers.

Proposed § 618.310(e) reminds CSAs of the availability of two funding sources for reemployment services for adversely affected workers: WIA Dislocated Worker funds for an adversely affected worker who meets the dislocated worker definition at WIA section 101(9); and WIA-funded Adult programs for adversely affected workers who remain partially employed and therefore do not meet the WIA definition of a dislocated worker. When providing services to partially employed workers, the CSAs should assess the likelihood of restoring full employment and any other of the workers' circumstances to develop appropriate IEPs.

Proposed § 618.315 describes reemployment services which may be paid for with Trade Act funds. Proposed paragraph (a) implements section 239(f) of the Act by requiring CSAs to provide information to individuals about TAA, as detailed in proposed § 618.820. Proposed paragraph (b) follows 20 CFR 617.20(b) in describing the responsibilities that a CSA has for the delivery of reemployment services. However, since proposed paragraph (b) only lists those responsibilities funded under the Act, paragraphs (b)(2), (b)(5), and (b)(13) of 20 CFR 617.20 are inapplicable because TAA funds are not used to provide those services. Paragraph (a) of 20 CFR 617.20 also is inapplicable under the seamless system envisioned under the Act. The paragraph is also updated to eliminate a reference to now-inapplicable Title III of the Job Training Partnership Act by substituting a reference to the Wagner-Peyser Act and the WIA at proposed § 618.315(b)(12).

Proposed § 618.320 implements the new requirement, at section 221(a)(2)(A) of the Act, that the Governor, upon receipt of a petition for TAA certification, must ensure the availability of WIA rapid response assistance (described as ''rapid response activities'' in 20 CFR 665.300 and 20 CFR 665.310) and appropriate core and intensive services to workers covered by the petition. Under 20 CFR 665.300(a), which the Department also proposes to amend to address the broadened State responsibility to covered workers, regular rapid response activities follow either a permanent closure or mass layoff, or a natural or other disaster resulting in a mass job dislocation.

Proposed § 618.320(a) provides some flexibility for the Governor in providing rapid response activities to workers covered by a TAA petition where rapid response activities were already provided to those workers. In such cases, the Governor must review the rapid response activities already provided and determine whether it is necessary to provide additional information or assistance once the TAA petition is filed. The Governor may establish protocols and procedures for CSA and rapid response staff to ensure they use the most effective methods to notify workers about any additional benefits available to them under the TAA program. This advance collaboration becomes useful when the State learns of the filing of a petition at some time after the layoff has occurred.

Proposed § 618.320(b) encourages Governors to ensure access to appropriate core and intensive services (as described in WIA section 134(d)(2) and (3)) for workers covered by a TAA petition by using rapid response activity funding. During rapid response activities, the State rapid response staff, in coordination with the local One-Stop delivery system, assesses the needs of the individuals in the petition group, as well as the local and State resources available to support the workers. Use of rapid response activity funding to help individuals access core and intensive services can encourage a more rapid return to employment. In addition, where there are insufficient partner and other resources to provide the necessary complementary services to these individuals, the rapid response activity staff may participate in analyzing the information gathered through the needs assessment to help develop an application and secure WIA national emergency grant (NEG) funding to bring additional reemployment services into the area to support a more rapid return to employment.

Proposed § 618.325 discusses strategies to ensure the availability of a comprehensive array of services for adversely affected workers. Proposed paragraph (a) requires the CSA to collaborate with local workforce investment boards and other One-Stop partners, in accordance with the Reform Act, which requires the Secretary to use services provided under any other Federal law, ''including the services provided through [O]ne-[S]top delivery systems described in section 134(c)'' of the WIA. This regulation also encourages collaboration with other available programs, such as local faith- and community-based programs that may not be One-Stop partners, to increase the availability of services to adversely affected workers. This integration of service strategies arises from the requirement in section 235 of the Act that every reasonable effort be made to secure employment services, such as counseling, testing, placement services, and supportive and other services for adversely affected workers. Proposed § 618.325(b) introduces the topic of co-enrollment of workers in both TAA and WIA-funded programs. The Department believes that co-enrollment is the best means to accomplish integration of services, although the Department leaves the programmatic mechanism to accomplish this requirement to State and local program design. CSAs may enhance and expand co-enrollment to include multiple enrollments with a broader range of service delivery partners and programs. Multiple enrollment resources may include Wagner-Peyser activities, vocational rehabilitation services, and veterans' programs such as those provided by the Department's Veterans Employment and Training Service. Properly implemented, co-enrollment or multiple-enrollment of trade-impacted workers in the programs offered through the One-Stop delivery system, as well as early provision of rapid response services, will further the adjustment process and promote the most rapid possible return to employment for all workers. Co-enrollment or multiple-enrollment also allows covered individuals and adversely affected workers to receive supportive services that may assist them in a quicker transition to work.

Proposed § 618.330 requires CSAs to design an assessment process that affords workers enough time and information to consider, request, and enroll in training or obtain a waiver of the training requirement for TRA before expiration of the 8-week and 16-week deadlines for enrollment in training provided under section 231(a)(5)(A) of the Act.

Proposed § 618.335 discusses the requirements for an initial assessment of adversely affected workers; the first step in the process to determine whether the worker will need employment services and training and may meet the requirements for HCTC and ATAA. It should be noted that benefit information provided by the CSA to all adversely

affected workers as discussed in proposed § 618.820(f), should be no later than at the time of the initial assessment of the adversely affected worker. However, the CSA may provide this information earlier, to a worker covered by a petition upon its receipt by the Department and the Governor.

Proposed § 618.335(a) lists factors that must be considered to find the best approaches to reemployment that are tailored to a worker's particular circumstances. A review of the local labor market conditions will help the CSA determine if any jobs are available in the local area for which the worker could apply. A review of the workers' skills from previous jobs will help the CSA determine whether the worker will be able to use those skills in new available jobs, or whether the worker's skills are too specialized to be able to be transferred to other available jobs. A review of any significant barriers to employment that may prevent the worker from obtaining employment will help the CSA identify available training, such as remedial training to get a high school equivalency degree or to provide English language training, to address barriers to employment.

Proposed § 618.335(b) allows CSAs to use WIA initial assessments and assessments performed under other WIA partner programs, such as those performed under the UI profiling system to identify UI claimants who are likely to exhaust their UI benefits, as tools for providing an initial assessment, as long as these other assessments meet the specific requirements of paragraph (a) of this section. The use of partner programs' assessments can increase efficiency, ensure that workers quickly receive appropriate reemployment services, and quickly identify those workers requiring a more comprehensive assessment of their skills. The Department recognizes that the lack of uniform requirements for assessments means that some assessments may not meet all of the TAA requirements for an initial assessment. In this case the CSA may be required to supplement those assessments to acquire sufficient information.

Proposed § 618.335(c) explains the CSA's options for service strategies based on the information it gathers from the initial assessment. If a CSA determines there is suitable employment for the worker, and the worker agrees with this determination, then it will provide WIA core and intensive services. However, if the worker disagrees with the determination, then the CSA must provide the worker with a comprehensive assessment under proposed § 618.345 to be certain that the initial assessment is correct. If the CSA determines that no suitable employment is available for the worker, the CSA must perform a comprehensive assessment to develop a comprehensive service strategy for the worker and provide reemployment services funded under the Act, as described in proposed § 618.315. The CSA may also provide reemployment services not funded under the Act, as described in proposed § 618.310.

Proposed § 618.340 discusses the CSAs obligations to adversely affected workers not enrolled in training. Proposed paragraph (a) focuses on workers who are determined through an initial assessment to possess marketable skills for suitable employment and are reasonably expected to find employment at equivalent wages in the foreseeable future. This section recognizes that the ''suitable employment'' determination in the initial assessment took into account prevailing local labor market conditions, as required under proposed § 618.335(a)(1). Also, the CSA must provide for the worker to obtain referrals to suitable work, as defined in proposed § 618.110, whichever is applicable to the worker depending on whether the worker is collecting regular UC or extended benefits (EB)/TRA. Actual referrals to suitable work are necessary to enable the worker to meet the EB work test, which is a condition of TRA eligibility under section 231(a)(4) of the Act. The EB regulations appear at 20 CFR Part 615.

Proposed § 618.340(b) requires the CSA to develop a strategy to review the assessments of workers who may not be successful in a job search for suitable employment, bearing in mind the deadlines for other TAA benefits and services, such as TRA and training, when a worker has not received a training waiver. The review may result in the CSA developing a strategy to provide the worker with additional services to facilitate the search for suitable employment without TRA-approved training. For those workers who received a training waiver for marketable skills, as provided under proposed § 618.725(b)(2), the review should be part of the periodic review of waivers issued under proposed § 618.725(b) to determine whether the conditions for which the CSA issued the waivers continue to exist, which is required under paragraph (e) of that section. The review also may result in the CSA revoking a training waiver and, or initiating a comprehensive assessment in preparation for enrollment in training.

Workshops provided through WIA or Wagner-Peyser Act programs can assist those workers with marketable skills to obtain the necessary job search skills. The TAA program also provides important cash assistance to help with this job search process, such as reimbursement for Job Search Program (JSP) expenses, and job search allowances for out of area job searches (described in subpart D, infra) and relocation allowances (described in subpart E, infra). Nonetheless, in scheduling services to be provided after their review of a worker's assessment and progress in finding employment, CSAs must allow enough time to complete a comprehensive assessment, as well as any career counseling necessary for the worker to make an informed training decision and maintain eligibility for TRA.

Proposed § 618.345 discusses the comprehensive assessment that the CSA must arrange for each worker seeking TAA approval of a training program. The comprehensive assessment must update determinations in the initial assessment regarding the worker's skills, aptitudes, and abilities (including reading and math levels), and consider the worker's interests as they relate to employment opportunities that are in demand either in the worker's commuting area, as defined in proposed § 618.110, or, where there is no reasonable expectation of employment in the commuting area, outside the commuting area if the worker is interested in relocating. The purpose of requiring the comprehensive assessment is to assure that cooperating State agencies gather relevant information that will help the worker in selecting appropriate training, thus increasing the worker's chances of successfully completing training and finding sustainable employment afterwards.

Proposed § 618.350 requires the CSA to prepare an IEP, as defined in proposed § 618.110, for any worker who receives a comprehensive assessment. The IEP must document the results of the comprehensive assessment and document a service strategy to provide the worker with needed services for reemployment, and it must also provide specific documentation on four specific items. Those four items are: (1) Whether the six criteria for training approval in § 618.610(a) through (f) or for issuing a training waiver in proposed § 618.725 have been met; (2) the type of training proposed, if any; (3) any additional services the worker needs to obtain employment, including intensive services, supportive services, and post-

training and follow-up services, as required in proposed § 618.360(b); and (4) any financial prearrangements for the payment of approved training costs (as described in proposed § 618.625(c)), as well as any amendments to the training program and any subsistence or transportation payments, with the basis for its calculation.

Proposed § 618.355 describes the knowledge and abilities that the staff performing the initial assessment should possess because the initial assessment is critical to proper functioning of the TAA program. These skills include: (1) An understanding of the local labor market; (2) knowledge of local employer skill demands and hiring prerequisites, such as educational requirements and professional certifications, and the sets of skills workers from various occupations are likely to possess; (3) the ability to identify transferable skills that a worker may possess that would be of interest to other local employers outside of the individual's present occupational area; (4) the ability to quickly evaluate a worker's knowledge of and ability to implement job search strategies with little or no assistance; and (5) the ability to identify a worker's apparent employment barriers that will require additional training and counseling. Because of the importance that the Department places on the assessment process and its central role in providing effective and efficient services to adversely affected workers, the Department believes that having qualified and knowledgeable staff to perform the assessment function is critical to the proper functioning of the TAA program.

Proposed 618.360 requires CSAs to continue to provide all workers enrolled in approved training programs access to the reemployment services available under proposed § 618.310 and proposed § 618.315 to assist workers as they make the transition from trainee to employee. The CSAs also must provide follow-up services, including placement and other appropriate supportive services, to adversely affected workers upon their completion of training. Such follow-up services protect the large financial investment the program made in training the worker by helping workers in need of such services make the transition back into the workforce.

Proposed § 618.365, which implements section 296(d) of the Act (19 U.S.C. 2401e(d)), requires the CSA to provide employment services to agricultural commodity producers who are entitled to cash benefits under the TAA for Farmers program administered by the U.S. Department of Agriculture. These individuals may receive training (including subsistence and transportation allowances), but they are not entitled to any other benefits under the TAA program.

Subpart D—Job Search Allowances

Subparts D and E address job search and relocation allowance provisions. Proposed subpart D keeps the 20 CFR Part 617 requirements intact concerning allowances for job searches outside the commuting area. For purposes of clarity, these subparts also contain various editorial and procedural changes, but most changes do not affect the substantive requirements in the current program regulations. Proposed subpart E covers relocation allowances available to individuals who obtain suitable employment outside their commuting area. Major changes in subparts D and E include:

- Changes the eligibility requirement for both job search and relocation allowances that there be no ''suitable work'' (a state UI definition) available in the local area to the requirement that there be no ''suitable employment'' (a national TAA definition) available in the local area. Since ''suitable employment'' is generally work at higher skill levels and wage rates than is ''suitable work,''—meaning that a job is less likely to meet the higher ''suitable employment'' standard and that such jobs will therefore less likely be available—the proposed change would make it easier to qualify for a job search allowance but possibly make it harder to qualify for a relocation allowance.
- Increases the limit for job search allowance reimbursement per individual per certification from $800 to $1,250, as well as the lump-sum payment for relocation from $800 to $1,250.

The first section of subpart D, proposed § 618.400, revises 20 CFR 617.30 to reflect the goal of providing a job search allowance to help the worker secure ''suitable employment,'' as defined in section 236 of the Act, instead of merely assisting the worker in finding a job that is ''suitable work.'' As discussed earlier in this preamble, the Department believes that this change will meet the intent of the Act by encouraging workers to find better paying jobs.

Proposed § 618.405 describes the application process but differs from the existing regulations at 20 CFR 617.31 on when to file an application. Under the current regulations, an individual who is covered under a petition and who is totally or partially separated may apply for a job search allowance before a certification is issued. Proposed § 618.405 changes these procedures to require that applications for job search allowance be accepted only after a certification has been issued. Thus, all references in proposed subpart D are to ''adversely affected workers'' and not to ''individuals'' as in 20 CFR part 617, subpart D. This change is consistent with paragraph 237(a)(1) of the Act, which provides that ''an adversely affected worker covered by a certification'' may file an application for a job search allowance. The Department proposes to eliminate pre-certification applications for job search allowances to avoid unrealistic expectations for reimbursement. Further, because the Department has made great strides in reducing the time in which determinations are made on petitions, the Department believes there is less need to permit pre-certification applications. The Department has reduced the average processing time for petitions from 103 days in 2002 to less than 28 days presently. Thus, for most workers, requiring certification prior to filing a job search application will result in only a short delay in filing and no delay in payment because only adversely affected workers may receive a job search allowance. This approach is similar to that of many assistance programs that generally do not reimburse individuals for activities conducted with their own resources prior to the individual becoming eligible for assistance.

Proposed § 618.405(c) also incorporates the one change that the Reform Act made to the time limits within which a worker must request a job search allowance. Prior to its amendment, section 237(b)(3) of the Act required that a worker apply for a job search allowance within 182 days after concluding training approved under the Act, and 20 CFR 617.31(c)(2) contains this time limit. However, the Reform Act amended this time limit by adding the condition: ''unless the worker received a training waiver under section 231(c).'' The Department interprets this statutory amendment to mean that a worker who received a training waiver before entering an approved training program is not entitled to the 182-day period after the conclusion of approved training to apply for a job search allowance. Rather, the worker must file a job search allowance application within the same 365-day deadline applicable to other workers under section 237(a)(2)(C) of the Act.

Proposed § 618.410 sets forth the eligibility requirements for job search allowances. The significant difference between this provision and 20 CFR

617.32 is that 20 CFR 617.32(a)(4) requires a CSA to determine that ''suitable work'' is not available in the commuting area and that the worker has a reasonable expectation of obtaining suitable work of a long-term duration outside the commuting area. Proposed § 618.410(a)(4) substitutes ''suitable employment'' (as defined in § 618.110) for ''suitable work.'' ''Suitable employment'' is generally work at higher skill levels and wage rates than is ''suitable work.'' The Department believes this change will increase the availability of job search allowances to adversely affected workers so that these workers will have the financial ability to conduct job searches outside their commuting area. The requirement in 20 CFR 617.32(a)(3) is not included because proposed § 618.315(b) already requires CSAs to provide reemployment services and the Act does not contain this particular registration requirement for job search allowance eligibility.

Proposed § 618.410(a)(4) implements the new requirement that the worker has not previously received a relocation allowance under subpart E under the same certification to clarify that job search allowances are inappropriate following receipt of a relocation allowance since a worker has already obtained work to qualify for such relocation allowance.

Proposed § 618.410(a)(5) allows an individual 30 calendar days within which to complete a job search, while 20 CFR 617.32(a)(5) provides ''a reasonable period not exceeding 30 days after the day on which the job search began'' within which to conduct a job search outside the commuting area. This change is made to simplify and clarify the rules for completing job searches. Proposed § 618.410(a)(5) also adds language that the job search must begin after the date of certification, which corresponds to the change in proposed § 618.405(b) regarding the application for job search allowances after issuance of a certification.

Proposed § 618.410(b) describes when a job search is complete and comports with 20 CFR 617.32(b). A job search is not complete until the worker has obtained a job or has contacted each employer the worker planned to contact or to whom the worker was referred by the CSA or other One-Stop partner.

Proposed § 618.415 describes the CSA's responsibilities and introduces the terms ''liable State'' and ''agent State'' for delineating the responsibilities between CSAs with respect to job search allowances when a job search occurs in a different State. Because funding is limited, paragraph (a) requires that before approving a job search payment, a CSA must determine that job search funds are available for the fiscal year in which the job search activity takes place. The only proposed change under paragraph (b) is that it includes the employer contact verification requirement found at 20 CFR 617.32(c), and thereby requires a CSA to verify the worker's contracts with employers identified in both the worker's own job search plan and through referrals.

Proposed § 618.420 follows the current regulations at 20 CFR 617.34, but increases the maximum amount available for allowances from $800 to $1,250 based upon the 2002 Amendments. Proposed § 618.420(b) limits reimbursement to the statutory dollar limit instead of a particular dollar amount so that, if Congress later increases the dollar amount, these regulations will not have to be amended.

Proposed § 618.425, like 20 CFR 617.35, requires a worker to provide supporting documentation in order for payment to be made upon completion of a job search and require the CSA to reimburse the worker promptly. Paragraph (a) of this proposed section changes the language in 20 CFR 617.35(a) by eliminating temporal references because, under the changes in proposed § 618.405(b), the CSA will accept applications for job search allowances only after a certification is issued. Further, paragraph (a) clarifies that job search allowance determinations are subject to the requirements of § 618.825 (determinations and notice) and § 618.830 (appeals and hearings) and requires CSAs to include copies of job search allowance applications and determinations in the worker's case file.

Proposed § 618.425(c), like 20 CFR 617.35(c), permits the CSA to advance up to 60 percent of the expected cost to be paid to the worker.

Proposed § 618.430 implements the Reform Act amendment to section 237(c) of the Act to allow an adversely affected worker participating in a job search program [JSP] approved by the Secretary reimbursement for necessary expenses, including transportation and subsistence allowances, related to their participation in an approved JSP within or outside their commuting area, subject to available funding.

Subpart E—Relocation Allowances

This proposed subpart covers relocation allowances available to workers who obtain suitable employment outside their commuting area. For purposes of clarity, this proposed subpart makes editorial and minor procedural changes, most of which do not affect substantive requirements. The proposed changes are discussed below.

Proposed § 618.500 revises 20 CFR 617.40 to reflect the goal of providing a relocation allowance to help the worker relocate to secure ''suitable employment,'' as defined in section 236 of the Act, instead of merely assisting the worker in relocating to begin ''suitable work'' outside the worker's former commuting area (but inside the United States). As discussed earlier in this preamble, the Department believes that this change will meet the intent of the Act by encouraging workers to find better paying jobs.

Proposed § 618.505 retains the general discussion of relocation allowances found in 20 CFR 617.40, but eliminates the reference to the ''head of the family.'' Instead, it authorizes payment to the adversely affected worker in the family who first applies for the relocation allowance, if otherwise eligible. The Department believes this minor change makes the test easier to administer by eliminating the need under the current regulations for the family to produce financial records indicating which family member maintains a home for the family by providing more than half the cost of maintenance.

Proposed § 618.510 describes the application process for a relocation allowance but differs from 20 CFR 617.41 on when to file an application. While proposed paragraph (a) is essentially unchanged from 20 CFR 617.41(a), proposed paragraph (b) allows a worker to apply for a relocation allowance only after a certification covering that worker is issued. Thus, all references in proposed subpart E are to ''adversely affected workers'' and not to ''individuals'' as in 20 CFR Part 617, subpart E. This is consistent with section 238(a)(1) of the Act, which provides for ''[a]n adversely affected worker covered by a certification * * * [to] file an application for a relocation allowance. * * *'' A worker who is not covered by a certified petition may relocate using personal funds to take advantage of an opportunity outside the commuting area, but the worker will not be reimbursed for the costs of that relocation. As previously noted in the preamble discussion of proposed § 618.405 (on job search allowances), the Department is concerned that permitting pre-certification applications will raise false expectations. Also, because of the substantial reduction in the average processing time for petitions noted in that discussion, there will only

be a short delay in workers being able to file applications.

Proposed § 618.510 also contains the basic requirement that the relocation may only be approved after a worker files an application and before the relocation is undertaken. The time limits for filing an application in proposed § 618.510(c) are the same as in 20 CFR 617.41(c), except that the Reform Act eliminated the second time limit for filing an application for a relocation allowance (as it did for filing an application for a job search allowance) for those workers who receive a training waiver. Prior to its amendment, section 238(a)(2) of the Act required that the individual must apply for the relocation allowance within 182 days after concluding training, which is reflected in 20 CFR 617.41(c)(2). The Reform Act amended this requirement by adding the condition ''unless the worker received a waiver [of the participation in training requirement] under section 231(c).'' The Department interprets this statutory amendment to mean that a worker who received a training waiver before entering an approved training program is not entitled to the 182-day period after the completion of approved training to apply for a relocation allowance. Thus, whenever the CSA grants a training waiver to a worker under proposed § 618.725, the worker must file for a relocation allowance within the 425-day time limit after the date of certification or the worker's last total separation under § 618.510(c)(1). Eliminating the 182-day period whenever the CSA grants a training waiver is consistent with the plain language of section 238(a)(2)(E)(ii) of the Act.

Proposed § 618.515 on eligibility for a relocation allowance retains essentially the same requirements as 20 CFR 617.42 (Eligibility) and 20 CFR 617.43 (Time of relocation) but combines these sections, edits them for clarity and makes three significant changes. The requirement in 20 CFR 617.42(a)(5) is removed because proposed § 618.310 of subpart C now requires CSAs to provide reemployment services and the Act does not contain this particular for relocation allowance eligibility.

There is an important difference between proposed § 618.515(a)(5) and 20 CFR 617.42(a)(6) in the definition of eligibility. The proposed provision substitutes ''suitable employment'' (as defined at proposed § 618.110) for ''suitable work.'' Therefore, before granting a relocation allowance, the CSA must determine that a worker has no reasonable expectation of securing ''suitable employment'' in the commuting area. This is consistent with the treatment of job search allowances and is a higher standard than the ''suitable work'' standard that is used in Part 617. Using ''suitable employment'' in the eligibility criteria for relocation allowances restricts the jobs for which a relocation allowance may be paid. Nevertheless, the change furthers the purpose of the TAA program, and the use of relocation allowances in particular, by improving the financial ability of workers to obtain new jobs with compensation and skill levels at or near those of the jobs from which they were separated.

Two other significant differences between § 618.515 and current regulations involve the timing of relocations. First, proposed § 618.515(a)(6) integrates 20 CFR 617.42(a)(7) and 20 CFR 617.43 and simply states the two statutory 182-day time limits for beginning a relocation (instead of stating that a worker must begin a relocation ''within a reasonable period''). Paragraph (a)(6) continues to refer to a ''reasonable period'' for the time period for completing the relocation, while retaining the required factors found at 20 CFR 617.43(a) that a CSA must consider in determining whether a worker has completed the relocation within a reasonable time.

The second significant difference involves the statutory 182-day time limit in which the relocation must occur. The Reform Act amended section 238(c)(2) of the Act, which requires the worker's relocation to occur within 182 days after the conclusion of an approved training program, by adding at the end of the sentence the condition ''if the worker entered a training program approved by the Secretary under section 2296 [section 236 of the Act] (b)(1) and (2) [providing subsistence and transportation payments for workers in training outside the commuting area].'' The Department interprets section 238(c)(2) of the Act to mean that only a worker approved by the CSA, under proposed § 618.640(c) and (d), to receive subsistence and transportation payments for training at facilities outside the worker's commuting area, may use the 182-day time limit after the conclusion of training within which to relocate. Workers not approved by the CSA to receive such subsistence and transportation payments, that is, workers who take their training within their commuting area, are ineligible for the additional 182-day time limit after the conclusion of training. Instead, their relocation must occur within the 182-day time limit after filing the application for a relocation allowance under § 618.515(a)(6)(i)(A).

Proposed § 618.525 simplifies, edits and updates the requirements for determining the amount of relocation allowances under 20 CFR 617.45, 617.46 and 617.47. In general, a relocation allowance includes 90 percent of the travel and subsistence costs of the worker and their family to reach their new home, 90 percent of the cost of moving household effects, and a lump sum payment equal to three times the worker's average wage, not to exceed $1,250. This lump sum payment was raised from $800 by the Reform Act. Proposed § 618.525(a)(4), however, does not refer to a lump sum dollar amount. Instead, it simply provides the citation to section 237(b)(2) of the Act so that, if Congress later increases the amount, these regulations will not have to be amended.

Proposed § 618.525 requires CSAs to follow the Federal Travel Regulations (FTR). Proposed § 618.525(a)(2) sets reimbursement amounts for the family's meals and lodging at 90 percent of the lower of their actual meals and lodging costs or one-half the applicable prevailing per diem rates in the FTR. The current per diem rates can be found on the Internet at the following Web site: *http://www.gsa.gov*. Proposed paragraph (a)(1) refers to 41 CFR Parts 301–311 (travel) and proposed paragraph (a)(3) refers to 41 CFR Part 302 (movement of household goods). Proposed § 618.525(a)(3)(ii) increases the allowable amount of insurance coverage of such household goods and effects to $40,000 from the current $10,000 found in 20 CFR 617.47(a)(1). The Department notes that moving a house trailer or mobile home, as permitted under proposed § 618.525(a)(3)(i), has special requirements under the FTR, at 41 CFR 302–10, of which the worker should be made aware prior to planning such a move. The specific sections of the FTR may be accessed on the Internet at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/41cfrv4_02.html#301-1*.

Proposed § 618.530 on the time and method of payment of a relocation allowance serves the same purpose as 20 CFR 617.48, although the proposed rule is edited for clarity and simplified. No relocation allowances may be paid until the worker is covered under a certification, makes a timely application, and is otherwise eligible, and the CSA must promptly make and record determinations, as well as make prompt payment of, relocation allowances. Any advance payments of relocation costs will be made at the time of the relocation or as close to the time of the scheduled relocation as possible,

but no more than 10 days before scheduled departure. Upon completing the relocation as described in paragraph (f) of proposed § 618.530, the worker and the cooperating State agency will reconcile the advances and costs and the worker will either receive the balance of the allowance or repay any advance amount that might be due.

Subpart F—Training Services

Proposed subpart F governs TAA training. TAA approval of a training program entitles a worker to payment of the costs of the training, subject to a number of limitations included in this subpart. Section 236(a)(6) of the Act does, however, permit other funding sources to pay all or part of the costs of a TAA–approved training program. Participation in a TAA-approved training program is an eligibility requirement for TRA, as explained in subpart G. Major changes include:

- CSAs would be required to ensure that every worker has a comprehensive assessment leading to the development of an IEP to facilitate appropriate training for the worker.
- Clarifying language is added to the six criteria provided in the law that will enable CSAs to better determine what constitutes approvable training.
- Up to 26 additional weeks of training is provided for individuals who need remedial education as part of their training program, for a total of up to 130 weeks of training.
- Excludes the purchase of computers as part of the cost of a training program.
- Allows adversely affected workers who are military reservists ordered to perform active duty that interrupts their training program to resume, repeat, or begin a new training program upon discharge.
- Provides workers training flexibility by allowing CSAs to permit individuals to amend their training programs.
- Allows the approval of part-time training when combined with employment, which gives workers the option to continue working while participating in training.
- Requires the use of eligible training providers approved under WIA to facilitate quality training and co-enrollment for trade affected workers.
- Expands worker training options by permitting distance learning for all or part of a worker's program where the final degree or certificate is equivalent to what would have been received if the training had been conducted on campus.
- Allows the Department to use a formula to allocate TAA training funds to enable states to maximize timely training opportunities for workers.
- Permits the worker to continue training at his or her own expense when the appropriation for training funds has been exhausted. This enables a worker to continue to receive TRA and HCTC.
- Introduces customized training as an allowable activity under the TAA program to meet the needs of an employer or group of employers.
- Makes it easier for the worker to attend employer-paid training by allowing the state to assume any unfunded portion of partially employer funded programs and by allowing the state to assume any liability if the worker is unable to successfully complete the training.
- Makes transportation costs for travel to and from training payable for miles outside the worker's commuting area.
- Facilitates the largest number of workers served by allowing a CSA to determine a maximum reasonable cost for training for the state or each local area.
- Provides training services to individuals entitled to cash benefits under the TAA for Farmers program administered by the U.S. Department of Agriculture.

Proposed § 618.600 explains that the purpose of an approved training program is to assist an adversely affected worker to obtain skills leading to a new job as quickly and effectively as possible.

Proposed § 618.605 discusses general procedures for adversely affected workers to apply for training, as well as other procedures CSAs must follow in making determinations on applications for training. Proposed paragraph (a) requires CSAs to ensure that every worker has a comprehensive assessment leading to the development of an IEP, as described in proposed §§ 618.345 and 618.350, before approving an application for training. The use of a comprehensive assessment in the development of a worker's IEP is essential to ensure the proper coordination and use of reemployment services to develop a successful training program.

Proposed § 618.605(b)(1) follows 20 CFR 617.22(d) on the use of forms when applying for training, but simplifies the current regulatory language to describe more accurately the process by which the worker chooses a training program and applies to the CSA for approval based on statutory criteria. While a worker may seek assistance from a CSA in selecting a training program, ultimately it is the worker and not the CSA who decides whether to apply to a particular training program. Proposed paragraph (c) differs from 20 CFR 617.22(e) by adding that the CSA, in making determinations on training and TAA-funded subsistence and transportation payments under proposed § 618.640, must keep copies of all applications and determinations in the adversely affected worker's case file. The Department proposes adding this language to ensure that a worker's case file is complete and that it contains relevant information about a worker's request for training.

Proposed § 618.605(d) slightly changes 20 CFR 617.23(a) by clarifying that CSAs are not required to create new training programs or develop new curricula where none currently exist. Nonetheless, the Department strongly encourages CSAs to use all necessary means to find appropriate training where a significant void in training opportunities exists. CSAs, in collaboration with the local One-Stop delivery system and other partners, should explore how to make new training opportunities available either by approving out of area training or by encouraging training providers to provide needed training in the local area, as well as exploring ways in which on-the-job training (OJT), customized training, and other training programs can be adapted to accommodate workers in areas that lack training opportunities.

Proposed § 618.610, which corresponds to 20 CFR 617.22(a)(1) through (a)(6), implements all six statutory criteria for training approval. The introductory language adds a new requirement that a CSA must refer to a worker's comprehensive assessment and IEP before approving training because they will be important tools for measuring the proposed training against the approval criteria.

Criterion 1, implemented by proposed § 618.610(a), requires that there be no suitable employment available for the adversely affected worker. Section 236(e) of the Act provides the definition of ''suitable employment, which appears at proposed § 618.110. Proposed paragraph (a) generally follows 20 CFR 617.22(a)(1)(i), but includes the condition that a CSA must deny training approval if the worker is notified of a specific recall to the firm in the same or essentially the same job that is expected to be permanent. When recalls are scheduled in the foreseeable future, workers clearly do not require training because suitable employment is available to the worker. In that case, it is appropriate for the CSA to grant a waiver of the training requirement under the recall provision at proposed § 618.725(b)(1) to allow the worker to qualify for TRA while awaiting the recall. Proposed paragraph (a) also

explores more fully the concept of ''no reasonable prospect of such suitable employment in the foreseeable future'' by requiring the CSA to look at both the worker's skills and the local or appropriate out of area labor market indicators as well as the likelihood of recall.

Criterion 2 (the worker would benefit from the appropriate training), implemented by proposed § 618.610(b), contains similar requirements to the current regulation at 20 CFR 617.22(a)(2)(i). However, instead of referring to ''job readiness,'' criterion 2 emphasizes that the training is expected to improve the worker's chances of obtaining and retaining ''sustainable employment at higher wages for the worker than in the absence of training.'' This change emphasizes the Department's belief that approved training should provide the worker with the skills necessary to remain employed throughout a career.

Proposed § 618.610(b)(2) follows the current regulations at 20 CFR 617.22(a)(2)(i) in requiring that a worker be capable of undertaking, making satisfactory progress in, and completing the training. However, the Department proposes eliminating the phrase ''mental and physical capabilities'' that is currently contained in 20 CFR 617.22(a)(2)(i) and substituting the phrase ''knowledge, skills, and abilities'' as the test for determining whether a worker can undertake, make satisfactory progress in, and complete the training in order to eliminate any suggestion that a CSA or subrecipient may lawfully take the disability or disabilities of a qualified worker into consideration when determining eligibility for training. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations at 29 CFR Part 32 and, if applicable, WIA section 188 (29 U.S.C. 2938) and its implementing regulations at 29 CFR Part 37, prohibit such consideration. Both 20 CFR Part 32 and 29 CFR Part 37 define the circumstances under which a particular individual with a disability may be considered ''qualified'' for a program or activity. See the definition of ''qualified handicapped individual'' in 29 CFR 32.3 and 29 CFR 37.4. For the same reasons, the same change was made in § 618.610(e) and ''knowledge, skills and abilities'' replaces the word ''capabilities'' in § 618.610(f). For further information about these requirements, contact the Department's Civil Rights Center (CRC) as directed in the regulatory text of proposed § 618.875(i)(3).

Proposed § 618.610(b)(3) contains a new requirement that a CSA must not approve applications for training programs that would result in seasonal employment of such short duration and minimum compensation that a worker cannot achieve self-sufficiency, as defined by the Local Workforce Investment Board under 20 CFR 663.230. The Department believes that training that would result in this type of seasonal employment does not benefit the worker and would be an inappropriate use of limited training funds.

Criterion 3 (there is a reasonable expectation of employment following the completion of such training) is implemented by proposed § 618.610(c)(3) and corresponds to 20 CFR 617.22(a)(3). It provides that the CSA must assess, based on labor market information about present and future employment conditions and trends, whether the skills and education acquired while in training is likely to allow the worker to find a job allowing the worker to achieve self-sufficiency, as defined by the State or Local Workforce Investment Board under 20 CFR 663.230.

Criterion 3 would not require that TAA-approved training must lead to a job or that the CSA must create training that leads to jobs for adversely affected workers. The Department recognizes that there are situations in which tight local labor markets or significant barriers to employment may make it difficult or impossible to identify immediate job opportunities for workers. The same workers may, however, benefit from training by improving their abilities to compete in the labor market by gaining skills needed to compete for jobs. The Department proposes to interpret criterion 3 flexibly enough to allow CSAs to approve training that they determine will lead to the acquisition of skills that will significantly improve a worker's prospects of obtaining a job in the local labor market, even if job opportunities after completion of the training cannot be identified.

Accordingly, proposed paragraph (c)(1) expands upon the statutory language discussed in 20 CFR 617.22(a)(3) by expressly providing that a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training. However, it may not be realistic to approve training in an occupation in which there has been a trend of fewer and fewer job openings over some period of time, or where the industry in which the retraining is proposed has been laying-off workers with skills similar to those for which training is requested. This criterion requires TAA and One-Stop delivery system staff to continually update their knowledge of the local labor market and its trends.

Proposed paragraphs (c)(2) through (c)(5) do not have counterparts in current regulations. Paragraph (c)(2) allows CSAs to use the demand occupation list maintained by the Local Workforce Investment Board, as required in the WIA regulations at 20 CFR 661.350 in determining whether there is a reasonable expectation of employment following training. Use of this common information source reinforces the relationship of the partner programs in the One-Stop delivery system and encourages the Local Workforce Investment Board to think broadly about the types of workers who that system serves. WIA permits each Local Workforce Investment Board to define ''demand occupation'' based on its unique labor market conditions, trends, and employer-identified skill needs. As the staff of a required partner in the One-Stop delivery system, TAA program staff should participate in discussions about how demand occupations are determined and the content of the list. Proposed § 618.610(c)(3) places a new obligation on the CSA to document that there is a reasonable expectation of employment in the planned area of relocation when a worker desires to relocate.

Proposed § 618.610(c)(4) recognizes that a ''demand for one'' can exist in the local labor market, as long as that demand can be documented by the CSA with evidence that an employer intends to hire the worker upon successful completion of the training. This provision permits the CSA to determine that a reasonable expectation of employment exists in an occupation that may be a valid career choice, but for which there are very limited numbers of jobs in rural areas or in larger workforce areas where only a few skilled specialists are needed to meet the local demand (e.g., taxidermist or underwater boat repairer). Proposed paragraph (c)(5) recognizes that self-employment is a viable option under existing market conditions, even where there is no expectation that employers have positions available in a given occupation upon completion of training.

Criterion 4 (training is reasonably available) is implemented by proposed § 618.610(d) and corresponds to 20 CFR 617.22(a)(4) but has been simplified. This criterion requires that training be reasonably available to the worker from either governmental agencies or private sources and refers to the list of possible sources of approved training contained

in proposed § 618.620, noting that the list is not exhaustive. It eliminates the requirement in current 20 CFR 617.22(a)(4)(ii) that first consideration be given to training within the worker's normal commuting area and that training outside the commuting area should only be approved if such training is not available within the commuting area or would cost less. A similar requirement now appears in proposed § 618.610(f)(2)(ii) as part of the sixth criterion for training approval.

Criterion 5 (the worker is qualified to undertake and complete such training), implemented by proposed § 618.610(e), follows the requirements in 20 CFR 617.22(a)(5), but has been reorganized and some minor provisions added. Proposed paragraph (e)(1) adds a new requirement directing the CSA to consult the worker's IEP or comprehensive assessment. Proposed paragraph (e)(2) generally follows 20 CFR 617.22(a)(5)(ii), and stresses that the duration of the approved training must be commensurate with the worker's financial resources.

Criterion 6 (the training is suitable for the worker and available at a reasonable cost) is implemented by proposed § 618.610(f) and generally follows the current regulations at 20 CFR 617.22(a)(6). Proposed paragraph (f)(1) identifies the worker's comprehensive assessment and IEP as sources of information on the worker's knowledge, skills, and abilities, background and experience. The first sentence of 20 CFR 617.22(a)(6)(i) is not included because it is unnecessary.

Proposed § 618.610(f)(2) discusses reasonable cost, which has been and continues to be a critical determinant in approving training programs to ensure that training funds are expended wisely, are available for the maximum number of adversely affected workers, and can also adequately support workers to ensure that they will complete their selected training. Proposed paragraph (f)(2)(i) includes a new cost prohibition against using TAA funds to purchase personal computer equipment for adversely affected workers to own in order for them to engage in a training program that requires such equipment as a prerequisite. However, this provision allows CSAs to purchase personal computer equipment which it can then lend to those workers who are required to have such equipment for their particular training programs. Certain One-Stop systems using funds under WIA have successfully instituted similar loan arrangements for use of computer equipment. Therefore, if a training program requires the use of computer equipment, a CSA may not approve the training if it determines that the worker lacks access to the necessary computer equipment. This prohibition will help to ensure that purchases of personal computer equipment for workers to own will not deplete the TAA funds available for training and other benefits.

Since the amount of training funds is capped, the statute requires that training be approved only if it is ''available at a reasonable cost,'' and, once approved, a worker is entitled to payment of all the costs of the approved training, the Department believes it is important to assure that the costs of training are kept in check as long as the training is adequate to meet the worker's needs. Proposed § 618.610(f)(2)(ii) through (iv), as well as the proposed cost cap in § 618.650, seek to accomplish this cost containment in several ways. These paragraphs restate many of the requirements of § 617.22(a)(6)(ii) and (iii). These proposed paragraphs have not retained the requirement, in § 617.22(a)(6)(ii), that, in determining the reasonableness of the cost of training, the cost be compared with the costs of training workers in similar occupations. The Department believes that CSAs should have more flexibility in determining the reasonable cost of training, within the parameters set forth below.

Proposed § 618.610(f)(2)(ii) provides that the CSA must first consider the lowest cost training available in the worker's commuting area, if that training is of sufficient quality, content, and expected outcome to meet the worker's occupational goal as reflected in the worker's IEP, as developed under proposed § 618.340. A CSA may approve higher cost training if it is of higher quality, content, or expected outcomes or is expected to achieve comparable results in a significantly shorter duration. The Department intends that higher cost training not be approved unless there is a clear (''demonstrable'') difference in the quality and results of the training or unless the same results can be achieved in a significantly shorter time, which is consistent with the Act's intent to get workers back into employment as rapidly as possible. The words ''demonstrably'' and ''significant'' have been included in the regulatory language to make clear that there must be a real and substantial benefit from a more expensive training program in order for it to be approvable when a good and less expensive training program is available.

Proposed § 618.610(f)(2)(iii) consolidates 20 CFR 617.22(b) into this criterion 6. It provides that training in a selected occupational area may not be approved if (1) it requires an extraordinarily high skill level, and (2) the total costs of the training are substantially higher than the costs of other types of training that are suitable for the worker. The intent of the second clause is to require CSAs to choose the least expensive method of training that provides similar results for the worker. So, for example, if an on-the-job training opportunity would cost $2,000 and a classroom training course that would teach the same skills would cost $6,000, a CSA must approve the OJT opportunity.

Proposed § 618.610(f)(2)(iv) follows 20 CFR 617.22(a)(6)(iii)(C) in prohibiting approval where transportation or subsistence payments for training outside the worker's commuting area add substantially to the total cost of training, if other appropriate training in the commuting area is available at a lower cost. Proposed paragraph (f)(2)(v) introduces a new restriction. A CSA may deny approval of training when its costs exceed the limit on the amount of training per worker set by a CSA, unless that agency makes an exception based upon individual and exceptional circumstances, as provided in proposed § 618.650(a). The preamble discussion of § 618.650 explains this training cap.

Proposed § 618.615 discusses the various limitations on a CSA's approval of a training program. In particular, proposed paragraph (a)(2) contains a new requirement that CSAs consider factors such as a worker's full- or part-time non-suitable employment, as described in proposed § 618.630, childcare considerations, and the worker's course selection.

Proposed § 618.615(a)(3) corresponds to 20 CFR 617.22(f)(2), which limits the maximum duration of any approvable training program to match the duration of training to the statutory limits on income support since, for most workers, the availability of income support is critical to the ability to engage in training. The Department interprets the Reform Act's addition of 26 weeks of TRA for adversely affected workers who require remedial education, as discussed in proposed § 618.755, to mean that Congress intended to match the maximum number of weeks of training with the maximum number of available weeks of income support (UI plus TRA). Therefore, paragraph (a)(3)(i) changes the current 104-week regulatory limit on weeks of training to include up to an additional 26 weeks of training for workers whose approved training includes remedial education, for a total

number of weeks of training not to exceed 130 weeks.

This proposed paragraph also clarifies the existing regulation by specifically stating the current program requirement of counting consecutive calendar weeks when measuring the duration of training. This ensures that the number of weeks of an approved training program does not significantly exceed the number of weeks of UI plus TRA.

Proposed § 618.615(a)(3)(iii) does not have a counterpart in Part 617 because it concerns program changes adopted in the Reform Act. It requires the CSA to consult the worker's comprehensive assessment or IEP when determining the length of remedial education the worker needs, and permits a CSA to approve a training program consisting entirely of remedial education when such a program is appropriate for the worker. The Department proposes these measures to ensure that the duration of any remedial education component of a training program meets the worker's specific needs. The Department expects CSAs to approve remedial education programs when it is justified to help workers who need assistance with the basic skills of reading, writing, mathematics and/or language to obtain employment. When determining the type and length of remedial education appropriate for the worker, CSAs should assess the worker's basic skills to determine whether there are deficits in any area that necessitate remedial education. Remedial education may occur before, or while participating in, the requested training program.

Proposed § 618.615(a)(4) creates an exception to the duration of training requirements to meet the training needs of adversely affected workers who are members of a reserve component of the U.S. Armed Forces ordered to perform active duty service. Such workers should not be penalized for serving their country. The exception tolls the duration of training requirement so that those workers who return after involuntarily being called up to active duty service can re-enroll in a training program upon their return or even begin a new training program. The terms, notification procedures, and documentation requirements in proposed paragraphs (a)(4)(i) through (a)(4)(v) coincide with those in the Uniform Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301–4333), which protects reemployment rights of workers called to military service. These procedural requirements differ from those in USERRA, 38 U.S.C. 4312, when necessary to conform to the situation of an adversely affected worker enrolled or participating in a TAA-approved program.

The Department invites comments on whether to allow other exceptions to the duration of approvable training programs and, if so, what exceptions might be appropriate. As is discussed above, a purpose of the proposed limits is to ensure that income support is available throughout the training period. However, the Department recognizes that not all workers need income support to complete training, and that some workers might have a need for a longer training program or to temporarily suspend training. Allowing exceptions could provide such workers more options. On the other hand, further exceptions could undermine the purpose of TAA to return a worker to worker as fast as possible.

Proposed § 618.615(b) greatly expands upon the current regulatory requirement for amending an approved training program. The second sentence of 20 CFR 617.22(f)(3)(ii) merely permitted an amendment ''to add a course designed to satisfy unforeseen needs of the individual.'' Proposed paragraph (b) recognizes that more substantial amendments may be necessary and sets forth the circumstances, and conditions, under which amendments, including the substitution of an entirely new program, may be made. Proposed paragraph (c) retains the single training program rule of 20 CFR 617.22(f)(2), but permits exceptions for amendments, as well as when an adversely affected worker is called for active duty as provided in paragraph (a)(4). Paragraph (c) thereby seeks to ensure careful expenditure of limited training funds in a manner that will meet the training needs of the greatest number of adversely affected workers.

Proposed § 618.615(d) corresponds to 20 CFR 617.22(f)(4) on full-time training, but differs significantly by permitting CSAs to approve part-time training. This section recognizes that a mix of training and employment suited to the worker's situation may achieve the sustained employment goal, and do so as quickly as possible. This will permit workers financially or otherwise unable to participate in full-time training to enroll in TAA program training opportunities to upgrade their skills. In particular, proposed paragraph (d)(2)(i) requires that the combination of part-time training and part-time employment must represent the equivalent of full-time employment as defined by the State UI law. However, the overall limitation on the duration of training under proposed § 618.615(b) remains the same.

Proposed § 618.615(d)(ii) provides that if the hours of work are reduced so that the combination of part-time employment and part-time training no longer represent the equivalent of full-time employment, the worker may complete that session or semester. However, the training approval must be rescinded beginning with the next session or semester, unless the combination of part-time employment and part-time training is changed to represent the equivalent of full-time employment by that time. Proposed paragraph (d)(2)(ii) recognizes that employers may reduce workers' hours of employment or terminate employment during an approved training program and protects a worker by allowing the worker to continue in training for a period of time or to find other non-suitable employment or to increase his/her training schedule to continue in the approved training program on a part-time basis.

Proposed paragraph (d)(2)(iii) also protects workers by requiring CSAs to ensure that workers understand the effects of part-time employment on receipt of UI and other TAA benefits, including the HCTC, to prevent their unknowingly losing benefits due to this choice. Even with these limitations on part-time training, this change provides a worker the option, if approved by the cooperating State agency, to choose a mix of training and employment that best suits the worker's situation. While the Department seeks to provide workers with greater flexibility in choosing training options, the primary goal of approved training remains returning the worker to employment as quickly as possible. CSAs should keep this goal in mind when determining whether to approve part-time training.

Proposed § 618.620 provides for the selection of training programs. Proposed paragraph (a) represents a change from the language at 20 CFR 617.23(d), which outlined the selection criteria for training programs and also evaluated a training provider's success by placement rates.

Proposed § 618.620(a) establishes the criteria for selecting training providers but also describes the procedures for approving affected worker requests for training by a training provider that is not on a State approved list. Under proposed § 618.620(a)(1), training other than OJT, customized training, or training for a limited demand occupation must be provided to an adversely affected worker through a program approved under the WIA eligible training provider provisions. Further, proposed § 618.620(a)(2) eliminates the reference to a training

provider's placement rates and requires the CSA to follow procedures under WIA when an affected worker requests training from a provider that has not been approved. Proposed § 618.620(a)(3) makes an exception from the requirement that a training provider must be on the State-approved list for training in limited demand occupations if the training meets the requirements described in § 618.610(c)(4).

The Department believes that the TAA requirements for approving a training provider for an adversely affected worker should follow the requirements of WIA. By following the WIA approval procedures, CSAs would be required to ensure the credibility and accountability of service providers and for providing quality performance information to participants. Following the WIA procedures would fulfill the requirement of section 239(e) of the Act, which requires the Department to coordinate services provided under TAA with those offered under WIA. It would also abandon the outdated ''silo'' approach to workforce development and make the various programs work together more closely, as the Reform Act amendments contemplate. This approach also is consistent with section 236(a)(1)(B) of the Act, which allows training to be approved if the CSA determines that the worker can benefit from the training. Requiring CSAs to use training providers approved under WIA provides an assurance that workers will receive the skills needed to reach their employment goals because the providers have demonstrated that they operate effective training programs.

To take account of possible amendments to the process of approving training providers in the WIA reauthorization, the Department refers to ''eligible training providers'' under WIA rather than specifically referring to the Eligible Training Provider list. This revision would allow the TAA training requirements to change as the WIA training provider requirements evolve through future legislation.

Proposed § 618.620(a) does not include the language in 20 CFR 617.23(d)(2) that describes the procedures for determining the types of training that may be provided, including the requirement to consult with local employers, appropriate labor organizations, and others. The Department believes this language is unnecessary because CSAs may only approve training by providers that have been approved under WIA requirements. Those requirements provide an opportunity for business and labor to comment on the selection procedures. Therefore, the Department believes that this process is sufficient to accomplish the same result without the additional language in 20 CFR 617.23(d)(2).

Proposed § 618.620(b) covers methods of training and generally follows 20 CFR 617.23(b), (c)(1) and (c)(2). Proposed paragraph (b)(2) provides for preference to be given to on-the-job training under proposed § 618.635 when firm-specific training is not practical. In determining whether to approve OJT, the CSA must consider the six criteria in § 618.610, as well as the availability of OJT and the worker's need for remedial education, and must inform the worker of the effect of such training on eligibility for HCTC. Because of these latter two new factors, added by the Reform Act, the Department has revised the language about the preference for OJT to make it clear that these new factors must be taken into account in determining what training method best fits an adversely affected worker's needs.

Proposed § 618.620(b)(4) is derived from 20 CFR 617.23(c)(2), but adds some new features. It describes institutional training methods and gives priority to training in public area vocational and technical education schools and community colleges (when it is determined that these schools are at least as effective and efficient as other institutional alternatives). The Department has added the reference to community colleges in recognition of their importance to the nation's overall training efforts. Proposed paragraph (b)(4) also expands the kinds of approvable institutional training specifically to include the increasingly popular option of distance learning, where a participant completes all or part of an educational or training program in a location remote from the institution hosting the program.

Proposed § 618.620(c), which provides a non-exclusive list of other specific types of approvable training programs, generally follows 20 CFR 617.24(d), (e) and (f). However, this provision adds vocational and technical education to the list of approvable types of training because they are included in the Carl D. Perkins Vocational and Applied Technology Education Act, which supercedes the Vocational Education Act of 1963, to which section 236(a)(1)(D) of the Act refers.

Proposed § 618.625 explicates a series of restrictions on payments for training programs. It follows 20 CFR 617.25(b), but has been rewritten, simplified and condensed to eliminate certain redundancies. The introductory paragraph contains new language that specifically allows the Department to use a formula to distribute the statutorily-capped training funds to CSAs, as permitted under section 236(a)(2)(B) of the Act. Distribution of TAA funds by formula adds predictability and regularity to the funding process, and allows CSAs to better plan for and manage the use of available training funds.

Of particular note, proposed § 618.625 (c) permits the CSA to share training costs with authorities administering other Federal, State, and private funding sources. It is based on section 236(a)(5)(E) and 236(a)(6) of the Act, allowing for the sharing of program costs, and follows 20 CFR 617.25(b)(2) and (b)(3). The CSA should take into consideration all appropriate and available funds to pay for a TAA training program, thereby reducing the amount of TAA training funds used to cover the costs. Within the One-Stop delivery system, it may be possible to leverage training resources, including resources for basic and remedial education, and specialized training for workers with disabilities, with other One-Stop delivery system partner programs.

Proposed § 618.625(c)(1) follows 20 CFR 617.25(b)(3)(ii)(A). It authorizes the CSA to share future costs of training where prior costs were paid from another Federal, State or private source, as permitted by section 236(a)(5)(E) and 236(a)(6) of the Act. However, it prohibits reimbursement from TAA funds of any training costs which were incurred and for which payment became due before the approval of the training program. For example, if a laid-off worker is enrolled in WIA-funded training (using a prearrangement discussed in proposed paragraph (c)(2)) in order to ensure that there is no delay in the worker's access to needed training because the semester will begin before the certification decision on the TAA petition, then TAA funds may not be used to pay for any costs of the training program incurred before certification.

Proposed § 618.625(c)(2)(i) corresponds to 20 CFR 617.25(b)(2)(ii) and (b)(3)(ii)(A), describing prearrangements and what is required in prearrangement agreements. These 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 TAA, workforce development and other programs. Prearrangements help prevent duplication of the payment of training costs, which is prohibited by section 236(a)(4)(B)(i) of the Act. They also help ensure that training costs that are

reimbursable under any other Federal law are not paid from TAA funds, which would violate section 236(a)(4)(B)(ii) of the Act. Proposed paragraph (c)(2)(i) also contains a new requirement that the CSA must enter into an agreement with another funding source to specify how the worker's training program will be funded if funds become available from another source to pay for training after TAA funds are committed. The Department has added this provision for clarity because it specifically covers a situation not previously addressed in the regulations.

Proposed § 618.625(c)(2)(ii) follows 20 CFR 617.25(b)(3)(ii)(B) and is derived from section 236(a)(6)(B) of the Act. This provision will help avoid duplicate payments of training costs by requiring the worker to enter into a written agreement with the CSA providing that TAA funds will not be applied toward, or used to pay, any portion of the costs of the training that the worker has reason to believe will be paid by any other source.

Proposed § 618.625(c)(3)(i) follows 20 CFR 617.25(b)(4)(ii)(C). As required by section 236(a)(4)(C) of the Act, the CSA must not consider payments to the worker under other Federal laws which do not directly cover the costs of training in determining the amount of training costs payable from TAA funds. Thus, Federal student financial assistance paid directly to a worker is not deducted from the worker's TAA benefits. This is also consistent with 20 U.S.C. 1087uu, which prohibits Federal student financial assistance from being considered in determining eligibility for, or the benefit amount, under any other Federally-funded benefit or assistance program. To effectuate this prohibition, proposed paragraph (c)(3)(i) eliminates the requirement of 20 CFR 617.25(b)(4)(ii)(C)(1) that payments of Federal student financial assistance to the worker be deducted from TRA.

Proposed § 618.625(c)(3)(ii) follows 20 CFR 617.25(b)(4)(ii)(C)(2) in requiring that when other Federal funding sources directly pay the training provider for training costs, the payments must be accounted for as a direct payment of training costs under that other Federal law. Thus, the CSA must deduct the amount of those other payments from the amount of TAA funds payable to the training provider in order to prevent duplication in the payment of training costs. Generally, the CSA will use a prearrangement agreement to assure proper accounting for these payments.

Proposed § 618.625(d)(2)(i), modified from 20 CFR 617.25(b)(5)(ii), prohibits the approval of a training program if the worker is required to pay training costs from TAA funds or any funds belonging to the worker from any source, subject to the limited exception provided in proposed paragraph (d)(2)(ii). This prohibition follows section 236(a)(1) of the Act, which provides that the worker is entitled to have the costs of approved training paid by the Secretary, subject to the annual training cap limitation under section 236(a)(2)(A). Proposed paragraph (d)(2)(ii) creates a new and limited exception that permits a worker to contribute personal funds for the payment of training costs when the Director determines that all available funds have been allocated, and only when the CSA determines that no other funding from other sources is available to pay for such worker's training program. Where the worker chooses to pay those unfunded costs, the CSA is not liable to pay those costs. Where the worker chooses not to pay the unfunded costs, the CSA must waive the training requirement in order to preserve any remaining basic TRA eligibility under proposed § 618.725(b)(6) on the basis that training is not available. Of course, waiving the training requirement will not benefit those workers who have begun receiving additional TRA before ceasing training due to lack of training funds. The Department expects CSAs to make every reasonable effort to find other funding, including WIA dislocated worker and NEG funds, to provide training when TAA funds are capped. This option should rarely be used and only as a last resort.

Proposed § 618.625(d)(2)(iii) is also new and addresses the situation where an employer or other entity agrees to fund training costs under conditions that may make the worker liable for all or a portion of those costs if certain conditions are not met. For example, an employer may offer separated employees paid training, but require the worker to reimburse the employer if the worker does not maintain a certain minimum grade point average (GPA). If the training is otherwise approvable under the Act, this proposed provision would allow the CSA to contract with an employer or other entity to assume any unfunded costs on the worker's behalf. Thus, in the above example, if the employer required the worker to maintain a 2.5 GPA or lose the paid training benefit, the worker could enroll in and receive employer-funded training, and, if the worker later achieves only a 2.4 GPA, the agreement would allow the CSA to assume the cost of training and not force the adversely affected worker to reimburse the employer. This provides the CSA with greater flexibility to leverage the use of nongovernmental funds made available by employers and others to adversely affected workers.

Proposed § 618.630, which follows 20 CFR 617.22(g), derives from section 236(d) of the Act. This provision addresses those workers who cannot find suitable employment, as defined in proposed § 618.110, but who obtain non-suitable employment. These workers, while employed, continue to be eligible for TAA training opportunities as long as their proposed training meets the approval criteria in proposed § 618.610. They may continue their employment while waiting for their selected training course to begin. Upon approval and enrollment in training, they may choose to terminate their employment, reduce the hours worked, or continue in either full- or part-time employment while taking training (as discussed in proposed § 618.615(c)). The workers may not be determined ineligible or disqualified for UI or TAA program benefits, including TRA, because they left work that is not suitable employment. Of course, choosing to continue in such employment, either part- or full-time, may have negative effects on UI and TAA benefits, including the possible loss of the HCTC. Proposed paragraph (a) requires CSAs to provide written notice to warn an adversely affected worker who continues in non-suitable employment on a part-time or full-time basis while undertaking approved training that, due to disqualifying income, the worker may not receive any UI or TRA, which might then forfeit the worker's eligibility for the HCTC. Employed TAA participants continue to be eligible for job search and relocation allowances before or upon completion of their TAA training, as discussed in proposed § 618.630(b).

Proposed § 618.635 modifies 20 CFR 617.25(a) to provide a new description of OJT that follows the statutory definition at section 247(16) of the Act. This section sets forth detailed requirements for OJT and customized training. OJT must be provided under a contract between the CSA and an employer, which may be in either the public or private sector. Related education necessary for acquisition of skills needed for the position should be provided to the extent possible, either as part of the OJT contract or separately as approved TAA training. Classroom training sponsored by the employer (known as vestibule training) may be part of OJT and may occur either before the actual ''hands-on'' training or may be provided for part of the day with the balance of the training day in a productive setting. The IEP and the OJT

contract should specify the duration of the OJT, which must be appropriate to the occupation for which the adversely affected worker is being trained. The duration of the OJT does not need to be the same for the same occupation for all workers as long as it allows the worker to become proficient in the occupation.

Proposed § 618.635(a)(5) contains the conditions required by section 236(c) of the Act for approval of the costs of OJT. Proposed paragraphs (a)(5)(i) through (a)(5)(viii) are essentially unchanged from 20 CFR 617.25(a)(1) through (a)(7) and (a)(9), except for minor language changes. Paragraphs (a)(8) and (a)(10) of 20 CFR 617.25(a) have been dropped because of the repeal of the previous language of section 236(c)(8) of the Act, which required the employer to certify to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of training if the worker desires to continue employment and the employer does not have due cause to terminate the employment. In the Reform Act, Congress replaced the former section 236(c)(8) requirement with a requirement that the employer be provided reimbursement of not more than 50 percent of the wage rate of the participant for the cost of providing the training and additional supervision related to the training. This requirement is now included in proposed § 618.635(a)(4).

Proposed § 618.635(a)(6) follows the statutory provision requiring payments for OJT to be made to employers in equal monthly installments. Proposed paragraph (a)(6) changes 20 CFR 617.25(a) to eliminate confusion over this requirement and to clarify that it does not require equal dollar amounts be paid on a monthly basis. Instead, proposed paragraph (a)(6) permits CSAs to pay either in equal monthly dollar amounts or to compute the monthly payments based on the same rate of reimbursement for each hour worked, up to a maximum of 40 hours each week. Under this latter method of computation, the dollar amounts of the payments may fluctuate because, though paid at the same rate, the payments are based on different numbers of hours.

Proposed § 618.635(a)(7) is a reminder that proposed § 618.765(c) provides that workers engaged in OJT are not eligible for TRA because workers must be eligible for TRA to be considered eligible for the HCTC.

Proposed § 618.635(b) explains customized training, which is a new term under section 236(f) of the Act and is part of employer-based training under section 236(a)(5)(A) of the Act. Proposed paragraphs (b)(1) through (b)(3) set forth the specific requirements for customized training. For example, proposed paragraph (b)(3) requires the CSA to consider similar policies established under WIA by the State and Local Workforce Investment Boards in determining the portion, which must be at least 50 percent, of the cost of customized training paid by the employer.

Proposed § 618.640 discusses the requirements for TAA-funded subsistence and transportation payments and combines 20 CFR 617.27 and 617.28. Proposed paragraph (b) incorporates the determination and notice requirements of proposed § 618.825 and the hearings and appeals requirements of proposed § 618.835 for any determination by a CSA on an application for supplemental assistance.

Proposed § 618.640(c) and (d) correspond to, condense, and rewrite for clarity 20 CFR 617.27 and 20 CFR 617.28, respectively. Proposed paragraph (d)(3) sets forth the calculation of the transportation allowance, and provides that these payments are solely for those miles beyond the commuting area. This is a significant change from 20 CFR 617.28(b), which provides an allowance for the entire round trip distance where training is conducted outside the commuting area. Section 236(b) of the Act permits, but does not require, the Department to pay, ''where appropriate,'' supplemental assistance necessary to defray ''reasonable'' transportation expenses when the training is outside the community area. In order to conserve the capped training funds for tuition, fees, books, and equipment, the Department proposes to limit training allowances to only those miles beyond the commuting area. The Department believes this change is reasonable because workers who travel to training within the commuting area receive no allowance.

Proposed § 618.645 establishes a new requirement for an adversely affected worker's voluntary withdrawal from a training program. Proposed paragraph (a) provides that the CSA must advise the adversely affected worker that eligibility to training, even though not completed, under the existing certification is terminated if they withdraw from approved training. The worker will not be able to resume the training program. Proposed paragraph (a) also recognizes an exception: If a worker ceases participation in a training program for justifiable cause, the worker may resume the program if it can be completed within the 104 or 130 week time limits of proposed § 618.615(a)(3). This provision further implements the single training program rule of proposed § 618.615(c). Because of the limitations on training funds, the Department cannot afford to pay for workers to take more than one approved training program. However, proposed paragraph (b) recognizes that adversely affected workers who withdraw from training still may receive job search and relocation allowances if they meet all the eligibility requirements for these benefits as set forth in proposed §§ 618.410 and 618.515.

Proposed § 618.650 provides new authority, under certain conditions, for CSAs to set limits on the amount of training costs payable for adversely affected workers. Section 236(a)(F) of the Act requires the Secretary to approve training suitable for the worker and available at a reasonable cost. The Department has interpreted ''reasonable cost'' in proposed § 618.610(f)(2) to require taking into consideration, among other things, ''the least cost to TAA funding of providing suitable training opportunities to the worker.'' This requires the CSA to focus on approving training for individual workers at the lowest reasonable cost for the particular type of training in that area that will enable the worker to obtain employment within a reasonable period of time. This focus on the lowest reasonable cost will result in training opportunities for the largest number of adversely affected workers.

To achieve the goal of expanding training opportunities for the largest number of workers, the Department believes it must give CSAs the authority to set specific training caps as a tool to ensure they approve training for individual workers at the lowest reasonable costs which will lead to employment. Proposed § 618.650 allows CSAs to establish training caps on a statewide or local area basis, and, if caps are established, requires that they be set based on the costs for training available in the local area. The Department is concerned that a state-wide training cost cap could shortchange areas of the State in which training costs are high. Thus, a CSA may not arbitrarily establish a cap. In recognition that in a large State costs may vary significantly from urban areas to rural areas, the State must arrive at a reasonable cap based upon training costs in the local areas throughout the State.

Proposed § 618.650(a) allows training caps to be established on a statewide or local area basis. If these caps are used, however, they must reasonably reflect the costs for training available in all the local areas throughout the State. The CSA must also develop standards and procedures for the review and approval

of training costs that exceed established limits, based on individual and exceptional circumstances. This exception to the cost cap will prevent the denial of a training program based solely on a cost limitation. While the Department expects CSAs to be judicious in granting exceptions, the Department recognizes that there will likely be a few exceptional cases in which relief from the cap is appropriate.

The genesis of training caps goes back over a decade. The Department previously proposed to amend 20 CFR 617.22(b) to allow CSAs to establish, annually, a maximum amount allowable for the total cost of training for each worker. 59 FR 906, 924 (January 6, 1994). Comments on that proposal noted that Congress rejected a proposed $4,000 per worker limit on training costs because training and related costs for individual workers may vary significantly from one region of the country to another and from one worker dislocation to another. 59 FR 924. The comments also pointed out the contradiction in requiring CSAs to establish a single maximum amount but then indicating that States should take into consideration the different types of occupational training and varying durations of training, which would then seem to render a single maximum cost meaningless. The comments also raised concerns that inequities would occur in setting a single amount both for individuals in a rural area without training facilities and for individuals in an urban area with training facilities. Although the Department abandoned its proposal, instead adopting the current language at 20 CFR 617.22(a)(6) making no provision for caps, some CSAs have expressed a desire over the past several years to have the flexibility to establish training caps when warranted by State and local circumstances.

The Department believes that the earlier concerns on implementing training caps, while valid, are less of a concern under proposed § 618.650. First, the requirement that a training cap be based on the local area cost basis should eliminate the problem of significant variances in costs that would exist across regions if a single state cap were used. Second, the requirement to base caps on local area costs should guard against the possibility of workers in certain areas of a State being shut out of reasonably priced training opportunities in their local area because any cap, whether statewide or local, will have to consider the reasonable costs of training in that local area. Although not required, CSAs may choose a statewide cap based on the local area in the State with the highest reasonable costs of training. This would ensure that all workers in the State have an opportunity to obtain training at a reasonable cost. Third, the requirement that CSAs develop standards and procedures to review and approve training costs that exceed established limits based on individual and exceptional circumstances, should help eliminate the specific concerns of workers in rural areas who may be concerned that the lack of training opportunities will force them to seek higher-cost training outside their local area because of the need for adding subsistence and transportation payments as a component to their total training costs. This requirement also means that CSAs will continue to review individual training programs under the cost criteria for types and duration of training since reasonable training for a particular worker's circumstances may be approved even if it is above the established training cap.

Finally, the advent of the WIA and the One-Stop delivery system, which focuses on forging partnerships for training and employment services in local labor markets to assist individuals in finding jobs, now provides CSAs with better information on local labor markets and local training opportunities, including their costs. The One-Stop delivery system was not in place when the Department last considered training caps, but this system now allows for the collection of data on various training programs and puts the CSA in a better position to gauge local training costs. Better information on local labor markets and on the costs and quality of various training opportunities provides CSAs with the ability to establish reasonable local, regional or statewide training caps that reflect current conditions. Thus, the Department believes that this current proposal addresses the earlier concerns about their fairness and can be implemented effectively under the One-Stop delivery system.

Proposed § 618.650(b) requires cooperating State agencies to review their training caps annually and to change them when warranted. Proposed paragraph (c) requires that whenever a CSA establishes, changes, or ceases using a training cap, the CSA must send written notice and full documentation supporting its action to the Director before establishing, changing, or ending such limits. This requirement allows the Department to monitor, review, and approve the cost limits in accordance with the criteria in proposed paragraph (a) of this section. The CSA's caps, or their modification or termination, will take effect in 30 calendar days after receipt by the Director, unless the Department objects in writing to the CSA.

Proposed § 618.655 implements section 296(d)(2) of the Act, entitling an agricultural commodity producer entitled to receive a cash benefit under the TAA for Farmers program (see 7 CFR Part 1580) to employment services and training benefits (including subsistence and transportation payments) under the Department of Labor's TAA program. Although section 296(d)(2) of the Act entitles these individuals to training, it does not mean that they are entitled to receive any training they want. Rather, the Department must place reasonable limitations on the approval of this training to assure that public funds are spent wisely for purposes for which Congress appropriated them. Thus, although section 296(d)(2) of the Act does not require application of the six criteria for training approval at section 236 of the Act, the Department believes that approval criteria 2 through 6 (proposed § 618.610(b) through (f)) establish reasonable conditions for selecting and approving training for these or any individuals. Criteria 2 through 6 relate to the quality of the training and the utility of the training for the worker and thus permit CSAs to ensure that the training meets the needs of affected farmers. Proposed paragraph (a)(1) would apply, for example, approval criteria 5, at proposed § 618.610(e)(2), requiring, for training approval, that the worker have sufficient personal or family resources on which to live to allow completion of the training. It would make no sense to spend scarce training dollars on training that an individual will be forced to quit because of inadequate personal finances.

The Department proposes not to apply training approval criterion 1 (proposed § 618.610(a)), that there is no suitable employment available except where the agricultural commodity producer actually obtains suitable employment, because this is the major threshold requirement for determining whether a worker is entitled to training. The Department believes that it should not stand in the way of the statutory training eligibility. However, all of the other provisions of this subpart F would apply to place reasonable parameters around this eligibility. Thus, for example, an approved training program for an eligible agricultural commodity producer (as for an adversely affected worker) could not exceed 104 consecutive calendar weeks, with a possible 26 additional calendar weeks, as needed, to complete approved

remedial education, per proposed § 618.615(a)(3)(i).

Proposed § 618.655(a)(3) would require denial of training approval where the agricultural commodity producer has already obtained what is, in effect, ''suitable employment'' under section 236(e) of the Act. An adversely affected worker who obtains ''suitable employment'' is not entitled to training under criterion 1, requiring that no ''suitable employment'' be available. Since an agricultural commodity producer does not receive wages, but instead earns income from the sale of a commodity, proposed paragraph (a)(3) substitutes ''average weekly income'' for ''average weekly wages'' in the definition of ''suitable employment.'' ''Average weekly income'' would be calculated based on the agricultural commodity producer's self-employment income earned in his or her most recent tax year before the notice of entitlement to a cash benefit under the TAA for Farmers program. ''Average weekly income'' would be based on ''all self-employment'' because the CSA will likely be unable to isolate that portion of the self-employment income that was the basis of the cash benefit under the TAA for Farmers program. By using ''average weekly income'' in the definition of suitable employment in proposed paragraph (a)(3), the CSA treats agricultural commodity producers the same as adversely affected workers by denying training where the agricultural commodity producer has made a successful adjustment by obtaining, what is, in effect, suitable employment.

Proposed § 618.655(b) provides that the CSA must verify agricultural commodity producer's entitlement to a cash benefit under the TAA for Farmers program in accordance with procedures established by the Department of Labor. Currently this is done through an approved Form FFA–229, ''Application for Trade Adjustment Assistance (TAA) for Individual Producers,'' signed by the approving official at the Farm Service Agency. However, the Department expects that in the future CSAs will be able to confirm this entitlement electronically, using a Department of Agriculture database.

Proposed § 618.655(c) provides that an agricultural commodity producer receiving training is entitled to subsistence and transportation payments where the CSA determines that the requirements of proposed § 618.640 are met. It is logical and reasonable that those same requirements apply to agricultural commodity producers.

Proposed § 618.655(d) limits an agricultural commodity producer entitled to a cash benefit in multiple years for the same commodity to only one training program per affected commodity. Although section 296(d)(2) of the Act could be read as permitting a new training program each year, that result would not be a logical or reasonable reading of the law. A training program approved under subpart F should give an individual the skills necessary to obtain new employment, and a second training program would be an unnecessary diversion of scarce training funds from better uses. If an agricultural commodity producer receives TAA training under a certification and a future certification is issued with respect to the same commodity, the individual will be considered to have already received the training eligibility under section 296(d)(2) of the Act.

Proposed § 618.655(e), sets the limits on the TAA services that an eligible agricultural commodity producer may receive, found in section 296(d)(2) of the Act. Agricultural commodity producers entitled to a cash benefit are entitled to employment services under subpart C, but not any TRA under subpart G, job search allowances under subpart D, relocation allowances under subpart E, or ATAA under subpart I [reserved].

Subpart G—Trade Readjustment Allowances

Proposed subpart G, derived from 20 CFR Part 617, subpart B, covers the eligibility requirements for, and the amounts and duration of, trade readjustment allowances (TRA). Proposed subpart G reorganizes and simplifies some of the parallel provisions of Part 617 to make them easier to follow and excludes provisions of Part 617 that have lapsed. Proposed subpart G also implements several Reform Act amendments to TRA eligibility criteria. Major changes include:

- Allows individuals to receive wholly state-funded additional UI in addition to TRA to support an individual's job search and/or participation in training.
- Encourages rapid re-employment by instituting deadlines (*i.e.*, 8/16 enrollment deadline) for enrollment in approved training in order to qualify for TRA.
- Strengthens the connection between TRA and training by establishing specific criteria for issuing waivers of the training requirement for basic TRA eligibility.
- Increases additional TRA for workers in approved training from 26 weeks to 52 weeks, thus reducing the chance of a worker dropping out of training due to insufficient income support.
- Permits the payment of up to an additional 26 weeks of TRA, which assists workers who require remedial education to have enough income support to complete occupational training.
- Provides conditions under which TAA participants meet the definition of ''eligible TAA recipient'' for HCTC purposes, and directs the CSA to transmit the names of such workers to the Internal Revenue Service (IRS).
- Provides prompt access to HCTC for qualified TAA recipients and reduces the administrative burden on state agencies for issuing waivers by allowing workers to receive TRA, and thus be potentially eligible for HCTC, without enrolling in training or receiving a waiver for the weeks prior to the 8/16 enrollment deadline.

Proposed § 618.700 describes the scope of this proposed subpart G.

Proposed § 618.705 explains that there are three categories of TRA: Basic, additional, and remedial. This proposed section has no parallel in part 617. It is intended to make the rest of proposed subpart G easier to follow by providing context to the references throughout subpart G to the three distinct types of TRA. Proposed paragraphs (a) and (b) identify, respectively, basic TRA and additional TRA and reference their respective qualifying requirements contained in later sections in subpart G.

Proposed paragraph (c) addresses remedial TRA. Even though the Act does not explicitly refer to ''remedial TRA'' as a separate category of TRA, the Act, as amended by the Reform Act, implicitly recognizes remedial TRA as a distinct form of TRA. Section 233(g) of the Act permits the payment of up to 26 additional weeks of TRA, to assist those workers who require remedial education by providing extended income support while the worker completes occupational training. Proposed paragraph (c) makes eligibility for remedial TRA contingent upon the specific qualifying requirements of proposed § 618.755. In particular, and as explained in more detail in the preamble explanation of proposed § 618.755, remedial TRA need not be concurrent with participation in remedial education, as long as the adversely affected worker had participated in remedial education and is participating in approved training while receiving remedial TRA.

Finally, in order to prevent duplication of benefits, proposed paragraph (d) provides that an adversely

affected worker may receive only one form of TRA—basic, additional, or remedial—for a given week of unemployment.

Proposed § 618.710 covers applications for TRA. Under proposed paragraph (a), a worker may apply for TRA if the worker is covered under either a certification or, if before a certification is issued, a petition. Proposed paragraph (b) provides, as does 20 CFR 617.10(a), that, for a TRA application filed before a certification covering the adversely affected worker is issued, the CSA must make those determinations necessary to establish or protect such worker's TRA entitlement and, if necessary, to protect the worker's eligibility for the HCTC. The reference to HCTC is added because eligibility for HCTC may depend upon meeting all of the TRA eligibility requirements except exhausting UI. The CSA must also advise an applicant that a determination on payment of TRA cannot be made unless a certification is issued.

Proposed paragraph (c) follows 20 CFR 617.10(b), although it is edited for clarity. It sets the time limits for applications for TRA.

Proposed paragraph (d) follows 20 CFR 617.10(c) in providing the procedures for filing TRA applications.

Proposed paragraph (e) provides that TRA determinations are subject to specified requirements in proposed subpart H concerning determinations, appeals and hearings. It also requires that an adversely affected worker's case record must include the worker's TRA applications and the determinations on the applications. This is a new provision with no explicit counterpart in current regulations, but it merely clarifies, rather than changes or adds to, existing requirements.

Proposed paragraph (f) follows 20 CFR 617.11(a)(2)(i) and 617.11(b) in providing that a CSA may not pay a worker TRA until a certification is issued covering the worker, and that an adversely affected worker may not be paid TRA until the first week beginning more than 60 days after the date of the filing of the petition that resulted in the certification under which the worker is covered.

Proposed § 618.715 follows 20 CFR 617.11(a)(2) in setting forth the requirements for basic TRA eligibility.

Proposed paragraphs (a) through (c) follow 20 CFR 617.11(a)(2)(i) through (a)(2)(iii) setting three of the rules for basic TRA eligibility.

Proposed paragraph (d) follows 20 CFR 617.11(a)(2)(iv) in providing that an adversely affected worker must have been entitled to UI for a week within the first benefit period, as defined in proposed § 618.110. Proposed paragraph (d) simplifies the language in the current regulation by eliminating references to the ''first qualifying separation,'' because that term is incorporated into the definition of ''first benefit period.''

Proposed paragraph (e)(1) requires exhaustion of UI entitlement and follows the requirement in 20 CFR 617.11(a)(2)(v)(A) and (B) except in two respects. First, proposed paragraph (e) contains an exception to the exhaustion requirement, under section 231(a)(3)(B) of the Act, as amended by the Reform Act, that exhaustion of additional compensation that is funded by a State and not reimbursed from any Federal funds, including any waiting weeks, is not required. Second, it explains that whenever a worker becomes entitled (or would become entitled if the worker had applied therefor) to UI—except additional compensation that is funded by a State and not reimbursed from any Federal funds—TRA eligibility is suspended until the worker again exhausts UI.

Proposed paragraph (f) provides that the adversely affected worker must be able and available for work and must meet the EB work test requirements, except while enrolled in, or participating in, training approved under proposed subpart F. The requirements in proposed paragraph (f) combine the requirements in 20 CFR 617.11(a)(2)(vi) and 20 CFR 617.17, except that the 20 CFR 617.17(a)(1) requirement that a worker be unemployed appears in proposed paragraph (g) of this section. Proposed paragraph (f) also reorganizes and rephrases the paragraphs containing the specified means for meeting the EB work test requirements in a way the Department believes is easier to follow.

Proposed paragraph (g) provides that the adversely affected worker must be unemployed as defined in the applicable State law for UI claimants. This requirement follows 20 CFR 617.17(a)(1) and is placed in this section because it is a qualifying requirement for basic TRA.

Finally, proposed paragraph (h) mirrors the ''participation in training'' requirement of 20 CFR 617.11(a)(2)(vii)(1). The specific requirements in 20 CFR 617.11(a)(2)(vii)(2) and (3) have been moved to a separate section, proposed § 618.720.

Proposed paragraph (h) also provides that the participation in training requirement does not apply to a worker before what is commonly referred to as the 8/16-week deadline for enrollment in training. In fact, there are four alternative deadlines set out in section 231(a)(5)(A)(ii) of the Act and in proposed § 618.720(c). The deadlines are: (1) The last day of the 16th week after the worker's most recent total qualifying separation; (2) the last day of the eighth week after the week in which the certification covering the worker is issued; (3) 45 days after the later of the above two dates, if there are extenuating circumstances to justify an extension in the enrollment period; or (4) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver. These alternative deadlines are implemented in proposed § 618.720(c)(1) through (4) and are discussed also below in the preamble discussion of those paragraphs.

The Department proposes to interpret the participation in TAA-approved training eligibility requirement as not applying before the applicable deadline. Until the deadline is reached, the fact that a worker is not enrolled in or participating in training or has not received a waiver of participation in training does not preclude eligibility for basic TRA. Applying the participation in TAA-approved training requirement before the deadline would undermine one purpose of the deadlines, that is, to provide sufficient time to identify and make arrangements for an appropriate training program. Further, applying the participation in training requirement before the deadlines would cause some adversely affected workers who do not participate in training before the deadline to be denied eligibility for the HCTC because, by not meeting a requirement for TRA eligibility, they would not be ''eligible TAA recipients'' as required to receive the HCTC. A Government Accountability Office (GAO) report on the TAA program, published on September 22, 2004, found that in a majority of the states, some adversely affected workers might not be enrolling in the most appropriate training program because the 8/16-week deadline forced the states into rushed assessments of the workers' needs. See pages 13–17 of this GAO report, available at *http://www.gao.gov/new.items/d041012.pdf.* The Department believes that not applying the participation in training requirement before the 8/16-week deadline will prevent aggravation of this problem.

A related issue, on which the Department seeks public comment, is whether the deadlines should apply to waivers of the training requirement in the case of adversely affected workers who do not enroll in training by the applicable deadline; whether the issuance of a waiver after the deadline

has passed can revive eligibility for basic TRA. The Department's current position, reflected in § 618.725(a), is that an adversely affected worker who neither enrolls in training by the applicable deadline, nor receives a waiver of the training requirement by that deadline, may not become eligible for TRA by later receiving such a waiver. This position was articulated in the operating instructions in Training and Employment Guidance Letter (TEGL) No. 11–02, Change 1 (69 FR 60903 (2004)), which interpreted section 231(a)(5)(A) as imposing ''a deadline by which a worker must be enrolled in approved training, or have a waiver of this requirement, in order to be eligible for TRA.'' However, a CSA recently brought to the Department's attention an alternative reading, based on the structure of the Act, that the applicable deadline applies only to enrollment in training and not to waivers of the training requirement. The argument is that the alternative deadlines are contained only in the Act's provision on the enrollment in training requirement, section 231(a)(5)(A); that language in section 231(a)(5)(A)(ii) suggests the requirement applies only to the enrollment in training requirement in section 231(a)(5)(A)(i); and that the alternative requirement that the worker receive a waiver of the training requirement is contained in a separate provision, section 231(a)(5)(C) of the Act. While this argument is plausible, the Department is concerned that it effectively undermines Congress' intent that TAA-eligible workers be quickly returned to work or quickly provided with the training they need to succeed in the labor market. In light of this argument, the Department encourages public comments on this issue.

As noted above, proposed § 618.720 provides the requirements governing a worker's participation in training approved under proposed subpart F as a condition of receiving TRA.

Proposed paragraph (a) provides that an adversely affected worker must be enrolled in, participating in, or have completed training approved under proposed subpart F, or have a waiver granted under proposed § 618.725 in effect by the applicable deadline for enrollment in training. Proposed paragraph (a) repeats some of the requirements in proposed § 618.715(h) so that all the requirements related to basic TRA eligibility and all the requirements related to training requirements for receipt of TRA are placed in separate sections of the proposed rule.

Proposed paragraph (b) is self-explanatory.

Proposed paragraph (c) implements the enrollment in training deadlines, added by the Reform Act to section 231(a)(5)(A)(ii) of the Act. It implements the statutory requirement that, unless a worker who has a waiver in effect, the worker must be enrolled in training approved under subpart F no later than one of four alternative specified deadlines to be eligible for basic TRA. Proposed paragraphs (c)(1) through (c)(4) describe the deadlines and mirror the Act.

Proposed paragraph (c)(3) provides an alternative deadline of the last day of the 30-consecutive calendar day period following the termination or revocation of a waiver under proposed § 618.725. This paragraph implements section 231(a)(5)(A)(ii)(IV) of the Act, added by the Reform Act, which directs the Secretary to determine the deadline by which a worker must enroll in approved training after the termination of a waiver. The Department believes 30 calendar days is sufficient time for a worker whose waiver has been terminated or revoked to be advised of, and consider, training options, select an option, and enroll in training.

Proposed paragraph (c)(4) implements the requirement of section 231(a)(5)(A)(ii)(III) of the Act, added by the Reform Act, that a worker may have 45 additional days after the later of the 16/8-week deadlines, if there are extenuating circumstances that justify the extension. The Act does not elaborate on what are extenuating circumstances. Proposed paragraph (c)(4) explains that extenuating circumstances are unusual situations that are beyond the direct control of the adversely affected worker and that make enrollment within the otherwise applicable deadline impossible or impractical. Proposed paragraphs (c)(4)(i) through (iv) provide a non-exhaustive list of examples of extenuating circumstances.

Finally, proposed paragraph (c)(5) provides the same exception to the participation in training requirement that is contained in proposed §§ 618.715(h) and 618.720(a), as explained in the discussion of proposed § 618.715(h).

Proposed paragraph (d), derived from section 231(b)(2) of the Act, follows 20 CFR 617.11(a)(2)(vii)(B). It provides an exception to the training requirement for claims for basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA (within a reasonable period of time, as provided in proposed § 618.710(c)), and for weeks before notification that a worker is covered by a certification and is fully informed of the requirements for enrollment in training.

Proposed paragraph (e) interprets the terms ''enrolled in training,'' ''participating in training,'' and ''completed training.''

Proposed paragraphs (e)(1) and (e)(3) interpret, respectively, ''enrolled in training'' and ''completed training'' substantially the same as, respectively, paragraphs (*1*) and (*2*) of 20 CFR 617.11(a)(2)(vii)(D); but the interpretation of ''completed training'' is revised for clarity.

Proposed paragraph (e)(2) interprets ''participating in training.'' Part 617 does not interpret this term, despite using it throughout. Interpreting it in proposed Part 618 is helpful.

Proposed paragraph (e)(2)(i) provides that an adversely affected worker is ''participating in training'' if the worker is attending and participating in all scheduled classes, required activities, and required events, or the training institution has excused the worker's absence or failure to participate. Proposed paragraph (e)(2)(i) also provides a mechanism for ensuring that an adversely affected worker does not receive basic TRA when that worker has ''ceased participation'' in the approved training in which the worker is enrolled, in accordance with § 618.765(b)(3)(ii). It requires the training institution to certify in writing on a monthly basis to the CSA whether the adversely affected worker has met this requirement, and, if not, whether it has excused the worker.

Proposed paragraph (e)(2)(ii) provides that an adversely affected worker in a distance learning program is ''participating in training'' if the worker is meeting all the requirements of the training institution. Proposed paragraph (e)(2)(ii) also provides the same mechanism, monthly reports, for ensuring that a worker is participating in the training. The Department specifically invites comments on whether the requirements for monthly certifications by training institutions of worker participation is overly burdensome and whether there is a better means of assuring that a worker is participating in training as required for TRA.

Proposed paragraph (e)(2)(iii) provides that a worker is participating in training during breaks in training that meet the requirements of § 618.760.

Proposed § 618.725 addresses waivers of the training requirement as a condition for receiving basic TRA. This proposed section, because of the Reform Act amendments, varies substantially from the waiver provisions in 20 CFR 617.19(a)(2) and (b) through (d).

Proposed paragraph (a) provides the general rule that a CSA may issue to an adversely affected worker a written waiver of the training requirement if it finds that training is not feasible or appropriate for one or more of the reasons listed in paragraph (b). Proposed paragraph (a) also provides that no waiver of the training requirement is permitted for additional TRA or remedial TRA eligibility. Finally, proposed paragraph (a) requires, as discussed above in the discussion of proposed § 618.715(h), that a waiver must be issued no later than the latest of the applicable training enrollment deadlines described in § 618.720(c).

Proposed paragraph (b) sets forth the permissible bases for waiving the training requirement, implementing Reform Act amendments to section 231(c) of the Act. Before the Reform Act, the Act permitted waiver of the training requirement where training was not feasible or appropriate for a worker and gave the Secretary discretion to decide the criteria for determining whether training is feasible or appropriate. The Reform Act reduced the Secretary's discretion by specifying six bases, at least one of which must be cited in any determination that training is not feasible or appropriate for an adversely affected worker. Proposed paragraphs (b)(1) through (b)(6) identify the six bases, mostly verbatim from the Act; however, some of them elaborate on the statutory requirement, as explained below.

Proposed paragraph (b)(1) implements the statutory waiver criterion that ''[t]he worker has been notified that the worker will be recalled by the firm from which the separation occurred.'' The Department believes that this means that the recall must be to the same or substantially the same position by the firm from which the separation occurred, and that the recall is expected to be permanent. In this way, the criteria for approval of training will work in tandem with waiver of the training requirement where the worker has been notified of a recall and ensure that the worker receives income support while awaiting the recall. That is, section 236(a)(1) of the Act (implemented in proposed § 618.610(a)) requires denial of training where suitable employment is available, which includes a recall. However, section 231(c)(1)(A) of the Act (implemented in this proposed paragraph) provides for waiver of the training requirement where a worker has been notified of a recall to the adversely affected employment.

Proposed paragraph (b)(1) differs from its counterpart in 20 CFR 617.19(b)(2)(ii)(A) in that it excludes ''general'' recalls, described in 20 CFR 617.19(b)(2)(ii)(A)(*2*)(*ii*), from consideration in determining whether to issue a waiver due to a recall notice. The Department believes that a general recall, which by its terms does not include a specified date or time period for returning to work, is inherently too vague to rely upon for purposes of issuing a waiver of the training requirement. It also would simplify administration, and help ensure consistency among determinations on issuing waivers of the training requirement and denying approval of training, to require that a recall have a specified date or time period for returning to work in order to meet the requirements of both proposed paragraph (b)(1) and proposed § 618.610(a).

Proposed paragraph (b)(1) also differs from 20 CFR 617.19(b)(2)(ii)(A) in requiring that a recall be permanent. The Department believes that it would not be appropriate to deny training if a worker chooses not to return to work that holds no long term prospect of employment. If a worker chooses to accept a temporary recall, the worker may remain eligible for TRA upon his/her subsequent separation, under the moving eligibility rules of the Act.

Proposed paragraph (b)(2) implements the statutory waiver criterion that an adversely affected worker has marketable skills for suitable employment, and there is a reasonable expectation of employment at equivalent wages in the foreseeable future. The definition of ''suitable employment'' in proposed § 618.110 is used also in proposed § 618.610(a)(1) for purposes of determining whether to approve training. As discussed in the preamble discussion of the definition of ''suitable employment,'' the Department believes that, despite the use of slightly different language in sections 231(c)(1)(B) and 236(a)(1)(A), the two provisions must be read complementarily, so that a worker who is denied training because of the availability of suitable employment is not also denied a waiver because of a conflicting interpretation of the phrase ''employment at equivalent wages'' in the waiver criteria. Proposed paragraph (b)(3) implements the statutory waiver criterion that the worker is within two years of meeting all requirements for entitlement to either old-age insurance benefits under title II of the Social Security Act (except for the requirement of application for these benefits), or a private, employer-or-labor organization-sponsored pension. Proposed paragraph (b)(3) interprets entitlement to benefits under title II of the Social Security Act as including either full or partial retirement benefits.

Proposed paragraph (b)(4) implements the statutory waiver criterion that the worker is unable to participate in training for health reasons. Proposed paragraph (b)(4) repeats the statutory language almost verbatim with no further elaboration.

Proposed paragraph (b)(5) implements the statutory waiver criterion that the first available enrollment date for the approved training of the worker is within 60 days after the date of the waiver determination, or, if later, there are extenuating circumstances for the delay in enrollment, as determined under guidelines issued by the Secretary. Proposed paragraph (b)(5) repeats the 60-day deadline almost verbatim from the statutory language and, for consistency, implements the extension for extenuating circumstances by applying the test in proposed § 618.720(b)(4) for determining whether there are extenuating circumstances.

Proposed paragraph (b)(6) implements the statutory waiver criterion that a waiver of the training requirement may be issued if training is unavailable. Proposed paragraph (b)(6) implements this statutory provision almost verbatim with no further elaboration.

Proposed paragraph (c) governs the contents of a written waiver. It provides that a waiver does not take effect unless it contains, at a minimum, six specific items of information. Proposed paragraph (c) is modified from 20 CFR 617.19(a)(2)(i) through (a)(2)(vii) to account for the statutory change concerning allowable bases for issuing a waiver, and is also slightly reorganized to make it easier to follow. In particular, the requirement for the recipient's signature has been modified, to account for current claims-taking practice, to permit other evidence of the participant's receipt and acknowledgement of the waiver.

Proposed paragraph (d) requires that whenever a waiver request (whether or not made by the adversely affected worker to whom the request pertains) is denied, the worker to whom the denial pertains must be furnished with a written notice of the denial, and that the written notice must contain certain specified information. The paragraph is modified from 20 CFR 617.19(a)(3) for clarity about the required contents of a denial.

Proposed paragraphs (e) and (f) implement provisions of section 231(c)(2) of the Act, as amended by the Reform Act. Proposed paragraph (e) implements section 231(c)(2)(A) of the Act that a waiver of the training

requirement may be effective for not more than 6 months after the date on which it is issued ''unless the Secretary determines otherwise.'' Proposed paragraph (f) implements section 231(c)(2)(B) of the Act requiring revocation of a waiver if the basis of a waiver no longer applies, and written notification of the revocation to the worker.

Proposed paragraph (e)(1) implements the 6-month limit with two additional qualifications. First, it provides that the extension may be for a period not to exceed 6 months or the worker's period of basic TRA entitlement, whichever comes first. This limitation is consistent with the fact that a waiver may be issued only for basic TRA. Second, the waiver must be reviewed every 30 days to determine if one or more of the bases for a waiver continue to apply. The Department believes this requirement would be an effective means of ensuring that the waiver criteria continue to be met for the duration of the waiver. Not regularly reviewing waivers would undermine the Act's requirement that waivers should remain in effect only as long as the bases for a waiver continue to apply.

Proposed paragraph (e)(2) implements the statutory authority to extend a waiver beyond 6 months by providing two criteria that must be met in order for a CSA to extend a waiver. The criteria require that one or more of the bases for a waiver apply to the worker, and that the worker has not yet exhausted basic TRA entitlement. The first criterion permits a CSA to extend a waiver beyond 6 months as long as at least one of the six bases for a waiver continues to apply, even if the original basis or bases for issuing the waiver no longer apply. This criterion implements the statutory mandate that a waiver be in effect only if specified criteria are met. The Department includes the second criterion because extending a waiver of the training requirement would be pointless if the worker has exhausted basic TRA eligibility. The Department believes these criteria provide the maximum flexibility to extend a waiver within the spirit of the statutory requirements for such waivers.

Proposed paragraph (f) implements the statutory requirement that a waiver must be revoked if none of the six specified statutory bases for a waiver continues to apply. It requires the CSA to revoke a waiver if the waiver criteria are no longer met, and to notify the adversely affected worker in writing of the revocation. The notice would be required to contain the same information as a denial of waiver issued under proposed paragraph (d). Proposed paragraph (g) implements the new statutory requirement added by the Reform Act to section 231(c)(3)(B) of the Act that CSAs submit to the Secretary the written waivers of the training requirement issued under the Act and a statement of reasons for each waiver. Proposed paragraph (g) implements this requirement by requiring CSAs to transmit a copy to the appropriate Regional Administrator of any or all waivers or any or all revocations of waivers together with a statement of the reasons for the waiver or revocation. As a practical matter, a separate statement of reasons will not need to be submitted if the waiver follows the requirements of proposed paragraphs (c) and (f) and contains the reasons for the waiver or revocation.

Proposed § 618.730, modeled after 20 CFR 617.12, provides the requirements for evidence of qualification for basic, additional, and remedial TRA.

Proposed paragraph (a), containing the basic requirement that CSAs obtain the basic information necessary to establish whether a TRA applicant is eligible to receive TRA, is substantially the same as 20 CFR 617.12(a). However, proposed paragraph (a) excludes the requirement in 20 CFR 617.12(a)(2) that a State agency must obtain a TRA applicant's average weekly wage. This information is not administratively necessary in the case of a TRA applicant who is totally separated from adversely affected employment.

Proposed paragraphs (b) and (c) on obtaining alternative information where records are unavailable include only one change from 20 CFR 617.12(b) and (c). Where 20 CFR 617.12(c) requires verification by the employer of information received from other sources, proposed paragraph (c) requires such verification only ''if possible.'' This change acknowledges that in some cases the employer might have gone out of business, so that obtaining the required verification is virtually impossible.

Proposed paragraph (d), concerning the data on which a CSA must base a determination on TRA entitlement and benefit amounts, is substantively similar to 20 CFR 617.12(d), but, rather than requiring the CSA to make adjustments to the suspect data and make its determinations on the basis of the adjusted data, requires the CSA to make its determinations from the best available information. The Department believes that this change provides CSAs with more flexibility.

Proposed § 618.735, governing the determination of a worker's weekly amount of TRA, whether basic, additional, or remedial, is modeled on 20 CFR 617.13.

Proposed paragraphs (a) and (b) are substantively the same as their counterparts in, 20 CFR 617.13(a) and (b).

Proposed paragraph (c), requiring specified reductions to the TRA weekly amount, closely follows 20 CFR 617.13(c). However, proposed paragraph (c)(2) is modified from 20 CFR 617.13(c)(2) in order to resolve a conflict between the Act and another Federal statutory provision. The conflict is between section 232(c) of the Act, requiring a worker's TRA weekly benefit amount to be reduced by the amount of a training allowance the worker received for that week under any other Federal law, and another Federal statutory provision, at 20 U.S.C. 1087uu, that prohibits Federal student financial assistance from being considered in the determination of a Federal student financial assistance recipient's eligibility for or benefit amount under any other Federally funded benefit or assistance program. The provision at 20 CFR 617.13(c)(2) interprets training allowances referred to in section 232(c) of the Act as including specified types of payments that constitute Federal student financial assistance under 20 U.S.C. 1087uu.

Proposed paragraph (c)(2) resolves this conflict by requiring that no reduction of the TRA weekly amount be made for the receipt of Federal student financial assistance, as defined in proposed § 618.110. It further provides that in the case of a worker to whom such Federal student financial assistance is available, the State must rely on prearrangements for the sharing of costs under proposed subpart F in order to harmonize the provision of such Federal student financial assistance with the worker's TRA entitlement. The Department believes that prearrangements can be used to harmonize TRA with the provision of Federal student financial assistance consistent with the requirements of both otherwise conflicting statutory requirements. Under such a prearrangement, the agency responsible for providing Federal student financial assistance might, to the extent provided for under its laws, adjust that assistance in view of the worker's receipt of TRA.

Proposed § 618.740, on calculating the maximum amount of basic TRA, follows 20 CFR 617.14, with a few substantive and organizational differences. The calculation in proposed paragraph (a) is substantively the same except for two differences. The first difference is that additional compensation (defined at proposed § 618.110) is not included in

the total sum of UI that must be subtracted as part of the calculation of the maximum amount of basic TRA. This difference results from an amendment by the Reform Act to section 231(a)(3)(B) that a worker need not exhaust additional compensation funded by a state and not reimbursed from federal funds to qualify for TRA. The purpose of that amendment was to allow a worker to collect TRA even though he or she was entitled to additional compensation, which the worker might then collect after exhausting TRA. To deduct such additional compensation from a worker's TRA would defeat this purpose.

The second difference concerns the reduction for the total sum of the adversely affected worker's UI entitlement. Section 617.14(a)(2) provides that a worker's UI reduction must include, in addition to any UI the worker actually received, any UI to which the worker would have been entitled had the worker applied for it during the worker's first benefit period. The last sentence of that paragraph adds that in calculating the worker's maximum TRA amount, the worker's full UI entitlement for the first benefit period must be subtracted, regardless of the amount, if any, actually paid to the worker. This last sentence created an unintended result in recent years for workers who, after they began receiving TRA during their first benefit period, became eligible for extended benefits or benefits under the Temporary Extended Unemployment Compensation (TEUC) program. For example, assume that three weeks before a worker's benefit year ends, the worker becomes eligible for a TEUC maximum benefit amount of 13 weeks. If the worker is entitled to regular UI in a second benefit year, that regular UI entitlement means the worker is not eligible for TEUC as of the start of the second benefit year. Therefore, the worker could have collected at most three weeks of TEUC. However, because of the last sentence in 20 CFR 617.14(a)(2), all 13 weeks of TEUC would be deducted from the basic TRA maximum benefit amount, even though the worker could not have collected 10 weeks of it.

These workers would have their basic TRA maximum amount reduced by the full potential amount of the extended UI entitlement during their first benefit period, whether or not they were actually paid that full potential entitlement or could even actually qualify for the entire amount. In some cases, this resulted in workers having their maximum amount of TRA reduced to an amount below what they already had received, which resulted in TRA overpayments being established, despite these workers having received TRA for weeks of unemployment for which they were not eligible for any UI. Because these workers lawfully received TRA for weeks of unemployment for which they were not eligible for UI, and could not have known that they would become eligible for extended UI at a later time during their first benefit period, it seems contrary to the Act to declare the lawfully received TRA payments to be overpayments. Upon further review of the legislative history, the Department has determined that the Act does not compel the reduction of the TRA maximum amount by the full potential UI entitlement during the first benefit period.

Therefore, the Department proposes to exclude the last sentence of 20 CFR 617.14(a)(2) from proposed paragraph (a) of § 618.740 so that no deduction will be made from the basic TRA maximum benefit amount for the potential amount of extended benefits or TEUC that could not be received. However, excluding this provision potentially could cause another problem: a worker could receive basic TRA for weeks for which the worker did not receive UI because of State UI law disqualification provisions. Even though the disqualification provisions at proposed § 618.765(a) prohibit that result, proposed § 618.740(a) arguably could be read as conflicting with proposed § 618.765(a). To avoid any conflict, and because the Department believes it would defeat the purpose of the disqualification provisions to allow workers to receive TRA for such weeks, the Department proposes requiring the UI reduction to include the total sum of UI the worker would have received in the worker's first benefit period had such worker ''either applied therefor or not been subject to a disqualification under the applicable State law.''

Proposed paragraph (b), which contains exceptions to the maximum TRA amount calculation is substantively unchanged from 20 CFR 617.14(b)(1) and (2). However, proposed paragraph (b) excludes language in 20 CFR 617.14(b) that nothing in that paragraph will affect an individual's eligibility for the allowances described in that paragraph. The Department believes this language is unnecessary.

Finally, another difference between proposed § 618.740 and 20 CFR 617.14 is that the heading for proposed § 618.740 explicitly provides that this section applies only to calculating the maximum amount of basic TRA. The heading for 20 CFR 617.14 does not contain this limitation, but 20 CFR 617.14(b)(3) effectuates the same result by explicitly excluding additional TRA from the maximum amount calculation. The Department believes it can accomplish the same thing simply by modifying the section heading.

Proposed paragraph (c), which requires reductions of the maximum TRA amount for the receipt of Federal training allowances under other programs, follows 20 CFR 617.14(c), but has substantive differences. Proposed paragraph (c)(1) requires a worker's total number of weeks of TRA eligibility to be reduced by the number of weeks for which the worker both receives a training allowance referred to in proposed § 618.735(c)(2) and would be eligible to receive TRA. However, unlike 20 CFR 617.14(c)(1), no deduction would be made for the receipt of Federal student financial assistance. As explained above, in the discussion of proposed § 618.735(c)(2), such a deduction would conflict with 20 U.S.C. 1087uu. Proposed paragraph (c)(1) provides for prearrangements, as does proposed § 618.735(c)(2).

Proposed paragraph (c)(2) requires that if a training allowance from another training program is less than the TRA weekly benefit amount for a given week, then the worker must receive a TRA amount for that week not to exceed the difference between the worker's regular TRA weekly amount calculated under proposed § 618.735(a) and the amount of the training allowance paid to the worker for that week. Proposed paragraph (c)(2) contains the same requirement for the treatment of Federal student financial assistance as proposed paragraph (c)(1).

Proposed § 618.745, establishing the basic TRA eligibility period, is substantively different from 20 CFR 617.15(a). Proposed paragraph (a) implements the requirement in section 233(a)(2) of the Act, as amended by the Reform Act, that provides that the 104-week TRA eligibility period will be extended to a 130-week period where necessary for an adversely affected worker to complete remedial education approved under the Act.

Proposed paragraph (b) is an entirely new provision. It addresses situations where, because of the delays associated with litigation over the denials of certifications of petitions, certifications are issued so late that workers covered under the certification would not have enough time during which they could be paid basic or additional TRA to be able to complete approved training. Proposed paragraph (b) remedies this by providing that, as long as the petitioner or the adversely affected worker did not contribute to the delay in issuing the

certification, for example, failing to meet filing deadlines or repeatedly requesting extensions of filing deadlines, the basic TRA eligibility period will be extended for a period, decided on a case-by-case basis, necessary to provide an eligibility period for basic and additional TRA, and remedial TRA, if needed, that would provide a worker TRA through completion of approved training. The Department believes that in these cases, the adversely affected workers should not be unfairly penalized by not receiving TRA throughout their approved training. The Department proposes paragraph (b) to restore such workers to the position they would have occupied had the certification covering them been issued without the delay.

For the same reasons, proposed paragraph (c) extends this exception to cases in which a CSA's determination that a worker is ineligible for TRA is ultimately reversed through reconsideration or appeal. Conforming provisions in proposed §§ 618.720(d)(2) and 618.750(a)(3) modify the training enrollment deadline and the deadline for a bona fide training application for a worker whose initial TRA negative determination is reversed on reconsideration or appeal. Without these modifications, a worker might miss these deadlines through no fault of the worker, but because of the delay in finding the worker eligible.

Proposed § 618.750, establishing the qualifying requirements for, and duration of, additional TRA, has no specific counterpart in 20 CFR Part 617; however, most of the provisions in proposed § 618.750 are contained in various sections of 20 CFR Part 617. The Department believes including a section governing only additional TRA in proposed Part 618 would make the TRA requirements easier to follow than the current regulations.

Proposed paragraph (a) contains additional TRA qualifying requirements and is, in substance, unchanged from the current regulations in 20 CFR 617.11(a)(2) (TRA qualifying requirements), 617.15(b)(2) (training application filing deadlines), and 617.15(b)(3) (requirement of participation in training except during breaks in training).

Proposed paragraph (b), governing the duration of additional TRA, closely follows the definition of ''eligibility period'' for ''additional TRA'' in 20 CFR 617.3(m)(2). The only substantive difference is that an adversely affected worker may receive up to 52 weeks of additional TRA, rather than up to 26 weeks, because of the Reform Act's amendment to section 233(a)(3) of the Act.

Proposed § 618.755, providing the qualifying requirements for, and duration of, remedial TRA, is a new section because remedial TRA added by the Reform Act. Under section 233(g) of the Act, remedial TRA may be paid only ''in order to assist an adversely affected worker to complete training approved for the worker under section 236 which includes a program of remedial education.'' The Department would implement this requirement in proposed paragraphs (a)(2) and (a)(3) by requiring participation in remedial education and that such participation must have caused training to extend beyond the period for which basic and additional TRA were payable. Additionally, the Department believes that because the Act does not provide any other distinctions between remedial TRA and other types of TRA, an adversely affected worker also must, as a condition for receiving remedial TRA, meet the qualifying requirements for receipt of basic TRA, as would be required by proposed paragraph (a)(1).

Section 233(g) of the Act authorizes payment of remedial TRA for ''up to 26 * * * weeks in the 26-week period that follows the last week of entitlement to [TRA] otherwise payable under this chapter.'' The Department interprets this provision as requiring that remedial TRA be paid during a 26-consecutive calendar week period; that remedial TRA be paid only for the same number of weeks, but not exceeding 26, that the worker participates in remedial education; and that remedial TRA be paid only after exhausting basic and additional TRA. These interpretations are reflected in proposed paragraph (b).

The Department recognizes that permitting payment of remedial TRA only after exhaustion of basic and additional TRA could create an apparent anomaly because most workers would not be enrolled in remedial education concurrent with receipt of remedial TRA. This is because, in many cases, the remedial education component of an approved training program would occur early in the program. Therefore, proposed paragraph (a)(2) provides that participation in remedial education may occur either during or before the week for which remedial TRA is claimed. Further, since nothing in the Act prohibits a worker receiving basic or additional TRA for weeks in which the worker participates in remedial education, proposed paragraph (c) clarifies that a worker may receive basic or additional TRA for those weeks that exceed the 26-week maximum for which remedial TRA may be paid or that fall outside the required 26-consecutive calendar week period.

Proposed § 618.760, governing payment of TRA, whether basic, additional, or remedial, during breaks in training, is substantially the same as 20 CFR 617.15(d) except that, as the result of a Reform Act amendment to section 233(f) of the Act, it extends the maximum number of days a break may last without interrupting TRA payments from 14 days to 30 days. Proposed § 618.760 omits provisions in 20 CFR 617.15(d) (5) and (6) that clarify requirements for the maximum amount of basic TRA and the basic and additional TRA eligibility periods. These clarifications would be unnecessarily duplicative in proposed § 618.760. The requirements in 20 CFR 617.15(d)(5), concerning the effect of breaks in training on the basic TRA maximum amount and the basic TRA eligibility period, are effectuated by proposed §§ 618.740 (maximum amount of basic TRA) and 618.745 (basic TRA eligibility period). The requirement in 20 CFR 617.15(d)(6), concerning the running of the additional TRA eligibility period for weeks during which additional TRA is not paid, is effectuated by proposed § 618.750(b) (duration of additional TRA).

Proposed § 618.765, governing disqualifications from receiving TRA, is substantively unchanged from 20 CFR 617.18, except for changes in 20 CFR 617.18(b) reflected in proposed § 618.765(b)(2) and (3). Proposed paragraph (b)(2), providing for the disqualification from receipt of TRA for workers enrolled in approved training under certain conditions, contains the same requirements as in 20 CFR 617.18(b)(2) except that it adds clarifications.

Proposed paragraph (b)(2)(i) follows 20 CFR 617.18(b)(2)(i), with two modifications. One modification is that proposed paragraph (b)(2)(i) omits language in 20 CFR 617.18(b)(2)(i) that a disqualification under that paragraph applies to not just basic TRA but also to ''any other payment'' under Part 617. The Department believes this language is partly inaccurate and partly unnecessary. It is partly inaccurate because participation in training is not an eligibility requirement for job search or relocation allowances or Alternative TAA for Older Workers, so that a TRA disqualification under (b)(2)(i) would not affect the worker's entitlement to those payments. It is partly unnecessary because provisions in other sections of this proposed subpart G and other proposed subparts are sufficient to ensure that a worker who fails to meet the participation in training requirement

would not receive benefits for which participation in training is required as a condition of receiving such benefits. Specifically, proposed §§ 618.750 and 618.755 prohibit payment of, respectively, additional TRA and remedial TRA for any week in which the worker did not participate in training, and proposed § 618.840(g) requires establishment of overpayments for a worker who, without good cause, does not complete training approved under proposed subpart F.

Second, proposed paragraph (b)(2)(i) includes two clarifications not contained in 20 CFR 617.18(b)(2)(i). The first is that a worker who has justifiable cause (as described in paragraph (b)(3)(iii)) for a failure to begin, or cessation of 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 G. The Department believes that if a worker is unable to begin or continue participation in training through no fault of the worker, it is appropriate to permit the worker to continue to collect basic TRA. Since, in some cases, the deadlines for granting a waiver set forth in § 618.720(c), will have passed, this exception will allow such workers to continue to collect basic TRA. The second clarification is that failure to begin participation in training, cessation of participation in training, or revocation of a waiver does not change the eligibility periods in proposed §§ 618.745, 618.750(b), and 618.755(b), even if the worker had justifiable cause.

Proposed paragraphs (b)(2)(ii) and (b)(2)(iii) are new provisions, but they only provide clarifications of TRA requirements rather than create new substantive requirements. Proposed paragraph (b)(2)(ii) provides that no adversely affected worker may receive additional or remedial TRA for any week in which the worker failed to participate in training, regardless of whether such worker had justifiable cause. This is merely a clarification to reinforce the requirement already contained in proposed §§ 618.750 and 618.755, which cover the qualifying requirements for and duration of additional and remedial TRA. This clarification would be helpful because a person reading proposed § 618.765 in isolation might overlook the requirement that a worker must, with no exceptions except for breaks in training that meet the requirements of proposed § 618.760, participate in training for every week for which the worker receives additional or remedial TRA.

Proposed paragraph (b)(2)(iii) provides that the disqualification in proposed paragraph (b)(2)(i) does not apply to an adversely affected worker for TRA claims for weeks beginning before the filing of an initial claim for TRA, nor for any week beginning before the worker is notified that he or she is covered by a TAA certification and is fully informed of the disqualification rules. This provision restates an exception to the participation in training requirement provided in proposed § 618.720(d). Like proposed paragraph (b)(2)(ii), this clarification would be helpful because a person reading proposed § 618.765 in isolation might otherwise overlook the exception to the participation in training requirement contained in proposed § 618.720(d).

Proposed paragraph (b)(3) provides the interpretation of three terms used in proposed paragraph (b)(2). Proposed paragraphs (b)(3)(i) and (b)(3)(ii) interpret, respectively, ''failed to begin participation'' and ''ceased participation'' in training the same as the current regulation in 20 CFR 617.18(b)(2)(ii)(A) and (B). In requiring in both interpretations that a worker participate in all classes and activities in the training program, the Department intends that the worker be disqualified from receiving TRA if the worker misses even a single class or activity in the training program in a week without good cause. The Department believes that TAA-approved training is meant to provide adversely affected workers with the opportunity to find new employment as quickly and efficiently as possible. The Department believes that the best way to effectuate this intent, to ensure that TAA funds are effectively spent, and to improve program performance, is to require that the workers who receive those funds participate in each and every class and activity in their approved training program unless excused by the training provider.

Proposed paragraph (b)(3)(iii) interprets ''justifiable cause'' very similarly to 20 CFR 617.18(b)(2)(ii)(C), but with four changes. Proposed paragraph (b)(3)(iii) slightly rephrases the basic interpretation of ''justifiable cause;'' excludes the examples used in 20 CFR 617.18(b)(2)(ii)(C); adds an example not contained in 20 CFR 617.18(b)(2)(ii)(C); and adds a requirement that CSAs determine whether ''justifiable cause'' exists on a case-by-case basis.

First, the basic interpretation of ''justifiable cause'' in proposed paragraph (b)(3)(iii) requires the reasons for the worker's conduct to be compared to the conduct expected of a reasonable worker in the ''same or similar'' circumstances, rather than in ''like'' circumstances, as provided in 20 CFR 617.18(b)(2)(ii)(C). The Department believes this change is clearer and easier to administer than the previous test.

Second, the exclusion of the examples in 20 CFR 617.18(b)(2)(ii)(C) does not mean the reasons listed in the current regulation no longer are valid; rather, the Department believes the reasons themselves are somewhat vague and not necessarily very helpful.

Third, the new example in proposed paragraph (b)(3)(iii) is that an excused absence under a training institution's written policy may be considered ''justifiable cause.'' The Department believes that the specific inclusion of excused absences as justifiable cause ameliorates any arbitrary effects of the rule that a worker must attend all classes and activities to avoid disqualification by recognizing that there will be situations in which nonattendance at a class or activity is justified by other needs of the individual or the individual's training.

Fourth, the additional language on case-by-case determination has no parallel in the current regulation but also, in the Department's view, does not change the current requirements. Rather, this language would merely codify what already is done in practice in the States.

Proposed paragraph (b)(3) applies to distance learning as well as to institutional training. Distance learning may, in some cases, be more self-paced than institutional training, which usually requires physical attendance at specific classes. CSAs will need to work with distance learning providers to understand the specific requirements or milestones of the distance learning program and to make sure that the training provider keeps the agency informed of the student's adherence to those requirements.

Finally, proposed paragraph (c), prohibiting payment of TRA to a worker for any week during which the worker is receiving on-the-job training, is substantively identical to 20 CFR 617.18(c) but rephrased for clarity and simplicity.

Proposed § 618.770 is new. It implements the Department's role in administering the HCTC, created by the Reform Act. Proposed paragraph (a) references some of the substance in section 35 of the Internal Revenue Code (26 U.S.C. 35), which authorizes the HCTC. Proposed paragraph (a) is informational, since the IRS determines HCTC eligibility. Proposed paragraph (b) describes the duties of the CSA in administering the HCTC.

Subpart H—Administration By Applicable State Agencies

This proposed subpart is modeled after subpart G of 20 CFR Part 617. However, sections in this proposed subpart H are organized differently than their companion sections in 20 CFR Part 617, and have been revised to reflect changes made by the Reform Act. Also, some new sections have been added. This proposed subpart covers the administrative procedures that the CSA will follow in delivering TAA program benefits and services to adversely affected workers. Major changes include:

- Clarifies that, in order to better integrate service delivery with all workforce investment programs, and provide flexibility to the states, merit staffing is not required, except that these merit system standards do apply to employees of the state UI or employment service (ES) agency who perform functions under both the TAA program and the UI and/or ES programs.
- Clarifies the need for the CSA to submit, upon request, a copy of each waiver of the training requirement, and a statement of the reasons for such waiver.
- Clarifies actions the Department may take in the absence of a jointly-signed Governor-Secretary Agreement for a particular state.
- Directs the CSA to provide information on ATAA benefits and deadlines to a worker, and inform the worker that a choice must be made between TAA and ATAA benefits and services, if the worker is covered under both a TAA and an ATAA certification.
- Requires the state to provide information about the HCTC and second COBRA election period available to affected workers to increase their opportunities to access the HCTC.
- Provides that ATAA will be treated in the same manner as TRA for recovering overpayments.
- Directs CSAs to submit, only upon request, a copy of any administrative or judicial ruling on an individual's eligibility to TAA or ATAA. Previously, states were required to submit a copy of every administrative or judicial ruling.
- Adds a new section, which establishes ''priority of service'' requirements for the TAA program consistent with the Jobs for Veterans Act of 2002. This gives the highest priority for approval and funding of TAA benefits to an adversely affected worker meeting the veterans' priority of service.
- Provides that the Department may reduce the training allocation or administrative funding of CSAs that fail to submit accurate and timely reports.
- Informs CSAs of the need to report financial results on an accrual basis.
- Requires CSAs to supply data to the Secretary on national TAA program performance goals identified in applicable regulations, the Department's written advisories, or any other written means used to communicate such goals.
- To ensure a complete and accurate accounting of program performance, directs the use of quarterly wage record information, the Wage Record Interchange System, and supplemental data, when appropriate.

Proposed § 618.800 sets out the scope for subpart H; that it covers administrative procedures governing the TAA program.

Proposed § 618.805 addresses the Agreements between the States and the Secretary of Labor that are required under section 239 of the Act before a State may deliver TAA to adversely affected workers. It follows § 617.59 but reorders the provisions and edits them for clarity. Proposed § 618.805 omits two provisions in 20 CFR 617.59 that the Department believes are obsolete and also adds a new provision not contained in 20 CFR 617.59.

Proposed paragraph (b), which provides the requirements for executing an Agreement, is significantly rephrased but remains substantively unchanged from 20 CFR 617.59(b). The one difference is that proposed paragraph (b) includes language more explicitly requiring the Secretary, in addition to the State, to sign and date the Agreement as a prerequisite to the Agreement taking effect. Proposed paragraph (b) recognizes the current practice of executing Agreements. A new sentence indicating the consequences of not entering an Agreement has been added to proposed paragraph (b) to serve as a reminder.

Proposed paragraph (d) is a new provision that clarifies the applicability of State merit systems to the TAA program. The Department has received inquiries in recent years about the applicability of the merit system standards, promulgated by the U.S. Office of Personnel Management in 5 CFR 900.603, to the TAA program. These standards apply to the States' administration of, among other things, the UI program as a condition of the States receiving administrative grants. TAA has no legislative requirement to use State merit system employees, nor do the programs authorized under the Workforce Investment Act. The Reform Act requires the Secretary to secure for adversely affected workers the services provided through the One-Stop delivery system. To avoid imposing new merit staffing requirements on the One-Stop partner programs, including those funded by WIA, proposed paragraph (d) provides that the merit system standards in 5 CFR 900.603 do not apply to the TAA program, except that these merit system standards do apply to employees who perform functions under both the TAA program and other programs covered by the merit standards.

Proposed paragraph (e) is a new provision which identifies required provisions in each Agreement while also clarifying that it is not an exhaustive list. Proposed paragraph (e)(1) requires Agreements to contain provisions consistent with the requirements of section 239 of the Act. It is designed to remind States of, and insure compliance with, the requirements of section 239 of the Act. Proposed paragraph (e)(2) reflects the provisions of section 231(c)(2) of the Act by requiring Agreements to contain provisions authorizing the CSA to issue waivers of the training requirement under proposed § 618.725, and requiring the CSA to submit, to the Secretary, upon request, a copy of each waiver and, if not already contained within each waiver, a statement of the reasons for such waiver. Proposed paragraph (e)(3) provides that Agreements must contain the requirement that CSAs supply data to the Secretary 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. This is a new requirement designed to implement guidance from the Office of Management and Budget (OMB) on the Government Performance Results Act of 1993 (GPRA). GPRA requires, among other things, that Federal agencies take steps to improve the performance outcomes of federally funded programs. Toward this end, proposed § 618.880 requires States to report specified data on TAA performance outcomes to the Department. The Department believes that including a specific provision in the Agreements requiring reporting of performance data would emphasize to States the importance of pursuing improved performance outcomes in the TAA program.

Proposed paragraph (g) provides that ETA Regional Administrators are responsible for monitoring and reviewing State and CSA compliance with the Agreement. It is slightly rephrased from 20 CFR 617.59(g), deleting ''initially'' from language in 20 CFR 617.59(g) that stated ETA Regional Administrators are ''initially'' responsible for monitoring and reviewing State and CSA compliance, and omitting language in 20 CFR

617.59(g) that provides for ''periodic'' monitoring and review by ETA Regional Administrators. The word ''initially'' is a confusing and unnecessary qualification to the central role that ETA Regional Administrators assume in overseeing the States' administration of the TAA program. The word ''periodic'' is omitted because Departmental review is an ongoing process.

Proposed paragraph (h) is modified from 20 CFR 617.59(f). Proposed paragraph (h) retains the substance of 20 CFR 617.59(f) but also provides that the Secretary may, upon finding a State has not fulfilled its commitments under its Agreement, ''disallow costs or impose such other sanctions as may be appropriate.'' The Department believes it is important to explicitly provide for lesser sanctions that might be more effective in encouraging compliance with the terms of the Agreements than only the more severe sanction of terminating the Agreement.

Finally, proposed § 618.805 omits two provisions of 20 CFR 617.59 that the Department believes are obsolete. The first of these provisions is 20 CFR 617.59(d), which provides that a State or State agency must execute an amended Agreement with the Secretary before administering any amendments to the Act. The Department believes this provision to be unnecessary and counterproductive. The Act contains no such requirement, and it would be more efficient and beneficial to all interested parties to allow States, which have already agreed to administer the TAA program in accordance with the law and the Department's instructions, to administer amendments to the Act before the execution of an amended Agreement. However, the omission of this provision from proposed Part 618 should not be construed as removing the Department's authority to require execution of an amended Agreement after amendments to the Act are enacted.

The second provision is 20 CFR 617.59(h), which requires coordination among State agencies administering programs under subpart C of 20 CFR Part 617, entities administrating the Job Training Partnership Act (JTPA), and State UI agencies. JTPA has been superseded by the Workforce Investment Act of 1998 (WIA), and, reflecting the Reform Act's increased emphasis on program coordination, the Department proposes a new set of coordination requirements in proposed subpart C that need not be repeated in proposed § 618.805.

Proposed § 618.810, providing the requirements governing State agency rulemaking concerning State TAA administration, is slightly rephrased but contains only two substantive differences from 20 CFR 617.54. The first difference is that while the current regulation permits the Department's temporary approval of a State supplemental procedure to remain in effect for not longer than 90 days, proposed § 618.810 provides that such temporary approval may remain in effect ''not to exceed a period determined by the Secretary on a case-by-case basis.'' The 90-day maximum in the current regulation is unnecessarily restrictive and all interested parties would be better served if the periods for temporary approvals are decided on a case-by-case basis, depending on the importance of the provision to state operations and the length of the review process. The second difference from 20 CFR 617.54 is that, while 20 CFR 617.54 requires a CSA to follow State UI law requirements for public notice and opportunity for hearing, proposed § 618.810 more broadly requires the State to follow also any other State or Federal law that may require such public notice and opportunity for hearing. This change accommodates the possibility that other laws that require public participation in changes to State plans or procedures, such as WIA, could apply.

Proposed § 618.815, authorizing CSAs to issue and enforce subpoenas for various purposes specified in that provision, is substantially the same as 20 CFR 617.53, with one modification. Proposed § 618.815 identifies the purposes for which subpoenas to require attendance of witnesses and production of records may be issued: for making benefit determinations and assisting in the petition determination process.

Proposed § 618.820 contains requirements the States must meet in providing TAA program and benefit information to workers. It is significantly modified from 20 CFR 617.4 and has been placed in proposed subpart H on State administration where it more logically fits. Proposed § 618.820 omits some provisions in 20 CFR 617.4 that the Department believes are unnecessary. It updates some provisions and adds a few provisions to reflect Reform Act amendments to the Act. It also includes other changes that have occurred since Part 617 became effective, and some of the requirements typically contained in the Agreements with the States.

Proposed paragraph (a), requiring CSAs to provide general program information and advice to workers, serves the same purpose as 20 CFR 617.4(a) but is more condensed.

Proposed paragraph (b) is a new provision mandated by the Reform Act which requires CSAs to provide rapid response assistance and appropriate core and intensive services, consistent with section 134 of WIA, to workers covered under a TAA petition.

Proposed paragraph (c) implements section 235 of the Act and requires CSAs to provide specified reemployment services to adversely affected workers. This is a new provision.

Proposed paragraph (d) requires CSAs to provide assistance to complete and file TAA petitions. It combines requirements contained in 20 CFR 617.4(b) and 20 CFR 617.4(e)(2), simplifies the language of those provisions, and adds the authorization, provided by the Reform Act, for CSAs to file petitions on behalf of worker groups.

Proposed paragraph (e) requires CSAs to provide certain information and assistance to adversely affected workers after a certification covering their worker group is issued. The provisions in proposed paragraph (e) are substantively identical to 20 CFR 617.4, but they have been rephrased and slightly reorganized for clarity and simplicity. Proposed paragraph (e)(2) mirrors 20 CFR 617.4(d)(1) but has some minor changes. The first change is that proposed paragraph (e)(2) adds a sentence encouraging CSAs to provide notice of benefits during the rapid response process to workers who are covered by a certification and who have received a notice of separation, consistent with the Reform Act's requirement that rapid response assistance be provided. The second change is to add to the information that must be included in the written notice mailed to each worker covered by a certification information regarding the training enrollment deadlines that are a condition of TRA eligibility.

Proposed paragraph (f) requires CSAs to provide specific benefit assistance to workers. Proposed paragraph (f)(1) is modeled on 20 CFR 617.4(e)(1) but is rephrased for clarity. One minor change from 20 CFR 617.4(e)(1) is that proposed paragraph (f)(1) omits the reference to UI claimants because it might be confusing. The Department interprets section 225(b)(1) of the Act to require that the CSA provide notice to each worker that it can reasonably identify as being covered by a certification whether or not that worker has applied for UI.

Proposed paragraph (f)(2) combines the requirements of 20 CFR 617.4(e)(3) and 20 CFR 617.4(e)(4) into a single paragraph because they are closely related. The language has been changed

to emphasize the need to timely provide the advice and reemployment services adversely affected workers need to make the decisions about employment or training necessary to preserve eligibility for TAA benefits. Language has been added to recognize that a worker may decline to be interviewed.

Proposed paragraphs (f)(3) and (f)(4) are new provisions that require CSAs to provide information on ATAA benefits and deadlines and on HCTC and the second COBRA election.

Proposed § 618.825 contains Federal procedural requirements that apply to State benefit determination and redetermination processes. It contains four minor differences from 20 CFR 617.50, only two of which are noteworthy. The first is in proposed paragraph (d), which excludes an exception contained in 20 CFR 617.50(d) that the State law and regulations do not apply where they are inconsistent with the letter or purpose of 20 CFR part 617. This exception is unnecessary because this paragraph applies only to matters that by the terms of Federal law are committed to be decided under State law. The second difference is in proposed paragraph (g), which omits an exception in 20 CFR 617.50(g) that the specified provisions of the *Employment Security Manual* do not apply where part 617 requires otherwise. This exception is unnecessary because it is axiomatic that where there is a conflict between the Act or the implementing regulations and the *Employment Security Manual,* the Act or implementing regulations govern.

Proposed § 618.830, concerning the respective responsibilities of a liable State and an agent State, repeats the requirements in 20 CFR 617.26 but updates the requirements to reflect changes made by the Reform Act, and also reorganizes the requirements. Proposed paragraph (a)(6) requires a liable State to provide lists of eligible TRA recipients and eligible ATAA recipients to the IRS consistent with the requirements of proposed § 618.770. These lists are necessary for the IRS to determine who is potentially eligible to receive the HCTC. Also, the specific reference in 20 CFR 617.26(a) that ''the liable State also is responsible for publishing newspaper notices'' alerting the public to certifications is omitted here as unnecessary because it is contained in proposed § 618.820(e)(3).

Proposed § 618.835, providing requirements governing appeals and hearings of TAA determinations and redeterminations, repeats the requirements in 20 CFR 617.51, but slightly rephrases the language for clarity and also adds a new paragraph. This new paragraph, proposed paragraph (b), clarifies that, as an exception to the general rule concerning appeals in proposed paragraph (a), a complaint that a determination or redetermination under this part 618 violates applicable Federal nondiscrimination laws administered by the U.S. Department of Labor must be filed in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and/or 37, as provided in proposed § 618.875(i) (Nondiscrimination and equal opportunity requirements). This clarification would help insure that proper procedures are followed where a claimant alleges discrimination.

Proposed § 618.840, concerning overpayments, fraud, and penalties for fraud, generally repeats 20 CFR 617.55, but reorganizes the section outline to make it easier to follow. Proposed § 618.840 slightly rephrases some of the provisions in 20 CFR 617.55 and also contains a few substantive differences from 20 CFR 617.55. Also, proposed § 618.840 omits provisions in 20 CFR 617.55(h) on using TAA to offset other debts because, reflecting the importance the Department places upon these provisions, proposed subpart H devotes a separate proposed section to them, § 618.845.

Proposed paragraph (a) repeats the requirements in 20 CFR 617.55(a), except that the language on the overpayment waiver criteria has been moved into separate paragraphs for clarity.

Proposed paragraph (b), concerning the State election to permit waivers of overpayment recoveries, repeats the requirements in 20 CFR 617.55(a)(2)(ii)(C)(4) and places this provision toward the beginning of proposed § 618.840 because it logically precedes other provisions in this proposed section. A sentence has been added to clarify that if a CSA elects the option of waiving overpayments, waivers must follow the rules in § 618.840, and the CSA must document that its waiver rules do so. Proposed paragraph (c) repeats the requirements of 20 CFR 617.55(a)(2)(ii)(C)(3) but modifies them slightly by specifying that the waiver request must be made to the CSA. Proposed paragraph (d) repeats the requirements in 20 CFR 617.55(a)(1)(i)–(ii).

Proposed paragraph (e) contains more specific waiver criteria that interpret the general criteria in proposed paragraphs (d)(1) and (d)(2).

Proposed paragraphs (e)(1) and (e)(2) provide the criteria to determine whether an overpayment was made without fault of the person or individual who received the overpayment. Proposed paragraph (e)(1) repeats the requirements in 20 CFR 617.55(a)(2)(i)(A)(1)–(5), with one exception. It changes the standard for determining whether fault exists from ''knew or could have been expected to know'' to ''knew or should have known.'' The Department believes this test is easier to administer because it is a common standard that administrative and judicial adjudicators apply routinely.

Proposed paragraphs (e)(3) and (e)(4) repeat the requirements in 20 CFR 617.55(a)(2)(ii)(A)(1) and 20 CFR 617.55(a)(2)(ii)(B). However, proposed paragraph (e)(3)(ii) rephrases the language of the current regulation to make it easier to understand.

Proposed paragraphs (e)(5)(i) and (e)(5)(ii) repeat the requirements in 20 CFR 617.55(a)(2)(ii)(C)(1) and (a)(2)(ii)(C)(2), with two modifications. The first modification is that the explanation of what is a ''lasting financial hardship'' in proposed paragraph (e)(5)(i) omits the requirement that the hardship must also be ''extraordinary'' to make it clear that these are two separate tests. The second modification is that where 20 CFR 617.55(a)(2)(ii)(C)(2) refers to a person's or individual's ''firm'' or ''organization,'' proposed paragraph (e) refers to the person's or individual's ''wholly or family-owned business'' and omits the term ''organization.'' This wording more clearly focuses attention on the debtor's assets.

Proposed paragraph (f) repeats the requirements about determinations of fraud in 20 CFR 617.55(b) but makes one modification, adding that a person or individual found guilty of fraud in a TAA claim is ''forever more'' ineligible for any further TAA payments. The Department believes that this ''lifetime'' ban is the better interpretation of section 243(b) of the Act, which it implements.

Proposed paragraph (g) retains the requirements in 20 CFR 617.55(c) about the consequences of failing to complete training, a job search, or a relocation funded by the TAA program, but is rewritten for clarity.

Proposed paragraph (h) repeats the requirements in 20 CFR 617.55(d), slightly rephrased for clarity.

Proposed paragraph (i) repeats the requirements in 20 CFR 617.55(a)(2)(ii)(C)(5), with changes concerning recovering an overpayment from the affected person's or individual's State UI entitlement and with some added provisions. The current regulation permits, but does not require, recovery from State UI payments. Proposed paragraph (i)(2) requires overpayment recovery from

State UI in a State that has in effect a cross-program offset Agreement with the Secretary under authority of 42 U.S.C. 503(g)(2), subject to the limitation on the amount that may be recovered from any single payment in proposed paragraph (i)(4). The current regulations predated the cross-program offset Agreements and, therefore, contain no provision for them. Proposed paragraph (i)(3) provides that, in States that do not have a cross-program offset Agreement, overpayment recovery from State UI is permitted but not required, and also is subject to the limitation in proposed paragraph (i)(4). Proposed paragraph (i)(4) limits recoveries from all types of UI described in proposed paragraph (i) to no more than 50 percent of each of the affected person's or individual's State UI payments. This limitation would implement the limitation in section 243(a)(2) of the Act. However, since the Act sets the 50-percent deduction as a ceiling, proposed paragraph (i)(4) requires each State to follow its own law if its law provides for a greater limitation.

Proposed paragraphs (j) and (k) repeat the requirement of 20 CFR 617.55(e) and (f).

Proposed paragraph (l) repeats the requirements of 20 CFR 617.55(g) but makes one change. It changes the requirement that State procedures for detection and prevention of fraudulent TAA overpayments be ''commensurate with'' those for State UI to a requirement that State procedures to be ''no less rigorous than'' those for State UI. The Department believes this change provides a clearer standard.

Proposed paragraph (m) follows 20 CFR 617.55(i) in explaining who is a ''person'' for purposes of proposed §§ 618.840 and 618.845, except for two modifications. The modifications are that proposed paragraph (m) explicitly includes ''any training institution as well as the officers and officials thereof,'' and ''an adversely affected worker or other individual.''

Proposed § 618.845 governs the use of TAA benefits to offset debts that a benefit recipient owes to others. Proposed paragraph (a) largely follows 20 CFR 617.55(h)(1) but rephrases it for clarity and adds ATAA. The authority for this requirement is the Debt Collection Act of 1982 (Pub. L. 97–365) and its implementing regulations in 29 CFR Part 20.

Proposed paragraph (b) makes a significant change in 20 CFR 617.55(h)(2). The current regulation prohibits using TAA to pay debts owed to any State or other person or entity but permits offset only for debts owed for child support and alimony required to be collected under State and Federal law. Proposed paragraph (b) limits the general prohibition to allow TAA and ATAA to be applied to any debt that may be collected under the State law for UI. The Department proposes this change because the exception in the current regulation goes beyond Federal law and because, since State laws must follow the Social Security Act (SSA), there is no good reason to single out one instance in which the SSA requires or permits collection of debts but to ignore others.

Most particularly, SSA section 303(e)(2) requires a State to deduct ''child support obligations'' from ''any unemployment compensation otherwise payable to an individual.'' Under SSA section 303(e)(2)(B), this deduction is applicable to TRA. However, SSA section 303(e)(1) defines ''child support obligations'' as ''only includ[ing] obligations which are being enforced pursuant to a plan described in section 454 of this Act which has been approved by the Secretary of Health and Human Services under Part B of title IV of this Act.'' It therefore does not permit deductions for alimony or for child support in general, as provided by 20 CFR 617.55(h)(2), but only for child support obligations of the type specified. Unemployment Insurance Program Letter No. 45–89 (55 FR 1886 (1990)) explained in detail the deductions permitted under SSA section 303(e)(2).

Other SSA provisions permit deductions from State UI for other purposes. These SSA provisions, like section 303(e)(2), apply to TRA. For example, section 303(d)(2)(A), SSA, permits offset of UI to recover uncollected over-issuances of food stamps under section 303(e)(2)(B)(iii). The Department believes that all TAA and ATAA, which are closely connected to TRA, should follow the same rules for the offset of benefits as State UI law, except as provided under proposed paragraph (a).

Proposed § 618.850, on uniform interpretation and application of the Act and these proposed regulations, repeats the requirements in 20 CFR 617.52, but with some reorganization and a few substantive changes. A change throughout proposed § 618.850 is that these provisions apply explicitly to both TAA and ATAA.

Proposed paragraphs (a) and (b) repeat the requirements in 20 CFR 617.52(a) and (b).

Proposed paragraph (c)(1) modifies the requirements in 20 CFR 617.52(c)(1) that States to forward to the Department a copy of each administrative and judicial TAA decision within 10 days after the decision's issuance to a requirement to forward to the Department a copy of any TAA determination or redetermination only upon the Department's request. Proposed paragraph (c)(1) also applies the requirement to all administrative and judicial decisions. The Department believes the current requirement is unduly burdensome and that the purpose of this provision, oversight of State benefit rulings, can be accomplished effectively with this less burdensome requirement.

Proposed paragraph (c)(2) combines the requirements in 20 CFR 617.52(c)(2), (3) and (5) and makes some changes. Proposed paragraph (c)(2) rewrites and simplifies the provisions in 20 CFR 617.52(c)(2) and (c)(3), eliminating the distinction between ''ordinary'' and ''patent and flagrant'' interpretations. Since the procedures applicable to both types of determination are the same, the Department sees no need to retain the distinction. Proposed paragraph (c)(2)(ii) also eliminates any ambiguity in 20 CFR 617.52(c)(3), concerning the conditions under which payments otherwise ''due'' within the meaning of SSA section 303(a)(1) may be temporarily delayed in the case of a determination, redetermination, or decision awarding TAA that is inconsistent with the Department's interpretation of the Act or the regulations. Section 617.52(c)(3) uses the phrase ''redetermination or appeal action is taken.'' This language leaves unclear what is the ''redetermination action'' that must be taken and how that action differs from the actual redetermination. Proposed paragraph (c)(2)(ii) resolves this ambiguity by requiring that the redetermination be issued.

Proposed paragraph (c)(2)(iii) repeats the requirements of 20 CFR 617.52(c)(5), with three substantive changes: that the request for reconsideration must be in writing; that the request must be made within 10 calendar days of receiving the notice; and that the Secretary will respond to the request within 30 calendar days. These changes will make for a more orderly and predictable process.

Proposed paragraph (c)(3) repeats the requirements in 20 CFR 617.52(c)(4) but slightly rephrases them for clarity. Proposed paragraph (c)(4) repeats the requirement in 20 CFR 617.52(c)(6).

Proposed § 618.855 repeats the requirements in 20 CFR 617.56 concerning inviolate rights to TAA almost verbatim but extends it to include ATAA.

Proposed § 618.860, a new section, establishes ''priority of service''

requirements for the TAA program consistent with the Jobs for Veterans Act of 2002. Under that Act, armed forces veterans and specified categories of spouses of such veterans are entitled to a ''priority of service'' in Department of Labor-funded workforce development programs. This proposed section requires CSAs to give ''the highest priority'' for approval and funding of TAA to an adversely affected worker meeting the veterans' priority of service. In particular, this priority would come into play if the TAA program is approaching its annual national cap on training funds. In that case, each CSA must give priority to veterans and to the specified categories of spouses, over other adversely affected workers' training applications, in approving and funding training. Of course, when a CSA is about to run out of its allotted training funds, it may request supplemental training funds to ensure that all adversely affected workers' training needs are met. There is no annual national cap on payments of other TAA benefits, and a CSA about to run out of its allotted funds for such other benefits may request supplemental funding for such benefits; however, it is possible that the funds appropriated for other TAA services could be exhausted, in which case the priority of service would apply to TAA program benefits beyond training.

Proposed § 618.865 repeats the requirements in 20 CFR 617.57 concerning recordkeeping and disclosure of information but makes a few minor changes.

Proposed paragraph (a) is very similar to 20 CFR 617.57(a), with two changes. First, proposed paragraph (a) omits reference to reporting form ETA 563. This omission does not mean that reporting on this form is no longer required. Rather, required reporting would be governed by proposed § 618.870. Second, proposed paragraph (a) adds that CSAs are required to maintain records that contain any information that the Department determines to be appropriate in support of any reports that the Department may require, including the reports specified in proposed §§ 618.875(j) and 618.880(e). This new language would facilitate initiatives on improving TAA program performance and outcomes.

Proposed paragraph (b) modifies the requirements in 20 CFR 617.57(b). The opening sentence requires States to keep information on TAA applicants confidential to the extent required under all State and Federal laws. This is a change from the first sentence in 20 CFR 617.57(b), which requires information in records kept by a State in its administration of the Act to be kept confidential and to be disclosed only in the same manner and to the same extent as State UI information may be disclosed under State law.

Proposed paragraph (b) omits the second sentence of 20 CFR 617.57(b) and substitutes a new second sentence that explicitly identifies confidential business information, as defined in proposed § 618.110, as a type of information that States must keep confidential. The requirements in the first two sentences of 20 CFR 617.57(b) are appropriate for 20 CFR Part 617 because it governs only individual benefits administration and not the petition determination process, which can bring the State into possession of confidential business information obtained when determining whether to issue a certification. State UI law confidentiality and disclosure requirements may not apply to confidential business information and also may not consider other Federal law confidentiality requirements that could apply to that information. Because proposed Part 618, governs both the petition determination process and individual benefits administration, it is necessary that proposed paragraph (b) contain these more broadly applicable requirements. Also, the language in proposed paragraph (b) is more consistent with the language in the Agreements with the States, which more broadly encompasses any State and Federal confidentiality and disclosure requirements that might apply to TAA information.

Proposed § 618.870 expands on the one-sentence requirement in 20 CFR 617.61 requiring CSAs to submit such information and reports and conduct such studies as the Secretary requires for TAA purposes.

Proposed paragraph (a) repeats the requirement in 20 CFR 617.61 and adds that CSAs must submit financial and non-financial reports on activities conducted with TAA program funds to the Department in accordance with reporting instructions on such reports' content, frequency, and due dates approved by the Office of Management and Budget. The Department proposes adding this requirement to facilitate initiatives on improving TAA program performance and outcomes.

Proposed paragraph (b), a new provision, provides that the Department may reduce the funding of CSAs that fail to submit accurate and timely reports or whose reports cannot be validated or verified as accurately counting and reporting activities. This provision reflects the importance the Department places on the submission of timely and accurate reports and provides an additional incentive for CSAs to comply with reporting requirements.

Proposed § 618.875, a new section, contains general fiscal and administrative requirements applicable to CSA' administration of the TAA program. It is modeled on the WIA regulations at 20 CFR 667.200, but with significant differences. Proposed § 618.875 contains no requirements that States are not already required to meet. Its requirements are those also found in Federal regulations in 29 CFR and 48 CFR, various Office of Management and Budget (OMB) Circulars that govern uses of Federal funds by recipients of such funds, and the Department's interpretations of those regulations and Circulars. The Department believes including this section in subpart H to highlight these requirements would result in improved compliance by CSAs and other entities receiving TAA funds.

Proposed paragraph (a) is roughly modeled on the WIA regulation in 20 CFR 667.200(a) but contains significant differences because it is written for TAA purposes.

Proposed paragraph (a)(3) provides that the period of expenditure for TAA funds granted for employment services, training, and job search and relocation allowances is three years. This provision follows section 245(b) of the Act, as amended by the Reform Act.

Proposed paragraph (a)(4) provides that equipment, as described in Attachment B of ''Cost Principles for State, Local and Indian Tribal Governments,'' codified at 2 CFR Part 225, and in 29 CFR 97.32, includes equipment acquired with TAA administrative funds under both current and prior Agreements.

29 CFR 97.32, includes equipment acquired with TAA administrative funds under both current and prior TAA Annual Cooperative Financial Agreements. This provision, which only clarifies existing Federal law requirements, responds specifically to two situations observed in the States. First, in the case of a CSA's internal reorganization, any equipment purchased in prior years with TAA funds remains the CSA's property and must continue to be used for the TAA program. Second, this provision makes clear that a CSA may charge other non-TAA State agencies for using equipment purchased originally with TAA funds in previous years.

Proposed paragraph (a)(5), mirrors the requirement in the WIA regulation at 20 CFR 667.200(a)(5), that TAA grant recipients apply the addition method to all program income earned under TAA

grants. Proposed paragraph (a)(5) codifies the Department's view that the addition method always should be used in TAA administration.

Proposed paragraph (b) governs allowable costs and cost principles, mirroring the requirements in the WIA regulation in 20 CFR 667.200(c). Proposed paragraph (b)(7) provides that all types of organizations must abide by the limitation on administrative costs for training and job search and relocation allowances contained in the TAA Annual Cooperative Financial Agreement.

Proposed paragraphs (c) through (e) provide specific cost principles applicable to TAA grants. Proposed paragraphs (c) and (d) mirror the requirements in the WIA regulations at 20 CFR 667.200(c)(6) and (e). Proposed paragraph (e) provides that, as an exception to 2 CFR part 225 (codifying OMB Circular No. A–87 (Revised)), the costs of certain State employee fringe benefit plans may be charged to TAA grant funds if certain conditions are met. This preserves the benefit rights of State UC and ES agency employees who perform functions in the TAA program.

Proposed paragraph (f) waives, with one specified exception, the requirement in 2 CFR part 225 that TAA grant recipients obtain the Department's approval before purchasing equipment, as defined in 29 CFR 97.3, using TAA grant funds. Prior Department approval still is required for real estate purchases. The Department also reserves the right to require the transfer of automatic data processing equipment in accordance with applicable regulations.

Proposed paragraphs (g) and (h) are self-explanatory.

Proposed paragraph (i) contains nondiscrimination and equal opportunity requirements, drawn from 29 CFR Part 37. It is modeled on the nondiscrimination and equal opportunity provisions at 20 CFR 641.827 in the Department's regulations implementing the Senior Community Service Employment Program, but is revised to make it appropriate for the TAA program.

Proposed paragraph (i)(1) notifies CSAs and subrecipients of financial assistance under the TAA program that, as recipients of Federal financial assistance, they are subject to the requirements of specified Parts of 29 CFR, setting forth prohibitions relating to discrimination.

Proposed paragraph (i)(2) notifies CSAs and subrecipients of financial assistance under the TAA program of the circumstances under which they may be subject to 29 CFR Part 37, which implements the nondiscrimination provisions in section 188 of WIA. It states that the WIA nondiscrimination regulations apply to CSAs and subrecipients that operate their TAA programs and activities ''as part of the One-Stop delivery system,'' as provided in 29 CFR 37.2(a)(2). Since CSAs and entities that carry out ''activities authorized under chapter 2 of title II of the Trade Act of 1974'' (29 U.S.C. 2841(b)(1)(B)(viii)) are required One-Stop partners, the WIA nondiscrimination regulations apply to them. Coverage under this provision is not limited to CSAs or subrecipients that co-locate their operations in a One-Stop Center. Proposed paragraph (i)(2)(ii) notifies CSAs and subrecipients that there may be additional circumstances under which they are subject to 29 CFR Part 37 if they in any other way meet the definition of ''recipient'' in 29 CFR 37.4.

Proposed paragraph (i)(3) directs those with questions about the cited nondiscrimination provisions to DOL's Civil Rights Center. It also explains where persons who believe that those nondiscrimination regulations have been violated may file complaints.

Proposed paragraph (i)(4) explains how the cited nondiscrimination provisions affect the applicability of any other Federal nondiscrimination laws, or any relevant State or local laws, to TAA programs and activities. Proposed paragraph (i)(4)(i) provides that proposed § 618.875(i) does not, and is not intended to, affect any rights regarding, or protections against, discrimination provided by such laws, except as provided in proposed paragraphs (4)(ii) and (iii).

Proposed paragraph (i)(4)(ii) makes clear that the provisions of DOL's regulations implementing certain Federal statutes requiring nondiscrimination take precedence over any State or local law or other requirement that permits, or requires, discrimination on the bases protected by those Federal regulations. Proposed paragraph (i)(4)(iii) provides that 29 CFR Part 37 takes precedence over any State or local law or other requirement that permits or requires discrimination against beneficiaries of the TAA program on the basis of participation in a program or activity that is financially assisted under title I of WIA or on the basis of citizenship or status as a non-citizen lawfully admitted to work in the United States.

Proposed paragraph (j) contains fiscal reporting requirements for CSAs. Like other DOL workforce development programs, CSAs are required to report financial results on an accrual basis.

Proposed § 618.880 is a new section which contains TAA program performance requirements. As mentioned in the discussion of proposed § 618.805, proposed § 618.880 implements OMB guidance on GPRA. Toward this end, proposed § 618.880(a) requires States to report specified data on TAA performance outcomes to the Department.

Proposed paragraph (b) requires States to report TAA program data necessary to calculate performance in three specified categories and also includes a provision authorizing the Department to establish additional categories. The three specified categories are taken from the ''common measures'' through which the Federal Government measures the performance of a variety of workforce development programs. The Department has adopted the common measures and will apply them to all Department-funded workforce development programs.

Proposed paragraph (c)(1) identifies, in general terms, the performance measures States must use in reporting performance under each category identified in proposed paragraph (b). It also authorizes the Department to establish additional measures. Proposed paragraph (c)(2) provides that the Department will identify certain timeframes, definitions, and units of cost in future administrative issuances to provide more detailed reporting guidance. The Department believes that flexibility is required in setting the details of performance reporting, which is best provided in administrative issuances.

Proposed paragraph (d) requires CSAs, consistent with State law, to use quarterly wage record information, as defined in the WIA regulation at 20 CFR 666.150(c), in measuring progress on the program performance measures. Specifically, it requires CSAs to use social security numbers if permitted by Federal law, and other identifying designations if Federal law prohibits such use of social security numbers, to measure the progress of TAA program participants using quarterly wage information. The Department believes current Federal law permits such use of social security numbers but recognizes that Congress in recent years has considered restricting the uses of social security numbers. Further, proposed paragraph (d) requires CSAs that participate in the Wage Record Interchange System (WRIS) to use WRIS to obtain pertinent wage information for individuals who obtain work outside the State in which they received services. Finally, proposed paragraph (d) permits CSAs to use supplemental

sources to obtain pertinent wage and employment data.

Proposed paragraph (e) imposes performance reporting requirements on CSAs. The Department plans to initially require the use only of the Trade Act Participant Report that States already submit. However, proposed paragraph (e) recognizes that the Department in the future might require reports that supersede or supplement this report. Proposed paragraph (e) also requires that reports be verified or validated as accurate.

Proposed paragraph (f) provides that State performance outcomes will be measured against national goals established by the Department. These evaluations of State performance compared to national goals would be used to plan actions to improve program performance. Proposed paragraph (f) also provides that the Department may negotiate and establish performance goals each fiscal year with each CSA.

Finally, proposed paragraph (g) provides that the Department will annually publish the States' TAA program performance.

Proposed § 618.885 contains requirements related to the termination of the TAA program after it expires. This provision is very different from 20 CFR 617.64, because it reflects amendments to section 285 of the Act made after the promulgation of 20 CFR 617.64, including those made by the Reform Act.

Proposed paragraph (a) provides the general rule that TAA benefits may not be paid after the termination date in section 285 of the Act or as otherwise provided by law. Section 285(a)(1) of the Act currently provides a termination date of September 30, 2007. However, history demonstrates that this date can change, and the Act might be reorganized so that a termination date might not always be contained in section 285. Therefore, the Department proposes omitting a specific date in the regulation and also qualifying the reference to section 285 to accommodate that possibility.

Proposed paragraph (b) provides the one exception to the general rule that benefits may not be paid after the termination date: That TAA benefits must continue to be paid to adversely affected workers who are covered under TAA certifications issued before the termination date and who otherwise meet TAA benefit eligibility requirements.

Proposed subpart H also excludes some provisions contained in subpart G of 20 CFR Part 617 which are based on expired laws. Also, proposed subpart H omits the provision in 20 CFR 617.58 that UI otherwise payable to an adversely affected worker must not be denied or reduced for any week because of the worker's entitlement for any TAA benefit. The Department believes other provisions in proposed Part 618 effectuate the same result, obviating the need for such a provision in proposed subpart H.

Part 665—Statewide Workforce Investment Activities Under Title I of the Workforce Investment Act

The amendments to the WIA regulations proposed to be codified at 20 CFR Part 665 reflect the Reform Act requirements for coordination between the workforce investment system and the TAA program that proposed 20 CFR 618.320 also addresses. Proposed § 665.330 revises the title of this section to read: ''Are Trade Adjustment Assistance (TAA) program requirements for rapid response assistance, under the Trade Act of 1974, as amended, also required activities?'' The revised title clearly identifies that this section applies to the TAA programs instead of the NAFTA-TAA program under the NAFTA Implementation Act (Pub. L. 103–182), which was repealed by the Reform Act. Accordingly, this revised section incorporates the requirement that section 221(a)(2)(A) of the Act places on the States, through the Governors, to expand State rapid response assistance to cover workers who have filed, or on whose behalf has been filed, a petition for certification of eligibility to apply for TAA.

Proposed § 665.330 recognizes that the full range of rapid response activities required by § 665.310 may not be appropriate for workers covered by a petition because of the size or the timing of the layoff, or because such assistance has been provided previously in response to a layoff. Under those circumstances, paragraphs (b) and (c) of proposed § 665.330 permit States to make alternative arrangements to assist workers seeking TAA certification to obtain employment. Rapid response assistance by the States includes providing individuals covered by a petition with: the information specified at proposed § 665.310(b) and proposed §§ 618.310 and 618.820; and information about and access to appropriate core and intensive services, and training opportunities, income support, and potential HCTC assistance, if they have not otherwise been provided.

Part 671—National Emergency Grants for Dislocated Workers

The proposed revisions to the WIA regulations codified at 20 CFR Part 671 reflect changes to the NEG program relating to the HCTC. Proposed § 671.105 revises this section to reflect that the Reform Act amended WIA section 174 to permit grants to provide health insurance coverage assistance under WIA section 173(f) and (g) to adversely affected workers under the Trade Act.

A new section, § 671.115 ''Under what circumstances are NEG grants available to provide assistance under WIA section 173(f) and (g)?,'' is proposed to be added to Part 671. This new section would explain how NEG grants described in § 671.105 may be used to pay for health insurance coverage and other assistance for administrative and start-up expenses related to enrolling TAA recipients, ATAA recipients and PBGC pension recipients in qualified health insurance, as provided under the Reform Act.

V. Administrative Requirements

Executive Order 12866

This proposal to revise 20 CFR Part 617, add 20 CFR Part 618, and revise 20 CFR Part 663 and 20 CFR Part 671 is not an economically significant rule because it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, the proposal is a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Paperwork Reduction Act

This proposed rule contains requirements for States to submit to the Department, at the Department's request, copies of any judicial or administrative decisions relating to an individual's eligibility to TAA and the text of procedures or supplemental procedures enacted by the States to further effective administration of the TAA program (proposed §§ 618.845 and 618.810, currently codified at 20 CFR 617.52 and 617.54). These requirements were previously reviewed and approved for use by the Office of Management and Budget (OMB) under 20 CFR 601.2 and

§ 601.3 and assigned OMB control number 1205–0222 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA). Additionally, in accordance with the PRA, OMB has approved the Department's reporting requirements for the States at: proposed § 618.870(e) concerning TAA program performance data (OMB control number 1205–0392); and proposed § 618.725(g) concerning written waivers of the training requirement, and proposed §§ 618.855 and 618.860 concerning reports on TAA activity in general (OMB control number 1205–0016). The Department has determined that this proposed rule contains no new information collection requirements.

Executive Order 13132: Federalism

The Department has reviewed this proposed rule revising the operation of a federal benefit program in accordance with Executive Order 13132 and found that it will not have substantial direct effects on the States or the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Unfunded Mandates Reform Act and Executive Order 12875

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and Executive Order 12875. The Department has determined that this rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Regulatory Flexibility Act/SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule ''will not * * * have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). Therefore, the definition of the term ''small entity'' does not include States or individuals.

This rule revises and updates procedures governing an entitlement program administered by the States and not by small governmental jurisdictions. In addition, the entitlement program applies to individuals who seek certification of eligibility under the program only, and not small entities as defined by the Regulatory Flexibility Act. Therefore, the Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because this proposed rule is not an economically significant rule under Executive Order 12866, we certify that it also is not a major rule under SBREFA.

Effect on Family Life

The Department certifies that this proposed rule has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by providing greater benefits, including health insurance coverage assistance, to eligible individuals.

Congressional Review Act

This proposed rule is not a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. 801 *et seq.*). If promulgated as a final rule, this rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.245.

List of Subjects

20 CFR Parts 617 and 618

Administrative practice and procedure, Employment, Fraud, Grant programs-labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements, Trade adjustment assistance, Vocational education.

20 CFR Parts 665 and 671

Employment, Grant programs—labor.

Words of Issuance

For the reasons stated in the preamble, Part 617 of title 20, Code of Federal Regulations, is amended, Part 618 of title 20, Code of Federal Regulations is added, and Part 665 and 671 of title 20, Code of Federal Regulations, as amended, as set forth as follows:

Signed at Washington, DC on July 27, 2006.

Emily Stover DeRocco,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

1. The authority citation for part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. The heading for part 617 is revised to read as follows:

PART 617—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974 FOR WORKERS CERTIFIED UNDER PETITIONS FILED BEFORE NOVEMBER 4, 2002

3. Section § 617.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 617.1 Scope.

The regulations in this part 617 pertain to:

(a) Adjustment assistance, such as counseling, testing, training, placement, and other supportive services for adversely affected workers under the terms of chapter 2 of title II of the Trade Act of 1974, as amended prior to August 6, 2002 (the Act), covered by certifications issued under petitions filed with the Secretary before November 4, 2002;

(b) Trade readjustment allowances (TRA) and other allowances such as allowances while in training, job search and relocation allowances, for adversely affected workers under the Act covered by certifications issued under petitions

filed with the Secretary before November 4, 2002; and

* * * * *

4. Section 617.10 is amended by adding paragraph (e) to read as follows:

§ 617.10 Applications for TRA.

* * * * *

(e) *Advising workers to apply for health coverage tax credit.* State agencies will advise each worker of the qualifying requirements for the health coverage tax credit (HCTC) and related health insurance assistance.

5. Title 20, chapter V, is amended by adding new part 618 to read as follows:

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974 FOR WORKERS CERTIFIED UNDER PETITIONS FILED AFTER NOVEMBER 3, 2002

Subpart A—General

Subpart B—[Reserved]

Subpart C—Delivery of Services through the One-Stop System

Subpart D—Job Search Allowances

Subpart E—Relocation Allowances

Subpart F—Training Services

Subpart G—Trade Readjustment Allowances

Subpart H—Administration By Applicable State Agencies

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

Subpart I—[Reserved]

Subpart A—General

§ 618.100 Purpose and scope.

(a) The Trade Act of 1974, as amended (the Act), establishes a trade adjustment assistance (TAA) program. The goal of the TAA program is to provide adversely affected workers with assistance to return them to work that will use the highest skill levels and pay the highest wages given the workers' preexisting skill levels and education and the condition of the labor market, and to do so as quickly as possible. The TAA program also includes the ATAA program, which may be available to workers 50 years of age or older. Workers who have lost their jobs with firms who supplied, or were downstream producers to, other firms whose workers were certified as eligible to apply for TAA may also be covered under the TAA program. The regulations in this part 618 are issued to implement the Act.

(b) This part 618 covers:

(1) The scope, purpose, effective dates and transition guidelines, and definitions of terms applicable to the TAA program;

(2) [Reserved];

(3) Counseling, testing, placement, and other supportive services for adversely affected workers and agricultural commodity producers entitled to receive a cash benefit under the TAA for Farmers program (subpart C);

(4) Job search allowances for adversely affected workers (subpart D);

(5) Relocation allowances for adversely affected workers (subpart E);

(6) Training for adversely affected workers (subpart F);

(7) Trade readjustment allowances (TRA) for adversely affected workers (subpart G);

(8) Administrative requirements applicable to State agencies administering the TAA program and assistance for individuals (subpart H);

(9) [Reserved].

§ 618.105 Effective dates for the 2002 amendments to the Trade Act of 1974.

Section 151 of the Trade Adjustment Assistance Reform Act of 2002 (the ''Reform Act''), Public Law 107–210, provides that its amendments governing Trade Adjustment Assistance for Workers applies to petitions for certification filed on or after November 4, 2002. However, ATAA became effective on August 6, 2003 and the Health Coverage Tax Credit (HCTC), established under 26 U.S.C. 35 (administered by the Internal Revenue Service), generally became effective on December 1, 2002. Consistent with section 151 of the Reform Act, Part 617 of title 20 of the Code of Federal Regulations governs the operational and benefit provisions of the TAA program for petitions filed before November 4, 2002, even where the determinations are made after that date.

§ 618.110 Definitions.

The following definitions apply in this part.

Act means chapter 2 of title II of the Trade Act of 1974, Public Law 93–618, 88 Stat. 1978, 2011 *et seq.* (19 U.S.C. 2271–2321 and 2395), as amended.

Additional compensation means unemployment compensation totally financed by a State and payable under State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes unemployment compensation payable under chapter 85, title 5 of the United States Code.

Adversely affected employment means employment in a firm or appropriate subdivision of a firm (which may include workers in any agricultural firm or subdivision of an agricultural firm), if workers of such firm or subdivision are certified as eligible to apply for trade adjustment assistance under this part.

Adversely affected worker means an individual, including an employer, who, because of lack of work in adversely affected employment—

(1) Has been totally or partially separated from such employment between the impact date and two years after the date on which the certification is signed, unless the certification expires or is terminated earlier; or

(2) Has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists between the impact date and two years after the date on which the certification is signed, unless the certification expires or is terminated earlier.

Agent State means any State other than the liable State for an adversely affected worker.

Alternative trade adjustment assistance, Alternative TAA or *ATAA* means a wage subsidy for adversely affected workers 50 years of age and older.

Applicable State law means, for any adversely affected worker, the State law of the State—

(1) In which such worker is entitled to UI (whether or not such worker has filed a UI claim) immediately following such worker's first separation, or

(2) If the adversely affected 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.

(3) The applicable State law for an adversely affected worker, as determined under paragraphs (1) and (2) of this definition, 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).

(4) For purposes of determining the applicable State law for UI entitlement under paragraph (1) of this definition—

(i) An adversely affected 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.

(ii) In the case of a combined-wage claim (under part 616 of this chapter), UI entitlement must be determined under the law of the paying State.

(iii) In case of a Federal UI claim, or a joint State and Federal UI claim (under parts 609 and 614 of this chapter), UI entitlement must be determined under the law of the applicable State for such claims.

Average weekly hours means a figure obtained by dividing:

(1) Total hours worked (excluding overtime) by a partially separated worker in adversely affected employment in the 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in such employment.

Average weekly wage means one-thirteenth of the total wages paid to an individual in the individual's high quarter. The high quarter for an individual is the quarter in which the total wages paid to the individual were highest among the first four of the last five completed calendar quarters preceding the week in which the individual's first separation occurred.

Benefit period means, with respect to an individual—

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the individual is eligible for regular compensation, additional compensation, extended compensation, or Federal supplemental compensation, or

(2) The equivalent of such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

Bona fide application for training means an individual's signed and dated application for training filed with the State agency administering the TAA training program, on a form provided by the cooperating State agency necessarily containing the individual's name, petition number, and specific occupational training.

Certification means a certification of eligibility to apply for TAA, or TAA and ATAA, with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

Certification period means the period of time during which total and partial separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by the certification.

Certifying officer means an official in the Employment and Training Administration, United States Department of Labor, who has been delegated the authority granted to the Secretary of Labor to make determinations and issue certifications of eligibility to apply for trade adjustment assistance.

Co-enrollment means enrollment in the TAA program and at least one other program that operates as part of the WIA One-Stop delivery system, such as the Adult program under title I of the WIA.

Commuting area means the area in which an individual would be expected to travel to and from work on a daily basis as determined under the applicable State law.

Confidential business information means commercial or financial information received by the Director in an investigation of a petition for

certification of eligibility to apply for TAA, or TAA and ATAA, whose disclosure is prohibited under the Trade Secrets Act, 18 U.S.C. 1905.

Cooperating State Agency (CSA) means the State workforce agency or any other State or local agency administering job training or related programs and which participates in the administration of the TAA program under an agreement with the Secretary to carry out any of the provisions of the Act.

Customized training means training that is designed to meet the special requirements of one or more employers, as provided in § 618.635(b) (enrollment in on-the-job and customized training).

Date of certification means the date on which the certifying officer signs the certification of eligibility to apply for TAA, or TAA and ATAA, for a group of adversely affected workers at a firm or appropriate subdivision.

Date of filing means the date on which a complete petition is received by the Division of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Date of separation means:

(1) With respect to a total separation—

(i) For an individual in employment status, the last day worked; or

(ii) For an individual on employer-authorized leave, the last day the individual would have worked had the individual not been on the employer-authorized leave; or

(2) With respect to a partial separation, the last day of the week in which the partial separation occurred.

Department of Labor or *Department* or *DOL* means the United States Department of Labor.

Director means the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, DC, who has responsibility for administering the TAA programs, or his or her designee.

Division of Trade Adjustment Assistance or *DTAA* means the organization within the Employment and Training Administration, DOL, Washington, DC that administers the TAA programs, or its successor organization.

Eligible ATAA recipient means an individual who is receiving benefits under a demonstration program of Alternative Trade Adjustment Assistance for older workers under subpart I of part 618.

Eligible PBGC pension recipient means an individual who is 55 years of age or older and is receiving a pension benefit paid in whole or part by the Pension Benefit Guaranty Corporation (PBGC).

Eligible TAA recipient means an individual who is receiving a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted Unemployment Insurance benefits.

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.

Extended compensation or *Extended Benefits* or *EB* means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefits Period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 and regulations governing the payment of extended unemployment compensation and, when so payable, includes unemployment compensation payable under chapter 85 of title 5 of the United States Code, but does not include regular compensation, additional compensation, or Federal supplemental compensation. Extended compensation is explained further in part 615 (Extended Benefits in the Federal-State Unemployment Compensation Program) of title 20 of the Code of Federal Regulations.

Family means the following members of an individual's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(1) A spouse;

(2) An unmarried child, including a stepchild, adopted child, or foster child, under age 21 or of any age if incapable of self-support because of mental or physical incapacity; and

(3) Any other person whom the individual would be entitled to claim as a dependent for income tax purposes under the Internal Revenue Code of 1986, as amended.

Federal student financial assistance means student financial assistance authorized by title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 *et seq.*): Grants to Students in Attendance at Institutions of Higher Education (20 U.S.C. 1070a–1070f–6) (popularly known as Pell grants); Federal Family Education Loan Program (20 U.S.C. 1071–1087–4; William D. Ford Federal Direct Loan Program (20 U.S.C. 1087a–1087j); Federal Perkins Loans (20 U.S.C. 1087aa–1087ii); Federal Work-Study Programs (42 U.S.C. 2751–2756b); and Bureau of Indian Affairs student assistance programs, such as Indian and Alaska Native forestry education assistance programs (35 U.S.C. 3113).

Federal supplemental compensation means the Federal supplemental unemployment compensation payable to individuals under the Temporary Extended Unemployment Compensation Act of 2002 or any similar Federal law.

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.

First benefit period means the benefit period established after the worker's first qualifying separation or in which such separation occurs.

First qualifying separation means, for the purposes of determining the weekly and maximum amounts of basic TRA payable to an individual, the individual's first (total or partial) separation within the certification period of a certification if, with respect to such separation, the individual meets the requirements of paragraphs (a), (b), and (d) of § 618.715 (qualifying requirements for basic TRA).

First separation means, for an individual to qualify as an adversely affected worker for the purposes of TAA program benefits (without regard to whether the individual also qualifies for TRA), the individual's first total or partial separation within the certification period of a certification, irrespective of whether such first separation also is a qualifying separation.

Health Coverage Tax Credit or *HCTC* means the tax credit for the costs of health insurance coverage of eligible individuals authorized by section 35 of the Internal Revenue Code of 1986 (relating to refundable credits), as amended (26 U.S.C. 35).

Impact date means the date stated in a certification of eligibility to apply for TAA, or TAA and ATAA, on which the

total or partial separations of the workers covered by the certification began or threatened to begin.

Individual Employment Plan or *IEP* means a document containing an ongoing strategy jointly developed by the participant and the CSA, which identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goals. Generally, the IEP is prepared after conducting both an initial assessment and a comprehensive assessment of the worker's employment goals and strategies to achieve those goals.

Job finding club means a job search workshop that includes a period of 1 to 2 weeks of structured, supervised activity in which participants 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 participants with knowledge that will enable the participants to find jobs. Subjects of the seminar 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, and includes circumstances when:

(1) Work is not available because the employer closes or ceases operations; or

(2) Work is not available because the employer downsizes the workforce by means of attrition or layoff, including downsizing when an employee accepts an employer's offer of a severance package designed by the employer to encourage voluntary separations; or

(3) Work to maintain the worker's customary hours of work is not available.

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 not less than seven (7) consecutive days.

Liable State means the State whose State law is the applicable State law for an adversely affected worker.

One-Stop delivery system means the system of entities operating under title I of WIA to administer and deliver workforce investment, educational, and other human resource program services to enhance access to these services in local areas and improve long-term employment, as described in part 662 of title 20 of the Code of Federal Regulations.

On-the-job training means training provided by an employer to an individual, as provided in § 618.635(a)(1) (enrollment in on-the-job and customized training).

Partial separation means, for a worker who has not been totally separated, whether the worker either is covered by a petition for certification of eligibility to apply for TAA, or TAA and ATAA, or the worker has been certified as an adversely affected worker, that:

(1) 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 in adversely affected employment during a week ending on or after the impact date specified in the certification under which the adversely affected worker is covered; and

(2) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm or in adversely affected employment during a week ending on or after the impact date specified in the certification under which the adversely affected worker is covered.

Program of remedial education means training that is designed to enhance the employability of an adversely affected worker by upgrading basic knowledge through such courses as adult basic education, basic math and literacy, English-as-a-second-language, and high school equivalency, among others.

Qualifying separation means, for an individual to qualify as an adversely affected worker and for basic TRA, for determining the 16-week period for enrollment in approved training as a condition of TRA, and for determining the basic TRA eligibility period, any total separation of the individual within the certification period of a certification, with respect to which the individual meets all of the requirements in paragraphs (a), (b), (c) and (d) of § 618.715 (qualifying requirements for basic TRA).

Regional Administrator means the appropriate Regional Administrator of the Employment and Training Administration, U.S. Department of Labor.

Regular compensation means unemployment compensation payable to an individual under any State law, and, when so payable, includes unemployment compensation payable under chapter 85, title 5 of the United States Code, but does not include extended compensation, additional compensation or federal supplemental compensation.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

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 of the State that administers the State law.

State law means the unemployment insurance law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1986 (26 U.S.C. 3304).

Suitable employment means work of a substantially equal or higher skill level than the worker's previous adversely affected employment and wages for such work at not less than 80 percent of the worker's average weekly wage, including (or taking into consideration) the value of fringe benefits, including health insurance.

Suitable work means, with respect to an individual—

(1) Suitable work as defined in the applicable State law for claimants for regular compensation; or

(2) Suitable work as defined in applicable State law provisions consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970; whichever is applicable, but does not in any case include self-employment or employment as an independent contractor.

Supportive services means services such as transportation, childcare, dependent care, and housing that are needed to enable an individual to participate in activities authorized under the Act.

Total separation means the layoff or severance of a worker from employment in a firm in which adversely affected employment exists or has been alleged to exist in a petition for certification of eligibility to apply for TAA.

Trade adjustment assistance or *TAA* means the benefits and services provided under subparts D, E, F, and G of this part 618 and not ATAA provided under subpart I [Reserved]. TAA also includes certain employment services provided to adversely affected workers, as described in subpart C of this part 618.

Trade adjustment assistance for Farmers program or *TAA for Farmers program* means the program implemented by regulations codified at 7 CFR part 1580 and in §§ 618.365 (employment services and the TAA for Farmers program) and 618.655 (training services and TAA for Farmers program). Under this program the Department of Agriculture provides technical assistance and certifies qualified agricultural commodity producers as

eligible to apply for cash benefits from the Department of Agriculture.

Trade readjustment allowance or *TRA* means a weekly allowance payable to an adversely affected worker with respect to such worker's unemployment under subpart G of this part 618.

Unemployment insurance or *UI* means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code (5 U.S.C. 8501 *et seq.*) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*), and includes: Regular compensation, additional compensation, extended compensation or extended benefits or EB, and Federal supplemental compensation.

Wages means all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash.

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 unemployment insurance law.

Workforce Investment Act or WIA means the Workforce Investment Act of 1998 (Pub. L. 105–220), as amended (29 U.S.C. 2801 *et seq.*).

Subpart B—[Reserved]

Subpart C—Delivery of Services Through the One-Stop System

§ 618.300 Scope.

This subpart requires cooperating State agencies, under the agreements signed with the Secretary under § 618.805 (agreements with the Secretary of Labor), to integrate the provision of benefits and services available to workers separated or threatened with separation under the TAA program with the delivery of employment services and other assistance provided under any Federal law other than the Act, through the One-Stop service delivery system (established under title I of the Workforce Investment Act of 1998 (WIA)), 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 intensive services described in WIA section 134(d)(2) and (3) for workers upon the receipt of a petition covering those workers.

§ 618.305 The TAA program as a One-Stop partner.

The cooperating State agency must ensure that the TAA program complies with One-Stop partnership requirements in 20 CFR 662.230.

§ 618.310 Responsibilities for the delivery of employment services not funded under the Act.

(a) The cooperating State agency must assure the following services are made available to individuals covered under a petition for certification of eligibility to apply for TAA or TAA and ATAA:

(1) Rapid response assistance (as specified in § 618.320 (coordination with WIA-funded rapid response activities)); and

(2) Core and applicable intensive services, as needed through the One-Stop delivery system.

(b) The cooperating State agency must make every reasonable effort to ensure that the core and intensive services available to adversely affected workers, including those certified as eligible to apply for ATAA, include the following services:

(1) Wagner-Peyser Act labor exchange services;

(2) Assessment;

(3) Employment counseling;

(4) Vocational testing;

(5) Placement services;

(6) Development of Individual Employment Plans (IEPs) for adversely affected workers, as specified in § 618.350; and

(7) Supportive services, as defined in § 618.110.

(c) The cooperating State agency must make every reasonable effort to ensure the provision of services authorized under other Federal laws for all adversely affected workers.

(d) The services described in this section may be paid for with WIA or Wagner-Peyser funds or with funds from One-Stop partner programs if the workers meet the eligibility requirements of those programs.

(e)(1) Except as provided in paragraph (e)(2) of this section, adversely affected workers who meet the definition of a dislocated worker under WIA, section 101(9), may participate in appropriate core, intensive, training, and supportive services funded with WIA Dislocated Worker funds.

(2) Those adversely affected workers who are partially separated generally will not meet the WIA definition of a dislocated worker and therefore may not be served with WIA Dislocated Worker funds. Such workers may be served in WIA-funded Adult Worker programs and receive similar One-Stop core, intensive, training and supportive services.

§ 618.315 Responsibilities for the delivery of employment services funded under the Act.

(a) The CSA is responsible for providing information to individuals about TAA, as required in § 618.820 (TAA program and benefit information to workers);

(b) The CSA is responsible for providing the following services to adversely affected workers, which may be paid out of TAA funds:

(1) Interviewing each adversely affected worker about suitable training opportunities reasonably available to each worker under subpart F of this Part, reviewing such opportunities with each worker, informing each worker of the requirements for participation in training, including the enrollment deadlines, as a condition for receiving TRA, and accepting applications for training;

(2) Informing adversely affected workers of the employment services and allowances available under the Act and this part 618, the application procedures, the filing requirements for such employment services and the training requirement and enrollment deadlines for receiving TRA;

(3) Determining whether suitable employment, as defined in § 618.110, is available;

(4) Providing self-directed job search training, when necessary;

(5) Providing training;

(6) Providing job search and relocation allowances;

(7) Determining which training institutions offer training programs at a reasonable cost and with a reasonable expectation of employment (as described in § 618.610(c)) following the completion of such training, and procuring such training;

(8) Documenting the standards and procedures used to select occupations and training institutions in which training is approved;

(9) Approving training programs for adversely affected workers;

(10) Monitoring the progress and attendance of adversely affected workers in approved training programs;

(11) Developing and implementing a procedure for determining whether to issue a training waiver and reviewing waivers and extensions at least every 30 days to determine whether the conditions under which they are issued have changed; and

(12) Coordinating the administration and delivery of employment services,

benefits, training, and supplemental assistance for workers with programs under the Act, the Wagner-Peyser Act, and the WIA.

§ 618.320 Coordination with WIA-funded rapid response activities.

(a) Upon the filing of a petition, the Governor must ensure that rapid response assistance is made available, consistent with 20 CFR 665.300 and 20 CFR 665.310 (WIA rapid response activities).

(1) If rapid response activities have been provided previously in response to a layoff or plant closure or other event, then the Governor must determine whether the provision of any additional information or assistance related to the TAA program is necessary due to the filing of the petition. This may include information about training opportunities, income support, employment services, and potential HCTC assistance.

(2) If rapid response assistance has not been provided previously in response to a layoff or plant closure or other event, then the Governor must ensure that appropriate rapid response assistance is provided. The Governor may develop and implement appropriate methods of achieving the goals of rapid response in situations where the full range of rapid response activities required by 20 CFR 665.310 is not appropriate. The alternative methods should be cost effective and responsive to the workers' needs. At a minimum, information and access to unemployment compensation benefits, comprehensive One-Stop system services, employment services, and TAA program benefits, must be provided.

(b) The Governor is encouraged to provide workers for whom a TAA petition has been filed with access to appropriate WIA core and intensive services using rapid response funding before a determination on whether to certify the workers' petition is issued in order to assist a more rapid return to employment.

§ 618.325 Integrated service strategies to ensure that a comprehensive array of services are provided by WIA or other programs.

(a) The cooperating State agency must collaborate with Local Workforce Investment Boards and other WIA One-Stop partners and is encouraged to collaborate with other available programs to ensure that adversely affected workers receive appropriate services, as described in § 618.310 (responsibilities for the delivery of employment services not funded under the Act) and § 618.315 (responsibilities for the delivery of employment services funded under the Act).

(b) Any adversely affected worker may be co-enrolled (as defined in § 618.110) in one or more appropriate One-Stop employment programs to ensure that all necessary and appropriate services are available for the worker. Where an adversely affected worker is not co-enrolled, the State must employ other integrated service strategies to ensure that such services are made available to the worker.

§ 618.330 Assessment of adversely affected workers.

(a) The cooperating State agency must design its assessment process to protect a potentially eligible worker's access to TAA-approved training and to TRA. Services must be scheduled to provide the worker sufficient time and information to make a meaningful and timely request for training approval or a waiver, if appropriate, and protect the worker's eligibility to receive TRA.

(b) The cooperating State agency must provide an adversely affected worker with an initial assessment, as described in, § 618.335 and, if appropriate, a comprehensive assessment, as described in § 618.345, to determine which benefits and services, including training, are most appropriate to enable the worker to become reemployed.

§ 618.335 Initial assessment of adversely affected workers.

(a) The initial assessment represents the first step in determining if the worker will need employment services, whether suitable employment is available to the worker without training, whether training is needed and feasible, whether any of the six criteria for issuing a waiver from the training requirement for receipt of TRA (as described in § 618.725(b)(1) through (b)(6)) apply, and whether the worker may meet the requirements for ATAA and the HCTC. The initial assessment of the worker's likely employment opportunities 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) Transferable skills that the worker may possess that would be of interest to other local employers; and

(3) Any significant barriers to reemployment the worker has, such as:

(i) Obsolete skills in the worker's present occupation;

(ii) Skills similar to those of other workers that represent an excess supply in the labor market area; or

(iii) Limited English language proficiency coupled with limited or no skills in demand in the local labor market area.

(b) The initial assessment requirements may be satisfied by a WIA-funded initial assessment. Assessments performed under the Wagner-Peyser Act or other partner programs, or a worker's profile under the UI profiling system (section 303(j) of the Social Security Act (42 U.S.C. 503(j)), may satisfy the initial assessment requirements if they meet the requirements of paragraph (a) of this section.

(c) Based upon the information gathered in the initial assessment, described in paragraph (a) of this section, the cooperating State agency may:

(1) Determine that suitable employment (as defined in § 618.110) is available to the worker, and if so, the cooperating State agency may provide WIA core and intensive services. If the worker disagrees with the determination, the cooperating State agency must provide the worker with a comprehensive assessment (under § 618.345) to be certain that the initial assessment is correct.

(2) Determine that no suitable employment is available to the worker and, if so, the cooperating State agency may provide services as described in § 618.310 (responsibilities for the delivery of employment services not funded under the Act) and § 618.315 (responsibilities for the delivery of employment services funded under the Act) and must provide a comprehensive assessment (as described in § 618.345) of the worker's circumstances in order to develop a comprehensive service strategy for the adversely affected worker.

(d) If the cooperating State agency determines under paragraph (c) of this section that an adversely affected worker lacks marketable skills with which the worker can reasonably be expected to secure suitable employment, as defined under § 618.110, the cooperating State agency must advise the worker to apply for training under subpart F, or seek a waiver under § 618.725 (waiver of training requirement for basic TRA).

§ 618.340 Employment services and waiver provisions for workers not enrolled in training.

(a) The cooperating State agency must coordinate with the One-Stop delivery system to ensure the provision of services to adversely affected workers who are determined through the initial assessment under § 618.335(a) (initial assessment of adversely affected

workers) to possess marketable skills for suitable employment and who are reasonably expected to find employment at equivalent wages in the foreseeable future. For these workers, in addition to the services discussed in § 618.310 (responsibilities for the delivery of employment services not funded under the Act) and § 618.315 (responsibilities for the delivery of employment services funded under the Act), the cooperating State agency must take the following actions, as necessary, and in a timely manner, to assure that the workers' job search activities are efficient and effective:

(1) Determine whether a waiver of the training requirement is appropriate under § 618.725 (waiver of training requirement for basic TRA), and, if appropriate, issue the waiver;

(2) Refer the worker to suitable work (as defined in § 618.110, whichever is applicable to the worker) through appropriate labor exchange services provided by the public employment service system or through WIA core services.

(b)(1) For workers whose initial assessment under § 618.330 (assessment of adversely affected workers) indicates that suitable employment is available but who are unsuccessful in their job search efforts, the cooperating State agency must establish procedures that will permit review of the assessment and of the reasons for the workers' circumstances, as follows:

(i) If a waiver of the training requirement has not been issued, the review must occur in a sufficiently timely manner so as not to endanger a worker's eligibility for TRA under the time deadlines for enrollment in a training program described in § 618.725(b).

(ii) If a waiver of the training requirement has been issued based on the assessment that the worker has marketable skills, the review should be part of the cooperating State agency's 30-day waiver review procedures.

(2) Based upon the review under paragraph (b)(1) of this section, the cooperating State agency may plan appropriate additional employment services and make a determination whether to continue or revoke a training waiver issued under § 618.725, to provide additional core and intensive services, and/or supportive services, or to initiate a comprehensive assessment in preparation for training.

§ 618.345 Comprehensive assessment for adversely affected workers.

(a) The cooperating State agency must arrange for a comprehensive assessment for each worker seeking TAA approval of a training program.

(b) The comprehensive assessment must expand upon the initial assessment regarding the worker's skills, aptitudes, and abilities (including reading and math levels). The cooperating State agency should determine in the comprehensive assessment, the worker's interests as they relate to employment opportunities in demand either in the commuting area (as defined in § 618.110) or, where there is no reasonable expectation of securing employment in the commuting area and the worker is interested in relocation to other areas, outside of the commuting area.

§ 618.350 IEPs for adversely affected workers.

A cooperating State agency must prepare an IEP, as defined in § 618.110, for any worker who receives a comprehensive assessment. The IEP must document the result of the comprehensive assessment and document a service strategy to provide the worker with the services needed to obtain employment. The IEP must document:

(a) Whether or not each of the six criteria for training approval in § 618.610(a) through (f) (criteria for approval of training) or for issuing a training waiver under § 618.725 has been met;

(b) The type of training proposed, if any;

(c) Any additional services that will be needed by the worker to obtain employment, including intensive services, supportive services, and post-training and follow-up services; and

(d) Any prearrangements (as described in § 618.625(c) (payment restrictions for training programs)) for sharing the costs of the worker's approved training program, any amendments of the training program, and any subsistence or transportation payments provided and the basis for its calculation.

§ 618.355 Staff requirements for assessments.

Staff performing either the initial or comprehensive assessment should possess the following:

(a) An understanding of the local labor market;

(b) Knowledge of local employer skill demands and hiring prerequisites, such as educational requirements and professional certifications, and the sets of skills workers from various occupations are likely to possess;

(c) The ability to identify transferable skills that a worker may possess that would be of interest to other local employers outside of the worker's present occupational area;

(d) The ability to evaluate quickly a worker's knowledge of and ability to implement job search strategies with little or no assistance; and

(e) The ability to identify a worker's apparent employment barriers that will require additional training and counseling.

§ 618.360 Employment services for workers enrolled in training and follow-up services.

(a) The cooperating State agency must ensure that all workers who enroll in training continue to receive access to the full range of core and intensive services as discussed in § 618.310 (responsibilities for the delivery of employment services not funded under the Act) and § 618.315 (responsibilities for the delivery of employment services funded under the Act), as appropriate, to facilitate their appropriate and timely re-employment.

(b) The cooperating State agency must provide follow-up services, including placement and other appropriate supportive services to workers upon completion of training.

§ 618.365 Employment services and the TAA for Farmers program.

The cooperating State agency must provide employment services to individuals entitled to cash benefits under the TAA for Farmers program administered by the U.S. Department of Agriculture. Such individuals may also receive training and incidental supplemental assistance under subpart F of this part. However, they are not entitled to any other benefits under the TAA program or under ATAA, including TRA under subpart G of this part, job search allowances under subpart D of this part, or relocation allowances under subpart E of this Part.

Subpart D—Job Search Allowances.

§ 618.400 Scope.

This subpart D sets forth the conditions under which an adversely affected worker 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.

§ 618.405 Applying for a job search allowance.

(a) *Forms.* To receive a job search allowance, an adversely affected worker must apply to the cooperating State agency, using the forms that such agency will furnish upon request.

(b) *Submittal.* A worker who has a total or partial separation may apply to the cooperating State agency for a job search allowance after a certification has been issued covering the worker. The worker must apply for a job search allowance before beginning a job search, and the job search allowance will not be approved until the cooperating State agency has determined that the worker is covered by a certification.

(c) *Time limits.* To receive a job search allowance, the worker must apply before the later of the following:

(1) The 365th day after either the date of the certification under which he or she is covered, or the 365th day after his or her last total separation, whichever is later; or

(2) The 182nd day after the date of concluding approved training, unless the worker received a waiver of the participation in training requirement, in which event this paragraph (c)(2) is inapplicable.

§ 618.410 Eligibility for a job search allowance.

(a) *Conditions.* To be eligible for a job search allowance a worker must:

(1) File a timely application within the deadlines imposed by § 618.405(c) (applying for a job search allowance);

(2) Be an adversely affected worker totally separated from the job covered under the certification when he or she begins the job search;

(3) Receive a determination by the cooperating State agency that he or she cannot reasonably expect to secure suitable employment (as defined in § 618.110) in the commuting area (as defined in § 618.110), and can reasonably expect to obtain suitable employment affording a reasonable expectation of employment of a long-term duration outside the commuting area and in the area of the job search.

(4) Not have previously received a relocation allowance under subpart E under this same certification; and

(5) Begin each job search after the date of the certification and complete each 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.* A job search is completed when the worker either obtains a job or has contacted each employer the worker planned to contact or to whom the cooperating State agency or other One-Stop partner referred the worker as part of the job search.

§ 618.415 Findings required.

(a) *Available funding.* Before any payment of a job search allowance may be approved, the liable State (as defined in § 618.110) must determine that job search funds are available for the fiscal year in which the job search activity takes place.

(b) *Findings by liable State.* Before final payment of a job search allowance may be approved, the liable State must also:

(1) Find that the worker meets the eligibility requirements for a job search allowance specified in § 618.410(a)(1) through (b)(5) (eligibility for a job search allowance);

(2) Find that the worker submitted the application for a job search allowance within the time limits specified in § 618.405(c) (applying for a job search allowance); and

(3) Verify that the worker made contacts with all employers to which the worker has been referred and must find that the worker completed the job search (as described in § 618.410(b)) within the time limits stated in § 618.410(a)(5) (eligibility for a job search allowance).

(c) *Assistance by agent State.* (1) When a worker files an application for a job search allowance to conduct a job search in an agent State (as defined in § 618.110), the cooperating State agency of the agent State in which the worker conducts the job search is responsible for assisting the worker in conducting the job search, and for assisting the liable State by furnishing to it any information required for the liable State's determination of the claim.

(2) The agent State must cooperate fully with the liable State in carrying out its activities and functions with regard to such applications.

§ 618.420 Amount of a job search allowance.

(a) *Computation.* The job search allowance is 90 percent of the total costs of each of the following (up to the limit in paragraph (b) of this section):

(1) *Travel.* The more cost effective, reasonable mode of travel which cannot exceed the lesser of:

(i) The actual cost of the most economical round trip travel by public transportation the worker reasonably can be expected to take between the worker's home and the job search area; or

(ii) The prevailing cost per mile under the Federal travel regulations (41 CFR part 301–11) for roundtrip travel by the usual route from the worker's home to the job search area.

(2) *Lodging and meals.* The worker's allowable lodging and meals costs, which 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 Federal travel regulations for the worker's job search area.

(b) *Limit.* The worker's total job search allowance under a certification may not exceed the statutory dollar limit, no matter how many job searches he or she undertakes. If the worker is entitled to be paid or reimbursed by another source for any of these travel, lodging and meals expenses, the job search allowance will be reduced by that amount.

§ 618.425 Determination and payment of a job search allowance.

(a) *Determinations.* The cooperating State agency must promptly make and record determinations necessary to assure an adversely affected worker's eligibility to a job search allowance. Sections 618.825 (determinations and notice) and 618.830 (appeals and hearings) of subpart H apply to these determinations. Copies of such applications and all determinations by the cooperating State agency must be included in the adversely affected worker's case record.

(b) *Payment.* If the worker makes a timely application, is covered under a certification, and is otherwise eligible, the cooperating State agency must make payment as promptly as possible 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 cooperating State agency determines that the worker is eligible for a job search allowance, it may advance the worker 60 percent of the estimated amount of the job search allowance (subject to the limit of § 618.420(b) (amount of a job search allowance)) not later than five days before the worker begins the job search. The advance must be deducted from any payment under paragraph (b) of this section.

(d) *Worker evidence.* Once the worker has completed a job search, he or she must certify, on a form provided by the cooperating State agency, as to the employer contacts made and the daily lodging and meals expenses and transportation costs. The worker must provide receipts for all lodging and purchased transportation expenses during the job search. An adjustment must be made if the amount advanced is less or more than the amount to which the worker is eligible under this section.

§ 618.430 Job search program participation.

(a) *Requirements.* An adversely affected worker who participates in an approved job search program (JSP), as defined in § 618.110, may receive reimbursement for necessary expenses 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 (amount of a job search allowance) and § 618.425 (determination and payment of a job search allowance).

(b) *Approved JSP.* A cooperating State agency may approve a JSP if:

(1) The JSP is provided through the WIA, the public employment service, or any other Federal or State funded program, and complies with § 618.110; or,

(2) The JSP is sponsored by the firm from which the worker has been separated and complies with § 618.110.

(c) *JSP allowances.* Subsistence and transportation costs, whether inside or outside the worker's commuting area, must be approved for workers participating in JSPs in accordance with § 618.640(c) and (d) (governing subsistence and transportation costs for workers in approved training) and within available State funding levels. Costs incurred may not exceed those allowable for training under § 618.640(c) and (d).

Subpart E—Relocation Allowances

§ 618.500 Scope.

This subpart E sets forth the conditions under which an adversely affected worker may apply for and receive a relocation allowance to help the worker relocate to secure suitable employment outside the commuting area but within the United States.

§ 618.505 General.

(a) A relocation allowance may be granted to an adversely affected worker to assist the worker and the worker's family to relocate within the United States. A relocation allowance may be granted to a worker only once under a certification.

(b) A relocation allowance may not be granted to more than one member of a family for the same relocation. If more than one member of a family applies for a relocation allowance as an adversely affected worker for the same relocation, then the allowance must be paid to the family member who files first, if otherwise eligible.

§ 618.510 Applying for a relocation allowance.

(a) *Forms.* To receive a relocation allowance, a worker must apply to the cooperating State agency, using the forms that such agency will furnish upon request.

(b) *Submittal.* A worker who has a total or partial separation may apply to the cooperating State agency for a relocation allowance after a certification has been issued covering the worker. The worker must apply for a relocation allowance before the relocation begins.

(c) *Time limits.* The worker must apply for a relocation allowance before the later of the following:

(1) The 425th day after either the date of the certification under which the worker is covered or the worker's last total separation, whichever is later; or

(2) The 182nd day after the date the worker concluded training, unless the worker received a waiver of the participation in training requirement, in which event this paragraph (c)(2) is inapplicable.

§ 618.515 Eligibility for a relocation allowance.

(a) *Conditions.* To be eligible for a relocation allowance, the worker must:

(1) File a timely application within the deadlines imposed by § 618.510(c) (applying for a relocation allowance);

(2) Be an adversely affected worker 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 present commuting area;

(5) Receive a determination by the cooperating State agency that the worker has no reasonable expectation of securing suitable employment (as defined in § 618.110) in the commuting area (as defined in § 618.110), and has obtained suitable employment affording a reasonable expectation of employment of a long-term duration, or a bona fide offer of such suitable employment, outside the commuting area and in the area of intended relocation; and

(6)(i) Begin the relocation as promptly as possible after the date of certification but no later than:

(A) 182 days after the worker applies for a relocation allowance, or

(B) 182 days after the conclusion of an approved training program, if the worker entered a training program approved under § 618.640(c) and (d) (subsistence and transportation payments) for training outside the worker's commuting area;

(ii) Complete the relocation (as described in § 618.530(e) (determination and payment of a relocation allowance)) within a reasonable time as determined in accordance with Federal travel regulations with the cooperating State agency giving consideration to, among other factors, whether:

(A) Suitable housing is available in the area of relocation;

(B) The worker can dispose of the worker's residence;

(C) The worker or a family member is ill; and

(D) A member of the family is attending school, and if so, when the member can best be transferred to a school in the area of relocation.

(b) *Job search allowances.* The cooperating State agency may not approve a relocation allowance and a job search allowance for a worker at the same time. However, if the worker has received a job search allowance, he or she may receive a relocation allowance at a later time.

§ 618.520 Findings required.

(a) *Available funding.* Before any payment of a relocation allowance may be approved, the liable State (as defined in § 618.110) must make a determination that relocation funds are available for the fiscal year in which the relocation activity takes place.

(b) *Findings by liable State.* Before final payment of a relocation allowance may be approved, the liable State must make the following findings:

(1) That the worker meets the eligibility requirements for a relocation allowance specified in § 618.515(a)(1) to (6) and is not also receiving a job search allowance as specified in § 618.515(b) (eligibility for a relocation allowance);

(2) That the worker submitted the application for a relocation allowance within the time limits specified in § 618.510(c) (applying for a relocation allowance);

(3) That the worker began and completed the relocation within the time limitations specified in § 618.515(a)(6) (eligibility for a relocation allowance); and

(4) That the worker obtained suitable employment affording a reasonable expectation of employment of a long-term duration, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 618.515(a)(5) (eligibility for a relocation allowance). The liable State must verify (directly or through the agent State) the employment or bona fide offer with the employer.

(c) *Assistance by agent State.* (1) When a worker relocates to an agent State (as defined in § 618.110), the cooperating State agency of the agent State is responsible for:

(i) Assisting the worker in relocating to the State, and in completing an

application for a relocation allowance with the liable State, and

(ii) Assisting the liable State by furnishing to it 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 affording a reasonable expectation of employment of a long-term duration, or a bona fide offer of such suitable employment.

§ 618.525 Determining the amount of a relocation allowance.

The worker's relocation allowance includes the following, as applicable:

(a) *Reimbursement.* (1) *Personal travel.* The worker may be reimbursed for 90 percent of the following expenses related to personal travel:

(i) The lesser of—

(A) the most cost effective, reasonable travel expenses by public transportation for the worker and family from their old home to their new home; or

(B) the prevailing cost per mile by privately owned vehicle under the Federal travel regulations (41 CFR part 301–11) for travel by the usual route from their old home to their new home.

(ii) Separate travel, computed in accordance with paragraph (a)(1)(i) of this section, of a family member or members who, for good cause and with the approval of the cooperating State agency, must travel separately to their new home. 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 or economic circumstances.

(2) *Lodging and meals.* The worker may be reimbursed for 90% 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 Federal travel regulations for the relocation area for those days while the worker and his or her family are traveling.

(3) *Movement of household goods.* (i) The worker may be reimbursed for 90 percent of the allowable costs of moving the worker's and family's household goods and personal effects. This includes 90 percent of the costs of moving by the most economical commercial carrier the worker reasonably can be expected 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 cooperating State agency must follow the specific requirements of the Federal travel regulations at 41 CFR part 302–10.

(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, whichever is less, against loss or damage in transit.

(iii) If more economical, the cooperating State agency 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. 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 Federal travel regulations (41 CFR Parts 301 through 304); and

(4) *Lump sum.* As part of the relocation allowance, the worker will receive a lump sum payment equivalent to three times his or her average weekly wage, not to exceed the statutory dollar limit under section 237(b)(2) of the Act or its successor provision.

(b) *Reduction.* If the worker is eligible to receive or has received moving expenses from any other source for the same relocation, the amount received will be deducted from the amount of the relocation allowance as determined in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(c) *Limitation.* In no case may the cooperating State agency pay a travel allowance for the worker or a family member more than once for a single relocation.

§ 618.530 Determinations and payment of a relocation allowance.

(a) *Determinations.* The cooperating State agency must promptly make and record determinations necessary to assure a worker's eligibility to a relocation allowance. Sections 618.825 (determinations and notice) and 618.830 (appeals and hearings) of subpart H apply to these determinations. Copies of such applications and all determinations by the cooperating State agency must be included in the adversely affected worker's case record.

(b) *Payment.* If the worker makes a timely application, is covered under a certification, and is otherwise eligible, the cooperating State agency must make payment as promptly as possible after the worker has completed the relocation.

(c) *Travel allowances.* (1) The cooperating State agency must pay, in advance, by check payable to the worker, the allowances, computed under § 618.525(a) (determining the amount of a relocation allowance), within 10 days before or at the time of the worker's scheduled departure to begin relocation. Payment for a family member approved for separate travel must be paid in advance within 10 days before or at the time of that family member's scheduled departure.

(2) *Worker Evidence.* After a worker completes the relocation, he or she must certify on a State form the daily lodging and meals expenses. The worker must provide receipts for all lodging and purchased transportation expenses for the worker and family related to the relocation. If the advance the worker received was more or less than the actual allowance, an appropriate adjustment must be made.

(d) *Movement of Household Goods.* The cooperating State agency must pay the amount equal to 90 percent of the estimate of the costs of moving the worker's household goods by the most economical commercial carrier the worker reasonably can be expected to use (as described at § 618.525(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 cooperating State agency must provide the worker with an advance equal to 90 percent of the estimated cost of the move, including any other charges that the cooperating State agency has approved such as insurance. The funds must be advanced by check or checks payable to the carrier and insurer; the cooperating State agency must deliver the check to the worker within 10 days of, or at the time of, the scheduled shipment.

(i) On completion of the move (as determined under paragraph (e) of this section), the worker must promptly

submit to the cooperating State agency 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, he or she must reimburse the cooperating State agency for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the cooperating State agency, the cooperating State agency must reimburse the worker for the difference.

(iii) If more economical, the cooperating State agency 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 condition of § 618.525(a)(3)(iii) (determining the amount of a relocation allowance).

(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, 90 percent of the estimated cost for the use of the private vehicle must be made by check payable to the worker and must be delivered within 10 days of the scheduled move.

(ii) *Truck and trailer rental.* If the move is by rental truck or rental trailer, 90 percent of the estimated rental cost must be advanced by check payable to the worker or the rental agency and must be delivered to the worker within 10 days of the scheduled move.

(iii) *House trailer.* If a house trailer or mobile home is moved by commercial carrier, 90 percent of the approved estimated cost must be advanced by check payable to the worker or the carrier, and must be delivered to the worker within 10 days of the scheduled move.

(iv) On completion of the move, the worker must promptly submit a receipt to the cooperating State agency itemizing and evidencing payment of the rental charges for the rental trailer and fuel costs, or for the rental truck and trailer and fuel costs, or for the actual charges for the house trailer or mobile home move. If the amount the worker received as an advance is greater than 90 percent of the actual approved moving costs, he or she must reimburse the cooperating State agency for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the cooperating State agency, the cooperating State agency must reimburse the worker for the difference.

(3) *Temporary storage.* If temporary storage, not to exceed 60 days, of household goods and personal effects is necessary and incident to transportation of the household goods for the relocation, then 90 percent of the approved estimated cost must be advanced by check payable to the worker or the rental agency and must be delivered to the worker within 10 days of the scheduled move.

(e) *Lump sum allowance.* The lump sum allowance provided in § 618.525(a)(4) (determining the amount of a relocation allowance) must be paid when arrangements for the relocation are finalized, but not more than 10 days before the earlier of the worker'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.* A worker 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 no household goods and personal effects are moved, then a worker completes a 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 the relocation was completed.

Subpart F—Training Services

§ 618.600 Scope.

This subpart covers approval of training for an adversely affected worker. The purpose of an approved training program is to assist an adversely affected worker to obtain skills that will lead them to work that will use their highest skill levels, including those gained in the training program, and pay the highest wages given the workers' preexisting skill levels and education and the condition of the labor market, and to do so as quickly as possible.

§ 618.605 Procedures.

(a) *Comprehensive Assessment.* The cooperating State agency must ensure that every worker has a comprehensive assessment leading to the development of an IEP, as described in subpart C, before an application for training can be approved.

(b) *Applications.* (1) Applications for approval of training, including requests for TAA-funded transportation and subsistence payments, must accord with this subpart F and be documented on forms which the cooperating State agency must furnish to individuals.

(2) A bona fide application for training under this subpart F must contain the information specified in § 618.110 and must be signed and dated by a cooperating State agency representative upon receipt.

(c) *Determinations.* Selection for, approval of, or referral of a worker to training, including TAA-funded transportation and subsistence payments, under this subpart F, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason is a determination to which § 618.825 (determinations and notice), § 618.830 (liable and agent State responsibilities) and § 618.835 (appeals and hearings) of subpart H apply. Copies of such applications and all determinations by the cooperating State agency whether to approve or deny the training, including TAA-funded transportation and subsistence payments, must be included in the adversely affected worker's case record.

(d) *Linkages for training opportunities.* It is the responsibility of the cooperating State agency to explore, identify, and secure training opportunities and to establish linkages with other public and private agencies, as described in § 618.325 (integrated service strategies to ensure that a comprehensive array of services are provided by WIA or other programs), which can provide training that maximizes the potential of adversely affected workers to return to employment as soon as possible. A cooperating State agency is not required to create new training programs or develop new curricula where none currently exist.

§ 618.610 Criteria for approval of training.

The cooperating State agency must consult the worker's comprehensive assessment and IEP, as described respectively under § 618.345 and § 618.350, before approving an application for training. Training must be approved for an adversely affected worker if the cooperating State agency determines all of the following six criteria are met:

(a) *Criterion 1: There is no suitable employment available for the adversely affected worker.* (1) There is no suitable employment, as defined at § 618.110 (which may include technical and professional employment), available for an adversely affected worker either in the commuting area, as defined in § 618.110, or outside the commuting

area in an area to which the worker desires to relocate with the assistance of a relocation allowance under subpart E of this Part, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. Notification of a specific recall, as described in § 618.725(b)(1) (waiver of training requirement for basic TRA), to adversely affected employment by the worker's firm in the same or essentially the same job is considered suitable employment if the recall is expected to be permanent, and the worker's application for training must be denied.

(2) ''No reasonable prospect of such suitable employment in the foreseeable future'' means that the worker does not have a likely prospect of being recalled to the adversely affected employment and an assessment of the worker's skills and local labor market indicators, or local labor market indicators in the area where the worker desires to relocate, does not provide evidence of suitable employment being available in the foreseeable future.

(3) If an application for training is denied under paragraph (a)(1) of this section, the cooperating State agency must document the availability of suitable employment through local labor market information or job orders.

(b) *Criterion 2: The worker would benefit from appropriate training.* (1) The worker would benefit from appropriate training when a direct relationship exists between the worker's need for skills training or remedial education in order to increase the likelihood of obtaining suitable employment and those skills or remediation that would be provided by the training program under consideration for the worker. It also means that the training is expected to improve the worker's chances of obtaining and retaining sustainable employment at higher wages than would have been obtained in the absence of training;

(2) The worker must also have the knowledge, skills, and abilities to undertake, make satisfactory progress in, and complete the training.

(3) The cooperating State agency may not approve training for a worker that would result in seasonal employment, unless the duration and minimum compensation of such employment meets the criteria for employment that will lead to self-sufficiency set by the State Workforce Investment Board or the Local Workforce Investment Board for the local workforce investment area under 20 CFR 663.230.

(c) *Criterion 3: There is a reasonable expectation of employment following completion of such training.* A reasonable expectation of employment following completion of such training means that, given the job 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 worker is likely to find a job that will allow the worker to achieve self-sufficiency. Self-sufficiency is judged in accordance with criteria established by the State Workforce Investment Board or the Local Workforce Investment Board for the local workforce investment area under 20 CFR 663.230 using the skills and education acquired while in training, after completion of such training. The job market conditions considered must be limited to those in the worker's commuting area, as defined in § 618.110, or in an area where the worker desires to relocate with the assistance of a relocation allowance under subpart E of this part.

(1) Any determination under this criterion must take into account that ''a reasonable expectation of employment'' does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This criterion emphasizes that, when initially approving such training, there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training. This criterion recognizes that new employment occurs on employers' time schedules that may not coincide with the time of the completion of the training.

(2) The cooperating State agency may measure expected job market conditions using the list of high growth and demand occupations maintained by the Local Workforce Investment Board (which is based in part on pertinent labor market data, including job order activity where appropriate), or by contacting the local and State economic development agencies for information about jobs requiring training that may not already exist in the local workforce investment area but which have a reasonable prospect of soon becoming available.

(3) When a worker desires to relocate within the United States but outside the worker's present commuting area upon completion of training, the cooperating State agency must obtain documentation (such as telephone contact notes, copies of e-mail communications, or written statements or a facsimile copy) of labor market information in the area in which relocation is planned to support the determination that a reasonable expectation of employment exists within 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 an occupation that occurs in exceptionally limited numbers in the worker's commuting area (such as, a taxidermist or antique doll restorer) but is one in which the worker has expressed a desire for training. Such an occupation ordinarily will not appear on a list of high-growth and demand occupations. A limited demand for such an occupation does not preclude the development of an IEP that includes such an occupational training program, but the cooperating State agency must determine that there is a reasonable expectation that the worker can find employment in the occupation. Cooperating State agencies must require that an employer interested in hiring such a trained person provide evidence of an intent to hire the worker upon successful completion of approved training which provides documentation in the IEP that an employment opportunity is expected to be available.

(5) A cooperating State agency may approve training in an occupation if it finds that there is a reasonable expectation that the training will lead to a reasonable prospect of self employment in the occupation for which the worker requests training.

(d) *Criterion 4: Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools and employers).* This criterion means that training is reasonably accessible to the worker at any governmental or private training (or education) provider. Training may be institutional training, on-the-job training or customized training with employers. This criterion also means that emphasis must be given to finding accessible training for the worker in the commuting area, although it does not preclude approving training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (f) of this section. Sources of approved training may include those described in § 618.620 (selection of training programs).

(e) *Criterion 5: The worker is qualified to undertake and complete such training.* This means the worker is qualified to undertake and complete such training, as follows:

(1) Evaluation of the worker's qualifications must determine that the worker's knowledge, skills, and abilities, educational background, work experience and financial resources, are adequate to undertake and complete the specific training program being considered. The cooperating State agency must consult the adversely affected worker's comprehensive assessment or IEP developed in accordance with subpart C of this part in determining whether the worker is qualified to undertake and complete the training.

(2) The worker must have sufficient personal or family resources on which to live to allow completion of the training within the time limits in § 618.615(a)(3) (limitations on approval of training). (i) In making this determination, the cooperating State agency must consider:

(A) The worker's remaining weeks of UI and TRA payments in relation to the duration of the selected 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 as defined in § 618.110 or any State-funded student financial assistance; and

(E) If applicable, the worker's employment situation while attending training.

(ii) Before approving a TAA training program, the cooperating State agency must document that financial resources were discussed with the worker and a determination made that the worker had adequate personal or family resources along with UI and/or TRA payments to allow for the completion of training.

(iii) When a worker has inadequate financial resources to complete a selected TAA training program regardless of whether it exceeds the duration of UI and TRA payments, then that training must not be approved and consideration must be given to other training opportunities or related workforce development programs' assistance available to the worker.

(f) *Criterion 6: Such training is suitable for the worker and available at a reasonable cost.* (1) *Suitable for the worker.* Suitable for the worker means that the training being considered meets the criteria in paragraph (e) of this section and that the training is appropriate for the worker given the worker's knowledge, skills, and abilities, background and experience.

(2) *Available at a reasonable cost.* (i) Costs of a training program include tuition and related expenses (books, tools, uniforms and other training-related clothing including goggles and work boots, laboratory fees and other academic fees required as part of the approved training program), subsistence expenses and travel expenses (described in § 618.640(c) and (d) (subsistence and transportation expenses)). Under no circumstances may the costs of a training program include the payment for personal computer equipment for a worker to own, even when it is a prerequisite for a worker's training program, although cooperating State agencies may purchase personal computer equipment and then lend it to those workers who require it for their training; if a worker lacks sufficient access to such computer equipment, then the training program must not be approved. Cooperating State agencies must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(ii) The cooperating State agency must give first consideration to the lowest cost training for the occupation that is available in the worker's commuting area, if that training is of sufficient quality, content, and expected outcome to meet the worker's occupational goal as reflected in the IEP. The cooperating State agency may approve higher cost training if that training is expected to be of demonstrably higher quality, content or expected outcomes, or to achieve comparable results in a significantly shorter duration.

(iii) Training in a selected occupational area may not be approved if:

(A) It requires an extraordinarily high skill level; and

(B) The total costs of the training are substantially higher than the costs of other types of training that are suitable for the worker.

(iv) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments which add substantially to the total costs may not be approved if other appropriate training in the commuting area is available at a lower cost.

(v) A training program may not be approved if the cost exceeds the limit on the amount of training per worker set by the cooperating State agency, except as permitted under § 618.650 (State training cost caps).

§ 618.615 Limitations on approval of training.

(a) *Length of training.* The cooperating State agency, in determining whether to approve training, must determine the appropriateness of the length of training, as follows:

(1) The training must be of suitable duration to achieve the desired skill level to facilitate employment in the selected occupation in the shortest possible time.

(2) Factors that may affect the workers' participation in training, including employment (full- or part-time) under § 618.630 (training of reemployed workers not in suitable employment), availability of childcare, and the course schedule of the selected training institution, must be considered.

(3) *Duration.* (i) The maximum duration for any approvable training program is 104 consecutive calendar weeks, and up to 26 additional calendar weeks, as needed, for a worker to complete approved remedial education (as discussed in § 618.755 (qualifying requirements for TRA)) for a total not to exceed 130 consecutive calendar weeks.

(ii) If a training program meets the duration requirements of paragraph (a)(3)(i) of this section, but will extend beyond the period in which TRA is available, the cooperating State agency must determine, under § 618.610(e)(2) (criteria for approval of training), that the worker has sufficient personal resources to complete the training.

(iii) The cooperating State agency must consult the adversely affected worker's comprehensive assessment and IEP, as discussed in § 618.345 (comprehensive assessment) and § 618.350 (IEPs), when determining the length of remedial education the worker needs to return to employment. This paragraph does not preclude the cooperating State agency from approving a training program consisting entirely of remedial education when it is determined to be appropriate for the worker as long as it is consistent with, in particular, § 618.610(c) (criteria for approval of training) that there is a reasonable expectation of sustainable employment following completion of training.

(4) *Exception for certain workers who perform service in the Uniformed Services.* A member of one of the Reserve components of the U.S. Armed Forces means the Army Reserve; Air Force Reserve; Naval Reserve; Marine Corps Reserve; Coast Guard Reserve; Army and Air National Guard when performing duty under Federal authority. A member of one of the Reserve components of the U.S. Armed Forces ordered to perform active duty service in the uniformed services 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 (v) of this section are met. Such a Reserve component member may either resume training upon discharge from active service for whatever training period still remains from the point when the Reservist left training 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 104-consecutive calendar week period, and up to an additional 26 calendar weeks, as needed, to complete approved remedial education (as discussed in § 618.755), for a total not to exceed 130-consecutive calendar weeks. To be eligible to resume, repeat, or begin a new approved training program, the Reservist must meet the following requirements:

(i) The active duty service must be under competent Federal orders and must be involuntary service in support of: a war or national emergency declared by the President or the Congress; an operational mission; a critical mission or requirement of the uniformed services; or other contingencies for which an involuntary activation is deemed necessary.

(ii) The worker must give prior oral or written notice of the active duty service to the cooperating State agency, unless the giving of notice is precluded by military necessity or is otherwise impossible or unreasonable.

(iii) The worker must not have:

(A) received a dishonorable or bad conduct discharge;

(B) received a separation under other than honorable conditions;

(C) received a dismissal under section 10 U.S.C. 1161(a); or

(D) been dropped from the rolls under 10 U.S.C. 1161(b).

(iv) The worker must apply to the cooperating State agency for training within 90 days following release from active duty service, as described in § 618.605(b)(2) (procedures) above. The application may be oral or written.

(v) Upon request of the cooperating State agency, the worker must provide documentation that the worker has not received a dishonorable or other disqualifying discharge upon release from active duty service as described in paragraph (a)(4)(iii) of this section.

(b) *Amending approved training.* The cooperating State agency may, with the approval of the worker, amend a worker's approved training program under the following conditions:

(1) The cooperating State agency determines after reviewing and amending the worker's IEP that—

(i) A course or courses designed to satisfy unforeseen needs of the worker, such as remedial education or new employer skill requirements, are necessary;

(ii) The originally approved training program cannot be successfully completed by the worker;

(iii) The originally approved training program is determined to be of poor quality; or

(iv) Training in another occupation will lead to a better outcome.

(2) The proposed training program meets the criteria for approval of training at § 618.610 (criteria for approval of training), and, specifically, the costs for the amended training program continue to meet the reasonable cost requirement of § 618.610(f).

(3) The amended training program and the originally approved training program combined do not exceed the 104-week limitation, or the 130-week limitation when remedial education is part of the training program, on the duration of training.

(c) *One approved training program per certification.* Except as provided under paragraphs (a)(4) and (b) of this section, no worker may receive more than one approved training program under a single certification.

(d) *Full-time or part-time training.* A cooperating State agency may approve a training program on a full-time or part-time basis.

(1) *Full-time.* Full-time training means that the hours in a day and days in a week of attendance in training are full-time in accordance with the established hours and days of the training provider. If a worker in full-time training has obtained employment (which is not suitable employment as defined in § 618.110, then the worker may choose to continue with such employment if the worker is willing and able to accommodate a full-time training schedule under the training institution's standard for full-time training.

(2) *Part-time.* (i) A cooperating State agency may approve part-time training when the worker has employment which is not suitable employment, or may amend an approved training program from full-time to part-time if a worker obtains employment which is not suitable employment and the worker wants to accept or continue with such employment. A cooperating State agency may also approve part-time training for partially separated workers. In such instances, the time limits under paragraph (a)(3) of this section will continue to apply for receipt of training and TRA (if applicable). Participants seeking approval to attend training on a part-time basis must be employed on at least a part-time basis in employment as defined under the State law of the State in which the worker is employed. The combination of part-time employment and part-time training must represent at least the equivalent of full-time employment as defined by State law. The training approval requirements of § 618.610 (criteria for approval of training) apply to part-time training. In particular, the cooperating State agency must assure, before approving part-time training or the amendment of an approved training program from a full-time to a part-time basis, that the program provides the worker with a reasonable expectation of employment following completion of the training program.

(ii) If the hours of work are reduced so that the combination of part-time employment and part-time training no longer represent the equivalent of full-time employment, the worker may complete that session or semester. However, the training approval must be rescinded beginning with the next session or semester, unless the combination of part-time employment and part-time training represents the equivalent of full-time employment by the start of the next session or semester.

(iii) The cooperating State agency must ensure that the worker, if choosing to engage in part-time employment and part-time training, is informed of the possible negative effects on UI and other TAA benefits, including loss of the HCTC. The cooperating State agency must require a worker to sign a statement (for inclusion in the worker's case file) establishing that the worker has been informed of the potential for reduced benefits.

(e) *Previous approval of training under other law.* Training previously approved for a worker under another State or Federal law or other authority is not training approved under § 618.610. 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 F, but such approval may not be retroactive for any of the purposes of this Part 618, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training, the redetermination or decision must be given effect retroactive to the issuance

of the determination that was reversed; but no costs of training may be paid unless such costs actually were incurred for training in which the individual participated, and no basic nor additional TRA may be paid with respect to any week the individual was not actually participating in the training.

(f) *Training outside the United States.* In no case may a worker be approved for training under this subpart F that is conducted totally or partially at a location outside the United States.

§ 618.620 Selection of training program.

(a) *Standards and procedures for selection of training.* Cooperating State agencies must document the standards and procedures used to select training providers and training programs in which training is approved. The following provisions apply to the selection of a training program other than OJT, customized training, or training in limited demand occupations:

(1) Cooperating State agencies may only approve training for an adversely affected worker if the training is provided by an eligible training provider under WIA, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Cooperating State agencies must follow the applicable requirements under WIA to approve requested training from a provider that is not an eligible training provider.

(3) Cooperating State agencies may approve training in limited demand occupations with a provider that has not been approved as an eligible training provider if the provider meets the requirements described at § 618.610(c)(4).

(b) *Methods of training.* Eligible adversely affected workers must be provided training using either one or a combination of the following methods:

(1) *Firm-specific retraining program.* To the extent practicable and before referring a worker to approved training, the cooperating State agency must consult with the adversely affected worker's firm and certified or recognized union, or other authorized representative, to identify if there is suitable employment at the worker's firm for which the worker can be retrained. If such suitable employment is identified, the cooperating State agency must determine whether there is training available that meets the firm's staffing needs and preserves or restores the employment relationship between the worker and the firm. That other employers in the area have no need for workers in a specific occupation for which training is undertaken does not preclude approval of a training program for such occupation with the adversely affected worker's firm.

(2) In the event that firm-specific retraining is not practical, preference should be given to on-the-job training under § 618.635 (enrollment in OTJ and customized training), which may include related education necessary to acquire skills needed for a position within a particular occupation, in the firm or elsewhere. In determining whether to approve on-the-job training, the cooperating State agency must consider the six criteria in § 618.610 (criteria for approval of training), the availability of on-the-job opportunities and the worker's need for remedial education, and inform the worker of the effect of such training on eligibility for HCTC;

(3) Customized training; and

(4) Institutional training, with priority given to providing the training in public area vocational and technical education schools, as well as community colleges, if it is determined that such schools are at least as effective and efficient as other institutional alternatives. This also includes distance learning 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.

(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) Any program of remedial education, including adult basic education courses and other remedial education courses, English as a Second Language (ESL) courses, and General Equivalency Diploma (GED) preparation courses offered through community colleges or other training vendors;

(2) Vocational and technical education and apprenticeships;

(3) Any training program approvable under § 618.610 for which all, or any portion, of the costs of training the worker are paid—

(i) Under any other Federal or State program other than this subpart F, or

(ii) From any source other than this part; and

(4) Any other training program approved by the Department.

§ 618.625 Payment restrictions for training programs.

The cooperating State agency must (subject to the cap on training funds under section 236(a)(2)(A) of the Act) provide for payment of the costs of an adversely affected worker's training approved under § 618.610 (criteria for approval of training) as provided in this section. The Department may use a formula to distribute to States training funds for adversely affected workers.

(a) *Funding of training programs.* The costs of a training program approved under the Act may be paid—

(1) Solely from TAA funds,

(2) Solely from other public or private funds (except as prohibited in paragraph (d) of this section), or

(3) Partly from TAA funds and partly from other public or private funds (except as prohibited in paragraph (d) of this section).

(b) *No duplication of costs allowed.* (1) Any use of TAA funds to duplicate the payment of training costs in any circumstances is prohibited.

(2) *Procedures.* When the direct costs of a training program approvable under § 618.610 (criteria for approval of training) are payable from TAA funds and are also wholly or partially payable from any other source, the cooperating State agency must establish procedures that ensure TAA funds will not duplicate funds available from the other source(s), but this preclusion of duplication does not prohibit and must not discourage sharing of costs under prearrangements authorized under paragraph (c)(2) of this section.

(c) *Cost sharing permitted.* (1) Sharing the future costs of training is authorized where prior costs were paid from another source, but this paragraph (c)(1) does not authorize reimbursement from TAA funds of any training costs which were incurred, and for which payment became due, before the approval of the training program under § 618.610 (criteria for approval of training).

(2) *Prearrangements and agreements.* (i) Where training costs are shared between the TAA program and any other source, the cooperating State agency must enter into a prearrangement with the other funding source to agree upon the mix of TAA funds and other funds to be used to pay the costs of a training program approved under § 618.610 (criteria for approval of training). A prearrangement must be a specific, binding agreement from the other sources to pay the costs they agree to assume, and must be entered into before any TAA funds are obligated. If, after TAA funds are committed to a training program, other funds become available to pay for that training, the

cooperating State agency must enter into an agreement with the other funding source specifying how the training program will be funded.

(ii) Before approving any training program under subpart F of this part, which may involve the sharing of training costs under the authority of paragraph (a)(3) of this section, the cooperating State agency must require the worker to enter into a written agreement with the cooperating State agency, under which TAA 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.

(3)(i) A cooperating State agency may not take into account, in determining whether training costs are payable from TAA funds, any payments to the worker under any other Federal law, such as Federal student financial assistance as defined in § 618.110, which may have the effect of indirectly paying all or a portion of the training costs.

(ii) If payments of Federal student financial assistance and other training allowances from other Federal funding sources are made to the training provider instead of the worker and are used for training costs, then such payments must be taken into account as direct payment of the training costs under another Federal law for purposes of this section.

(d) *No training fees or costs to be paid by worker from TAA funds.* (1) A training program must not be approved under the Act if—

(i) All or a portion of the costs of such training program are paid under any nongovernmental plan or program; and

(ii) The adversely affected worker has a right to obtain training or funds for training under such plan or program; and

(iii) Such plan or program requires the worker to reimburse the plan or program from funds provided under the Act, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(2)(i) No training program may be approved under § 618.610 (criteria for approval of training) if the worker is to, or may, pay any of the costs of a training program from any other funds belonging to the worker from any source, except as provided in paragraph (d)(2)(ii) of this section.

(ii) When the Director determines that all available funds under section 236(a)(2)(A) of the Act have been allocated, the Director will promptly publish a notice in the **Federal Register** announcing that determination. A cooperating State agency must then seek funding from other sources (other than from adversely affected workers), including WIA national emergency grants for dislocated workers under 20 CFR part 671, to cover the costs of training approved under § 618.610. To the extent that a cooperating State agency is unable to fund training costs from those other sources, the agency may approve training under § 618.610 where the worker pays those unfunded costs. Where the worker chooses to pay those unfunded costs, the cooperating State agency is not liable for paying those costs. Where the worker chooses not to pay the unfunded costs, the cooperating State agency must waive the training requirement on the basis that training is not available, in order to preserve any remaining basic TRA eligibility under § 618.725(b)(6) (waiver of training requirement for basic TRA).

(iii) If an employer or other entity agrees to fund training costs under conditions that may make the worker liable for all or a portion of those costs under certain conditions, the cooperating State agency may, if the training is otherwise approvable, contract with the employer or other entity to assume any unfunded costs on the worker's behalf.

§ 618.630 Training of reemployed workers not in suitable employment.

(a) An adversely affected worker who obtains new employment that is not suitable employment, as defined in § 618.110, and has been approved for training under § 618.610 (criteria for approval of training) may elect to terminate the job, reduce the hours worked in the job, or continue in full- or part-time employment. Such a worker must not be 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 undertaking training is considered to be in training under § 618.765(b) (disqualifications). If the worker continues in full- or part-time employment that is not suitable employment while undertaking approved training, the cooperating State agency must inform the worker in writing that such employment may have negative effects on UI and other TAA benefits due to disqualifying income, which could also include the possible loss of the HCTC.

(b) An adversely affected worker described in paragraph (a) of this section may also be eligible for job search and relocation allowances.

§ 618.635 Enrollment in on-the-job and customized training.

(a) *On-the-job training (OJT).* (1) *Description.* On-the-job training is training provided by an employer to an adversely affected worker who has been hired by the employer. OJT is conducted while the worker is engaged in productive work in a job that provides knowledge or skills essential to the full and adequate performance of the job. OJT is provided under a contract with an employer in the public or private sector.

(2) *Related education.* In providing OJT, the cooperating State agency, insofar as possible, must ensure the provision of related education necessary for the acquisition of skills needed for a position within the occupational goal in the worker's IEP. Such related skills training may be provided as part of the on-the-job training contract or separately. Classroom training (also known as vestibule training) sponsored by the employer may be provided prior to or in conjunction with OJT to ensure the participant has sufficient working vocabulary and concepts of the employer's industry or firm, or has a basic understanding of such things as applicable safety rules and regulations prior to on-site training. Such training may be provided at the employment site or at educational institutions or other locations. Such classroom or vestibule training may be conducted for a portion of the day, to be followed by on-site OJT.

(3) *Duration.* The worker's IEP and 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 adversely affected worker is being trained, taking into account the content of the training, the worker's prior work experience, and the worker's skills as documented in the IEP. The duration of the training must allow enough time 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.

(4) *Reimbursement.* (i) Under an OJT contract, the employer may be reimbursed not more than 50 percent of the worker's wage rate for a maximum 40-hour work week (including hours spent in classroom or vestibule training conducted by the employer or the employer's representatives) for the cost of providing the training and additional supervision related to the OJT.

(ii) The reimbursement for OJT must be limited to the duration of approved training as specified in the OJT contract.

(5) *Approval of the Costs of OJT.* OJT costs for an adversely affected worker may be approved by a cooperating State agency 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 non-overtime work, wages, or employment benefits) by the adversely affected worker;

(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 adversely affected worker is being trained;

(v) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce with the intention of filling the vacancy created by hiring the adversely affected worker;

(vi) The job for which the adversely affected worker 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 adversely affected worker was separated and with respect to which such worker's group was certified; and

(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 which failed to meet the requirements of paragraphs (a)(5)(i) through (a)(5)(vi) of this section or the requirements of the other Federal laws governing employment practices.

(6) *Payment of the costs of OJT.* The costs of OJT that are paid from TAA funds must be paid in equal monthly installments. To meet the requirement that payments be made in equal monthly installments, a cooperating State agency must either pay OJT costs in equal monthly dollar amounts or, alternatively, compute the monthly payments at the same rate. For the latter, payments based upon the number of hours of paid work up to a maximum of 40 hours a week during the month and then multiplied by the agreed-upon rate of payment are equal monthly installments in that the payment for each month is computed at the same rate.

(7) Under § 618.765(c), an adversely affected worker may not be paid TRA for any week during which that worker is in OJT and, therefore, may be ineligible for the HCTC.

(b) *Customized training.* Customized training may be conducted by a training vendor, and is training that is:

(1) Designed to meet the special requirements of one or more employers;

(2) Conducted with a commitment by the employer(s) to employ an adversely affected worker upon successful completion of the training; and

(3) For which the employer(s) pay(s) for a significant portion (but in no case less than 50 percent) of the cost of such training as determined by the cooperating State agency and consistent with similar policies established under WIA by the State Workforce Investment Board and Local Workforce Investment Board for the local workforce investment area.

§ 618.640 Subsistence and transportation payments.

(a) *General.* Subsistence and transportation payments must be provided to an adversely affected worker whose training has been approved under § 618.610 (criteria for approval of training) to defray reasonable subsistence and transportation expenses while the worker attends a training program at a facility outside the worker's commuting area. The need for such subsistence and transportation payments must be identified in the worker's IEP as described in § 618.350 (IEPs).

(b) *Applications for subsistence and transportation payments.* An adversely affected worker must submit an application for any subsistence or transportation payments in accordance with this section on forms furnished by the cooperating State agency. A determination on an application made under this section is subject to § 618.825 (determinations and notice) and § 618.835 (appeals and hearings).

(c) *Subsistence payments.* (1) *General.* Subsistence payments must be made for the costs of separate maintenance, which means maintaining another (second) residence, when the training facility is located outside the adversely affected worker's commuting area.

(2) *Requirements for subsistence payments.* (i) An adversely affected worker must receive subsistence payments only for the period when he or she is not receiving or authorized to receive reimbursement or separate payments for such costs from any other source; and

(ii) No subsistence payment may be made for any day for which such worker receives a daily commuting transportation allowance from TAA funds or from any other source or any day of unexcused absence as certified by the training institution.

(3) *Amount of subsistence payments.* The cooperating State agency may pay subsistence to an adversely affected worker only for the lesser of:

(i) The adversely affected worker's actual per diem expenses for subsistence, or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (*see* 41 CFR parts 301 through 304) for the training facility.

(4) *Timing of subsistence payments.* The cooperating State agency must make subsistence payments upon an adversely affected worker's completion of a week of training, but may advance a subsistence payment for a week if it determines that such advance is necessary to enable an adversely affected worker to participate in training.

(d) *Transportation payments.* (1) *General.* Travel for which a transportation payment must be paid includes travel:

(i) At the beginning and end of the training program located outside the commuting area, where the adversely affected worker lives at or near the training site and will not commute daily to his or her permanent residence;

(ii) In order to return to the worker's permanent residence when the worker fails with justifiable cause (as described in § 618.765(b)(3)(iii)) to complete a training program located outside the worker's commuting area; and

(iii) When the worker travels daily beyond the commuting area, and receives transportation payments in lieu of subsistence. In such cases, the daily transportation payment must not exceed the amount otherwise payable as subsistence for each day of commuting.

(2) *Requirements for transportation payments.* An adversely affected worker must receive payments for transportation expenses when commuting to and from the training facility outside the commuting area. Transportation payments will only be made when the total amount of such payments will not exceed the total amount of subsistence payments that would be made if the adversely affected worker were to maintain a residence within the commuting area of the training facility. Transportation payments are payable only for the actual days traveled. Transportation payments must not be paid when:

(i) Transportation is arranged and paid for by the cooperating State agency for one or more workers,

(ii) Such payments are being provided under any other law, or

(iii) The adversely affected worker is authorized to be paid or reimbursed for such expenses from any other source.

(3) *Amount of transportation payments.* Such transportation payments to an adversely affected worker must not exceed the lesser of:

(i) The actual cost for travel by the least expensive means of public transportation reasonably available, or

(ii) The cost per mile at the prevailing personal vehicle mileage rate authorized under the Federal travel regulations (*see* 41 CFR parts 301 through 304). See also Travel on Government Business, Privately Owned Vehicle Reimbursement Rate at: *http://www.gsa.gov*. Cost per mile payments are solely for those miles beyond the commuting area as defined at § 618.110.

(4) *Timing of transportation payments.* (i) An adversely affected worker must receive transportation payments after completion of a week of training approved under § 618.610 (criteria for approval of training). However, such payment may also be made in advance to facilitate the worker's attendance at the training institution.

(ii) An adversely affected worker receiving subsistence payments may also receive transportation payments only:

(A) At the beginning and end of the training program outside the daily commuting area, or

(B) When the adversely affected worker fails for justifiable cause (as described in § 618.765(b)(3)(iii)) to complete the training program and must return home before the end of the training program.

(e) *Adjustments to subsistence and transportation payment advances.* The cooperating State agency must adjust subsistence and/or transportation payments if it advances funds and the amount of the advance is more or less than the amount to which the adversely affected worker is entitled to receive under paragraphs (c)(3) and (d)(3) of this section.

§ 618.645 Voluntary withdrawal from a training program.

(a) The cooperating State agency must advise an adversely affected worker who chooses to withdraw from approved training that the worker's eligibility for TAA training (even though it was not completed) is terminated and the worker will not be able to resume the training program, except as provided in § 618.615(a)(4) (limitations on approval of training) except that if a worker ceases participation in training for justifiable cause, as described in § 618.765(b)(3)(iii) (disqualifications), the worker may resume the approved training program if the program can be completed within the 104 or 130-week period described in § 618.615(a)(3)(i).

(b) The 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 § 618.515 (relocation allowances).

§ 618.650 State training cost caps.

(a) A cooperating State agency may set a statewide or local area limit on the amount of training costs payable for training programs. If such limits are used, the methods used for calculating such limits must be documented and the limits must reasonably take into account the costs for training available in the local areas throughout the State. Factors that may be taken into account include average historical costs of training available from eligible training providers, costs of training for work force needs in high growth and high demand industries, and the overall labor prospects. The cooperating State agency must develop standards and procedures for the review and approval of training costs that exceed established limits, based on individual and exceptional circumstances.

(b) The cooperating State agency must review any established limits on an annual basis to determine whether they continue to be appropriate and change or end such limits if warranted.

(c) Whenever a cooperating State agency establishes, changes, or ceases using State-established limits on training costs payable under paragraph (a) of this section, the cooperating State agency must send written notice and full documentation supporting its action to the Director for review. Unless the Department notifies the cooperating State agency, otherwise, in writing, within 30 calendar days of receipt of such documentation, the cooperating State agency may establish, change, or end such limits.

(d) The liable State will adhere to the agent State's training cost caps, if any, when approving training programs in the agent State.

§ 618.655 Training services and the TAA for Farmers program.

(a)(1) An agricultural commodity producer entitled to receive a cash benefit under a certification under the TAA for Farmers program administered by the U.S. Department of Agriculture (*see* 7 CFR part 1580) is entitled to training under this subpart F where the cooperating State agency determines that training approval criteria 2 through 6 (§§ 618.610(b) through (f)) are met.

(2) With the exception of training approval criterion 1 (§ 618.610(a)), all the provisions of subpart F of this Part apply to training for an agricultural commodity producer under paragraph (a)(1) of this section.

(3)(i) An agricultural commodity producer is not entitled to training under subpart F of this Part where that individual obtains work of a substantially equal or higher skill level than his or her past work as an agricultural commodity producer and wages for such work at not less than 80 percent of the agricultural commodity producer's average weekly income.

(ii) The average weekly income will be determined based upon the most recent tax year that has ended for the individual prior to the agricultural commodity producer's notice of entitlement to a cash benefit under the TAA for Farmers program. The average weekly income will be obtained by dividing by 52 the net income reported on the agricultural commodity producer's tax return as income from all self-employment. In the event that the agricultural commodity producer filed a joint return, the average weekly income will be determined based upon the share of that self-employment income attributable to that individual.

(b) The cooperating State agency must, upon receiving an application for training by an agricultural commodity producer, verify the individual's entitlement to a cash benefit under the TAA for Farmers program in accordance with procedures established by the Department of Labor.

(c) An agricultural commodity producer receiving training under paragraph (a) of this section is entitled to subsistence and transportation payments in accordance with § 618.640 where the cooperating State agency determines that the requirements of that section are met.

(d) An agricultural commodity producer entitled to a cash benefit in multiple years for the same commodity is not entitled to a different training program under each certification. Only one training program is allowed per affected commodity, except as provided under § 618.615(a)(4) (regarding certain workers who perform service in the Uniformed Services) and § 618.615(b) (on amending approved training programs).

(e) An agricultural commodity producer establishing entitlement to a cash benefit in accordance with

paragraph (a)(2) of this section is entitled to employment services under subpart C of this part, but is not entitled to any other benefits under the TAA program, including TRA under subpart G, job search allowances under subpart D, relocation allowances under subpart E, or ATAA.

Subpart G—Trade Readjustment Allowances

§ 618.700 Scope.

This subpart explains the requirements for eligibility for and the amounts and duration of basic TRA, additional TRA, and remedial TRA, all of which are income support in the form of cash payments for an adversely affected worker after such worker exhausts all rights to UI (except for additional compensation, as defined in § 618.110).

§ 618.705 Categories of TRA.

(a) *Basic TRA.* Basic TRA is payable to an adversely affected worker who meets the requirements of § 618.715 (qualifying requirements for basic TRA). Basic TRA is payable for weeks of unemployment after the worker meets the criteria for exhaustion of UI under § 618.715(e); and, consistent with § 618.720 (training requirement for receipt of basic, additional, and remedial TRA), for weeks of unemployment during which the worker either is enrolled in, is participating in, or has completed training (including, if necessary, remedial education) approved under subpart F of this part 618, or has received from the State agency a waiver of the training requirement (under § 618.725).

(b) *Additional TRA.* Additional TRA is payable to an adversely affected worker who meets the requirements of § 618.750 (qualifying requirements for, and duration of, additional TRA). Additional TRA is payable only for weeks of unemployment during which the worker is participating in a training program, whether remedial education or other training, approved under subpart F of this part 618 and only after the worker has exhausted all rights to basic TRA.

(c) *Remedial TRA.* Remedial TRA is payable to an adversely affected worker who meets the requirements of § 618.755 (qualifying requirements for, and duration of, remedial TRA). Remedial TRA is payable only for weeks of unemployment during which the worker is participating in a training program, whether remedial education or other training, approved under subpart F of this part 618. Remedial TRA is payable only after the worker has exhausted all rights to basic and additional TRA.

(d) *Nonduplication of TRA.* An adversely affected worker may receive only one form of TRA (basic, additional, or remedial) for a given week of unemployment.

§ 618.710 Applications for TRA and payment.

(a) *When a worker may apply for TRA.* A worker may apply to the cooperating State agency for TRA if the worker is covered under either a certification or, if before a certification is issued, a pending petition for certification.

(b) *Determinations on TRA applications that are filed before certification issued.* The cooperating State agency must make those determinations necessary to establish or protect an individual's potential entitlement to TRA and, if necessary, to protect the worker's eligibility for the HCTC. These determinations may include determinations on enrollment in training and determinations on waivers. If a determination is made before a certification is issued, the cooperating State agency must advise the worker that eligibility for the benefits that are the subject of the determination is contingent on the issuance of a certification.

(c) *Timing of TRA application after certification issued.* For TRA applications filed after a certification covering a worker is issued, an initial application for TRA, as well as applications for TRA for weeks of unemployment beginning before the initial application for TRA is filed, may be filed within a reasonable period of time after publication of the determination certifying a group of workers as eligible to apply for TAA or TAA and ATAA . However, an application for TRA for a week of unemployment beginning after the initial application is filed must be filed within the time limit applicable to claims for regular compensation under the applicable State law. For purposes of this paragraph (c), a reasonable period of time means such period of time as the adversely affected worker had good cause for not filing earlier, which may include, but need not be limited to, such worker's lack of knowledge of the certification or misinformation supplied such worker by the cooperating State agency.

(d) *Applicable procedures.* Applications must be filed in accordance with this subpart G and on forms furnished to workers by the cooperating State agency. The procedures for reporting and filing applications for TRA must be consistent with this part 618 and with the Secretary's ''Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services,'' *Employment Security Manual*, Part V, sections 5000 *et seq.* (Appendix A of Part 617 of this chapter).

(e) *Treatment of Determinations.* Determinations on TRA applications are determinations to which §§ 618.625 (determinations and notice), 618.830 (liable and agent State responsibilities), and 618.835 (appeals and hearings) of subpart H apply. Copies of such applications for TRA and all determinations by the cooperating State agency on such applications, must be included in the adversely affected worker's case record.

(f) *Payment of TRA.* (1) A cooperating State agency must not make any payment of TRA (or other TAA) until a certification is issued and the cooperating State agency determines that the worker is covered thereunder; and

(2) The first week any adversely affected worker may be entitled to a payment of TRA is the first week beginning more than 60 days after the date of the filing of the petition that resulted in the certification under which the adversely affected worker is covered.

§ 618.715 Qualifying requirements for basic TRA.

To qualify for basic TRA for a week of unemployment, an individual must meet each of the requirements in paragraphs (a) through (h) of this section:

(a) *Certification.* The individual must be an adversely affected worker covered under a certification;

(b) *Separation.* The adversely affected worker's first qualifying separation (as defined in § 618.110) must occur on or after the impact date of the certification and before the expiration of the two year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification;

(c) *Wages and employment.* The adversely affected worker 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 adversely affected worker's first qualifying separation (as defined in § 618.110), or any subsequent qualifying separation (as defined in § 618.110) under the same certification, 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 this requirement must be obtained as provided in § 618.730 (maximum amount of basic TRA). Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(2) The following categories of weeks also must be treated as weeks of employment at wages of $30 or more, regardless of whether the adversely affected worker actually receives any wages during such weeks, for purposes of this paragraph (c):

(i) All weeks, up to a maximum of 7 weeks, during which the adversely affected worker 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 adversely affected worker had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision.

(iii) All weeks, up to a maximum of 26 weeks, during which the adversely affected worker has a disability compensable under a workers' compensation law or plan of a State or the United States.

(iv) All weeks, up to a maximum of 26 weeks, during which the adversely affected worker is on call-up for the purpose of active duty, if such active duty is ''Federal service'' as defined in § 614.2(g) of this chapter, in a reserve status in the Armed Forces of the United States.

(3) Wages and employment creditable under this paragraph (c) must not include employment, or wages earned or paid for employment, which is contrary to or prohibited by any Federal law.

(d) *Entitlement to UI.* The adversely affected worker 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 as defined in § 618.110;

(e) *Exhaustion of UI.* The adversely affected worker must meet the following two requirements:

(1) The adversely affected worker must have exhausted all rights to any UI, except additional compensation that is funded by a State and not reimbursed from any Federal funds (*see* § 618.110), to which such worker was entitled (or would have been entitled had such worker applied therefor). Thus, whenever an adversely affected worker becomes entitled (or would become entitled if the worker applied therefor) to any type of UI (as defined in § 618.110), except additional compensation funded by a State and not reimbursed from any Federal funds, after the start of the adversely affected worker's receipt of TRA, then payment of TRA must be suspended until such worker exhausts entitlement to such UI. After the adversely affected worker exhausts that entitlement, as set forth in § 618.240(a), payments of TRA to which the worker is still entitled may resume.

(2) The adversely affected worker must have no unexpired waiting period applicable to such worker for any UI, except additional compensation (as defined in § 618.110) that is funded by a State and is not reimbursed from any Federal funds.

(f) *Extended Benefit work test.* The adversely affected worker must be able and available for work, as defined in the applicable State law for UI claimants, and must meet the Extended Benefit (EB) work test requirements by the means described in this paragraph (f), unless any exception described in paragraph (f)(2) of this section applies:

(1) The EB work test requirement must be met by:

(i) Registering for work with the State, in accordance with those provisions of the applicable State law which apply to EB claimants and which are consistent with part 615 of this chapter,

(ii) Applying for any suitable work, as defined in § 618.110, to which the adversely affected worker is referred by the State,

(iii) Actively engaging in seeking work,

(iv) Furnishing the State with tangible evidence of work search efforts each week, and

(v) Accepting any offer of suitable work.

(2) The able and available requirement and the EB work test requirement do not apply for purposes of TRA eligibility—

(i) When the adversely affected worker is enrolled or participating in a training program approved under Subpart F of this Part 618, or,

(ii) During a break in training that does not exceed 30 days as counted in accordance with § 618.760(b), 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 which begins before the adversely affected worker is notified that such worker is covered by a certification issued under the Act 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 with respect to any such week except as provided in paragraphs (f)(2)(i) and (f)(2)(ii) of this section for adversely affected workers enrolled in, or participating in, a training program approved under subpart F.

(g) *Unemployed.* The adversely affected worker must be unemployed, as defined in the applicable State law for UI claimants.

(h) *Participation in approved training.* The adversely affected worker must be enrolled in, participating in, or have completed, training under the requirements of § 618.720 (training requirement for receipt of basic, additional, and remedial TRA), unless, with respect to basic TRA, these requirements are waived under § 618.725. This participation in approved training requirement does not apply as a condition for receiving basic TRA before the applicable deadline under § 618.720(c).

§ 618.720 Training requirement for receipt of basic, additional, and remedial TRA.

(a) *Basic TRA.* As a condition for receiving basic TRA, except before the applicable deadline under paragraph (c) of this section, the adversely affected worker, after a total or partial separation from adversely affected employment within the certification period of a certification issued under this part 618, must—

(1) Be enrolled in (as explained in paragraph (e)(1) of this section) a training program approved under subpart F of this part 618; or

(2) Be participating in (as explained in paragraph (e)(2) of this section) a training program approved under subpart F of this part 618; or

(3) Have completed (as explained in paragraph (e)(3) of this section) a training program approved under subpart F of this part 618; or

(4) Have a waiver granted under § 618.725 in effect.

(b) *Additional and remedial TRA.* As a condition for receiving additional or remedial TRA, the adversely affected worker must be participating in a training program approved under subpart F of this part 618, as explained in paragraph (e)(2) of this section.

(c) *Enrollment in training deadlines.* As a condition for receiving basic, additional, or remedial TRA, the adversely affected worker must be enrolled in a training program approved under subpart F of this part 618 (unless, in the case of basic TRA, a waiver

granted under § 618.725 is in effect) no later than the latest of:

(1) The last day of the 16th week after the adversely affected worker's most recent qualifying separation as defined in § 618.110; or

(2) The last day of the 8th week after the week in which the certification was issued; or

(3) The last day of the 30-consecutive calendar day period following the termination or revocation of a waiver under § 618.725; or

(4) 45 days after the later of the dates specified in paragraphs (c)(1) or (c)(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 unusual situations that are beyond the direct control of the adversely affected worker, and that make enrollment within the otherwise applicable deadline impossible or impractical. They include, but are not limited to, the following:

(i) Abrupt cancellation of the training program by the training provider;

(ii) The first available enrollment date is after the deadline specified in paragraphs (c)(1) or (c)(2) of this section;

(iii) The adversely affected worker suffers injury or illness that prevents his or her ability to enroll; or

(iv) Failure of the cooperating State agency to notify the adversely affected worker of the petition certification and/or training enrollment deadlines.

(5) An adversely affected worker who is not enrolled in training may receive basic TRA before the expiration of the applicable deadline under this paragraph (c).

(d) *Exceptions.* (1) The requirement of paragraph (a) of this section that a worker be enrolled in, or participating in, training does not apply to an adversely affected worker with respect to claims for basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA within a reasonable period of time as provided in § 618.710(c), nor for any week which begins before the worker is notified that the individual is covered by a certification issued under the Act and is fully informed of the requirements of this section.

(2)(i) The enrollment in training deadlines of paragraph (c) of this section do not apply where a cooperating State agency's negative determination on an initial application for TRA under subpart G of this part 618 has been reversed through redetermination or appeal; the delay in obtaining the reversal is not attributable to the adversely affected worker; and the adversely affected worker is unable to meet the enrollment in training deadlines because of the delay in obtaining the reversal of the negative determination.

(ii) Where the conditions of paragraph (d)(2)(i) of this section are met, the worker will have until the last day of the 8th week after the week in which the negative determination was reversed in which to enroll in training.

(e) For purposes of the training requirement in paragraphs (a) and (b) of this section, the following provisions apply:

(1) A worker is ''enrolled in training'' if the cooperating State agency has approved an application for training and the training institution has furnished written notice that the worker has been accepted into the approved program, which is scheduled to begin within 30 calendar days of the approval of the training application.

(2) An adversely affected worker is ''participating in training'' if—

(i) The worker is either attending and participating in all scheduled classes, required activities, and required events, or the training institution has excused the worker's absence or failure to participate in accordance with its written policies. After the close of each month during which the training program is in session, the training institution must certify in writing to the cooperating State agency whether, for each week ending during the prior month, the worker has attended and participated in all scheduled classes, required activities, and required events or whether it has excused the worker's absence in accordance with it written policies; or

(ii) In the case of distance learning, the worker is either meeting all the requirements of the training institution in accordance with its rules, regulations, and standards, or the training institution has excused the worker's failure to meet those requirements in accordance with its written policies. After the close of each month during which the training program is in session, the training institution must certify in writing to the cooperating State agency whether, for each week ending during the prior month, the worker has met all the requirements of the training institution, or whether it has excused the worker from those requirements in accordance with its written policies; or

(iii) For any week during a break in training, if all of the requirements of § 618.760 (concerning payment of TRA during breaks in training) are met.

(3) An adversely affected worker has ''completed training'' if—

(i) The training program was approved under subpart F of this part 618; and

(ii) The training program was completed after the worker's total or partial separation from adversely affected employment within the certification period of a TAA certification; and

(iii) The training provider has certified that all the conditions for completion of the training program have been satisfied.

§ 618.725 Waiver of training requirement for basic TRA.

(a) *Waiver for basic TRA.* A cooperating State agency may issue a written waiver of the requirement in § 618.720 that an adversely affected worker be enrolled or participating in 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 remedial TRA eligibility. Waivers must be issued no later than the latest of the applicable deadlines described in § 618.720(c).

(b) *Bases for a waiver.* The cooperating State agency, in order to issue a written waiver to an adversely affected worker, must conclude, after conducting an assessment of such worker, that training is not feasible or appropriate for one or more of the following reasons, which must be cited in the written waiver:

(1) The adversely affected worker has been notified that he or she will be recalled to the same or substantially the same position by the firm from which the separation occurred, and the recall is expected to be permanent. A recall for purposes of this paragraph (b)(1) means that the employer who separated the worker from adversely affected employment has issued a specific recall whereby the employer notified the adversely affected worker, or a group of workers including such worker, to return to work on a certain date or within a specified time period.

(2) The adversely affected worker has marketable skills and there is a reasonable expectation of suitable employment (as defined in § 618.110) within the foreseeable future.

(3) The adversely affected worker is within 2 years of meeting all requirements for entitlement to either:

(i) Full or partial retirement old-age insurance under title II of the Social Security Act (42 U.S.C. 401 *et seq.*)

(except for the requirement of application therefor); or

(ii) A private pension sponsored by an employer or labor organization.

(4) The adversely affected worker is unable to participate in a training program for health reasons. 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 UI laws.

(5) The first available enrollment date for training is within 60 days after the date on which a waiver determination is made, or, if later, there are extenuating circumstances, as determined under the criteria in § 618.720(b)(4) (training requirement for basic TRA), that apply to the delay in enrollment in training.

(6) Training is not reasonably available from governmental or private sources (which may include area vocational education schools, as defined in § 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), or suitable training is not available at a reasonable cost, or training funds are unavailable.

(c) *Contents of a waiver.* A waiver issued under this section may not take effect unless it contains, at a minimum, the following information:

(1) The adversely affected worker's name and the worker's social security number or another identifying designation used by the State;

(2) The name and location of the worker group and the petition number under which the adversely affected worker's group was certified;

(3) A statement of the reasons why training is not feasible or appropriate for the adversely affected worker, citing to one or more reasons identified in paragraph (b) of this section;

(4) The effective date and expiration date of the waiver;

(5) A statement that the waiver must be revoked immediately upon a determination that the basis or bases for the waiver no longer apply; and

(6) The signature of an official of the cooperating State agency authorized to grant the waiver, and the signature of the adversely affected worker or other evidence of the worker's receipt of the waiver to acknowledge such worker's receipt of the waiver.

(d) *Denial of a waiver.* In any case where the cooperating State agency denies a request (whether or not made by the adversely affected worker to whom the request pertains) that a waiver under this section be issued, the adversely affected worker to whom the denial pertains must be furnished with a written notice of the denial of waiver. The cooperating State agency must afford such worker the right to appeal the denial of a waiver. The written notice of denial of waiver must contain, at minimum, the information in paragraphs (c)(1), (c)(2) and (c)(6) of this section; the specific reason(s) for the denial; the date of the denial; and notice of the adversely affected worker's appeal rights.

(e) *Duration of a waiver issued under this section.* (1) A waiver issued under this section may be for a period not to exceed 6 months, or the worker's period of basic TRA entitlement, whichever comes first, and must be reviewed every 30 days to determine if one or more of the bases in paragraph (b) of this section continue to apply.

(2) Notwithstanding the 6-month limitation in paragraph (e)(1) of this section, a cooperating State agency may extend an adversely affected worker's waiver beyond 6 months, only 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.

(f) *Revocation of a waiver.* The cooperating State agency must revoke a waiver issued under this section if the waiver criteria are no longer met. The cooperating State agency must notify the adversely affected worker in writing of any such revocation. The notice of revocation must be appealable and must contain the same information as a denial of waiver issued under paragraph (d) of this section as appropriate.

(g) *Submission of waivers and notices.* The cooperating State agency must submit to the appropriate Regional Administrator, upon request, a copy of any or all waivers issued under this section together with a statement of reasons for each such waiver, and a copy of any or all notices of revocation of waiver issued under this section together with a statement of reasons for each such revocation.

§ 618.730 Evidence of qualification for basic, additional, and remedial TRA.

(a) *Cooperating State agency action.* When a worker applies for basic, additional, or remedial TRA, the cooperating State agency having jurisdiction under § 618.825 (determinations of eligibility) must obtain information necessary to establish:

(1) Whether the worker meets the qualifying requirements in § 618.715 for basic TRA, in § 618.750 for additional TRA, or in § 618.755 for remedial TRA;

(2) For a worker claiming to be partially separated, the average weekly hours (as defined in § 618.110) and average weekly wage (as defined in § 618.110) in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from cooperating State agency records or from any employer, the cooperating State agency must require the worker to submit a signed statement setting forth such information as may be required for the cooperating State agency 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 worker to be true to the best of the worker's knowledge and belief and must be supported by evidence such as W–2 Forms, paycheck stubs, union records, income tax returns, or statements of fellow workers, and must, if possible, be verified by the employer.

(d) *Determinations.* The cooperating State agency must make the necessary determinations on the basis of information obtained under this section, except that if, after reviewing information obtained under paragraph (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 basis of the best available information.

§ 618.735 Weekly amounts of basic, additional, and remedial TRA.

(a) *Regular allowance.* The amount of basic, additional, or remedial TRA payable for a week of total unemployment (including a week of training approved under subpart F of this part 618) is an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the individual for a week of total unemployment preceding the individual's exhaustion of UI following the individual's first qualifying separation (as defined in § 618.110); except that—

(1) In a State in which weeks of UI are paid in varying amounts related to wages with separate employers, the weekly amount of TRA must be calculated as it would be to pay extended compensation; and

(2) Where a State calculates a base 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.

(b) *Increased allowance.* An adversely affected worker in training approved under subpart F of this part 618 who is thereby entitled for any week to TRA and a training allowance under any other Federal law for the training of workers will be paid in the amount computed under paragraph (a) of this section or, if greater, the amount to which the adversely affected worker would be entitled under such other Federal law if such worker applied for such allowance. A payment under this paragraph (b) is in lieu of any training allowance to which the adversely affected worker 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;

(2) The amount of a training allowance (other than a training allowance referred to in paragraph (b) of this section) under any Federal law that the adversely affected worker receives for such week, except that no reduction of the TRA weekly amount will be made for the receipt of Federal student financial assistance (as defined in § 618.110), and that in the case of an adversely affected worker to whom such Federal student financial assistance is available, the State will rely on prearrangements for the sharing of costs under § 618.625(c)(2) (payment restrictions for training programs) in order to harmonize the provision of such Federal student financial assistance with the worker's TRA entitlement; and

(3) 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 workers in approved training.

§ 618.740 Maximum amount of basic TRA.

(a) *General rule.* Except as provided in paragraph (b) of this section, the maximum amount of basic TRA payable to an adversely affected worker is the product of 52 multiplied by the TRA weekly amount for a week of total unemployment, calculated under § 618.735(a) (weekly amounts of TRA), reduced by the total sum of UI (except additional compensation (defined at § 618.110)) that such worker received, or would have received had such worker either applied therefor or not been subject to a disqualification under the applicable State law, in such worker's first benefit period as defined in § 618.110.

(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 § 618.735(a); and

(2) The amount of the difference between the adversely affected worker's weekly increased allowances determined under § 618.735(b) and such worker's weekly amount determined under § 618.735(a).

(c) *Reduction for Federal training allowance.* (1) If a training allowance referred to in § 618.735(c)(2) is greater than the amount of TRA otherwise payable to an adversely affected worker for any week of unemployment with respect to which the worker would be entitled to TRA (determined without regard to any disqualification under § 618.765(b)(2)), if the worker had applied for TRA for such week, then each week must be deducted from the total number of weeks of TRA otherwise payable to such worker, except that no such deduction will be made for the receipt of Federal student financial assistance as defined in § 618.110. In the case of an adversely affected worker to whom such Federal student financial assistance is available, the State will rely on prearrangements for the sharing of training costs under § 618.625(c)(2) in order to harmonize the provision of such Federal student financial assistance with the worker's TRA entitlement.

(2) If the training allowance referred to in paragraph (c)(1) of this section is less than the amount of TRA otherwise payable to the adversely affected worker for such week, such worker must, when applying for TRA for such week, be paid TRA in an amount not to exceed the difference between such worker's regular weekly TRA amount, as determined under § 618.735(a), and the amount of the training allowance paid to such worker for such week. However, if the training allowance referred to in paragraph (c)(1) is Federal student financial assistance as defined in § 618.110, then the amount of TRA will not be reduced. In the case of an adversely affected worker to whom such 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 such Federal student financial assistance with the worker's TRA entitlement.

§ 618.745 Eligibility period for basic TRA.

(a) Except as provided in paragraph (b) of this section, an adversely affected worker 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 adversely affected worker's most recent qualifying separation (defined in § 618.110) occurred. If necessary to permit an adversely affected worker to complete training, approved under subpart F of this part 618, that includes remedial education, that 104-week period will be extended to 130 weeks.

(b) The limitation in paragraph (a) of this section does not apply where a negative determination on a petition filed under subpart B of this part 618 has been appealed to the United States Court of International Trade; and the certification is later granted; and the delay in the certification is not attributable to the petitioner or the adversely affected worker; and the adversely affected worker does not have enough weeks remaining in the eligibility period established under paragraph (a) of this section, together with weeks of entitlement to additional TRA, to extend the duration of the period of TRA eligibility (basic, additional, and remedial) through the completion of training approved under subpart F of this part 618. In that event, the eligibility period for basic TRA will be extended, on a case-by-case basis, as necessary to provide an eligibility period for basic and additional TRA (and remedial TRA, if applicable) through the completion of that training. In no event may the basic TRA eligibility period extend beyond the close of the 104-week period (or, in cases where the worker takes remedial education courses, the 130-week period) beginning with the first week following the week of the certification. Nothing in this paragraph (b) modifies the limitation on the maximum amount of basic, additional, or remedial TRA.

(c) The limitation in paragraph (a) of this section does not apply where a cooperating State agency's negative determination on an application for TRA filed under subpart G of this part 618 has been reversed on redetermination or appeal; the delay in obtaining the reversal is not attributable to the adversely affected worker; and the adversely affected worker does not have enough weeks remaining in the eligibility period established under paragraph (a) of this section, together with weeks of entitlement to additional TRA, to extend the duration of the period of TRA eligibility (basic,

additional, and remedial) through the completion of training approved under subpart F of this part 618. In that event, the eligibility period for basic TRA will be extended, on a case-by-case basis, as necessary to provide an eligibility period for basic and additional TRA (and remedial TRA, if applicable) through the completion of that training. In no event may the basic TRA eligibility period extend beyond the close of the 104-week period (or, in cases where the worker takes remedial education courses, the 130-week period) beginning with the first week following the week of the reversal. Nothing in this paragraph (c) modifies the limitation on the maximum amount of basic, additional, or remedial TRA.

§ 618.750 Qualifying requirements for, and duration of, additional TRA.

(a) *Qualifying requirements for additional TRA.* An adversely affected worker is eligible to receive additional TRA for any week only if:

(1) The worker meets all qualifying requirements for receipt of basic TRA in § 618.715; and

(2) Except as provided in § 618.760 for a break in training, the adversely affected worker actually participated in training, approved under subpart F of this part 618, during that week; and

(3) The adversely affected worker filed a bona fide application for training (as defined in § 618.110) within the later of 210 days after the certification date or 210 days after such worker's most recent total or partial separation (as defined, respectively, in § 618.110 and § 618.110); *provided,* that if the adversely affected worker is unable to meet this deadline for the same reasons as in § 618.720(d)(2)(i), the worker will have 210 days from the date of the reversal of a denial of an initial application for TRA in which to file a bona fide application.

(b) *Duration of additional TRA.* Additional TRA is payable for up to 52 weeks during the 52 consecutive-calendar week period that—

(1) Immediately follows the last week of entitlement to basic TRA otherwise payable to the individual; or

(2) Begins with the first week of training approved under subpart F of this part 618, 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 618, if such training is approved after the training has commenced; but approval of training under subpart F of this part 618 after the training has commenced does not imply or justify approval of a payment of basic or additional TRA with respect to any week which ended before the week in which such training was approved, nor approval of payment of any costs of training or any costs or expenses associated with such training (such as travel or subsistence) which were incurred before the date of the approval of such training under subpart F of this part 618.

§ 618.755 Qualifying requirements for, and duration of, remedial TRA.

(a) *Qualifying requirements for remedial TRA.* An adversely affected worker is eligible to receive remedial TRA for any week only if—

(1) Such worker meets all qualifying requirements for receipt of basic TRA in § 618.715 (qualifying requirements for basic TRA); and

(2) The adversely affected worker actually participated in a program of remedial education, approved under subpart F of this part 618, during or before that week; and

(3) Participation in the program of remedial education caused the worker's training program to extend for a period longer than the periods during which basic and additional TRA are payable under, respectively, §§ 618.715 (qualifying requirements for basic TRA) and 618.750 (qualifying requirements for, and duration of, additional TRA).

(b) *Duration of remedial TRA.* Remedial TRA is payable only for up to 26 consecutive calendar weeks as necessary for an adversely affected worker to complete a training program that is approved under subpart F of this part 618 and which includes remedial education, and is payable only during the 26-consecutive calendar week period that begins with the first week following the week in which the adversely affected worker exhausted all rights to additional TRA under § 618.750 (qualifying requirements for, and duration of, additional TRA). No adversely affected worker may receive remedial TRA for a greater number of weeks than the number of weeks during which such worker participated in a program of remedial education approved under subpart F of this part 618. Remedial TRA may be paid only for the number of weeks that the program of remedial education caused the training program to extend training and the period in which additional TRA is payable under § 618.750.

(c) *Other forms of TRA payable for remedial education.* Where a program of remedial education approved under subpart F of this part 618 exceeds 26 weeks, or falls outside the 26-consecutive calendar week period established under paragraph (b) of this section, an adversely affected worker may, if otherwise eligible, receive basic or additional TRA for those weeks of remedial education exceeding 26 or falling outside the 26-consecutive calendar week period.

§ 618.760 Payment of basic, additional, or remedial TRA during breaks in training.

(a) TRA (basic, additional, or remedial) is payable to an otherwise eligible adversely affected worker 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 adversely affected worker participated in training approved under subpart F of this part 618 immediately before the beginning of the break in training; and

(2) The break in training was provided in the established schedule of the training provider; and

(3) The adversely affected worker resumes participation in the training immediately after the break ends.

(b) *Counting of days for breaks in training.* 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.

§ 618.765 Disqualifications.

(a) *General rule.* Except as stated in paragraph (b)(1) of this section and in § 618.840(f) (concerning disqualification due to fraud), an adversely affected worker 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 which apply to EB claimants and are consistent with the Federal-State Extended Unemployment Compensation Act of 1970.

(b) *Disqualification of trainees.* (1) *State law inapplicable.* A State law may not be applied to disqualify an adversely affected worker from receiving UI or TRA because:

(i) Such worker is enrolled in or participating in a training program

approved under subpart F of this part 618; or

(ii) Such worker refuses work to which the State agency referred such worker because such work either would require discontinuation of approved training or when added to the number of hours of approved training would occupy such worker more than 8 hours a day or 40 hours a week, except that this paragraph (b)(1)(ii) does not apply to an adversely affected worker who is ineligible under paragraph (b)(2) of this section; or

(iii) Such worker quits work that was not suitable employment (as defined in § 618.110) and it was reasonable and necessary to quit in order to begin or continue training approved under subpart F of this part 618.

(2) *Disqualifications.* (i) An adversely affected worker 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 training approved under subpart F of this part 618, or ceases participation (as described in paragraph (b)(3)(ii) of this section) in such training, or for whom a waiver is revoked under § 618.725(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 a training program approved under subpart F of this part 618. A worker who has justifiable cause (as described in paragraph (b)(3)(iii) of this section) for such failure to begin, or 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 G. Such failure, cessation, or revocation does not change the eligibility periods defined in §§ 618.745, 618.750(b), and 618.755(b), regardless of whether such worker had justifiable cause.

(ii) No adversely affected worker may receive additional or remedial TRA for any week in which such worker failed to participate in training, regardless of whether such worker had justifiable cause.

(iii) The disqualification in paragraph (b)(2)(i) of this section will not apply to an individual with respect to claims for TRA for weeks of unemployment beginning before the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the requirements of this section.

(3) For determining the disqualification of trainees, the following provisions apply:

(i) *Failed to begin participation.* A worker will be determined to have failed to begin participation in a training program when the worker fails to attend one or more scheduled training classes and other training activities in the first week of the training program, without justifiable cause.

(ii) *Ceased participation.* A worker will be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.

(iii) *Justifiable cause* means, for purposes of this section, the reason(s) that justify the adversely affected worker's conduct when measured by conduct expected of a reasonable worker in the same or similar circumstances. For example, an excused absence under a training institution's written policy may be considered ''justifiable cause.'' The cooperating State agency must determine all cases of failure to enroll or begin or continue participation in training on a case-by-case basis.

(c) *Disqualification while in on-the-job training.* An adversely affected worker may not be paid any TRA for any week during which such worker is receiving on-the-job training.

§ 618.770 Health Coverage Tax Credit.

(a) An eligible TAA recipient, as defined in § 618.110, an eligible ATAA recipient, as defined in § 618.110, and an eligible PBGC recipient, as defined in § 618.110, may be eligible for the Health Coverage Tax Credit subject to a determination by the Internal Revenue Service.

(b) The cooperating State agency is responsible for: (1) Transmitting a list of eligible TAA recipients and eligible ATAA recipients to the Internal Revenue Service;

(2) Providing information and assistance to workers under § 618.820(f)(4) (TAA program and benefit information to workers); and

(3) Assisting in other activities and functions required by the State's Agreement with the Secretary under § 618.805 (agreements with the Secretary of Labor).

Subpart H—Administration By Applicable State Agencies

§ 618.800 Scope.

This subpart covers the administrative procedures a cooperating State agency must follow in delivering TAA program benefits and services to adversely affected workers.

§ 618.805 Agreements with the Secretary of Labor.

(a) *Authority.* A State or cooperating State agency must, before performing any function or exercising any jurisdiction under the Act and this part 618, execute an Agreement with the Secretary meeting the requirements of the Act.

(b) *Execution.* An Agreement under paragraph (a) of this section must be signed and dated on behalf of the State or the cooperating State agency by an authorized official whose authority is certified by the State Attorney General or counsel for the cooperating State agency, unless the Agreement is signed by the Governor or the chief elected official of the State. To become effective, in addition to an aforementioned State official signing and dating the Agreement, the Secretary must sign and date the Agreement on behalf of the United States. 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 (26 U.S.C. 3302 (c)(3)) (loss of unemployment tax credits under section 3302(a) and (b)) applies.

(c) *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 carrying out the terms of the Agreement, and the cooperating State agency must carry out fully the purposes of the Act and this part 618, including making determinations and redeterminations and in connection with proceedings for review thereof.

(d) *Merit staffing.* A State need not apply the merit system standards of 5 CFR 900.603 to TAA program staff, except that employees who also perform other functions covered by the merit system must be merit staffed.

(e) *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) providing for these Agreements;

(2) Authorization for the cooperating State agency to issue waivers under § 618.725 (waiver of the training requirement for basic TRA), and the

requirement that the cooperating State agency submit, upon request, to the Secretary a copy of each such waiver and, if not already contained within each waiver, a statement of the reasons for such waiver; and

(3) The requirement that the cooperating State agency supply data to the Secretary on national TAA program performance goals identified in applicable regulations, the Department of Labor's written directives, or any other written means used to communicate such goals.

(f) *Public access to Agreements.* The cooperating State agency must make available for inspection and copying an accurate copy of its Agreement under this section to any individual or organization that requests it. Copies of the Agreement may be furnished upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the cooperating State agency.

(g) *Review of cooperating State agency compliance.* The appropriate ETA Regional Administrator is responsible for monitoring and reviewing State and cooperating State agency compliance with the Agreement entered into under the Act and this section.

(h) *Breach.* If the Secretary finds that the State or cooperating State agency has not fulfilled its commitments under its Agreement under this section, the Secretary may terminate the Agreement, disallow costs or impose such other sanctions as may be appropriate. In the event that the Secretary terminates the Agreement, section 3302(c)(3) of the Internal Revenue Code of 1986 (regarding loss of unemployment tax credits under section 3302(a) and (b)) applies. The Secretary must provide the State or cooperating State agency reasonable notice and opportunity for hearing before the Secretary makes a finding whether the State has not fulfilled its commitments under its Agreement.

(i) *Administration absent State Agreement.* In any State in which no Agreement under this section is in effect, the Secretary must administer the Act and this part 618 and pay TAA hereunder through appropriate arrangements made by the Department. For this purpose, the Secretary or the Department is substituted for the State or cooperating State agency wherever appropriate under the Act and this part 618. Such arrangements must require that TAA be administered in accordance with this part 618 and the provisions of the applicable State law, except to the extent that such State law is inconsistent with this part 618, or section 303 of the Social Security Act (42 U.S.C. 503), or section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)). Any such arrangement must include a provision for a fair hearing for any individual whose application for TAA is denied. A final determination as to eligibility to TAA will be subject to review by the courts of competent jurisdiction as provided by 42 U.S.C 405(g), as required by section 240(b) of the Trade Act.

§ 618.810 Cooperating State agency rulemaking.

A cooperating State agency may establish supplemental procedures not inconsistent with the Act or this part 618 or procedures prescribed by the Department to further effective administration of this part 618. The exact text of such supplemental procedure or procedures, certified as accurate by a responsible official, employee, or counsel of the cooperating State agency, must be submitted to the Department. No supplemental procedure may become effective unless and until approved by the Department. Approval may be granted on a temporary basis, not to exceed a period determined by the Secretary on a case-by-case basis, in cases of administrative necessity. On reasonable notice to a cooperating State agency, approval of a supplemental procedure may be withdrawn at any time. If public notice and opportunity for hearing would be required under either a State law for adoption of a similar or analogous procedure involving UI or other State or Federal law, the cooperating State agency must provide such public notice and opportunity for hearing as to the supplemental procedure.

§ 618.815 Subpoenas.

A cooperating State agency may issue subpoenas to require attendance of witnesses and production of records on the same terms and conditions as under the State law in the determination of a worker's claim for TAA or to obtain information needed by the Department of Labor or the cooperating State agency in the petition determination process. The cooperating State agency may enforce compliance with subpoenas as provided under the State law and, if a State court declines to enforce a subpoena issued under this section, the cooperating State agency may petition for an order requiring compliance with such subpoena to the United States District Court with jurisdiction over the proceeding.

§ 618.820 TAA program and benefit information to workers.

(a) *Providing general program information and advice.* Cooperating State agencies must provide full information and advice to workers about the benefits available under this part 618, and about the petition and application procedures and the appropriate filing deadlines for such benefits.

(b) *Rapid response assistance.* Cooperating State agencies must ensure that rapid response assistance and appropriate core and intensive services, as described in section 134 of the Workforce Investment Act, as amended, are made available to workers for whom a petition under subpart B of this part 618 has been filed.

(c) *Providing reemployment services.* Cooperating State agencies must provide to adversely affected workers reemployment services, including testing, counseling, assessment, selection and referral to training, placement services, and such other reemployment services as the Secretary may prescribe.

(d) *Petition filing assistance.* Cooperating State agencies must provide whatever assistance is necessary to enable individuals and entities to prepare petitions or applications for program benefits. Cooperating State agencies must facilitate the early filing of petitions for any workers who, based on information received from sources, including but not limited to, the State's dislocated worker unit, reasonably may be eligible to apply for benefits under this part 618. Cooperating State agencies may file petitions on behalf of groups of workers for whom petitions have not otherwise been filed.

(e) *Providing information after a certification is issued.* (1) Cooperating State agencies must inform the State's board on vocational and technical education (also called the eligible agency, as defined in 20 U.S.C. 2302(9)) 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 618 and of projections, if available, of the needs for training under subpart F of this part 618 as a result of such certification.

(2) Upon receipt of a certification issued under subpart B of this part 618 by the Department of Labor, the cooperating State agency must provide a written notice through the mail of the benefits available under this part 618 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. As part of its rapid response responsibilities under § 618.320, cooperating State agencies are encouraged to provide notice of benefits to certified workers who have not yet been totally or partially separated but who have received notice of separation. The cooperating State agency 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 within the certification period. The cooperating State agency must mail to each such worker a written notice that contains the following information:

(i) The worker group(s) covered by the TAA or the TAA and ATAA certification, and the article(s) produced as specified in the copy of the certification furnished to the State agency.

(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 reemployment services available to the workers.

(v) An explanation of how, when, and where the workers may apply for TAA benefits and services.

(vi) The training enrollment deadlines for TRA qualification.

(vii) Whom to contact to get additional information on the certification.

(3) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the cooperating State agency must publish a notice of the certification in a newspaper of general circulation in areas in which such workers reside. A newspaper notice is not required to be published, however, in the case of a certification with respect to which the cooperating State agency can substantiate, and enters in its records evidence substantiating, that all workers covered by the certification have received the written notice required by paragraph (c)(2) of this section. The published notice must include the same information identified in paragraphs (e)(2)(i) through (e)(2)(vii) of this section.

(f) *Specific benefit assistance to workers.* Cooperating State agencies must—

(1) Advise each adversely affected worker, as soon as practicable after the worker is separated from adversely affected employment or, if later, after a certification is issued, of the benefits and services available under this part 618, and of the qualifying requirements, procedures, and deadlines for applying for such benefits and services.

(2) Interview each adversely affected worker unless the worker declines the interview, as soon as practicable after the worker is separated from adversely affected employment or after a certification is issued. The interview must be scheduled in time for the worker to meet the 8 week or 16 week deadlines for enrollment in training. The interview must include, when appropriate, information about suitable training opportunities available to the worker under subpart F of this part 618, about jobs available in the labor market for workers with marketable skills, and about a waiver under § 618.725.

(3) Provide information on ATAA benefits and deadlines, including informing the potentially eligible worker that the worker must make a choice between TAA and ATAA benefits and services, if ATAA is included in the certification.

(4) Provide information about:

(i) The health coverage tax credit (HCTC) available to eligible TAA program recipients and eligible ATAA program recipients (as defined in § 618.110), as provided under section 35 of the Internal Revenue Code of 1986. Information provided to workers about the HCTC must include guidance on how to contact the appropriate division of the Internal Revenue Service for more detailed eligibility and benefit information about the HCTC;

(ii) The second COBRA election opportunity (a second period during which HCTC-eligible individuals, who did not elect COBRA coverage during the first election period, may elect coverage under COBRA, which provides an individual and his/her family temporary continuation of health insurance coverage under the individual's previous employer-provided health insurance plan) available to eligible TAA recipients and eligible ATAA recipients (as defined in § 618.110) under the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code of 1986, and the Public Health Service Act. Information provided to workers about the second COBRA election period must include guidance on how to contact the appropriate division of the Internal Revenue Service for more detailed eligibility and benefit information about the second COBRA election period.

§ 618.825 Determinations of eligibility; notices to individuals.

(a) *Determinations of initial applications.* The cooperating State agency whose State law is the applicable State law under § 618.110 must, upon the filing of an initial application, promptly determine the individual's eligibility to TAA or ATAA under this part 618, and may accept for such purposes information and findings supplied by another cooperating State agency.

(b) *Determinations of subsequent applications.* The cooperating State agency must, upon the filing of an application for payment of TRA, ATAA, or subsistence and transportation, promptly determine whether the individual is eligible for such payment, and, if eligible, the amount of such payment, for which the worker is eligible. In addition, the cooperating State agency must, upon the filing of a subsequent application for a job search allowance (where the total of previous job search allowances paid the worker was less than the statutory dollar limit), promptly determine whether the worker is eligible for a job search allowance, and, if eligible, the amount of the job search allowance for which the worker is eligible.

(c) *Redeterminations.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination on a claim for UI applies to determinations on all forms of TAA and on ATAA under this part 618.

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 618.835, a cooperating State agency must apply the regulations in this part 618. As to matters committed by this part 618 to be decided under the applicable State law, a cooperating State agency, 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: *Provided,* that, no provision of State law or 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 618, unless such State law or regulation is made applicable by a specific provision of this part 618.

(e) *Notices to individuals.* The cooperating State agency must notify the individual in writing of any determination or redetermination of eligibility to TAA or ATAA. 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.* Cooperating State agencies must make full payment of TAA and ATAA when due with the greatest promptness that is administratively feasible.

(g) *Procedure.* The procedures for making and furnishing determinations and written notices of determinations to individuals, must be consistent with the Secretary's ''Standard for Claim Determinations—Separation Information,'' Employment Security Manual, Part V, sections 6010–6015 (appendix B of part 617 of this chapter).

§ 618.830 Liable State and agent State responsibilities.

(a) *Liable State.* The liable State is responsible for:

(1) Making all determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part 618, including job search allowances under subpart D; relocation allowances under subpart E; training under subpart F; subsistence and transportation payments under § 618.640; basic, additional, and remedial TRA under subpart G; waivers and revocations of waivers under § 618.725; and ATAA;

(2) Providing workers with general program information and advice under § 618.820(a) and petition filing assistance under § 618.820(d);

(3) Providing rapid response assistance under § 618.320 upon receiving a copy of a petition filed on behalf of a group of workers at a firm or appropriate subdivision in the State;

(4) Providing information and assistance to adversely affected workers under paragraphs (c) (reemployment services), (e) (information after a certification is issued), and (f) (specific benefit assistance to workers) of § 618.820 upon receiving a certification issued by the Department with respect to affected workers at a firm or appropriate subdivision in the State;

(5) Providing reemployment services as provided under this part 618 to adversely affected workers covered by a certification issued by the Department under this part;

(6) Providing a list of eligible TAA recipients and eligible ATAA recipients (as defined in § 618.110) to the Internal Revenue Service under § 618.770; and

(7) Assisting in other activities and functions required by the State's Agreement with the Secretary under § 618.805.

(b) *Agent State.* The agent States is responsible for:

(1) Cooperating fully with and assisting the liable State in carrying out its responsibilities, activities, and functions;

(2) Cooperating with the liable State in taking applications and claims for TAA and ATAA;

(3) Providing interstate claimants with general program information and advice under § 618.820(a) and petition filing assistance under § 618.820(d);

(4) Providing employment services under subparts C, D, E, F, G, and I of this part to adversely affected workers covered by a certification issued by the Department;

(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 618, as described in paragraph (a)(1) of this section;

(6) Procuring and paying the cost of any approved training under subpart F, and subsistence and transportation payments under § 618.640, according to determinations issued by the liable State; and

(7) Assisting in other activities and functions required by the State's Agreement with the Secretary under § 618.805.

§ 618.835 Appeals and hearings.

(a) *Applicable State law.* Except as provided below in paragraph (b), a determination or redetermination under this part 618 is subject to review in the same manner and to the same extent as UI 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. Procedures as to the right of appeal and opportunity for fair hearing must be consistent with sections 303(a)(1) and (3) of the Social Security Act (42 U.S.C. 503(a)(1) and (3)).

(b) *Allegations of discrimination.* Complaints alleging that a determination or redetermination under this part 618 violates applicable Federal nondiscrimination laws administered by the U.S. Department of Labor must be filed in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and/or 37, as provided in § 618.875(i) (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 Secretary's ''Standard on Appeals Promptness—Unemployment Compensation'' (Part 650 of this chapter). Any provisions of the applicable State law for advancement or priority of UI cases on judicial calendars, or otherwise intended to provide for prompt payment of UI when due, must apply equally to proceedings involving eligibility to TAA under this part 618.

§ 618.840 Overpayments; penalties for fraud.

(a) *Determination and repayment.* If a cooperating State agency or a court of competent jurisdiction determines that any person has received any payment under this part 618 to which the person was not entitled, including a payment referred to in paragraph (f) or paragraph (g) of this section, such person will be liable to repay such amount to the cooperating State agency, and the cooperating State agency must recover any such overpayment in accordance with the provisions of this section except that the cooperating State agency may, in accordance with paragraphs (b) through (e) of this section, waive the recovery of any such overpayment.

(b) *Waiver of overpayment recovery; State option.* Each cooperating State agency has the option to decide whether to permit waiver of recovery of overpayments determined under paragraph (a) of this section. However, a cooperating State agency that decides to permit such waiver must apply the waiver provisions of this section and document that its waiver rules meet the requirements of this section. A cooperating State agency's decision whether to permit waiver of TAA overpayment recovery will not be controlled by whether it waives UI overpayment recovery. The State's decision whether to permit waiver of TAA overpayment recovery must be published for the information of the public and must be provided to the Department.

(c) *Waiver of overpayment recovery; requests for waiver.* In States which permit waivers of overpayments, notices of a determination of overpayments must include an accurate description of the waiver provisions of this section. Determinations granting or denying waivers of overpayment recovery under this section must be made only on a request for a waiver determination by the affected person. The request must be made on a form furnished to the person by the cooperating State agency.

(d) *Waiver of overpayment recovery; general waiver criteria.* The cooperating State agency may waive the recovery of any overpayment determined under paragraph (a) of this section if the agency determines:

(1) The payment was made without fault on the part of such person, in accordance with paragraphs (e)(1) and (e)(2) of this section; and

(2) Requiring repayment would be contrary to equity and good conscience, in accordance with paragraphs (e)(3) through (e)(5) of this section.

(e) *Waiver of overpayment recovery; specific waiver criteria.* (1) In determining whether fault exists for purposes of paragraph (d)(1) of this section, the following factors must be considered:

(i) Whether the person made a material statement or representation 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 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 had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(v) Whether there has been a determination of fraud under paragraph (f) of this section or section 243 of the Act.

(2) An affirmative finding on any one of the factors in this paragraph (e)(1) precludes waiver of overpayment recovery.

(3) In determining whether equity and good conscience exists for purposes of paragraph (d)(2) of this section, the following factors must be considered:

(i) If the overpayment was the result of a decision on appeal, whether the cooperating State agency had given notice to the person that the case had been appealed; that the person may be required to repay the overpayment in the event of a reversal on appeal; and recovery of the overpayment will not cause extraordinary and lasting financial hardship to the person.

(ii) If the overpayment was not the result of an appeal, whether recovery of the overpayment will not cause extraordinary financial hardship to the person and whether the person was notified that he or she was liable for repaying it.

(4) An affirmative finding on either of the factors in this paragraph (e)(3) precludes waiver of overpayment recovery.

(5)(i) For the purpose of paragraph (e)(3) of this section, an extraordinary financial hardship exists if recovery of the overpayment would result directly in the person's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and a lasting financial hardship is one that may be expected to endure for the foreseeable future.

(ii) In applying this test in the case of attempted recovery by repayment, a substantial period of time is 30 days, and the foreseeable future is at least three months. In applying this test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future are the longest potential period of benefit eligibility as measured at the time of the request for a waiver determination. In making these determinations, the cooperating State agency must take into account all potential income of the person and the person's wholly or family-owned business, or family and all cash resources available or potentially available to the person and the person's wholly or family-owned, or family in the time period being considered.

(f) *Fraud.* If a cooperating State agency or a court of competent jurisdiction finds that any person:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part 618 to which the person was not entitled, such person will, in addition to any other penalty provided by law, forever more be ineligible for any further payments under this part 618.

(g) *Training, job search and relocation allowances.* (1) If an adversely affected worker fails, with good cause, to complete training, a job search, or a relocation, then the payments for such benefit are not overpayments.

(2) If an adversely affected worker fails, without good cause, to complete training, a job search, or a relocation, then any payments for such benefits are overpayments.

(3) If an adversely affected worker fails, with good cause, to complete part of the training, job search, or relocation and that worker also fails, without good cause, to complete another part of the training, job search, or relocation, then any payment for the benefit accruing from the failure to complete training, job search, or relocation without good cause are overpayments.

(4) For purposes of this paragraph (g), an adversely affected worker has good cause if there exist such reasons that would cause a reasonable person in like circumstances not to complete TAA program benefits and services. The cooperating State agency must determine whether good cause exists on a case-by-case basis.

(5) An overpayment established under this paragraph (g) may be recovered or may be waived as provided in this section.

(h) *Final determination.* 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 the cooperating State agency has made a determination under paragraph (a) of this section, and has provided the person concerned a notice of the determination and an opportunity for a fair hearing thereon, and the determination has become final.

(i) *Overpayment recovery by offset.* Unless an overpayment is otherwise recovered, or is waived under paragraphs (b) through (e) of this section, the cooperating State agency—

(1) Must, subject to the limitation in paragraph (i)(4) of this section, recover the overpayment by deduction from any sums payable to such person under:

(i) This part 618;

(ii) Any Federal UI law administered by the State agency; or

(iii) Any other Federal law administered by the State agency that provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(2) Must, if the State has a cross-program offset Agreement with the Secretary in effect under authority of 42 U.S.C. 503(g)(2), and subject to the limitation in paragraph (i)(4) of this section, recover the overpayment from UI payable to such person under the applicable State law.

(3) May, if the State does not have a cross-program offset Agreement with the Secretary in effect under authority of 42 U.S.C. 503(g)(2), and subject to the limitation in paragraph (i)(4) of this section, recover the overpayment from UI payable to such person under the State law.

(4) Must not allow any single deduction under this paragraph (i) 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.

(j) *Deposit.* Any amount recovered by a cooperating State agency under this section must be deposited into the Federal fund or account from which payment was made.

(k) *Procedural requirements.* The provisions of paragraphs (c), (e), and (g) of § 618.830 and § 618.835 apply to determinations and redeterminations made under this section.

(l) *Fraud detection and prevention.* State procedures for the detection and prevention of fraudulent overpayments of TAA and ATAA must be, at a minimum, no less rigorous than those the State has adopted with respect to State unemployment compensation, and consistent with the Secretary's ''Standard for Fraud and Overpayment Detection,'' Employment Security Manual, Part V, sections 7510–7515 (Appendix C of this Part).

(m) *Person.* For purposes of this section and § 618.845 (recovery of debts due the United States or others by TAA offset), a person includes, in addition to an adversely affected worker or other individual, any employer or other entity or organization as well as the officers and officials thereof, any training institution as well as the officers and officials thereof, who may bear personal responsibility for the overpayment.

§ 618.845 Recovery of debts due the United States or others by TAA offset.

(a) *Debt due the United States.* Notwithstanding any other provision of this part 618, the State agency must apply TAA and ATAA, payable under this part to a person (as described in § 618.840(m)), for the recovery by offset of any debt due the United States from the person.

(b) *Debt due to others.* The State agency must not apply or use TAA and ATAA, in any manner for the payment of any debt of any person to any State or any other entity or person, except as provided by the applicable State law for UI.

§ 618.850 Uniform interpretation and application of the Act and regulations.

(a) *First rule of construction.* The Act and the implementing regulations in this part 618 will be construed liberally to carry out the purposes of the Act.

(b) *Second rule of construction.* The Act and the implementing regulations in this part 618 will be construed to assure, insofar as possible, the uniform interpretation and application of the Act and this part 618 throughout the United States.

(c) *Effectuating purposes and rules of construction.* (1) To effectuate the purposes of the Act and this part 618 and to assure uniform interpretation and application of the Act and this part 618 throughout the United States, a cooperating State agency must, upon request, forward to the Department a copy of any administrative or judicial ruling on an individual's eligibility to TAA and ATAA under this part 618.

(2)(i) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part 618, the Department may at any time notify the cooperating State agency of the Department's view. The cooperating State agency must issue a redetermination or must appeal, if possible. The cooperating State agency also must not follow such determination, redetermination, or decision as a precedent. In any subsequent proceedings which involve such determination, redetermination, or decision, or in which such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the cooperating State agency must inform the decision maker 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 a reversal of the determination, redetermination, or decision.

(ii) If the determination, redetermination, or decision in question awards TAA or ATAA to an individual, the benefits are ''due'' within the meaning of section 303(a)(1) of the Social Security Act (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 redetermination is issued or appeal is filed not more than one business day following the day on which the first payment otherwise would be issued to the individual; and the cooperating State agency seeks an expedited appeal decision within not more than two calendar weeks after the appeal is filed. If the redetermination is not issued or the appeal is not filed within the above time limit, or the decision on appeal is not obtained within the above two-calendar week limit, or any decision on appeal is issued which affirms the determination, redetermination, or decision awarding TAA or ATAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(iii) A State may request in writing, within 10 calendar days of receiving a notice under paragraph (c)(2) of this section, reconsideration of the notice. The State will be given an opportunity to present its views and arguments if desired. The request must be made to the Secretary and may include views and arguments on the matters to be decided by the Secretary 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.

(3)(i) If any determination, redetermination, or decision referred to in paragraph (c)(2) of this section is treated as a precedent for any future application for TAA or TAA and ATAA, the Secretary will decide whether to terminate the Agreement with the State entered into under the Act and this part 618, and whether to apply § 618.805(h) (agreements with the Secretary of Labor).

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part 618, including any determination, redetermination, or decision referred to in paragraph (c)(2) of this section, the Secretary will decide whether the State will be required to restore to the United States any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, to terminate the Agreement with the State, and whether to apply § 618.805(h), or whether to take other action to recover such sums for the United States.

(4) A State may not presume the Department's concurrence in a determination, redetermination, or decision from the absence of a notice issued under this section.

§ 618.855 Inviolate rights to TAA or ATAA.

Except as specifically provided in this part 618, the rights of individuals to TAA or ATAA must 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 or TAA and ATAA from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to TAA or ATAA, except as provided in §§ 618.840 (overpayments; penalties for fraud) and 618.845 (recovery of debts due the United States or others by TAA offset). In the same manner and to the same extent, individuals must be protected from discrimination and obstruction in regard

to seeking, applying for, and receiving any right to TAA or ATAA.

§ 618.860 Veterans' priority of service.

The Jobs for Veterans Act of 2002 (38 U.S.C. 4215(b)) establishes a priority of service for covered persons who otherwise meet the eligibility requirements for participation in TAA programs. Such covered persons include veterans, as well as spouses of any veteran who died of a service connected disability, has a total disability resulting from a service connected disability, or died while a disability so evaluated was in existence, or spouses of any member of the Armed Forces serving on active duty who are listed for a total of more than 90 days as missing in action, captured, or forcibly detained. The cooperating State agency must give the highest priority for approval and funding of TAA program benefits (including training, where the approval of training criteria are met) to an adversely affected worker meeting the veterans' priority of service criteria.

§ 618.865 Recordkeeping and disclosure of information requirements.

(a) *Recordkeeping.* Each cooperating State agency must make and maintain such records pertaining to the administration of the Act as the Secretary requires and must make all such records available for inspection, examination and audit by such Federal officials as the Secretary may designate or as may be required by law. Cooperating State agencies 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 §§ 618.875(j) (general fiscal and administrative requirements) and 618.880(e) (TAA program performance).

(b) *Disclosure of information.* Each State must keep confidential any information it receives about each applicant for any benefit or service under the Act in the course of fulfilling its obligations under the Act and this part 618 to the extent required under all applicable State and Federal laws. Each State also must keep confidential any confidential business information, as defined in § 618.110, that it obtains or receives in the course of fulfilling its obligations under the Act and this part 618 and must not disclose such information to any person, organization, or entity except as directed by the Secretary, a court, or as required by applicable State and Federal laws. This provision on the confidentiality of information maintained in the administration of the Act does not apply, however, to disclosures to the Department. This provision on confidentiality also does not apply to disclosures either for the purposes of § 618.840 or paragraph (a) of this section, or to provide information, reports and studies required by § 618.870 (information, reports, and studies), or where nondisclosure would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the Department promulgated thereunder (see 29 CFR parts 70 and 70a).

§ 618.870 Information, reports, and studies.

(a) A cooperating State agency must furnish to the Secretary such information and reports, including the reports required by §§ 618.875(j) (general fiscal and administrative requirements) and 618.880 (TAA program performance), and conduct such studies as the Secretary determines are necessary or appropriate to carry out the purposes of the Act and this part 618. A cooperating State agency must submit financial and non-financial reports on activities conducted with TAA program funds to the Department in accordance with reporting instructions approved by the Office of Management and Budget as to the content, frequency, and due dates.

(b) The Department may reduce the administrative funding of cooperating State agencies that fail to submit accurate and timely reports. Cooperating State agencies submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit reports.

§ 618.875 General fiscal and administrative requirements.

(a) *Uniform fiscal and administrative requirements.* (1) Each cooperating State agency receiving funds allocated for the TAA program funds from the Department as an agent of the United States must administer the TAA program in accordance with the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' at 29 CFR part 97. Paragraphs (a)(2) through (a)(5) of this section further elaborate upon the application of 29 CFR part 97 to the administration of the TAA program.

(2) Unless indicated otherwise in the TAA Annual Cooperative Financial Agreement between a State and the Department, or in a State subaward instrument (and as elaborated in paragraphs (a)(3) through (a)(5) of this section), a recipient of funds allocated for the TAA program (whether administrative or benefit fund expense categories) under a subaward from a State must abide by the administrative requirements provided in this paragraph (a)(2). Specifically, units of State, local, or Indian tribal government must abide by the regulations at 29 CFR part 97. Institutions of higher education, hospitals, other non-profit organizations, and commercial organizations must abide by the ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'' at 29 CFR part 95.

(3) Funds awarded to a State during a Federal fiscal year to carry out TAA program activities under sections 235 through 238 of the Act (but not sections 231 through 234 of the Act) may be expended by the State during that Federal fiscal year and the succeeding two Federal fiscal years.

(4) Equipment, as described in 29 CFR 97.32 and Appendix B of ''Cost Principles for State, Local and Indian Tribal Governments'' at 2 CFR part 225, includes equipment acquired with TAA administrative funds under both current and prior Agreements.

(5) The addition method, described at 29 CFR 95.24 or 29 CFR 97.25(g)(2) (as appropriate), 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) *General allowable costs/cost principles.* (1) All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organization. The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22(b) identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are described in paragraphs (b)(2) through (b)(6) of this section, while paragraph (b)(7) of this section applies to all recipients of TAA administrative funds.

(2) Allowable costs for State, local, and Indian tribal government organizations must be determined under ''Cost Principles for State, Local and Indian Tribal Governments'' at 2 CFR part 225.

(3) Allowable costs for non-profit organizations must be determined under ''Cost Principles for Non-Profit Organizations'' at 2 CFR part 230.

(4) Allowable costs for institutions of higher education must be determined under ''Cost Principles for Educational Institutions'' at 2 CFR part 220.

(5) Allowable costs for hospitals must be determined in accordance under appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(6) Allowable costs for commercial organizations and those non-profit organizations listed in Attachment C to ''Cost Principles for Non-Profit Organizations'' at 2 CFR part 230, must be determined under the provisions of the Federal Acquisition Regulation at 48 CFR part 31.

(7) The administrative cost limit for the fiscal year program funding allocation for training, job search assistance, and relocation allowances is included in the TAA Annual Cooperative Financial Agreement, with which States must comply.

(c) *Claims against the Federal Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(d) *Lobbying Costs.* In accordance with the restrictions on lobbying at 29 CFR part 93, no TAA program funds may be charged for salaries or expenses related to any activity designed to influence appropriations or other legislation pending before the Congress of the United States or any State legislature.

(e) *Employee Fringe Benefits.* As an exception to 2 CFR part 225 with respect to personnel benefit costs incurred on behalf of State Workforce Agency (SWA) employees who are members of fringe benefit plans which do not meet the requirements of Attachment B, item 11, in ''Cost Principles for State, Local, and Indian Tribal Governments'' at 2 CFR part 225, the costs of employer contributions or expenses incurred for SWA fringe benefit plans are allowable, provided that:

(1) All fringe benefit plans covered in paragraphs (e)(2) and (e)(3) of this section were approved by the Secretary before October 1, 1983; and all covered employees joined the plan before October 1, 1983; and any additional costs resulting from improvements to the plans made after October 1, 1983 are not chargeable to DOL grant funds; and the State agrees to refund to the Department of Labor any amount refunded to the State by the carrier at the termination of the plan or at the time the last beneficiary dies, whichever is later.

(2) For retirement plans, the plan is authorized by State law; and the plan is insured by a private insurance carrier which is licensed to operate this type of plan in the State; and any dividends or similar credits because of participation in the plan are credited against the next premium falling due under the contract.

(3) For SWA fringe benefit plans other than retirement plans, costs of the plan are allowable until such time as the plan is comparable in cost and benefits to fringe benefit plans available to other similarly employed State employees, after which time the requirements of 2 CFR part 225 cited in this paragraph (e) will apply.

(f) *Prior Approval of Equipment Purchases.* As provided in Attachment B, item 19.c. of ''Cost Principles for State, Local and Indian Tribal Governments'' at 2 CFR part 225, the requirement that grant recipients obtain prior approval from the Federal grantor agency for all purchases of equipment (as defined in 29 CFR 97.3) is waived, and approval authority is delegated to the cooperating State agency, except that the Secretary reserves the right to require transfer of title to Automated Data Processing Equipment in accordance with 29 CFR 97.32(g). Prior Federal approval of real estate purchases is not waived or delegated.

(g) *Audit requirements.* (1) All States, local governments, and non-profit organizations that are recipients or subrecipients of TAA or ATAA program funds must follow the audit requirements under 29 CFR parts 96 and 99. Further implementing requirements for governmental organizations, and for institutions of higher education, hospitals, and other non-profit organizations, are at, respectively, 29 CFR 97.26 and 29 CFR 95.26. Organizations that expend more than the minimum level specified in 29 CFR part 99 must have either an organization-wide audit conducted in accordance with 29 CFR parts 96 and 99.

(2) Commercial organizations that are subrecipients of TAA or ATAA program funds and expend more than the minimum level specified in 29 CFR part 99 must have either an organization-wide audit conducted in accordance with 29 CFR parts 96 and 99 or a program-specific financial and compliance audit.

(h) *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, and the government-wide requirements for a drug-free workplace at 29 CFR part 98.

(i) *Nondiscrimination and equal opportunity requirements.*

(1) Cooperating State agencies 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.

(2) Cooperating State agencies 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 part 37 if the agency or subrecipient:

(i) Operates its TAA programs and activities as part of the One-Stop delivery system established under the Workforce Investment Act of 1998, as amended (WIA); or

(ii) Otherwise satisfies the definition of ''recipient'' in 29 CFR 37.4.

(3) Questions about, or complaints alleging violation of, 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. Complaints alleging violations of the WIA nondiscrimination regulations at 29 CFR part 37 may also be filed at the State agency or subrecipient level. *See* 29 CFR 37.71 and 37.76. All such complaints must be processed using procedures that comply with the requirements in 29 CFR part 37.

(4)(i) This § 617.875(i) is not intended to, and does not, affect any rights regarding, or protections against, discrimination that are provided under any other applicable Federal laws prohibiting discrimination, any applicable State or local laws related to discrimination, or their implementing regulations, except as provided in paragraphs (i)(4)(ii) and (iii).

(ii) The obligation to comply with the nondiscrimination and equal opportunity provisions of 29 CFR parts 31, 32, 35, 36, and/or 37 is not excused or reduced by any State or local law or other requirement that uses race, color, religion, sex, age, disability, political affiliation or belief as a basis for prohibiting or limiting an individual's eligibility for any of the following:

(A) Receiving aid, benefits, services, training, or employment;

(B) Participating in any TAA program or activity;

(C) Being employed by any cooperating State agency; or

(D) Practicing any occupation or profession.

(iii) The obligation to comply with the nondiscrimination and equal opportunity provisions of 29 CFR part 37 is not excused or reduced by any State or local law or other requirement that permits or requires discrimination against beneficiaries of the TAA program on the basis of:

(A) Participation in a program or activity that is financially assisted under title I of WIA; or

(B) Citizenship or status as a non-citizen lawfully admitted to work in the United States.

(j) *Fiscal reporting requirements for cooperating State agencies.* (1) In accordance with 29 CFR 97.41, each cooperating State agency must submit a quarterly financial status report (QFSR) to the Department. The QFSR must be submitted in electronic format via the Internet within 30 days after the end of each quarter. Each cooperating State agency must also submit a final QFSR to the Department within 90 days after the end of the grant period. The Department will provide instructions for the preparation of this report.

(2) Financial data must be reported on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities.

(3) If the cooperating State agency's accounting records are not normally kept on the accrual basis of accounting, the cooperating State agency must develop accrual information through an analysis of the documentation on hand.

§ 618.880 TAA program performance.

(a) *General rule.* Each State that has an Agreement with the Secretary in effect under § 618.805 must report its TAA program performance to the Department as provided in this section.

(b) *Performance categories.* States must report program data necessary to calculate performance in the following categories:

(1) Entered employment.

(2) Retention in employment.

(3) Average earnings.

(4) Any additional categories established by the Department.

(c) *Performance measures.*

(1) States must report program performance using the following measures for the categories in paragraphs (b)(1) through (b)(4) of this section:

(i) Entered employment—the percentage of program participants employed within a period of time, established by the Department under paragraph (c)(2) of this section, after exiting the program;

(ii) Retention in employment—of those program participants who have entered employment, the percentage of program participants who remain employed after a period of time, established by the Department under paragraph (c)(2) of this section;

(iii) Average earnings—the average earnings per participant over a time interval, established by the Department under paragraph (c)(2) of this section;

(iv) Any other measures established by the Department.

(2) The Department will establish the timeframes used in the measurements for paragraphs (c)(1)(i) through (c)(1)(iii) of this section, and the definitions for specified terms for paragraph (c)(1)(iii) of this section, and will set the units of cost and timeframes used in paragraph (c)(1)(iv) of this section. The Department will provide further instructions on such timeframes, definitions of the measures, and units of cost in administrative issuances providing reporting guidance.

(d) *Use of wage records.* Cooperating State agencies must, consistent with State law, use quarterly wage record information (as defined in 20 CFR 666.150(c)) in measuring the progress on program performance measures in paragraphs (c)(1)(i) through (c)(1)(iii) of this section. In order to meet this requirement, cooperating State agencies must use registered program participants' social security numbers or, if Federal law prohibits such use of social security numbers, other identifying designations, and such other information as is necessary, to measure the progress of those participants through quarterly wage record information. Cooperating State agencies that participate in the Wage Record Interchange System must use the Wage Record Interchange System to obtain pertinent wage information for individuals who obtain work outside the State in which they received services. Also, cooperating State agencies may use supplemental sources to obtain pertinent wage and employment data.

(e) Reporting requirements. Cooperating State agencies must report TAA program performance data, identified in paragraphs (b) and (c) of this section, to the Department. The report used for this purpose is the Trade Act Participant Report (OMB control No. 1205–0392), unless otherwise superseded or on such other forms as the Department may prescribe. The report must be verified or validated as accurately counting and reporting activities in accordance with reporting instructions issued by the Department.

(f) *Performance evaluation and improvement.* State performance outcomes will be measured against national goals established by the Department to evaluate State program performance and to plan actions to promote improved program performance. The Department may negotiate and establish individual performance goals each fiscal year with cooperating State agencies.

(g) *Publication of performance results.* The Department will publish, annually, the TAA program performance results of the States.

§ 618.885 Termination of TAA program benefits.

(a) Except as provided in paragraph (b) of this section, cooperating State agencies may not provide vouchers, allowances, and other payments or benefits under this part 618 after the termination date provided in section 285 of the Act or as otherwise provided by law.

(b) Notwithstanding paragraph (a) of this section, cooperating State agencies must continue to provide benefits under this part 618 to an adversely affected worker for any week for which such worker meets the eligibility requirements for such benefits, if, on or before the termination date provided in section 285 of the Act or other law, the worker is—

(1) A member of a worker group that is certified as eligible for benefits under this part 618; and

(2) Is otherwise eligible to receive benefits under this part 618.

Subpart I—[Reserved]

PART 665—STATEWIDE WORKFORCE INVESTMENT ACTIVITIES UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

6. The authority citation for part 665 continues to read as follows:

Authority: Section 506(c), Public Law 105–220; 20 U.S.C. 9276(c).

7. Section 665.330 is revised to read as follows:

§ 665.330 Are Trade Adjustment Assistance (TAA) program requirements for rapid response assistance, under the Trade Act of 1974, as amended, also required activities?

(a) Yes. The Trade Act of 1974 (Pub. L. 93–618), as amended, requires that the Governor must make available rapid response assistance, described in §§ 665.300 and 665.310, to individuals upon the filing of a petition covering those individuals.

(b) If rapid response activities have been provided previously in response to a layoff or plant closure or other event, then the Governor must determine whether the provision of any additional information or assistance related to the TAA program is necessary due to the filing of the petition. This may include information about training opportunities, income support, employment services, and potential HCTC assistance.

(c) If rapid response activities or assistance have not been provided previously in response to a layoff or plant closure or other event, then the Governor must ensure that appropriate rapid response assistance is provided. The Governor may develop and implement appropriate methods of achieving the goals of rapid response in situations where the full range of rapid response activities required by 20 CFR 665.310 is not appropriate. The alternative methods should be cost effective and responsive to the workers' needs. At a minimum, information and access to unemployment compensation benefits, comprehensive One-Stop system services, employment services, and TAA program benefits, must be provided.

PART 671—NATIONAL EMERGENCY GRANTS FOR DISLOCATED WORKERS

8. The authority citation for part 671 continues to read as follows:

Authority: Sec. 506(c), Public Law 105–220; 20 U.S.C. 9276(c).

9. Section 671.105 is revised to read as follows:

§ 671.105 What funds are available for national emergency grants?

(a) We use funds reserved under WIA section 132(a)(2)(A) to provide financial assistance to eligible applicants for grants under WIA section 173.

(b) We use funds made available under WIA section 174 to make grants to provide health insurance coverage assistance under WIA section 173(f) and (g).

10. Section § 671.115 is added to read as follows:

§ 671.115 Under what circumstances are NEG grants available to provide assistance under WIA section 173(f) and (g)?

(a) WIA section 173(f) authorizes NEGs to pay for health insurance coverage and administrative and start-up expenses related to the enrollment of TAA-eligible individuals and certain others, and their qualifying family members, in qualified health insurance.

(b) WIA section 173(g) authorizes NEGs to pay for health insurance coverage for individuals eligible for health coverage tax credit. NEG funds under this section may also be used to provide other assistance and support services to eligible individuals, including transportation, childcare, dependent care and income assistance. For both health insurance coverage and income support assistance, the assistance cannot supplant other federal, state, or local assistance for which the individual is eligible.

(c) In order to qualify for assistance funded under WIA section 173(g), an individual must be:

(1) ''An eligible TAA recipient,'' which is defined as an individual who is receiving a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted Unemployment Insurance benefits;

(2) ''An eligible alternative TAA recipient,'' which is defined as an individual who is receiving benefits under a demonstration program of alternative trade adjustment assistance for older workers under subpart I of this part; or,

(3) ''An eligible PBGC pension recipient,'' which is defined as an individual who is 55 years of age or older and is receiving a pension benefit paid in whole or part by the Pension Benefit Guaranty Corporation (PBGC).

(d) A determination that an individual is an eligible TAA recipient, an eligible alternative TAA recipient, or an eligible PBGC pension recipient does not mean that individual is eligible for the health coverage tax credit; eligibility is determined by the Internal Revenue Service based upon whether other eligibility criteria are met.

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