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DEPARTMENT OF LABOR

29 CFR Part 90

Employment and Training Administration

20 CFR Parts 617 and 618

[Docket No. ETA-2019-0009]

RIN 1205-AB78

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

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

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments on the information

collection determination described in Section V. D of the preamble (Paperwork Reduction Act) may be submitted (postmarked, sent, or received) by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** in Docket Number ETA-2019-0010.

ADDRESSES: You may send comments, identified by Docket No. ETA-2019-0009 and Regulatory Identification Number (RIN) 1205-AB78, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Instructions for how to submit public comments electronically on the Federal eRulemaking Portal can be found on the <http://www.regulations.gov> website under “Help” > “How to use Regulations.gov” > “Submit a Comment.”
- Mail: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210.
- Hand Delivery/Courier: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210.

Instructions: All submissions received must include the agency name and docket number for this rulemaking or “RIN 1205-AB78.”

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to this NPRM without changes to <http://www.regulations.gov>, including any personal information provided. The <http://www.regulations.gov> website is the Federal e-Rulemaking Portal and all comments

posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information (either about themselves or others) such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the <http://www.regulations.gov> website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> (search using RIN 1205-AB78 or Docket No. ETA-2019-0009). The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N-5641, Washington, DC 20210. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of this NPRM available, upon request, in large print and electronic file. To schedule an appointment to review the comments or obtain the NPRM in an alternative format or both, contact OPDR at (202) 693-3700 (this is not a toll-free number). You may also contact this office at the address listed above.

Comments under the Paperwork Reduction Act (PRA): Send a copy of any comments that concern the information collection (IC) aspects of this NPRM to: Office

of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Fax: (202) 395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

Comments on the information collection determination described in Section V. D of the preamble (Paperwork Reduction Act) also may be submitted (postmarked, sent, or received) by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** in Docket Number ETA-2019-0010. The Department will consider comments on the information collection determination submitted in either docket, but is providing additional time for commenters to submit relevant information collection comments to Docket Number ETA-2019-0010. See section V.D of this NPRM (“Paperwork Reduction Act”) for particular areas of interest.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room N-5641, Washington, DC 20210, Telephone: (202) 693-3700 (voice) (this is not a toll-free number) or 1-800-326-2577 (Telecommunications Device for the Deaf).

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I. Acronyms and Abbreviations

AAIW(s)	adversely affected incumbent worker(s)
AAW(s)	adversely affected worker(s)
ABE	adult basic education
ATAA	Alternative Trade Adjustment Assistance
BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
CSA(s)	cooperating State agency(/ies)
Department	Department of Labor
EB	Extended Benefits
ECI	Employment Cost Indices
ELA	English language acquisition
E.O.	Executive Order
ETA	Employment and Training Administration
ETP(s)	eligible training provider
EUCA	Federal-State Extended Unemployment Compensation Act of 1970
FOIA	Freedom of Information Act
FR	Federal Register
FTR	Federal Travel Regulation
FUTA	Federal Unemployment Tax Act
FY	Fiscal Year
GPA	grade point average
GPRA	Government Performance Results Act of 1993
HCTC	Health Coverage Tax Credit

HEA	Higher Education Act of 1965, as amended
HSE	high school equivalency
IC	information collection
IEP(s)	individual employment plan(s)
IRS	Internal Revenue Service
IT	information technology
ITC	International Trade Commission
JSP	job search program
JTPA	Job Training Partnership Act
LEP	limited English proficient
local area	local workforce development area
LWDB	local workforce development board
MIS	management information systems
NPRM	Notice of Proposed Rulemaking
OECD	Organisation for Economic Co-operation and Development
OJT	on-the-job training
OMB	Office of Management and Budget
OPDR	Office of Policy Development and Research
OPM	Office of Personnel Management
OTAA	Office of Trade Adjustment Assistance
PCE	Personal Consumption Expenditures
PII	personally identifiable information
PIRL	Participant Individual Record Layout
PRA	Paperwork Reduction Act
PRWORA	Personal Responsibility and Work Opportunity Reform Act
Pub. L.	Public Law
RFA	Regulatory Flexibility Act
RIN	Regulatory Identification Number
RRUI	Railroad Unemployment Insurance Act
RTAA	Reemployment Trade Adjustment Assistance
Secretary	Secretary of Labor
SSA	Social Security Act
Stat.	U.S. Statutes at Large
TAA	Trade Adjustment Assistance
TAA Program	collective reference to the following three programs: TAA for Workers Program, ATAA, and RTAA
TAAEA	Trade Adjustment Assistance Extension Act of 2011
TAARA 2002	Trade Adjustment Assistance Reform Act of 2002
TAARA 2015	Trade Adjustment Assistance Reauthorization Act of 2015
TaOA	Training and Other Activities
TEGL(s)	Training and Employment Guidance Letter(s)
TGAAA	Trade and Globalization Adjustment Assistance Act of 2009
The Act	chapter 2 of title II of the Trade Act of 1974, as amended
TRA	Trade Readjustment Allowances
UI	Unemployment Insurance
UIPL	Unemployment Insurance Program Letter

UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code
USCIT	United States Court of International Trade
WARN	Worker Adjustment and Retraining Notice
WBA(s)	weekly benefit amount(s)
WIA	Workforce Investment Act of 1998
WIOA	Workforce Innovation and Opportunity Act

II. Executive Summary

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

The NPRM would increase efficiency and flexibility for States and trade-affected workers. Because subpart B (Petitions, Investigations, and Determinations) of this NPRM expressly proposes to permit workers employed by a leasing or staffing agency (termed “staffed workers”) to be members of a worker group, even if they are not mentioned specifically within the determination document, the Department anticipates a substantial reduction in the number of requests to amend certifications. The Department also proposes to increase flexibility in subpart D (Job Search and Relocation Allowances) by

making it easier for adversely affected workers (AAWs) to qualify for a job search allowance and ensuring that workers who qualify for relocation allowances are finding comparable or better paying jobs. Subpart F (Training Services) would expand work-based training to include apprenticeships for all or part of a trade-affected worker's training program. It also establishes a regulatory framework to provide assistance to workers who are currently employed but threatened with job loss resulting from trade, thereby enabling such workers to retrain and seek new employment before job separation occurs. And in subpart H (Administration by Applicable State Agencies), the Department would extend flexibility by removing the requirement that only State merit staff can be funded through employment and case management funding available under the TAA Program, allowing States more flexibility with program operations and creating better alignment with WIOA.

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

Lastly, the NPRM would implement statutory provisions for Reemployment Trade Adjustment Assistance (RTAA) and would incorporate administrative guidance

previously issued by the Department in subpart E since no regulations covering the RTAA program exist. Proposed subpart G (Trade Readjustment Allowances (TRA)) would implement several statutory changes to TRA, including establishing deadlines to enroll in training, reducing the types of available waivers, allowing an election between Unemployment Insurance (UI) and TRA, and allowing AAWs to earn up to their weekly benefit amount without penalty. In addition, proposed subpart I (Allocation of Funds to States for Training and Other Activities) replaces the term “training” with “Training and Other Activities” (TaOA) to reflect the additional benefits and services covered by such funding.

The NPRM would reduce costs and legal burden from court proceedings by providing the public and courts with the Department’s authoritative interpretation of the Act. Proposed subpart B (Petitions, Investigations, and Determinations) also would produce other cost savings by eliminating the two-step process for reconsiderations, which would reduce the processing time involved for all reconsiderations, and by clarifying “final determinations” for judicial appeals, which would reduce the number of those appeals. Lastly, proposed subpart H (Administration by Applicable State Agencies) would produce cost savings by revising the merit staff requirements to allow States to charge time for non-merit staff to TAA Program funds for the provision of employment and case management services.

The purposes of the proposed revisions are to ensure that the TAA Program regulations are modernized to reflect the program’s current operation and make needed improvements. The proposed revisions also would provide clarity by eliminating

confusing and overly technical language and update the TAA Program regulations by encouraging the use of paperless electronic mechanisms over paper-based methods.

The Department's preliminary regulatory impact analysis determines that this NPRM is a deregulatory action under E.O. 13771 because the cost savings associated with the rule would be larger than the anticipated costs of the rule. Cost savings associated with the rule are from revisions to the definition of "final determination" related to judicial appeals and from streamlining the reconsideration process. The costs of the NPRM are those associated with State staff needing to familiarize themselves with the new regulations, the development of IEPs for trade-affected workers seeking training or job search allowances, and the implementation of two IC forms (ETA Forms 8561, Study of Domestic Industry, and 9185, Application for Reconsideration). The Department expects the NPRM to have an average annual cost of \$6,604 and a total 10-year cost of \$46,383 (with 7-percent discounting). The Department estimates that the NPRM would have an annual cost savings of \$79,654 and a total 10-year cost savings of \$559,456 (with 7-percent discounting). In addition, the NPRM is estimated to result in annual transfer payments (i.e., redistribution of resources from one group to another that do not affect total resources available to society) of \$564,257 and total 10-year transfer payments of \$3,963,105 (with 7-percent discounting). The Department estimates that the NPRM would result in net cost savings of \$626,333 discounted at 3 percent and \$513,073 discounted at 7 percent, both expressed in 2018 dollars. See section V.B, the economic analysis, for a detailed discussion of the Department's preliminary regulatory impact analysis.

III. Background

A. Introduction to the Trade Adjustment Assistance Program

The Trade Act of 1974 (Pub. L. 93-619), as amended (the Act) (codified at 19 U.S.C. 2271 et seq.), title II, chapter 2, established TAA for Workers program, Alternative Trade Adjustment Assistance (ATAA),¹ and RTAA programs. These programs, collectively referred to as the TAA Program, assist U.S. workers who have lost or may lose their jobs as a result of foreign trade (i.e., trade-affected workers). The TAA Program provides AAWs and adversely affected incumbent workers (AAIW) with opportunities to obtain skills, credentials, resources, and support to help them become reemployed. TAA Program benefits and services under TAARA 2015 include employment and case management services; training; out-of-area job search and relocation allowances; income support through TRA; the RTAA wage supplement benefit for AAWs aged 50 or older who find qualifying reemployment; and, if available, eligibility for assistance with health care premium costs under the Health Coverage Tax Credit (HCTC),² which is administered by the Internal Revenue Service (IRS).

There are two steps for trade-affected workers to obtain program benefits and services. First, a group of workers must file a petition or have a petition filed on their behalf with the Department to determine worker-group eligibility. Upon receiving a petition, the Department initiates an investigation to determine whether the circumstances of the layoff meet the group-eligibility criteria established by sec. 222 of the Act. Second, if the Department finds the group eligible and certifies the petition, individual trade-affected workers in the worker group may apply to their State for TAA Program benefits

¹ ATAA is largely unaddressed in this NPRM because this NPRM codifies the TAARA 2015 Program and ATAA was replaced by RTAA. RTAA is newly codified in this NPRM.

² Because under TAARA 2015, the HCTC expires by January 1, 2020, references to the HCTC throughout this NPRM are coupled with “if available” or similar phrasing.

and services. Under agreements between the Secretary of Labor (Secretary) and each Governor, the States determine individual eligibility based on the statutory criteria and provide the TAA Program benefits and services to trade-affected workers with Federal funds allocated by the Department for that purposes. The TAA Program is a required one-stop partner under WIOA. One-stop centers—branded as American Job Centers under WIOA—deliver workforce development services to job seekers and businesses nationwide.

Since 1975, the TAA Program has served over two million trade-affected U.S. workers. In Fiscal Year (FY) 2017, an estimated 94,017 workers became eligible for TAA Program benefits and services. Nearly 75 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program, and over 90 percent of those who found work retained their jobs 6 months later.³

Trade-affected workers come from a variety of backgrounds and industries, so they enter the program with a wide array of skills and experience. Most trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, an average age of 49, and an average of 12 years of experience in a specific job that may no longer exist.³ The TAA Program is designed to serve the needs of this unique population.

An ever-changing global marketplace drives the 21st-century economy. For America to compete in the global economy, its workers need to have the skills and

³ U.S. Department of Labor, Employment and Training Administration. (2018). “Trade Adjustment Assistance for Workers Program: Fiscal Year 2017.” Retrieved from: <https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf>.

support to take advantage of new opportunities. The TAA Program aims to do that by helping American workers retrain and reenter the workforce.

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

The foundation of the current TAA Program was established by chapter 2 of title II of the Trade Act of 1974 (Pub. L. 93-618).

Congress has since reauthorized and amended chapter 2, and thus the TAA Program, multiple times. The TAA Program was changed extensively by amendments in 1981 (Pub. L. 97-35, title XXV), 1984 (Pub. L. 98-369, secs. 2671 and 2672), 1986 (Pub. L. 99-272, title XIII, subtitle A, part 1), 1988 (Pub. L. 100-418, title I, subtitle D, part 3), and 1993 (Pub. L. 103-182, sec. 506). In 1987, the Department issued a final rule significantly revising the certification process in 29 CFR part 90 (52 FR 23403, June 19, 1987) and in 1994, the Department issued a final rule significantly revising the TAA Program regulations in 20 CFR part 617 to implement the 1988 amendments (59 FR 906, Jan. 6, 1994).

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

The Department published two NPRMs in 2006, to implement the TAARA 2002 amendments (71 FR 50760, Aug. 25, 2006 and 71 FR 61618, Oct. 19, 2006). However,

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

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

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

The Trade Adjustment Assistance Extension Act of 2011 (TAAEA), enacted in 2011, for the most part restored the expanded certification criteria and benefits and services provided under TGAAA, but changed some provisions.

TAARA 2015 reauthorized the TAA Program through 2021. It primarily followed TAAEA, the 2011 law, but amended a few key provisions. The amendments included capped funding for TaOA at \$450 million per fiscal year and establishment of new performance indicators to align with WIOA. TAARA 2015 reauthorized the RTAA and

HCTC benefit programs. TAARA 2015 also continued to grandfather earlier versions of the TAA Program for trade-affected workers who had been certified under TAARA 2002, TGAAA, and TAAEA.

C. Need for the Notice of Proposed Rulemaking

The TAA Program regulations were last updated in 1994, with only minor changes made in 2006,⁴ 2007,⁵ and 2010.⁶ Since that time, multiple TAA Program reauthorizations and amendments have required various changes to the program, which the Department has addressed through administrative guidance. This NPRM proposes to codify in regulation the most recent reauthorization and amendment (TAARA 2015) as well as significant elements of TAA Program administrative guidance. The NPRM is drafted to reflect how the TAA Program is currently operating under TAARA 2015, with some proposed adjustments that would improve the program. Once finalized, the Department will rescind redundant administrative guidance, as appropriate, based on the final rule.

The NPRM, if finalized, would help States and the public better understand the proper operation of the TAA Program. States would no longer have to use a combination of regulations and administrative guidance to guide the worker-group certification process at the Federal level and the administration of individual benefits and services at the State level. The NPRM would promote transparency by setting out, in binding regulation, the major principles by which the TAA Program operates. In addition, it

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

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

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

provides the public and courts with the Department's authoritative interpretation of the Act.

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

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

IV. Section-by-Section Discussion of the Proposed Changes

A. Subpart A – General

Proposed subpart A sets forth the purpose and scope of the TAA Program and defines relevant terms used throughout the rule. Proposed subpart A modifies and simplifies several definitions for greater clarity, eliminates definitions in response to statutory changes to the Act, and adds definitions of new terms based on statutory

changes. The definitions used in this NPRM are intended to describe a modernized TAA Program, which has evolved since TAARA 2002, and ensure the TAA Program aligns with WIOA.

Section 618.100 Purpose and scope.

Proposed § 618.100 describes the purpose and scope of the TAA Program. The Department proposes updates to the scope and purpose based on programmatic experience to reflect more realistically the achievable outcomes for trade-affected workers.

Proposed § 618.100(a) establishes the purpose of the TAA Program. Under the existing statement of purpose at 20 CFR 617.2, the stated goal of the TAA Program is to return trade-affected workers to “suitable employment” as quickly as possible. In this context, suitable employment means that after the trade-affected worker receives services under the TAA Program, the worker is reemployed at an equal or higher skill level, earning at least 80 percent of their former wages. This goal of attaining suitable employment has not changed.

Unfortunately, there are situations in which trade-affected workers may be unable to obtain suitable employment. Such difficulties in obtaining suitable employment may occur because (1) few, if any, jobs are available at the workers’ former wages that require the trade-affected workers’ experience; (2) the local labor market has few available jobs; or (3) the trade-affected workers have substantial barriers to reemployment. These factors can significantly limit trade-affected workers’ employment opportunities. Yet offering appropriate training, especially in a stagnant labor market, may significantly increase a trade-affected worker’s prospects of obtaining suitable employment.

The Department is committed to ensuring trade-affected workers have access to training that will allow them the best possible outcomes and ability to compete for work at the highest skill levels and highest wages achievable, given the trade-affected workers' preexisting skill levels, abilities, and education, and the current and projected labor market, and to do so as quickly as possible. This must be accomplished with prudence, careful management of limited TAA Program funds, and a practical understanding of labor market realities. States must ensure that they administer their programs equitably and reasonably. Proposed § 618.100(b) expands the scope of the TAA Program beyond the scope in 20 CFR 617.1 and lists the types of TAA Program benefits and services that will be addressed in this proposed part 618. Proposed § 618.100(c) carries forth a statement in 20 CFR 617.2 specifying that the regulations in this part are issued to implement the Act.

Section 618.110 Definitions.

Proposed § 618.110 defines terms applicable to all other sections of the NPRM unless otherwise stated. The terms defined in the proposed rule are derived from the Act; 20 CFR part 617; 29 CFR part 90; and the WIOA Final Rule (81 FR 56072 (Aug. 19, 2016); 81 FR 55792 (Aug. 19, 2016)). Some definitions are taken from the Act, others interpret or expound upon terms in the Act, and others are terms that the Department will use in implementing the Act. The defined terms in the rule apply solely for purposes of this part 618.

The following section lists and explains proposed new terms and their definitions, revisions to definitions, and removal of defined terms.

Act—This NPRM modifies the definition of this term from 20 CFR 617.3(a) and 29 CFR 90.2, and updates the U.S. Code citation to 19 U.S.C. 2271–2323 and 2395. At the issuance of this NPRM, the most recent amendment, Pub. L. 114-27, applies.

Administrator—This NPRM adds this term and defines it for the first time to reflect the statutory change in sec. 249A(a) and (b) of the Act, which requires that the Division of Trade Adjustment Assistance be designated as the Office of Trade Adjustment Assistance (OTAA), and that the head of the OTAA be designated an Administrator rather than a Director. Also, this NPRM removes the defined term “Director” from 29 CFR 90.2.

Adversely affected employment—This NPRM modifies the definition of this term from 20 CFR 617.3(b) and is based on the statutory definition in sec. 247(1) of the Act. No substantive changes from those definitions are intended. This NPRM omits the explicit reference to agricultural firms from the definition in 20 CFR 617.3(b). Although agricultural firms may be identified as adversely affected employment, there were no other references to agricultural firms in 20 CFR part 617, and, other than in the definition of “firm,” which specifies that agricultural firms are included, there are no references to agricultural firms in the NPRM.

Adversely affected worker or *AAW*—This NPRM modifies the definition of this term from 20 CFR 617.3(c) to clarify the Department’s interpretation of this term defined in sec. 247(2) of the Act. Specifically, an employer may be considered an AAW when the employer is also an employee of a business that closes or experiences a reduction in operation. For example, the president of the firm lays off everyone at the firm, including herself. In this circumstance, if the employer becomes totally or partially separated from

their adversely affected employment, the employer is an AAW. Additionally, this NPRM omits the reference in the definition of this term from 20 CFR 617.3 to a subdivision of a firm since employment in an appropriate subdivision of a firm is part of the definition of the term “adversely affected employment” and including it in the definition of the term “adversely affected worker” is redundant. The combined terms “adversely affected worker” and “adversely affected incumbent worker” are also referred to as a trade-affected worker throughout the NPRM.

Adversely affected incumbent worker or *AAIW*—This NPRM adds this term and defines it for the first time. The proposed new definition is from sec. 247(18) of the Act. Under this proposed definition, workers who are part of a worker group that has been certified under subpart B as eligible to apply for the TAA Program, and are individually threatened to be, but who have not yet been, totally or partially separated from their adversely affected employment, may be eligible to receive certain benefits under the program. An AAIW, in combination with an AAW, is referred to as a trade-affected worker throughout this NPRM.

Agent State—This NPRM modifies the definition of this term from 20 CFR 617.3(aa)(2) and 617.16(e) by including the phrase “trade-affected worker” instead of the term “individual.” The term “Liable State” is now separately defined in this proposed subpart A.

Applicable State law—This NPRM adds this term and defines it for the first time to clarify that this term, which appears in secs. 232(a)(2), 239(e), and 247 of the Act, refers to State UI law. The definition is modified from 20 CFR 617.16(a) for clarity and procedures for determining applicable State law are provided in proposed § 618.898.

Appropriate subdivision—This NPRM adds this term and modifies the definition of this term from 29 CFR 90.2 (included as part of the definition of the term “firm”). The phrase “appropriate subdivision” is also part of the definition of the term “firm” under sec. 247(3) of the Act. The terms “physical facility,” “organizational department,” “product line,” “project team,” “operational unit,” or “part or combination thereof” have been added to the terms “establishment” and “auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities” from 29 CFR 90.2. This proposed definition reflects that service workers are now eligible for benefits and explains that the term is defined flexibly. Included are all workers at the location(s) who have been totally or partially separated or threatened with separation, including teleworkers who identify as reporting to that location(s), and may include workers at a satellite office or shared space who function as if they were at that location(s), identified in the petition, or subsequently identified during the course of the investigation, whose employment is dependent upon the production of the specific article or supply of the specific service identified in the petition, or identified during the course of the investigation. The proposed definition also clarifies that colocation is neither a requirement nor a presumption in determining an appropriate subdivision. Thus, an appropriate subdivision of a firm could include operational units that produce the article or provide the service in question, even if the units are not at the same physical location. Teleworkers, and staffed workers, may be part of the appropriate subdivision. In contrast, the fact that all of the workers are located at the same physical location does not necessarily mean that they are part of the appropriate subdivision. Additionally, when worker separations and trade effects are limited to a discrete, individually distinct

organizational unit, it may be that only a particular subset of workers in the specific organizational unit meets the sec. 222 group-eligibility requirements. In these cases, and as described in the example below, a narrower interpretation focusing on where the trade effects are concentrated, informs the definition of “appropriate subdivision.” Identifying a discrete subset of workers makes for a clearer causal nexus between a trade effect and the worker separations, especially when an organization provides multiple services, produces multiple articles, or consists of multiple units. Consequently, a determination may consist of several appropriate subdivisions when each subdivision is impacted by a different trade effect, or it may consist of a certification of an appropriate subdivision and a denial of the remaining group(s) of workers.

Here is an example. The appliances division of a company produces both ovens and refrigerators. The division’s 200 workers are separately identifiable, with 150 who produce refrigerators and 50 who produce ovens. The company shifts abroad some of its oven production and lays off eight oven-producing workers. The “appropriate subdivision” would be the oven product line, not the entire appliances division. If, however, the company’s sales fell due to foreign imports of ovens and refrigerators, and it laid off 25 workers from both product lines, the appropriate subdivision would be the entire appliances division.

Here is another example. A petition is filed on behalf of a group of workers in the accounting division of a car-manufacturing facility. If the workers were being separated due to the manufacturer’s decision to acquire the same accounting services abroad instead of performing them in-house, the appropriate subdivision would be the accounting division. If the workers were being separated as part of a larger set of layoffs across every

unit in the manufacturing facility because of increased imports of foreign-made cars, the appropriate subdivision would be the entire facility.

The Department's experience in implementing the provisions covering workers in the service sector has demonstrated that the organizational structures that companies use to supply services may differ significantly from those used to manufacture a product. Service sector workers are more likely to be spread out geographically or to work remotely than are workers in a manufacturing environment. The proposed definition makes it clear that flexibility is needed to ensure that the Department can address new and varied organizational structures.

Appropriate week—This NPRM modifies the definition of this term from 20 CFR 617.3(d) by replacing “individual” with “AAW.” This term is used in the proposed definitions of the terms “average weekly hours” and “average weekly wage.”

Approved training or TAA approved training—This NPRM adds this term and defines it for the first time. For training to be approved, the trade-affected worker must apply for training with the State and receive approval of the training program from the State after meeting the requirements of sec. 236(a)(1) of the Act, as described in proposed § 618.610. The other requirements and limitations of subpart F must also be met.

Article—This NPRM adds this term and defines it for the first time. The proposed term is in secs. 222 and 224 of the Act and the proposed definition is based on case law and current practice. An article may be tangible (including manufactured items, livestock, and commodities) or intangible (including software code and digital media). There is a distinction between an object produced for the purpose of sale (such as a book) and one produced incidental to the provision of a service (such as a ticket). While both objects

may be tangible (paperback novel and paper ticket, respectively) or intangible (e-book and e-ticket, respectively), the paperback book and the e-book are articles because they were produced by a firm and moved from one party to another at the contract of sale and for which ownership rights are transferred from one party to another under the contract of sale. The ticket is not an article but is a token that represents the intent or completion of a service. Where the revenue of the firm or appropriate subdivision is generated from the sale or production of an article, the firm or appropriate subdivision is deemed to be engaged in activity related to the sale or production of an article.

Average weekly hours—This NPRM modifies the definition of this term from 20 CFR 617.3(e), and has been combined with the statutory definition in sec. 247(5) of the Act. The phrase “consecutive calendar” has been added to the word “weeks” to clarify that the 52 weeks that comprise the average are the 52 consecutive calendar weeks before the worker’s first qualifying separation. Additionally, for consistency purposes, the word “individual” has been replaced with “AAW.”

Average weekly wage—This NPRM modifies the definition of this term from 20 CFR 617.3(f) by incorporating the statutory definition provided in sec. 247(4) of the Act. For consistency purposes, the word “individual” has been replaced with “AAW.”

Average weekly wage in adversely affected employment—This NPRM removes this defined term from 20 CFR 617.3(g) because it is unnecessary, as both terms “average weekly wage” and “adversely affected employment” are already defined.

Benefit period—This NPRM incorporates this defined term from 20 CFR 617.3(h) without change.

Certification or affirmative determination or petition certification—This NPRM modifies the definition of these terms from 20 CFR 617.3(j)(1) to clarify that the Department intends “group of workers,” the term used in 20 CFR 617.3(j)(1), to refer to workers pre certification, and the term “worker group” to refer to a group that has been certified as eligible to apply for TAA Program benefits and services. (The terms “group of workers” and “worker group” are defined in this proposed subpart A.) Otherwise, the definition is unchanged. This definition does not apply for purposes of the term “certification” in sec. 222(d)(3) (firm or customer must certify specific information), 236(a)(5)(H) (training involving obtaining or completing a degree or certification), 239(a)(3) (certifications for training waivers under 231(c)(2)), or 247(19) (definition of “recognized postsecondary credential”) of the Act. It also does not apply with respect to the term “affirmative determination” in sec. 222(e) (firms identified by the International Trade Commission (ITC)) or 224 (ITC notifications and investigations) of the Act.

Certification date or date of certification—This NPRM adds these terms and defines them for the first time. This NPRM removes the defined term “date of issuance” from 29 CFR 90.2. The change is intended to make clear that the date the Certifying Officer signs a certification is the date on which the certification takes effect.

Certification period—This NPRM modifies the definition of this term from 20 CFR 617.3(j)(2) to provide additional details to help clarify this specific time period. However, the meaning remains unchanged and is the period of time during which a worker group is covered by a certification.

Certifying Officer—This NPRM modifies the definition of this term from 29 CFR 90.2 to reflect the statutory change in sec. 249A of the Act, which changes the “Division

of Trade Adjustment Assistance” to the “Office of Trade Adjustment Assistance” and the title of the head of that office from “Director” to “Administrator.”

Co-enrollment—This NPRM adds this term and defines it for the first time. It refers to enrolling a trade-affected worker both in the TAA Program and also in another program administered through a State’s one-stop delivery system.

Commission or International Trade Commission or ITC—This NPRM incorporates these defined terms from 29 CFR 90.2 without change.

Commuting area—This NPRM modifies the definition of this term from 20 CFR 617.3(k) by replacing the word “individual” with “trade-affected worker.”

Completion of training or complete training or completed training—This NPRM adds these terms and defines them for the first time. It clarifies the Department’s interpretation of when a trade-affected worker completes TAA approved training.

Component part—This NPRM adds this term and defines it for the first time. The proposed definition is based on the statutory text, case law, and current practice. The Act consistently uses the term “component part” in the context of articles and does not use it in the context of service. Consequently, the Department determines that there is no component part of a service. A component part is a tangible or intangible input that is directly incorporated into another article and that becomes a subunit of that other article, although it need not retain its original form or characteristics. Examples of a component part of an article include a button on a shirt, lacquer on a table, preservatives in processed food, and code embedded in a microchip. Examples of inputs that are not component parts include production equipment, molds and castings, energy to power the production facility, code in software to operate machinery, blueprints, and designs. A component

part is neither like nor directly competitive with the article into which it is directly incorporated.

Confidential business information—This NPRM modifies the definition of this term from 29 CFR 90.33(a) by including a reference to the Trade Secrets Act, 18 U.S.C. 1905, and by omitting the phrase “obtained from a person” since the confidentiality exception applies regardless of its source. Title 29 CFR 90.33(a) identifies the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department’s regulations implementing FOIA, 29 CFR part 70, as the bases for designating confidential business information as “privileged or confidential.” FOIA exemption (b)(4) exempts from mandatory disclosure under FOIA trade secrets and certain commercial or financial information. The Trade Secrets Act prohibits the disclosure of trade secrets and confidential business information without legal authority. The proposed definition also adds that confidential business information could be received by the Department, or by the States on the Department’s behalf.

The proposed definition also reflects TGAAA’s addition of paragraph (e)(3) to sec. 222 of the Act (now sec. 222(d)(3)), which in part requires the Department to protect the confidentiality of information obtained during an investigation “that the Secretary considers to be confidential business information,” unless the firm or customer submitting the information had notice, at the time of submitting the information, that the information would be released by the Department, or subsequently agrees to its disclosure.

Finally, the proposed definition is used in conjunction with investigations under proposed subpart B. The NPRM relocates the information provided by 29 CFR 90.33(b) and (c) to proposed subpart B.

Contributed importantly—This NPRM adds this term and defines it for the first time. The proposed definition adopts the statutory definition in sec. 222(c) of the Act and is used in the petition investigation process described in proposed subpart B.

Cooperating State agency or CSA—This NPRM adds these terms and defines them for the first time to accurately identify the agency at the State level that will act as an agent of the Department in receiving applications from and providing benefits and services to trade-affected workers. The proposed definition incorporates language that is used in Governor-Secretary Agreements, as further described in proposed subpart H.

Customized training—This NPRM adds this term and defines it for the first time to identify a type of training approvable under the Act and proposed subpart F. The proposed definition of “customized training” is taken from sec. 236(f) of the Act. Proposed subpart F addresses exclusions specific to AAIWs from sec. 236(a)(10)(B) of the Act.

Date of issuance—This NPRM removes this defined term from 29 CFR 90.2 because it is not used in the Act or in the NPRM and is therefore unnecessary.

Date of the petition—This NPRM removes this defined term from 29 CFR 90.2. In its place, the NPRM proposes a new term, “petition date.”

Date of separation—This NPRM removes this defined term from 20 CFR 617.3(k)(1). In its place, the NPRM proposes a new term, “separation date.”

Denial or negative determination or petition denial—This NPRM adds these terms and defines them for the first time. The proposed definition is derived from 29 CFR 90.16(f) and describes the result when a group of workers has not met the requirements for certification and so is not eligible for TAA Program benefits.

Department of Labor or Department—This NPRM adds this term and defines it for the first time. It is used to identify references to the U.S. Department of Labor.

Downstream producer—This NPRM adds this term and defines it for the first time. It incorporates the statutory definition at sec. 222(c)(3) of the Act. A downstream producer is a firm that performs additional value-added production processes or services directly for another firm for articles or services with respect to which a worker group in such other firm has been certified as eligible to apply for TAA Program benefits and services. Value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services. Production processes are services provided directly for the primary firm even if ownership of the primary firm changes. Additionally, a firm can be a downstream producer even if the article for which the value-added production processes or services are carried out will become a component part of the article received from the primary firm, or if further value-added finishing or assembly of the article occurs downstream by another firm. Additionally, a downstream producer may be a firm that provides services to a primary firm that produces physical products. For example, a shipping company will be a downstream producer if a significant portion of its business is lost from a TAA certified primary firm.

Eligible RTAA recipient and eligible TAA recipient—This NPRM adds these terms and defines them for the first time to describe categories of persons who may be eligible

to qualify for the HCTC (see proposed definition of “HCTC”), if that benefit is available. These terms are defined in HCTC administrative guidance.

Employer—This NPRM incorporates this defined term from 20 CFR 617.3(n) without change.

Employment—This NPRM incorporates this defined term from 20 CFR 617.3(o) without change.

Enrolled in training—This NPRM modifies the definition of this term from 20 CFR 617.11(a)(2)(vii)(D)(1). This term is found at sec. 231(a)(5)(A) of the Act. The proposed definition is reworded from 20 CFR 617.11(a)(2)(vii)(D)(1). The proposed definition omits the instruction that a waiver is not required for a worker who is enrolled in training. That instruction is more clearly provided in proposed subpart G. The definition of this term is not the same definition used for the performance reporting under subpart H. Separate guidance, outside of this rule, is published on reporting requirements.

Exhaustion of UI—This NPRM removes this defined term from 20 CFR 617.3(p) and it is to be included in proposed subpart G rather than in this proposed subpart A.

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

Filing date—This NPRM modifies the definition of the term “date of filing” from 29 CFR 90.2. This term refers to the date on which petitions are deemed to be filed. OTAA, the office currently handling petitions under the TAA Program, is substituted for “Division of Trade Adjustment Assistance.” The phrase “other documents” has been

replaced with the phrase “attachments to the petition form” to clarify that the definition applies to attachments to a petition, and not to other documents submitted to the Department. The phrase “and determined to be valid” has also been added. The Department would review a petition, including attachments, to determine if it is valid, in accordance with proposed § 618.205, within 2 business days of receipt of the petition to the Department. The date on which the petition is determined to be valid is the filing date. The Department would not initiate the investigation until the petition is deemed valid, in accordance with proposed § 618.205(f). Accordingly, this interpretation applies to sec. 221(a)(3) of the Act, which states that “[u]pon receipt of the petition, [the Department] shall promptly publish notice in the *Federal Register* and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.”

Firm—This NPRM modifies the definition of this term from 29 CFR 90.2 and adds some new language derived from sec. 247(3) of the Act, including “[w]here the term ‘firm’ appears in this part, it means ‘firm or appropriate subdivision.’” This has been added to clarify that the term “firm,” as defined in sec. 247(3) of the Act, includes an appropriate subdivision thereof. Also included in the proposed definition is that “firm” includes “an agricultural firm or service sector firm or an appropriate subdivision thereof.” The Department also added a clarification that for purposes of determining group eligibility only, as described in subpart B, a firm does not include a public agency or any subdivision of a public agency. TAAEA modified sec. 247 of the Act (19 U.S.C. 2319) by striking “public agency” from the definition of a “firm.” Accordingly, individuals employed by a public agency, which the Department defines by reference to

29 U.S.C. 203(x), are not eligible for a certification of eligibility to apply for the TAA Program. This proposed definition of a “firm” is intended to encompass diverse organizations and to include closely related or affiliated organizations. The definition, however, follows basic rules of corporate and organizational law by limiting it to entities under common ownership or control.

First benefit period—This NPRM modifies the definition of this term from 20 CFR 617.3(r) by replacing “individual” with “AAW” to achieve consistency throughout the NPRM.

First exhaustion of UI—This definition is proposed for removal, as it is included in 20 CFR 617.3(s) and has been included in proposed subpart G, rather than in proposed subpart A.

First qualifying separation—This NPRM removes this defined term from 20 CFR 617.3(t)(3). The term is not necessary because the plain meaning of the term first qualifying separation is sufficient for use in the NPRM and additional clarifying language was added to the term “qualifying separation.”

First separation—This NPRM removes this defined term from 20 CFR 617.3(t)(1). It was written to address pre-TAARA statutory provisions that are outdated due to subsequent statutory amendments. The proposed definitions for the terms “partial separation,” “qualifying separation,” and “total separation” make this term and definition unnecessary.

Full-time training—This NPRM adds this term and defines it for the first time. It is derived from 20 CFR 617.22(f)(4) and defines full-time training as attendance in training in accordance with the training provider’s established full-time hours in a day (or credit

hours) and days in a week. The Department has added an interpretation, originally published in TAAEA administrative guidance, that provides that in the last semester of training, if the remaining required courses to complete the approved training will not meet the training provider's normal definition of full-time training, the State must consider the AAW to be in full-time training, and otherwise eligible to apply for TRA benefits.

Group of workers—This NPRM adds this term and defines it for the first time. It relates to the workers who file a petition or for whom a petition is filed and means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The proposed definition includes teleworkers and staffed workers because they are frequently performing the same work as other trade-affected workers in the subject firm and are under the subject firm's operational control. Separated workers are included in the definition because they, too, may be trade-affected workers. This term is different from the term "worker group." This NPRM also removes the defined term "group," from 29 CFR 90.2, because it defines "group" as three or more workers in a firm. The Act does not define this term and "group" can be interpreted as two or more. The Department is interested in comments related to this change.

Head of family—This NPRM removes this defined term from 20 CFR 617.3(u) because it is not used in this NPRM.

Health Coverage Tax Credit or HCTC—This NPRM adds these terms and defines them for the first time to describe the tax credit under sec. 35 of the Internal Revenue Code of 1986 (26 U.S.C. 35), which is available to eligible TAA recipients, eligible RTAA recipients, and other eligible recipients, including qualifying family members. The

HCTC benefit is available under TAARA 2015 and was available under TAARA 2002, TGAAA, and TAAEA for a limited time.

Impact date—This NPRM modifies the definition of this term from 20 CFR 617.3(v) for clarity. Section 223(a) of the Act requires that each certification specify the date on which the total or partial separation began or threatened to begin. Section 223(b) requires that the impact date may not be more than 1 year before the petition date, with exceptions for certifications based in sec. 222(e) of the Act and those specified in proposed subpart B.

Increased imports—This NPRM incorporates this defined term from 29 CFR 90.2 without change.

Individual employment plan or IEP—This NPRM adds these terms and defines them for the first time. It describes an employment and case management service required by sec. 235(2) of the Act. The IEP is a dynamic document that may be changed based on comprehensive and specialized assessments, training program modifications, or other factors that emerge during program participation. Proposed subpart C describes development of an IEP in more detail.

Job finding club—This NPRM incorporates this defined term from 20 CFR 617.3(y) and sec. 247(16)(C) of the Act without change.

Job search program or JSP—This NPRM incorporates this defined term from 20 CFR 617.3(w) and sec. 247(16)(A) of the Act without change.

Job search workshop—This NPRM modifies the definition of this term from 20 CFR 617.3(x) to conform to the definition provided in sec. 247(16)(B) of the Act.

Lack of work—This NPRM adds this term and defines it for the first time. The proposed term is in sec. 247(2) of the Act and is also in the definitions of the terms “adversely affected worker” and “layoff” in this NPRM. The proposed definition incorporates the administrative guidance in TEGL No. 12-16 on “strikes” and “lockouts” and their effect on eligibility for TAA Program benefits and services. Specifically, a “lack of work” separation occurs when the employer initiates the unavailability of work – the employer either does not have work for the worker to perform or does not make that work available to the worker. A lack of work separation can be based on a lockout, because a lockout is initiated by the employer. Another example is when an employer provides a retirement package incentive or other bonus to reduce the workforce through voluntary separations. Some AAWs will meet this definition of a “lack of work” separation but may still be disqualified for UI in some States under their voluntary quit provisions. Although the UI disqualification will make these workers ineligible for TRA, they may qualify for other benefits and services under the TAA Program.

Layoff—This NPRM modifies the definition of this term from 20 CFR 617.3(z) and 29 CFR 90.2. The phrase “suspension or separation from employment” used in 20 CFR 617.3(z) is adopted instead of the phrase “suspension from pay status” used in 29 CFR 90.2 because the Department intends for “layoff” to include persons separated from employment who receive severance pay and, therefore, may be deemed in a pay status. Some of these workers may be eligible for TAA Program benefits and services, whether or not State law prevents them from qualifying for TRA. The words “of time” have been added to the 20 CFR 617.3(z) phrase “expected to be for a definite or indefinite period,” and this is a change from the 29 CFR 90.2 definition, which does not include the latter

phrase. In addition, the language at 20 CFR 617.3(z) and 29 CFR 90.2 that requires that the layoff be expected to last for “not less than seven consecutive days” and “no less than seven (7) consecutive calendar days,” respectively, has not been included in the proposed definition, because that restriction is not supported by the Act. These changes 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 Program purposes.

Liable State—This NPRM modifies the definition of this term from 20 CFR 617.3(aa)(1) and 617.16(e) to provide more specific directions about identifying the liable State. It also includes the phrase “trade-affected worker” instead of “individual” and updates references to this NPRM. The term “Agent State” is now separately defined in this proposed subpart A.

Like or directly competitive—This NPRM modifies the definition of this term from 29 CFR 90.2 in order to accommodate the statutory changes to group eligibility, which now includes worker groups performing services, to address intangible articles and services, and to remove the second paragraph, which states, “An imported article is *directly competitive with* a domestic article at an earlier or later stage of processing, and a domestic article is *directly competitive with* an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.” The Department proposes the removal of the second paragraph of the definition because it was seldom used and the proposed changes to the definition maintain the Department’s ability to determine whether an article at an earlier or later stage of production or a service at an earlier or later stage of supply are

commercially interchangeable. In addition, the proposed definition clarifies that like and directly competitive articles and services can be tangible or intangible. Examples of “like” tangible articles could include jackets and coats; examples of “like” intangible articles could include programming software code and operating software code. Examples of “like” services could include payroll services and billing services. Examples of “directly competitive” articles could include corrective eyeglasses and corrective contact lens. Examples of “directly competitive” services could include physical fitness personal trainer services and virtual fitness training programs available online. A component part is neither like nor directly competitive with the article into which it is incorporated because the component part is a subunit of the article.

Office of Trade Adjustment Assistance or OTAA—This NPRM adds this term and defines it for the first time as authorized by sec. 249A of the Act. It refers to the name of the organization within the U.S. Department of Labor, Employment Training Administration with responsibility for administering the TAA Program, or OTAA’s successor organization.

One-stop delivery system—This NPRM adds this term and defines it for the first time. It refers to the American Job Center network, which brings together workforce development, education, and other human resource services in a seamless, customer-focused service delivery network that enhances access to partner programs’ services and improves long-term employment outcomes for individuals receiving assistance. This includes coordination of services to eligible dislocated workers as defined under sec. 3(15) of WIOA. States operate the one-stop delivery system consistent with the

requirements of WIOA and its implementing regulations. WIOA sec. 121(b)(1)(B)(vii) requires the TAA Program to be a partner in the one-stop delivery system.

On-the-job training or *OJT*—This NPRM modifies the definition of this term from sec. 247(15) of the Act and 20 CFR 617.3(bb). It adds that the training is work-based and performed under contract with an employer. The term “AAW” replaces “individual.”

Partial separation or *partially separated*—This NPRM modifies the definition of this term from 20 CFR 617.3(cc), 29 CFR 90.2, and sec. 247(6) of the Act. The definition of this term in 29 CFR 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 the TAA Program. After being determined eligible to apply for the TAA Program, the AAW’s “partial separation” is referred to in 20 CFR 617.3(cc) as being “in adversely affected employment,” the term used in sec. 247(6)(A) and (B) of the Act. The proposed definition retains the statutory criteria of “partial separation” for both workers on whose behalf a petition has been filed and workers who are covered by a certification, and offers different definitions for usage under proposed subpart B and the other proposed subparts of this NPRM. The proposed definition also retains the provision in 20 CFR 617.3(cc) that, in order for the AAW to be counted as partially separated from adversely affected employment, the requisite reduction of hours and wages must have occurred. However, the proposed definition simplifies the language about when the separation must occur by substituting the phrase “during the certification period” for “during a week ending on or after the impact date specified in the certification under which an adversely affected worker is covered” (see proposed definition of “certification period”).

Period of duty—This NPRM adds this term and defines it for the first time. It is

from sec. 233(i)(2) of the Act, added by TGAAA, and relates to service performed in the reserve components of the Armed Services of the United States.

Petition date—This NPRM adds the term and defines it for the first time. It means the date a petition form is signed by the petitioner(s). This change reflects the common, everyday usage of this phrase. When petitioners sign on different dates, the petition date is the latest of those dates. This NPRM also removes the defined term “date of petition” from 29 CFR 90.2.

Prerequisite education or prerequisite coursework or prerequisite training—This NPRM adds these terms and defines them for the first time. They refer to approvable training under sec. 236(a)(5)(E) of the Act. For example, a trainee enrolled in an engineering program might have to complete courses in mathematics before registering for engineering courses. Similarly, some nursing programs may require additional math coursework beyond the trainee’s high school classes before starting the nursing program curriculum.

Program of remedial education or remedial education or remedial training—This NPRM adds these terms and defines them for the first time. They refer to approvable training under sec. 236(a)(5)(D) of the Act and are used to refer to education designed to improve trade-affected workers’ basic knowledge.

Qualifying separation—This NPRM modifies the definition of this term from 20 CFR 617.3(t)(2). The Department is proposing to amend the definition of “qualifying separation” to include partially separated workers. The definition at 20 CFR 617.3(t)(2) excludes partially separated workers and is based on an August 23, 1988, amendment to sec. 233(a)(2) of the Act, which added a 104-week limitation period for the receipt of

Basic TRA with respect to totally separated workers. See Pub. L. 100-418, sec. 1425(a).

The Department has reviewed the Act for this NPRM and has concluded that under a plain reading of the Act, partially separated workers are otherwise eligible for TRA benefits if the eligibility requirements in sec. 231 of the Act are met. The proposed definition covers qualifying separation for the purposes of assisting States in determining an AAW's eligibility to receive Basic TRA; the 26-week period for enrollment in approved training; and the Basic TRA eligibility period. The first qualifying separation is used for purposes of determining a worker's eligibility for Basic TRA and the weekly and maximum amounts of Basic TRA. This is discussed further in proposed subpart G.

Reemployment Trade Adjustment Assistance or RTAA—This NPRM adds these terms and defines them for the first time to refer to the employment-based benefit described in sec. 246 of the Act. RTAA was established with TGAAA and continued under TAAEA and TAARA 2015.

Regional Administrator—This NPRM modifies the definition of this term from 20 CFR 617.3(dd), by reversing the order of the terms “U.S. Department of Labor” and “Employment and Training Administration.”

Remuneration—This NPRM removes this defined term from 20 CFR 617.3(ee) because it does not appear in this NPRM.

Secretary—This NPRM incorporates this defined term from 20 CFR 617.3(ff) and 29 CFR 90.2 without change.

Separation date—This NPRM adds this term and defines it for the first time. It replaces the term “date of separation” and is substantially the same as in 20 CFR 617.3(l), but rephrases the employer-authorized leave language slightly for clarity, adds a

reference to leave for military service as provided in sec. 231(a)(2)(D) of the Act, and uses the word “worker” instead of “individual.” This NPRM also removes the defined term “date of separation” from 20 CFR 617.3(l).

Service—This NPRM adds this term and defines it for the first time to explain how the term is used in sec. 222 of the Act as part of group eligibility requirements. This proposed definition has been developed from case law and current practice. A service is the work performed by a worker for a service firm or appropriate subdivision. The work of a service firm is measured in units of time, labor, and tasks completed. Services may include the incidental production of an article, such as a license, ticket, certificate, permit, model, drawing, or prototype. For example, a travel agent provides travel-planning services, but may send customers a ticket or voucher. An online education company provides education services, but may send students a textbook. Where the revenue of the firm or its appropriate subdivision is generated from the sale of a service, the firm or subdivision is engaged in the supply of a service.

Significant number or proportion of the workers—This NPRM modifies the definition of this term from 29 CFR 90.2 to reflect that both partially and totally separated workers, as well as workers threatened with total or partial separation, are counted towards the number and proportion of workers affected, as established in sec. 222(a)(1) and (b)(1) of the Act. The phrases “[i]n most cases” and “would ordinarily have to be affected” have also been omitted from the definition.

Staffed worker—This NPRM adds this term and defines it for the first time under the authority of sec. 223(e) of the Act, which allows the Department to establish standards for investigations of petitions filed under sec. 221 of the Act and to develop

criteria for making determinations under sec. 223(a) of the Act. Previously referred to as leased workers, staffed workers are more fully addressed in proposed subpart B.

State—This NPRM modifies the definition of this term from 20 CFR 617.3(hh), by replacing the phrase “such Commonwealth” to “the Commonwealth of Puerto Rico” for clarity.

State agency—This NPRM removes this defined term from 20 CFR 617.3(ii). This is a commonly understood term. The term is defined at sec. 247(8) of the Act.

State law—This NPRM modifies the definition of this term from 20 CFR 617.3(jj) and sec. 247(9) of the Act. The reference to the Internal Revenue Code has been updated and additional language is added to include other State laws that may be explicitly mentioned in this proposed part 618.

Successor-in-interest—This NPRM adds this term and defines it for the first time to provide clarity to States when there are mergers and acquisitions, name changes, bankruptcy proceedings, and other actions that may change the name of the firm under which a worker’s wages are reported to the State or by whom a termination notice or threatened status letter is issued. There is a test used by the Department in determining whether there is a successor-in-interest when the question arises as part of a determination as to the scope of the worker group under a certification. In determining whether or not there is a successor-in-interest, the State must determine whether most or all of the following conditions are met: there is continuity in business operations; there is continuity in location; there is continuity in the workforce; there is continuity in supervisory personnel; the same jobs exist under similar conditions; there is continuity in machinery, equipment, and process; there is continuity in product/service. If the State’s

investigation finds a successor-in-interest relationship exists and that could result in a denial of any TAA benefits, except RTAA, the State should file a new petition requesting an amendment to a certification in accordance with proposed § 618.250. The Department specifically encourages comments on this topic.

Suitable employment—This NPRM modifies the definition of this term from 20 CFR 617.22(a)(1)(i) and sec. 236(e) of the Act. Specifically, the Act uses the term suitable employment in sec. 236(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 Department has concluded that suitable employment, to be considered such, excludes part-time, temporary, or threatened employment. Thus, the proposed definition adds this caveat. Additionally, unlike 20 CFR 617.22(a)(1)(i), the NPRM does not restrict applicability of the definition to sec. 236(a)(1)(A) of the Act.

Suitable work—This NPRM removes this defined term from 20 CFR 617.3(kk)(1) and (2) and defines it within proposed subpart G, rather than in this proposed subpart A.

Supplier—This NPRM adds this term and defines it for the first time. It is derived from sec. 222(c)(4) of the Act. The Department proposes to add this term and definition in response to statutory changes to group eligibility requirements. The Department has supplemented the statutory definition with a statement explaining that there is no direct supply where an intervening entity receives the component parts for articles, aside from a delivery or bailment situation, or in the case of a service supplier, if an intervening entity performs the service. The Department’s interpretation is based on case law and current practice.

Supportive services—This NPRM adds this term and defines it for the first time. It is derived from sec. 235(8) of the Act and is used to refer to such services as are needed to enable a trade-affected worker to participate in activities authorized under the Act. Additional information on supportive services is in the WIOA regulations at 20 CFR 680.900.

Threatened to become totally or partially separated—This NPRM adds this term and defines it for the first time. It is similar to the term “threatened to begin” in 29 CFR 90.2 and is used in the context of petition investigations. The proposed definition describes that workers in a firm or appropriate subdivision can be threatened to become totally or partially separated when there is evidence of intent to separate workers. Evidence may include a Worker Adjustment and Retraining Notice (WARN) Act notification, a letter to a union official from the company, a memo to the employees from the company, or other forms of notice. Similar to 29 CFR 90.2, the phrase applies when it is reasonable to anticipate that separations are imminent.

Threatened to begin—This NPRM incorporates this defined term from 29 CFR 90.2 without change. It is used in conjunction with the proposed defined term “threatened to become totally or partially separated,” and is the date(s) on which the applicable event(s) occurred.

Total separation or totally separated—This NPRM modifies the definition of these terms from 20 CFR 617.3(l) and 29 CFR 90.2 and specifies the difference between how the terms are applied to a worker for purposes of investigating a petition and determining group eligibility, in accordance with proposed subpart B, and how they are applied to an AAW otherwise.

Trade Adjustment Assistance for Workers or *Trade Adjustment Assistance* or *TAA Program*—This NPRM modifies these defined terms from 20 CFR 617.3(mm) to state that the programs included as part of the TAA Program include RTAA and also to refer generally to the provision of benefits and services to trade-affected workers as described in this NPRM.

Trade-affected worker—This NPRM adds this term and defines it for the first time to simplify the reference when the NPRM applies to both categories of workers: “adversely affected workers” and “adversely affected incumbent workers.”

Trade Readjustment Allowance or *TRA*—This NPRM modifies the definition of these terms from 20 CFR 617.3(nn) and (m)(1) and (2) to reference the administration of the TRA benefit in proposed subpart G and includes the three categories of TRA available under TAARA 2015: Basic, Additional, and Completion. This revised definition does not define the three categories of TRA, but provides a cross-reference to their definitions in proposed subpart G.

Unemployment Insurance or *UI*—This NPRM modifies the definition of these terms from 20 CFR 617.3(oo), to use the word “worker” instead of “individual.” The terms “regular compensation,” “additional compensation,” and “extended compensation” are the same as the definitions in the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26. U.S.C. 3304 note), except that the word “worker” has been substituted for the word “individual,” and the term “Federal supplemental compensation” has been updated and moved within the definition of “extended compensation.”

Value-added production processes or services—This NPRM adds this term and defines it for the first time. It is derived from sec. 222(c)(3)(B) of the Act and used in reference to the petition investigation process and identifying adversely affected secondary workers who perform work for a firm that is a downstream producer.

Wages—This NPRM incorporates this defined term from 20 CFR 617.3(pp) without change. For purposes of proposed subpart G, this includes wages paid to a worker by a successor-in-interest.

Wagner-Peyser Act—This NPRM adds this term and defines it for the first time to refer to the Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.). It references a program that is a required WIOA partner and may provide assistance to TAA Program participants.

Week—This NPRM incorporates this defined term from 20 CFR 617.3(qq) and sec. 247(12) of the Act without change.

Week of unemployment—This NPRM modifies the definition of this term from 20 CFR 617.3(rr). The phrase “Federal unemployment compensation law” has been changed to “Federal Unemployment Insurance law” to mirror the definition in sec. 247(13) of the Act.

Worker group—This NPRM adds this term and defines it for the first time. It defines who may comprise a group of workers certified under proposed subpart B as eligible to apply for TAA Program benefits and services. The proposed definition includes teleworkers and staffed workers. The proposed definition is derived from sec. 223(a) of the Act, which refers to a certification of eligibility to apply for assistance as “covering workers in any group.” The term is differentiated in this NPRM from the term

“group of workers” (defined in this proposed subpart A), which refers to workers who file a petition for certification under sec. 221(a)(1)(A) of the Act.

Workforce Innovation and Opportunity Act or *WIOA*—This NPRM adds this term and defines it for the first time to refer to the Workforce Innovation and Opportunity Act (Pub. L. 113-128), as amended, under which the Department provides funding for States to carry out employment and training activities for adult, dislocated worker, and for youth activities in conjunction with local workforce development areas. The TAA Program is a mandatory one-stop partner under WIOA.

B. Subpart B – Petitions, Investigations, and Determinations

The purpose of subpart B is to set forth regulations required by sec. 248 of the Act, directing the Department to prescribe regulations to implement the provisions for rendering group determinations on adjustment assistance for trade-affected workers. This subpart will provide for the prompt and effective investigation of petitions for certification of eligibility to apply for adjustment assistance.

Proposed subpart B addresses secs. 221, 222, 223, and 224 of the Act and codifies and relocates 29 CFR part 90 by incorporating it into part 618. The proposed subpart makes several changes to update those regulations to reflect statutory changes; current procedures for filing petitions, conducting investigations, and issuing determinations of TAA Program eligibility; and requires exhaustion of administrative remedies, specifically use of the reconsideration process, prior to judicial review. The Department proposes to relocate most of the definitions in 29 CFR 90.2 to subpart A of part 618 for clarity and consistency.

Section 618.200 Scope.

Proposed § 618.200 provides the same general scope for subpart B as 29 CFR part 90 but expounds upon the description of the scope given in 29 CFR 90.1.

Section 618.205 Petitions.

Proposed § 618.205 updates the provision related to petitions at 29 CFR 90.11 and also makes the following changes. Proposed paragraph (a) updates who may file a petition, based on changes to sec. 221(a) of the Act. It also changes § 90.11(a) to reduce the number of workers who must sign the petition from three to two. The Act does not specify a minimum number of workers that make up a “group of workers.” Therefore, the Department interprets this to require that a group of workers be a minimum of two workers, instead of the current requirement of three workers. Proposed paragraph (b) combines and modifies 29 CFR 90.11(b) and (c) regarding the form and content of petitions. It requires petitioners to provide information the Department needs to begin its investigation. Absent this required information, a petition will not be valid. The required information remains substantially the same with the exception of proposing to remove the requirements in § 90.11(c)(6) and (7). The requirements in § 90.11(c)(6) and (7) are not worded in such a way to elicit information in keeping with all of the statutory requirements for group eligibility. Primarily, the requirements in 29 CFR 90.11(c)(6) and (7) do not apply to a petition filed identifying a shift. Therefore, the Department proposes to remove and replace them with proposed paragraph (b)(8), which requires that the petitioner explain why it is believed that worker separations that have occurred or may occur at the worker’s firm are due to foreign trade impacts, or provide a reason that an amendment to an existing and active certification is being requested. Proposed paragraph (b)(3) also adds a requirement to provide the address of the location(s) where the group

of workers who have been totally or partially separated or threatened with separation report to work (for a teleworker, the address of the location to which they report) to assist the investigator in identifying the group of workers.

Proposed paragraph (c) is new and provides that supplemental information, while not required when the petition is filed, may be provided with the initial filing to assist the Department in rendering a timely decision.

Proposed paragraph (d) updates 29 CFR 90.11(c) and maintains the methods of filing, allowing petition submissions by fax, email, and mail, but strongly encourages that all petitions be filed electronically with the Department through the Department's website. Due to built-in quality control measures, online filing ensures that petitions are complete when filed, which improves the overall processing time of all petitions by minimizing the need for the Department to return incomplete petitions. Individuals requiring assistance with online filing may contact their nearest one-stop center or their State's rapid response unit.

Proposed paragraph (e) is a new provision that implements sec. 224 of the Act, requiring the Department to take specific actions when the ITC issues an affirmative determination on the investigation under sec. 202 or 421 of the Act, or issues an affirmative final determination under sec. 705 or 735 of the Tariff Act of 1930. This language follows the statutory requirements.

Proposed paragraph (f) revises 29 CFR 90.12 and provides the Department's procedures for acceptance of a petition. Upon receipt of a petition, the Department will make an initial determination of validity, which will be limited to checking whether all

required petition elements are included. Once a petition has been determined to be valid, the Department will begin an investigation.

Proposed paragraph (g) is new and provides that if the Department receives multiple petitions for the same group of workers, the petition date from the first petition filed will be used. This reflects current practice and ensures fairness to workers.

Proposed paragraph (h) was previously part of 29 CFR 90.12 and provides that the Department will publish a notice of the petition in the *Federal Register* and on the Department's website announcing the initiation of an investigation into all valid petitions filed.

Proposed paragraph (i) modifies 29 CFR 90.32 and reinforces that petitions and any attachments included are public documents. As such, the Department will publish redacted versions of petitions on the Department's website. This will remove the need for individuals to file a FOIA request for copies of posted petitions. Lastly, proposed paragraph (j) is a new provision and is part of the States' responsibilities under sec. 239 of the Act to ensure that petitions that have not been filed with the Department, as required under the Act, are identified and filed with the Department. The proposed language requires that if a petition is filed with the State, upon receipt of that petition, the State must ensure the Department has received a copy of the petition or the State must forward the petition to the Department.

Section 618.210 Investigation.

Proposed § 618.210 describes the investigation process, authorized under secs. 221 and 222 of the Act, and updates the language from 29 CFR part 90 to reflect current procedures and practices in the areas of timing; period of investigation; investigative

processes; protection of confidential business information; termination of an investigation; the investigative record; and site visits. Proposed paragraph (a) reiterates the requirement in proposed § 618.205(f) that before an investigation can begin, the Department must determine that the petition is valid. Proposed paragraph (b) expands on 29 CFR 90.12 and defines the period of investigation to be used during investigations under this subpart B. The statutory timeframe for completing the investigation begins once a petition is filed with the Department and determined to be valid. Proposed paragraph (c) is new and explains the steps the investigator may take in order to render a determination regarding whether to certify a petition. It also identifies commonly used sources of information, providing added detail, structure, and transparency to stakeholders about the investigation process.

Proposed paragraph (d) derives from sec. 222(d)(3)(C) of the Act and updates the language from 29 CFR 90.32 to reflect the availability of information and protection of confidential business information received during the investigation process. This provision reiterates that the Department will not disclose confidential business information without the consent of the submitting firm or a court order.

Paragraph (e) is new and describes the conditions under which the Department may terminate an investigation. If an investigation is terminated, the Department will inform the petitioner and publish a notice in the *Federal Register* and on the Department's website. This proposed paragraph also provides that the Department may retain the original impact date for terminated petitions if the petition is later reinstated or a valid petition is filed for the same group of workers. A terminated investigation is subject to reconsideration and judicial review (see proposed § 618.245).

Proposed paragraph (f) is new and describes the contents of the investigative record of a determination. The investigative record will not include documents covered by attorney work-product protection, such as documents prepared in anticipation of litigation; documents covered by the attorney-client privilege, such as confidential communications with counsel seeking legal advice; documents covered by the deliberative process privilege, such as early drafts of determination documents; and other information otherwise exempt from disclosure. Proposed paragraph (g) expounds upon 29 CFR 90.12 and authorizes the use of site visits, previously called field visits, during the investigation to collect or validate information furnished by petitioners or to gather other relevant information.

Section 618.215 Public hearings.

Proposed § 618.215 discusses the provision governing public hearings and, other than updating regulatory citations, there are only a few changes from 29 CFR 90.13. These changes are as follows: proposed paragraph (a)(3) is new and has been added to assist the parties in clearly communicating the issues to be heard; proposed paragraph (c) substitutes that a notice of public hearings will be published in the *Federal Register* within “a reasonable period of time” rather than at least 7 calendar days before the scheduled hearing, because the 7-day requirement may delay hearings; and proposed paragraph (j) revises 29 CFR 90.13(j) to allow for transcripts and recordings of hearings in place of being stenographically recorded.

Section 618.220 Use of subpoena.

Proposed § 618.220 explains the use of subpoena authority available to the Administrator under sec. 222(d)(3)(B) of the Act. It modifies 29 CFR 90.14 by providing

factors the Department will use in determining the need for issuance of a subpoena during the investigation process. States are also provided subpoena authority in this NPRM, as discussed in subpart H. Proposed paragraph (a) is unchanged from 29 CFR 90.14(a). Proposed paragraph (b) is new and describes five factors the Department will consider when determining whether to issue a subpoena. Proposed paragraph (c) is unchanged from 29 CFR 90.14(c). Proposed paragraph (d) is substantially the same as 29 CFR 90.14(d), but includes a new reference to Rule 5(b) of the Federal Rules of Civil Procedure, which describes service and filing procedures of court pleadings and other papers. Proposed paragraph (e) is substantially the same as 29 CFR 90.14(b).

Section 618.225 Criteria for certification of a group of workers.

Proposed § 618.225 substantially updates 29 CFR 90.16(b) to describe the criteria the Department uses to certify a group of workers, which has expanded significantly under sec. 222 of the Act. It also identifies factors under consideration in determining whether a criterion is met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used. The proposed new provisions, listed below, reflect Congressional intent, existing Departmental practices and, in some instances, thresholds for select criteria.

Proposed paragraph (a) covers increased imports and provides the criteria for certification of a group of workers under sec. 222(a) of the Act. While 29 CFR 90.16(b) covered certifications based on increased imports, the modifications to the provision are significant enough to deem this a new provision. Proposed paragraph (a)(1) describes five

possible bases for an increased imports certification. Proposed paragraph (a)(2) describes the four criteria that must be met in order to issue a certification under increased imports.

Proposed paragraph (b) covers shift in production of articles and supply of services by the group of workers' firm to another country and provides the criteria for certification of a group of workers under sec. 222(a) of the Act. Proposed paragraph (b)(1) describes the two possible bases of a shift in production certification. Proposed paragraph (b)(2) describes the three criteria that must be met in order to issue a certification under a shift.

Proposed paragraph (c) covers foreign acquisition and also provides the criteria for certification of a group of workers under sec. 222(a) of the Act. The introductory text to proposed paragraph (c) describes the two possible bases for a foreign acquisition certification. Proposed paragraphs (c)(1) through (3) describe the three criteria that must be met in order to issue a certification under foreign acquisition.

Proposed paragraph (d) covers the certification of a group of workers as a supplier under sec. 222(a) of the Act. Proposed paragraphs (d)(1) through (5) describe the five criteria that must be met in order to issue a certification for a supplier.

Proposed paragraph (e) covers the certification of a group of workers as a downstream producer under sec. 222(b) of the Act. Proposed paragraphs (e)(1) through (5) describe the five criteria that must be met in order to issue a certification as a downstream producer.

Proposed Paragraph (f) implements sec. 222(e) of the Act related to a group of workers in a firm or firms named as a member of a domestic industry for an affirmative determination issued by the ITC. Proposed paragraphs (f)(1) through (3) describe the

three criteria that must be met in order to issue a certification based on an affirmative determination issued by the ITC.

Proposed paragraph (g) is new and describes the Department's longstanding interpretation of the 1-year period prior to the petition date for production and sales declines.

Proposed paragraph (h) is new. The Department is making explicit an eligibility requirement contained in sec. 222(c)(2) of the Act, which states that firms, or appropriate subdivisions thereof, that engage in exploration or drilling for oil and natural gas must be considered to be engaged in the production of oil or natural gas. However, the Department will not interpret this provision to prevent workers from meeting criteria set forth in other portions of the Act. A petition covering a group of workers providing oil and gas services may be investigated as both a firm engaged in the supply of exploration or drilling services and a firm engaged in the production of oil or natural gas. This means the Department may conduct a parallel investigation to determine whether the petitioning group of workers meets any criteria for certification of worker groups set forth in proposed § 618.225.

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

information to States for the aforementioned leasing or temporary staffing entities to assist them in notifying workers. States that discover additional leasing or temporary staffing entities employing staffed workers who are members of a certified worker group may serve those workers without the delay of filing a new petition or requesting an amendment to the certification. This change in procedure will enhance service delivery to workers. Although every case is decided on its own merits, proposed paragraphs (i)(1) through (9) list the control questions used to evaluate operational control and have been added to ensure uniformity in the Department's decisions. The Department is also considering an alternative approach to this provision, changing its previous interpretation and not including staffed workers as part of the worker group of the firm. It would instead require staffed workers to file a separate petition to seek certification as their own worker group. The Department seeks comments on both proposed paragraph (i) and the alternative approach the Department is considering.

Proposed paragraph (j) codifies administrative guidance issued as part of the TAAEA operating instructions. This section explains that teleworkers, also known as remote workers, may be part of a certified worker group without being specifically referenced in a certification document, insofar as their position is affected by the same trade effects as other workers in the worker group. Teleworkers should not be excluded simply because they are teleworkers. Rather, they should be considered part of the worker group when they otherwise fit the description.

Proposed paragraph (k) is new and provides that workers employed by a firm that is a successor-in-interest are members of a worker group even if they are not

specifically mentioned within the determination document issued under proposed § 618.235.

Section 618.230 Evidence.

Proposed § 618.230 is new and provides a description of the types of evidence to be gathered and used in evaluating the criteria for certification during the investigation process under § 618.210. Section 223(e) of the Act requires the Department to establish standards, including data requirements, for investigations under sec. 221 and for making determinations under sec. 223(a). Section 222(d) of the Act authorizes the Department to collect such information as necessary to make a determination. There is no similar provision in 29 CFR part 90 as this provision originated with TGAAA.

Proposed paragraph (a) provides that the Department will seek to verify all information provided in support of a criteria as accurate, complete, and current as part of considering the evidence. Proposed paragraph (b) provides that evidence may be accepted from sources including, but not limited to, petitioners, company officials, current and former workers of the firm, customers of the firm, trade associations, union representatives, Federal agencies, and reliable public sources such as State agencies and academic institutions. Another example of a party who may produce evidence is a party who submits information in response to the publication of the petition in the *Federal Register* or the Department's website. Proposed paragraph (c) provides that the Department may share information submitted in support of a petition, for verification purposes, with any entity as deemed appropriate for completing the investigation. For example, the Department may share a media article submitted by the petitioner in support of the petition with the company official to verify its accuracy.

Section 618.235 Determinations.

Proposed § 618.235 clarifies the process the certifying officer will use for issuing a determination based on the findings of the investigation as set forth in proposed § 618.230. This is similar to 29 CFR 90.16, but reorders it, condenses the description of types of determinations into four categories, and adds a discussion of the oil and gas provision at sec. 222(c)(2) of the Act. The NPRM removes the reference in 29 CFR 90.16(a) to the issuance of a determination within 60 days. The statutory period is 40 days, as provided in sec. 223(a) of the Act. Proposed paragraph (a) describes the affirmative determination or certification category of determinations. It contains predominantly the same information provided in 29 CFR 90.16, but adds a discussion of the impact date and coverage of workers under the petition. Proposed paragraph (b) covers a negative determination or denial and derives from 29 CFR 90.16(f) but also incorporates additional language to explain the Department's process more fully and to align it with proposed paragraph (a). Proposed paragraph (c) covers determinations and derives from 29 CFR 90.16(d). Excluded is language that has been incorporated from 29 CFR 90.16 into proposed paragraphs (a) and (b).

Proposed paragraph (d) covers amended determinations and codifies the practice of amending a certification to limit or expand a worker group or other elements of a certification, which aligns with longstanding practice and administrative guidance. Proposed paragraph (d) also states the Department's position that it reserves the right to begin reconsideration proceedings of a denial without a request for reconsideration being filed. Proposed § 618.250 of this subpart B also discusses this issue. In addition, this

paragraph states that a termination will not take effect until the period in which to request reconsideration has elapsed.

Section 618.240 Termination of certification.

Proposed § 618.240 discusses the termination of certifications under sec. 223(d) of the Act, updating the regulations to reflect current practice and procedures through minor revisions to 29 CFR 90.17. Any party eligible under proposed § 618.225 to submit a petition may file for a reconsideration of a terminated or partially terminated certification. A decision to uphold the termination of a certification after reconsideration is a final determination by the Department and subject to judicial appeal.

Proposed paragraph (a) restates sec. 222(d) of the Act and is unchanged from 29 CFR 90.17(a). Proposed paragraph (a)(1) is new and describes that unless a termination is issued under proposed § 618.240, all certifications under proposed § 618.235(a)(1)(ii) are considered terminated the day following the expiration date of the certification. And as provided in the definition of the term “certification period” in proposed subpart A, a certification expires 2 years after the certification date. Proposed paragraph (a)(2) is new and provides that all ITC certifications, described at § 618.225(f), are considered terminated the day following the expiration date of the certification, which is 1 year following the date of publication of the determination in the *Federal Register*. Proposed paragraphs (a)(1) and (2) have been added to make clear that the expiration date of a certification serves the same purpose as a notice of termination as described further in proposed paragraph (e) of this section. The expiration date cannot be extended, however, so if it is known that further separations or threat of separations will continue to exist after that date, a new petition must be filed.

Proposed paragraph (b) includes the notice language from 29 CFR 90.17(a) and updates it to include to whom the notices will be made. It also requires the State to notify the workers in the worker group of the initiation of the investigation. Proposed paragraph (c) updates 29 CFR 90.17(b) and describes how interested parties may comment on a notice of the initiation of an investigation to terminate a certification. Proposed paragraph (d) is new and describes the information that will be considered in determining whether to terminate a certification. It also provides that the period of investigation will remain the same as the period of investigation for the original certification.

Proposed paragraph (e) combines 29 CFR 90.17(d) and (e) to provide details on the process of issuing a notice of termination or notice of partial termination, as well as detailing to whom the notices will be issued. It requires States to notify the worker group of the termination or partial termination. It also states that a termination will not take effect until the period in which a party may request reconsideration has elapsed. Proposed paragraph (f) updates 29 CFR 90.17(f) and provides detail on the process of issuing a notice of continuation of certification, as well as detailing to whom the notice will be issued. It requires States to notify the worker group of the continuation of certification. Proposed paragraph (g) is new and allows for reconsideration of a determination of termination or partial termination of a certification. It refers parties to § 618.245. *Section 618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.*

Proposed § 618.245 contains the process for reconsiderations of determinations on petitions. There are several changes from 29 CFR 90.18, enumerated below, to provide additional clarifications and to enhance efficiency of investigations. The

Department encourages comments addressing the impact of this revised process.

Proposed paragraph (a) updates 29 CFR 90.18(a) and (b) to clarify that the reconsideration process allows for a party to apply to the Department to reconsider the termination of an investigation, as described in proposed § 618.210(e); a negative determination issued under proposed § 618.235(b); or a termination or partial termination of certification issued under proposed § 618.240. It also lists the information required as part of the application in order for it to be complete and valid. Proposed paragraph (b) aligns with the last sentence in 29 CFR 90.18 (a) and maintains the requirement that all applications must be in writing and must be filed no later than 30 days after the notice of the termination of the investigation, negative determination, or termination or partial termination of a certification has been published in the *Federal Register*. Proposed paragraph (c) is new and addresses the process for reviewing and returning an incomplete application for reconsideration. The refiling of the complete application must occur within the 30-day period identified in proposed paragraph (b) or within 5 days of receipt if the application is returned less than 5 days prior to the end of that period.

Proposed paragraph (d) addresses the publication of a notice in the *Federal Register* and on the Department's website of the application and the initiation of an investigation on reconsideration. The Department proposes to eliminate 29 CFR 90.18(c), which required a determination to accept the application for reconsideration before conducting an investigation. The Department concluded that eliminating the step requiring the certifying officer to make and issue a determination on whether or not to initiate a reconsideration will decrease time and burden and simplify the process. The Department will initiate an investigation on all complete reconsideration applications.

Proposed paragraph (e) is substantially the same as 29 CFR 90.18(f). Proposed paragraph (f) is new and describes the procedures for investigation on reconsideration. It also provides that the period of investigation will remain the same as the period of investigation for the original certification. Proposed paragraph (g) combines and updates 29 CFR 90.18(h) and (i). It also includes the requirement of the State to notify a worker group of a certification in accordance with proposed § 618.820 in subpart H. Proposed paragraph (g) also states that should a reconsideration investigation extend past 60 days, the Department will contact the applicant for a directive to continue or terminate the investigation. If the applicant directs the Department to continue its investigation, the Department will issue a notice of determination on reconsideration, which will be the Department's final determination. If the applicant directs the Department to terminate the investigation, the Department will issue a notice of termination of investigation, which will render the initial determination the Department's final determination.

Section 618.250 Amendments of certifications.

Proposed § 618.250 provides the process for seeking amendments to certifications. This proposed section is new, though in practice the Department has been issuing amendments for many years. Section 223 of the Act establishes that a determination be issued for "any group" that meets the eligibility criteria of sec. 222 of the Act. The Department interprets that provision to mean that, should new or supplemental information support a clarification of the certified worker group, the Department may issue an amended certification under the same petition number and publish the amendment in the *Federal Register* and post it on the Department's website. Proposed paragraph (a) describes the types of amendments and explains that amendments

must not extend the impact date as that would go beyond the period covered by the certification itself. Common reasons for amendments include changes to the ownership of a successor firm, correcting any technical errors made, and clarifying the worker group. Clarifying the worker group does not include adding teleworkers or staffed workers, as they are considered part of the worker group.

Proposed paragraph (b) includes a new requirement that amendments be requested through the regular petition process, which is a change to current practice. This change will help formalize the amendment process and ensure that all individuals are aware of and able to use the process. Proposed paragraph (c) requires the Department to publish a notice of the amendment in the *Federal Register* and requires the States to notify any additional certified trade-affected workers impacted by the amendment.

Section 618.255 Judicial review of determinations.

Proposed § 618.255 explains the process for judicial review of determinations issued under proposed §§ 618.240(g) and 618.245. This is a significant update to 29 CFR 90.19. Section 284 of the Act allows for judicial review of only “final determinations.” Under existing regulations, all determinations rendered by the Department are final determinations subject to judicial review. In the NPRM, the Department is defining only determinations on reconsideration issued under proposed §§ 618.240(g) and 618.245 as final determinations and, therefore, only these determinations are subject to judicial review through the United States Court of International Trade (USCIT). Proposed paragraph (a) is substantially the same as 29 CFR 90.19(a), but eliminates the citations within part 90. Proposed paragraph (b) is new and defines only determinations on reconsideration issued under proposed §§ 618.240(g) and 618.245 as final determinations

subject to judicial review through the USCIT. Proposed paragraphs (c) and (d) are substantially the same as 29 CFR 90.19(b) and (c), with only minor language changes to reflect modernization. Proposed paragraph (e) contains an updated reference and title from 29 CFR 90.19(d). Proposed paragraphs (f) and (g) are new and provide clarity on the determinations subject to judicial review under sec. 284 of the Act and specify that USCIT rules apply to filings with the court.

Section 618.260 Study regarding certain affirmative determinations by the Commission.

Proposed § 618.260 provides for a study and report to be undertaken by the Department in response to certain ITC affirmative determinations under sec. 224 of the Act. This is an update to the requirements at 29 CFR 90.21. There are no substantial changes, but the additional detail provided explains what information the study will include.

Section 618.265 Availability of information to the public.

Proposed § 618.265 discusses the availability of information under this part 618 and is largely unchanged from 29 CFR 90.32, except to indicate that copies of petitions, in redacted form, will be available on the Department's website.

29 CFR 90.36, related to the computation of time for purposes of subpart B, is proposed for deletion as it does not apply to calculations for petitions or reconsiderations. Individual sections of this proposed subpart B address time periods as appropriate.

C. Subpart C – Employment and Case Management Services

Proposed subpart C sets forth requirements under sec. 235 of the Act for States to provide employment and case management services to trade-affected workers. Proposed subpart C makes significant changes to the employment and case management services

provisions in 20 CFR part 617 because the enactment of TGAAA altered these requirements. However, 20 CFR 617.20 and 617.21 contain many of the same elements now contained in sec. 235 of the Act in proposed subpart C. TAARA 2002 required States to “make every reasonable effort” to provide case management services to trade-affected workers through programs other than the TAA Program. TGAAA enacted and funded a requirement to offer case management services to trade-affected workers. TAARA 2015 continues these provisions and requires States to provide employment and case management services, either through TAA Program funding, through programs other than the TAA Program, or through a combination of both.

Proposed subpart C also updates 20 CFR part 617 to reflect changes to the TAA Program and related workforce development programs due to the authorization and implementation of WIOA. Proposed subpart C emphasizes the integration of the TAA Program into the one-stop delivery system established under WIA and continued under WIOA.

Some key additions within proposed subpart C include requiring initial assessments for trade-affected workers; clarifying the provision of required case management services; and prescribing requirements for IEPs.

Section 618.300 Scope.

Proposed § 618.300 discusses the scope of this subpart and does not have a directly comparable section in 20 CFR part 617. This proposed section describes the TAA Program benefits that States must make available and their required integration with the reemployment and career services provided through the one-stop delivery system established under WIOA. States must provide trade-affected workers with seamless

delivery of services and benefits described in subpart C to help them return to employment as quickly as possible. Providing timely employment and case management services is important for improving the efficiency and effectiveness of the TAA Program. Immediately conducting an assessment improves participation rates, gives trade-affected workers more time to consider their options, and leads to better employment, retention, and post-program earnings outcomes.

The Act requires States to provide services to two groups of workers: (1) members of a group of workers covered by a petition for TAA filed by, or on behalf of, such group of workers; and (2) members of a worker group covered by a petition that the Department has certified. Under sec. 221(a)(2)(A) of the Act, the Governor must provide rapid response services and appropriate WIOA career services to groups of workers for whom a petition has been filed under subpart B. States must provide these services at the time of filing, whether or not the petition has been, or eventually will be, certified or denied. Once covered by a certification, States must offer trade-affected workers employment and case management services, including counseling, testing and placement services, and information on supportive and other services. This requirement is based on new language in secs. 235 and 239(a), (e), and (g) of the Act, and the Congressional Declaration of Policy in sec. 125(a) of TAARA 2002, which states that trade-affected workers “are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.” Section 239(f) of the Act requires that these services be coordinated with workforce activities and services under title I of WIOA and provides the Department with the authority to establish the responsibilities and requirements for such coordination. These

requirements are not new. Many of the employment and case management services discussed in this subpart are contained in 20 CFR 617.20 and 617.21.

Section 618.305 The Trade Adjustment Assistance Program as a one-stop partner.

Proposed § 618.305 is new and requires States to ensure that their TAA Program, as a required partner in the one-stop delivery system, complies with one-stop partnership requirements such as sharing staff, materials, and financial resources. Coordination with the broader public workforce system established under WIA, now WIOA, is required at 20 CFR 617.59(h). This section expands upon the existing rules and updates them to reflect the requirements established under WIOA. The partnership activities help ensure the seamless delivery of necessary services, including a comprehensive array of appropriate services not funded under the TAA Program, to groups of workers covered by filed petitions and to members of worker groups for whom a certification has been issued. Services provided before the certification of a petition for TAA cannot be charged to the TAA Program. Services provided by partner programs must not be duplicated using TAA Program funds. However, there may be a need to supplement the previous services if they do not meet the requirements of the TAA Program. Proposed paragraph (a) reiterates that the TAA Program is a required partner under WIOA. Proposed paragraph (b) requires that the TAA Program meet the WIOA one-stop partner requirements, including paying infrastructure costs in areas where the TAA Program is being carried out. Proposed paragraph (c) provides that, for locations where the TAA Program is being carried out, States must ensure that their administration of the TAA Program complies with the one-stop partnership requirements, including appropriate cost allocation for infrastructure and operating costs of one-stop centers, and the terms and

conditions of the memorandum of understanding established under the WIOA Final Rule at 20 CFR 678.500.

If the TAA Program is carried out in a local workforce development area (or local area), the State must provide access to the TAA Program services in at least one of the local area's comprehensive one-stop centers in accordance with 20 CFR 678.305(d) and WIOA sec. 121(b)(1)(A)(i). Access to the TAA Program occurs in one of three ways:

- Option 1. Having a program staff member physically present at the one-stop center;
- Option 2. Having a staff member from a different partner program physically present at the one-stop center and appropriately trained to provide information to customers about the programs, services, and activities available through all partner programs; or
- Option 3. Making available a direct linkage through technology to a program staff member who can provide meaningful information or services.

The options above offer a wide range of possibilities to partners. Option 2 could require varying levels of assistance depending on the trade-affected worker's needs. For example, this could be as simple as having an adequately trained WIOA staff member providing basic program information to a one-stop customer regarding group and individual eligibility requirements of the TAA Program. In this example, the one-stop center staff has been trained on TAA Program eligibility requirements as well as how to search for and file a TAA Program petition. Once the Department renders a determination on a petition, the one-stop center staff will then connect the worker to appropriately trained one-stop center staff who can further assist them. If the petition is certified, the

trade-affected worker is eligible to apply for individual benefits and the appropriately trained one-stop center staff must guide them through the application and enrollment process. This option allows the trade-affected worker to receive high-quality service through the one-stop center, in a timely manner. In this example, it would be essential that the Wagner-Peyser Act Employment Service staff person document their time and effort to ensure that the charges to the appropriate program, namely the TAA Program, for salaries and wages are based on records that accurately reflect the work performed, consistent with Federal cost principles in the Office of Management and Budget's (OMB's) Uniform Guidance at 2 CFR 200.430.

Option 3, a direct linkage, can take many forms as well. As described in 20 CFR 678.305(d)(3), a "direct linkage" means providing a direct connection at the one-stop center within a reasonable time, by phone or through a real-time web-based communication, to a program staff member who can provide program information or services, including career services, to the customer. Solely providing a phone number, website, information, pamphlets, or materials does not constitute a "direct linkage." The flexibility provided through the three optional methods for assuring customer access to required one-stop partner services and activities at the comprehensive centers ensures that the TAA Program remains accessible through the one-stop center network.

Section 618.310 Responsibilities for the delivery of employment and case management services.

Proposed § 618.310 explains the State's responsibilities for delivering and making available employment and case management services. These responsibilities are from sec.

235 of the Act. Proposed paragraph (a) addresses the information that States must provide to trade-affected workers. The information requirements are detailed in subpart H.

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

Proposed paragraph (b) reorganizes 20 CFR 617.20(b). Paragraph (b)(1) is included in proposed § 618.310(b). Paragraph (b)(2), registering AAWs for work, is omitted from the NPRM. Registering AAWs for work is a function of the Wagner-Peyser and UI programs. Although TAA Program staff may assist with this process, it is not an employment and case management service listed under sec. 235 of the Act. Paragraph (b)(3) is covered in both proposed § 618.310(b)(2) and proposed § 618.816 of subpart H. Paragraphs (b)(4) and (6) are retained as proposed § 618.310(b)(3). Paragraph (b)(7) is covered in subparts F (training) and D (job search and relocation allowances). Paragraph

(b)(8) is covered through the comprehensive and specialized assessment and IEP discussed in this subpart. Paragraphs (b)(9) through (12), regarding the selection of, referral to, and determinations on training, are covered in proposed § 618.310(b)(5) and (6) and in more detail in subpart F of this NPRM. Paragraph (b)(13), regarding the periodic review of reemployment plans, is covered in proposed § 618.350. Paragraph (b)(14), regarding periodic review of waivers, is included as proposed § 618.310(b)(7). Paragraph (b)(15), regarding the coordination of services with WIOA, is divided into proposed § 618.310(b)(8) and (9).

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

Proposed paragraph (c)(2) requires States to inform trade-affected workers of the availability of an IEP to identify employment goals and objectives, and appropriate training and services needed to achieve those goals and objectives. An IEP is a combination of the "training plan" contained in 20 CFR 617.20(b)(8) and the "reemployment plan" in 20 CFR 617.20(b)(13). The requirement to periodically review the reemployment plan in 20 CFR 617.20(b)(13) is carried forward as a requirement for an IEP under this NPRM. For workers seeking training or job search allowances,

§ 618.350(a) requires States to provide workers with an IEP, though this is not a requirement for eligibility for benefits.

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

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

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

Proposed paragraph (c)(6) requires States to provide various kinds of employment statistics, including local, regional, and national labor market information, to ensure trade-affected workers make informed decisions about their employment goals and training needs. Part 617 of title 20 of the CFR references the provision of labor market information to trade-affected workers in relation to job search activities, relocation, and training programs. Section 235(7) of the Act requires States to provide this information.

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

Proposed paragraph (d) further defines what it means to "make available" the employment and case management services described in this subpart. TEGL No. 16-16, "One-Stop Operations Guidance for the American Job Center Network," discussed the requirement that career services under WIOA be "made available." The Department there concluded that this phrase had the same meaning as "provided." The Department reaches the same conclusion under the Act. While not all employment and case management services will be appropriate for all trade-affected workers, they must be made available to them. This requires informing trade-affected workers of the available services; providing those services if requested or if the services are deemed appropriate for the worker; and

documenting the services that they offered, any that were not offered, and why those services were not offered.

Section 618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.

Proposed § 618.325 does not have a comparable section in 20 CFR part 617.

Proposed § 618.325 discusses co-enrollment between the TAA Program and WIOA and other programs to ensure the availability of a comprehensive array of services for trade-affected workers and the integration of workforce development programs. The Department long ago concluded that co-enrollment of trade-affected workers in the dislocated worker program under WIOA, WIA, and title III of JTPA before that, is the best way to integrate services and ensure successful reemployment of trade-affected workers, and States have been co-enrolling in accordance with administrative guidance. The State also should explore partnerships with community and faith-based organizations, including organizations not affiliated with the broader WIOA system, to ensure the provision of appropriate, holistic services to trade-affected workers, their families, and their trade-affected communities. This integration of service strategies arises from the requirement in sec. 239 of the Act to make available employment and case management services, such as counseling, testing, placement services, and supportive and other services for trade-affected workers.

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

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

- (1) Higher training participation (75 percent versus 51 percent for those not co-enrolled);
- (2) Higher training completion rates (78 percent versus 71 percent for those not co-enrolled); and
- (3) Higher credential attainment (73 percent versus 62 percent for those not co-enrolled).

All of these outcomes are correlated with higher performance outcomes and are statistically significant.

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

Proposed paragraph (a)(2) requires that States make available to eligible trade-affected workers co-enrollment in Wagner-Peyser Act Employment Service activities,

vocational rehabilitation services, and veterans' programs, such as the Jobs for Veterans State Grants program, and other one-stop partner programs, if appropriate. When trade-affected workers are co-enrolled properly in other one-stop programs, provided timely rapid response services, and given appropriate career services, they return to work as quickly as possible. Co-enrolled trade-affected workers also can receive supportive services that may help them complete TAA approved training and then return to employment. The Department expects the TAA Program, in general, to pay for all training and related costs and the majority of employment and case management services. However, trade-affected workers often also benefit from WIOA's supportive services and post-employment follow-up services, which cannot be funded through the TAA Program.

Proposed paragraph (b)(1) emphasizes that most trade-affected workers are dislocated workers as defined at WIOA sec. 3(15). Most trade-affected workers have been laid off, are likely to be eligible for unemployment compensation or are otherwise attached to the workforce, and are unlikely to return to a previous industry or occupation, which are the primary eligibility criteria for the dislocated worker program. There are only a few barriers to WIOA eligibility. Proposed paragraph (b)(2) recognizes that AAIWs will generally not be eligible for the WIOA dislocated worker program, but in certain circumstances, such as a general announcement of a closure, they may meet those eligibility criteria and must also be co-enrolled. Similarly, some partially separated workers' wages and time on the job will have decreased, but they remain employed and do not meet any other eligibility requirements of the WIOA dislocated worker program. Proposed paragraph (b)(3) describes that the broader requirement under WIOA that certain males be registered under the Selective Service provisions can be a barrier to co-

enrollment. There is no Selective Service registration requirement under the TAA Program. If an individual knowingly and willfully fails to register, he cannot co-enroll in WIOA and, therefore the co-enrollment requirement does not apply.

Section 618.330 Assessment of trade-affected workers.

Proposed § 618.330 is new and requires States to design an assessment process. Section 239(g)(4) of the Act permits the Department to require initial assessments for all trade-affected workers and requires the State to “perform outreach to, intake of, and orientation for [AAWs] and [AAIW]s covered by a certification under [the Act].” States must provide all trade-affected workers an initial assessment after determining that they are individually eligible for the TAA Program as part of the intake process. This meets a necessary component of the requirement at TAARA 2015 sec. 239(g)(4) that each State perform “intake of” trade-affected workers covered by a petition. Intake includes these assessments but also the collection of demographic information for reporting purposes. The initial assessment must include an evaluation of a trade-affected worker’s skill levels (including literacy, numeracy, and English language proficiency), abilities (including skills gaps), and supportive service needs.

Proposed paragraph (a) provides an overview of assessments. Proposed paragraph (b) provides that the States must ensure the scheduling of the assessment gives trade-affected workers enough time and information to consider, request, and enroll in training or obtain a waiver of the training requirement for TRA before expiration of the 26-week deadlines for enrollment in training provided under sec. 231(a)(5)(A) of the Act. Proposed paragraph (c) provides that assessments are created in cooperation with the trade-affected worker with their interests, skills, aptitudes, and abilities discussed.

Proposed paragraph (d) requires that the results be documented in the worker's case file. An assessment requires more than a review of information available about the trade-affected worker, their education, and previous employment. An assessment is an interactive process that includes the involvement of the trade-affected worker. Proposed paragraph (e) discusses what to do if a partner program conducts the assessment(s). The use of partner programs' assessments can increase efficiency, ensure that workers quickly receive appropriate reemployment services, and quickly identify those workers requiring a more comprehensive and specialized assessment of their skills. The Department recognizes that the lack of uniform requirements for assessments means that some assessments conducted by partner programs may not meet all TAA Program requirements for an initial assessment. If so, the State must supplement those partner program assessments with additional information to comply with § 618.335. Proposed paragraph (f) requires that States must explain the advantages of receiving an assessment to trade-affected workers and also confirms that a worker may refuse an assessment. However, the worker must provide any information necessary (outside the assessment process) that enables States to determine eligibility for any benefit under this part 618.

Section 618.335 Initial assessment of trade-affected workers.

Proposed § 618.335 is new and implements sec. 239(g)(4) of the Act. WIOA sec. 134(c)(2)(A)(iii) requires individuals be provided with an "initial assessment of skill levels (including literacy, numeracy, and English language proficiency), aptitudes, abilities (including skills gaps), and supportive service needs" as a career service through the one-stop center. The WIOA regulations mirror this language at 20 CFR 678.430(a)(3). Proposed § 618.335 aligns the TAA Program with WIOA and it

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

Proposed paragraph (a) requires that States conduct an initial assessment for each trade-affected worker, as authorized by sec. 239(g)(4) of the Act. If an initial assessment has been completed before the trade-affected worker enrolls in the TAA Program, the State must use the previous assessment and not conduct a duplicate assessment in accordance with proposed § 618.330(e). Proposed paragraph (b) lists factors that States must consider to find the best approach to reemployment for each particular worker. A review of local labor market conditions will help the State determine if any jobs are available in the local area for which the worker could apply. A review of the worker's knowledge, skills, and abilities gained from their education and previous employment helps the State 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 transferred to other available employment. A review of all barriers to the worker's employment will help the State identify training that may overcome those barriers, such as English language training or remedial training to get a high school equivalency degree. Any feedback from the trade-affected worker, including disagreement with the assessment's conclusions, must be documented in the case file.

Proposed paragraph (c) explains the State’s options for service strategies based on the information gathered from the initial assessment. This involves first making a determination of whether or not there is suitable employment available to the trade-affected worker and the options for moving forward. Proposed paragraph (d) explains that if suitable employment is not available, the State must advise the worker to explore available training under subpart F.

Section 618.345 Comprehensive and specialized assessment of trade-affected workers.

Proposed § 618.345 is new and implements sec. 235 of the Act. WIOA sec. 134(c)(2)(A)(xii) and its implementing regulation at 20 CFR 678.430(b)(1) require States to provide “[c]omprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include . . . [d]iagnostic testing and use of other assessment tools; and [i]n-depth interviewing and evaluation to identify employment barriers and appropriate employment goals” as an individualized career service “if determined to be appropriate in order for an individual to obtain or retain employment.” WIOA draws a distinction between basic career services and individualized career services as individualized career services only are required to be provided if it is determined appropriate. Proposed § 618.345 aligns the TAA Program with WIOA. Proposed paragraph (a) requires the comprehensive and specialized assessment to be made available to all trade-affected workers. Proposed paragraph (b) explains that the trade-affected workers’ goals and interests must be taken into account, as well as their location as it relates to available local employment and whether or not it is inside their current commuting area. Proposed paragraph (c) reiterates WIOA’s regulations and is meant to ensure that States have the information needed to help

workers select appropriate training and a viable future career, thus increasing their chances of successfully completing training and finding sustainable employment. Finally, proposed paragraph (d) provides that States can design their comprehensive and specialized assessments to gather the information necessary for determining whether the six criteria for training approval can be met under subpart F.

Section 618.350 Individual employment plans for trade-affected workers.

Proposed § 618.350 revises and combines two separate sections of 20 CFR part 617: a “training plan” at 20 CFR 617.20(b)(8) and a “reemployment plan” at 20 CFR 617.20(b)(13), and implements a new process for making available IEPs for trade-affected workers.

Proposed paragraph (a) requires the State to make available an IEP to all trade-affected workers and requires the establishment of an IEP for workers who apply for training under subpart F or a job search allowance under subpart D. Proposed paragraph (b) requires that the IEP must document both the results of the assessment and a service strategy to provide the trade-affected worker with needed services for reemployment.

Proposed paragraph (c) provides the required elements of an IEP. The IEP must be developed jointly between the State and the trade-affected worker. These elements are required because they cover most aspects of the training and reemployment process.

Proposed paragraph (d) explains that the IEP can be developed by a partner program, but it must be supplemented to include the elements required in proposed paragraph (c) if the IEP does not already include them. This reduces duplication of services, while still meeting program-specific needs. Proposed paragraph (e) requires the State to monitor the worker’s progress toward meeting the IEP’s elements. Proposed paragraph (f) requires

the State to modify the IEP as necessary, and with the worker's input. The State also must modify the IEP when there is a change to the trade-affected worker's approved training program or revisions to receipt of subsistence and transportation payments. Proposed paragraph (g) explains that a trade-affected worker seeking a job-search allowance under subpart D or training under subpart F may refuse to participate in the IEP process.

However, the trade-affected worker must provide sufficient information, either through a partial IEP or outside of the IEP process, for the State to make a determination on the six required training approval criteria or the job-search allowance application criteria. Failure to do so will result in denial of the training program or allowance. A trade-affected worker so denied can appeal the training denial, in accordance with provisions in subparts D, F, and H.

Section 618.355 Knowledge, skills, and abilities of staff performing assessments.

Proposed § 618.355 is new and has no comparable counterpart in existing regulations or in administrative guidance. The Department is proposing this section for the first time in order to assist States to ensure that requirements under sec. 235 of the Act are fully realized. TAA Program funds described in sec. 235A of the Act may assist in ensuring that States are able to obtain adequate staff to perform these services. Proposed paragraph (a) describes the qualifications that staff performing assessments should possess. In essence, staff should understand what jobs in the area are available to whom, and how trade-affected workers may be able to fill those jobs, either immediately or after receiving additional training. Staff with these qualifications can perform assessments quickly and properly, which helps the TAA Program run efficiently.

Proposed paragraph (b) confirms that the staff performing the assessments may be from any partner program and need not be limited to those funded under this Act. This flexibility better integrates the services of the TAA Program and partner programs.

Proposed paragraph (c) references funds available under sec. 235A(2) of the Act to assist in training staff to meet these recommendations.

Section 618.360 Employment and case management services for trade-affected workers in training.

Proposed § 618.360 is a new clarification that is added as a result of TAA Program oversight and monitoring conducted by the Department. Proposed § 618.360 requires States to continue to make employment and case management services available to all trade-affected workers considering training (on a waiver from training in accordance with subpart G), taking TAA approved training, or who have completed training. Keeping these services available will help workers as they move from training to reemployment, and increases the chances of a good return on that training investment. Those services include placement and referrals to appropriate supportive services to trade-affected workers upon their completion of training and until they find reemployment. Post-employment follow-up services cannot be funded by the TAA Program, but must be provided through co-enrollment in WIOA.

D. Subpart D – Job Search and Relocation Allowances

Proposed subpart D governs job search and relocation allowances, which are authorized, respectively, under secs. 237 and 238 of the Act. Proposed subpart D consolidates provisions contained in subparts D, E, and F of 20 CFR part 617, which implement these allowances. Proposed subpart D largely preserves the 20 CFR part 617

requirements for job search and relocation allowances, with a few substantive changes regarding a statutory increase to the limit for job search allowance reimbursement per AAW and per certification to \$1,250 from \$800 previously; an increase in the maximum lump-sum payment for relocation to \$1,250 from \$800 previously; and the definition of “suitable employment” used in the eligibility requirement for both job search and relocation allowances, explained below. Proposed subpart D also contains procedural changes from 20 CFR part 617.

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

Section 618.400 Scope.

Proposed § 618.400 explains the scope of this subpart D. This provision is new. It explains that the purpose of job search and relocation allowances is to help AAWs secure suitable employment and relocate outside their commuting area.

Section 618.405 General.

Proposed § 618.405 contains general provisions and revises and consolidates 20 CFR 617.30 and 617.40. Proposed paragraph (a) retains the content in 20 CFR 617.30,

except that it replaces the reference to “securing a job” with “suitable employment.”

Proposed paragraph (b) retains the content of 20 CFR 617.40, except that it eliminates the reference to the “head of the family.” Instead, it authorizes payment to the AAW in the family who first applies for the relocation allowance, if otherwise eligible. The Department has concluded that this minor change makes it easier for States to administer these benefits by eliminating the need to identify the head of the family.

Section 618.410 Applying for a job search allowance.

Proposed § 618.410 describes the same application process in 20 CFR 617.31, but changes instructions on when to file an application. Under 20 CFR 617.31(b), an AAW who is covered under a petition and who is totally or partially separated may apply for a job search allowance before or after the Department issues a certification. Proposed § 618.410 changes these procedures to require that a State accept applications for job search allowance only after the Department has issued a certification. Further, the Department proposes to eliminate precertification applications for job search allowances to avoid unrealistic expectations for reimbursement. 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 AAWs may receive job search allowances. This approach is similar to that of many assistance programs that do not reimburse individuals for activities conducted with their own funds before the individual becomes eligible for assistance. Related to the change in when applications may be accepted, this proposed subpart includes a change that all references to “individuals” in 20 CFR part 617 will instead be “adversely affected workers.” This change is consistent with sec.

237(a)(1) of the Act, which provides that “an [AAW] covered by a certification” may file an application for a job search allowance.

Section 618.415 Eligibility for a job search allowance.

Proposed § 618.415 sets forth the eligibility requirements for job search allowances. Section 237(a)(2)(B) of the Act requires, as a condition for receipt of a job search allowance, that “the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.” In implementing this provision, the Department proposes to use the same definition of the term “suitable employment” as is used in proposed subpart F and defined in proposed § 618.110. This departs from 20 CFR 617.32(a)(4) and 617.42(a)(6), which use “suitable work,” applying the State UI law definition of suitable work, as the threshold for approval of job search and relocation allowances.

Proposed paragraph (a) has several changes from 20 CFR 617.32(a). Proposed paragraph (a) excludes language on registration with the State agency (a requirement in 20 CFR 617.32(a)(3)) because proposed § 618.310 already requires States to provide employment and case management services, and the Act does not contain this particular registration requirement for job search allowance eligibility. Proposed paragraph (a)(1) provides the time limits within which an AAW must request a job search allowance. It contains minor rewording for readability, but the requirements are unchanged from 20 CFR 617.31(c).

Proposed paragraph (a)(3) substitutes the term “suitable employment” for “suitable work” and eliminates the reference to long-term duration. Suitable employment may exclude some work—i.e., some lower-skilled and lower-paying work—that would

qualify as suitable work under a State law. Suitable employment is work at a substantially equal or higher skill level paying at least 80 percent of the AAW's previous wage.

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

The proposed changes would make it easier for workers to qualify for a job search allowance, because fewer local jobs would qualify as suitable employment. The proposed change, however, might make it harder for workers to qualify for a relocation allowance, because, similarly, fewer jobs requiring relocation would qualify as suitable employment. This difficulty should be mitigated by the fact that workers who find suitable employment with the help of a job search allowance would also be eligible for a moving allowance to relocate to that same suitable employment. The Department proposes this change because of the unique economic circumstances of workers adversely affected by international trade. The Organisation for Economic Co-operation and Development (OECD) notes that changes brought on by technology and trade can cause local labor market shocks; such shocks cause some workers to move elsewhere, but often not in

large enough numbers to mitigate fully the shock in the affected locality.⁷ Compounding the problem for trade-affected workers, worker migration has slowed over the last several decades.⁸ Together these trends have caused the Department to respond by proposing this change from suitable work to suitable employment. This change also would provide administrative consistency and uniformity of interpretation and application of Federal law, a policy goal described in 20 CFR 617.52(b), and in this NPRM, in proposed § 618.840.

Proposed paragraph (a)(4) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that the State determines whether an AAW could reasonably expect to find suitable employment through alternatives to a job search allowance, such as by having an AAW search and interview for jobs through electronic means. The Department added this provision to reflect the cost-saving technological advances of the modern era. There are now countless websites, apps, and online services that connect employers with workers, and many communication technologies make face-to-face discussion via video conferencing simple and inexpensive. By this proposed change, the Department is encouraging States and AAWs to use these cost-saving, and possibly equally effective, measures.

Proposed paragraph (a)(5) is new and has no comparable counterpart in existing regulations or in administrative guidance. It clarifies for the first time that a State may not approve job search allowances if the AAW received a relocation allowance under the

⁷ OECD. (2018). “OECD Economic Surveys: United States at 81.” Retrieved from: https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-united-states-2018_eco_surveys-usa-2018-en.

⁸ See id.; see, e.g., David Ihrke, U.S. Census Bureau. (2017). “United States Mover Rate at a New Record Low.” Retrieved from: <https://www.census.gov/newsroom/blogs/random-samplings/2017/01/mover-rate.html>.

same certification since an AAW must have already obtained work to qualify for the relocation allowance.

Proposed paragraph (a)(6) gives an AAW 30 calendar days to complete a job search, clarifying 20 CFR 617.32(a)(5), which 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.

Proposed paragraph (b) describes when a job search is complete and mirrors 20 CFR 617.32(b), with organizational changes for clarity and one change. A job search is not complete until the AAW has received a bona fide (i.e., good faith) offer of employment, or has contacted each employer the AAW either planned to contact or to whom the AAW was referred by the State agency or other one-stop partner. The language in 20 CFR 617.32(b) refers only to State agency-referred employment, but the proposed addition of employers that the AAW “planned to contact” broadens the scope and satisfies this requirement.

Section 618.420 Findings required.

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

Proposed paragraph (a) mirrors 20 CFR 617.33(a), except that it removes paragraph (a)(2) as redundant and adds the employer contact verification requirement that is in the eligibility requirements in 20 CFR 617.32(c). The Department has determined that this requirement, which requires a liable State to verify the AAW's contacts with employers certified by the AAW in the worker's own job search plan or through referrals, more logically fits under the section on required findings.

Proposed paragraph (b) in its first sentence mirrors 20 CFR 617.33(b), but adds a new requirement that the agent State, when requested by the liable State, must verify with the employer and report to the liable State whether the AAW has obtained suitable employment, or a bona fide offer of suitable employment, and pay the job search allowance.

Section 618.425 Amount of a job search allowance.

Proposed § 618.425 explains how to calculate the amount of a job search allowance. It follows 20 CFR 617.34, but updates the maximum amount available for allowances to the statutory limit of \$1,250, instead of \$800. It also simplifies requirements by basing allowable travel, lodging, and meal costs on the FTR, which in the Department's judgment are reasonable and necessary in amount. The lodging and meal allowance is set, by statute, at 90 percent of the lower of actual meal and lodging costs or one-half the applicable prevailing per diem rates in the FTR. Proposed § 618.425 reflects the statutory limit. Proposed § 618.425 inserts the FTR citation and a hyperlink to the FTR. Proposed § 618.425 also replaces the term "public transportation" with the term "mode of transportation." The reference to public transportation has been unduly limiting, so the Department proposes this more expansive term.

Section 618.430 Determination and payment of a job search allowance.

Proposed § 618.430 requires an AAW to provide supporting documentation upon completion of a job search in order for the State to make payment and requires the State to reimburse the AAW promptly. Proposed paragraph (a) departs from 20 CFR 617.35(a) by eliminating the reference to the State making determinations “before or after” the Department issues a certification covering a worker. This aligns with the rationale for proposed § 618.410(b), which provides that the State may accept applications for job search allowances only after the Department issues a certification. Consistent with this change, all references in proposed subpart D are to AAWs, not to “individuals” as in 20 CFR part 617. Further, proposed § 618.410(a) clarifies that job search allowance determinations are subject to the requirements of proposed §§ 618.820 (determinations and notice) and 618.828 (appeals and hearings), and requires States to include copies of job search allowance applications and determinations in the AAW’s case file. These are changes from 20 CFR 617.35(a) to ensure proper administration of job search allowances.

Proposed paragraph (b) revises its counterpart provision in 20 CFR 617.35(b) to clarify, without changing, the conditions for payment of a job search allowance, and adding that payment is conditioned on the availability of funds.

Proposed paragraph (c), like 20 CFR 617.35(c), permits the State to advance up to 60 percent of the cost of an expected job search allowance, but increases the maximum amount of an advance from \$360 to \$750, which is 60 percent of the statutory dollar limit of \$1,250. Inflation in the years since this limit was initially established reduced the value of the previous amount, and this NPRM ameliorates that reduced value.

Proposed paragraph (d) specifies the evidence an AAW must provide to receive a job search allowance. The Department proposes to align the requirements for documentation with the FTR and the Uniform Guidance at 2 CFR part 200. At the time of this proposed publication, receipts are required for all lodging and purchased transportation expenses. A receipt is also required for any expense of \$75.00 or greater.

Section 618.435 Job search program participation.

Proposed § 618.435 replaces 20 CFR 617.49 and implements sec. 237(c) of the Act. Proposed paragraph (a) provides the requirements for an AAW participating in a job search program (JSP) to receive reimbursement for the necessary expenses of subsistence and transportation related to participation in an approved JSP. Proposed paragraph (b) allows a State to approve a JSP if it is provided through WIOA, the public employment service, or any other Federal- or State-funded program, and meets the definition provided in § 618.110, or is sponsored by the firm from which the AAW has been separated. Proposed paragraph (c) requires that subsistence and transportation costs must be approved, as appropriate, for workers participating in a JSP and the JSP may be within or outside the AAW's commuting area.

Section 618.440 Applying for a relocation allowance.

Proposed § 618.440 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 an AAW to apply for a relocation allowance only after the Department issues a certification covering that worker. This is consistent with sec. 238(a)(1) of the Act, which permits “an [AAW] covered by a certification . . . to file an application for a relocation allowance.”

This mirrors the change for job search allowances reflected in proposed § 618.410, which also does not permit applications until after the Department issues a certification. A State may not issue a relocation allowance or a reimbursement to anyone not covered by a certified petition for any reason. As previously noted in the preamble discussion of proposed § 618.410 regarding job search allowances, the Department proposes this change because permitting precertification applications can raise workers' expectations of payments that may not become available.

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

Section 618.445 Eligibility for a relocation allowance.

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

First, proposed § 618.445 removes the requirement in 20 CFR 617.42(a)(5) regarding registration with the State agency from the job search eligibility requirements because the Act does not contain a registration requirement for relocation allowance eligibility and because proposed § 618.310 of subpart C, absent from 20 CFR part 617, already requires that States make available employment and case management services to all trade-affected workers. Further, proposed paragraph (a)(5) departs from 20 CFR 617.42(a)(6) in three respects. Proposed paragraph (a)(5) substitutes a Federal law definition of "suitable employment" for "suitable work" under State law and eliminates the reference to "affording a reasonable expectation of employment of long-term

duration” because the concept of long-term employment is substantially included in the definition of “suitable employment.” Proposed paragraph (a)(5) also adds “employment that pays a wage of at least the 75th percentile for national wages, as determined by the National Occupational Employment Wage Estimates.” This alternative ensures that AAWs who obtain or receive a bona fide offer of a job that otherwise meets the suitable employment definition except that it pays a wage of at least the 75th percentile of national wages, rather than paying at least 80 percent of the AAW’s previous wage, would still be eligible for relocation allowances.

Therefore, before granting a relocation allowance, the State must determine that an AAW has no reasonable expectation of securing suitable employment in the commuting area. This is consistent with the treatment of job search allowances, and, as explained earlier, is in many States likely to be a higher standard than the suitable work standard used in 20 CFR part 617. Using suitable employment in the eligibility criteria for relocation allowances limits the jobs for which a State may pay a relocation allowance. However, the Department has concluded this proposed change would increase workers’ options. The change would permit more AAWs to use a relocation allowance to secure suitable employment or other high-paying employment outside the commuting area, rather than settle for suitable work within the commuting area. And AAWs who are eligible for the job search allowance, and thereby find suitable employment or other high-paying employment, will similarly be eligible to relocate to that same suitable employment by using a relocation allowance.

Two other significant differences between proposed § 618.445 and 20 CFR part 617 involve the timing of relocations. First, proposed paragraph (a)(6) integrates 20 CFR

617.42(a)(7) and 617.43 and simply states the two statutory 182-day time limits for beginning a relocation, instead of stating that an AAW must begin a relocation “within a reasonable period” and later elaborating on what is a reasonable period merely by providing the same deadlines as in this proposed paragraph (a)(6). Proposed § 618.445 omits references to reasonable period to begin a relocation because the firm deadlines provided for an AAW beginning a relocation are sufficient, and render moot the references to a reasonable period. Proposed paragraph (a)(7) requires an AAW to complete the relocation within a “reasonable time” under the FTR, while retaining the required factors in 20 CFR 617.43(a) that a State 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. TAARA 2002 amended sec. 238(c)(2) of the Act, which requires the AAW’s relocation to occur within 182 days after the conclusion of an approved training program, by adding at the end of the provision the alternative condition “if the worker entered a training program approved by the Secretary under [sec.] 236(b)(1) and (2)” (which govern supplemental assistance for workers in training outside the commuting area). All workers who conclude TAA approved training must apply for a relocation allowance no later than the 182nd day after concluding such training, in accordance with sec. 238(a)(2)(E)(ii) the Act and proposed § 618.445(a)(1)(ii). However, the Department interprets sec. 238(c)(2) of the Act to mean that an AAW approved by the State, under proposed § 618.640(c) and (d), to receive subsistence and transportation payments (supplemental assistance) for training at facilities outside the worker’s commuting area, must also begin the relocation within 182 days after completing

training, the same as the relocation allowance application deadline. In contrast, AAWs who are not approved by the State to receive subsistence and transportation payments, because they receive training within their commuting area, may begin relocation within 182 days after applying for a relocation allowance, which effectively permits these workers to begin relocation much later than workers who receive supplemental assistance in training.

Proposed § 618.445 also makes one minor change. Proposed paragraph (a)(1) provides the time limits within which an AAW must apply for a relocation allowance. It contains the same requirements as 20 CFR 617.31(c), but is proposed to be moved here for better organization.

Section 618.450 Findings required.

Proposed § 618.450 regarding “findings required” is the counterpart to 20 CFR 617.44 and further delineates the responsibilities between a liable State and an agent State with respect to relocation allowances when a relocation occurs in a different State than the liable State. Proposed subpart H establishes the responsibilities of the liable State and the agent State. Specifically, proposed § 618.824 establishes that the liable State makes all determinations on each claim for program benefits, and the agent State pays the costs for job search and relocation allowances.

Proposed § 618.450 mirrors 20 CFR 617.44(a), with a change. Proposed paragraph (a)(1) adds a new requirement that, as a condition of approving final payment of a relocation allowance, the AAW is not simultaneously receiving a job search allowance. This is the same prohibition contained in the eligibility requirements in

proposed § 618.445(b). This provision is proposed for the first time and has no comparable counterpart in existing regulations or in administrative guidance.

Section 618.455 Determining the amount of a relocation allowance.

Proposed § 618.455, on determining the amount of a relocation allowance, consolidates, reorganizes, and updates the requirements in 20 CFR 617.45 (Amount), 617.46 (Travel allowance), and 617.47 (Moving allowance). A relocation allowance includes, with specified qualifications, 90 percent of the travel and subsistence costs of the AAW and their family to reach their new home, 90 percent of the cost of moving household effects, and a lump sum equal to three times the worker's average weekly wage, not to exceed \$1,250. The lump sum maximum reflects the statutory limit and is an increase from the \$800 maximum provided in 20 CFR 617.45(a)(3). Proposed § 618.455 requires States to follow the FTR but eliminates the specific citation to FTR sections. Proposed paragraph (a)(1) refers to 41 CFR chapter 301 (travel) and proposed paragraph (a)(3) refers to 41 CFR chapter 302 (movement of household goods). Proposed paragraph (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 using the "per diem rates" hyperlink at: <https://www.gsa.gov>. Proposed paragraph (a)(3)(ii) increases the allowable amount of insurance coverage of such household goods and effects to \$40,000 from \$10,000, found in 20 CFR 617.47(a)(1). The Department first introduced the allowable amount of insurance coverage of \$10,000 in § 635.47(a)(1) of regulations proposed by the Department on March 4, 1983 (48 FR 9444), and finalized on December 22, 1986 (51 FR 45840), with an effective date of January 21, 1987. The

Department has determined that \$10,000 is no longer an appropriate level of insurance coverage as households' accumulated goods and effects have increased in value due to inflation and rising household incomes since 1987. While no measure tracks the value of accumulated household goods and effects, a proxy is the core Personal Consumption Expenditures (PCE). Core PCE measures, for all households, personal expenditures on goods and services, excluding food and energy. It follows that the accumulated value of goods a household owns, and would move and require to be insured, is correlated with the annual amount spent on goods and services by households. According to the Bureau of Economic Analysis, the core PCE increased from \$2,443 billion in January 1987 to \$11,626 billion in January 2018.⁹ This increase in PCE by a multiple of 4.76 is a proxy for the increase in the value of goods a household would need to have insured. Therefore, proposed paragraph (a)(3)(ii) conservatively increases the allowable insurance coverage by a multiple of 4, from \$10,000 as established in 1987, to \$40,000.

Proposed § 618.455 omits the more detailed provisions for trailers, rental trucks, house trailers, and temporary storage contained in 20 CFR 617.47. These detailed requirements are unnecessary and better addressed by the FTR. The Department notes that moving a house trailer or mobile home, as permitted under proposed paragraph (a)(3)(i), has special requirements under the FTR, at 41 CFR part 302-10, of which the worker must be notified before planning such a move.

Section 618.460 Determinations and payment of a relocation allowance.

Proposed § 618.460 regarding determinations and payment of a relocation allowance serves the same purpose as 20 CFR 617.48 (Time and method of payment),

⁹ Federal Reserve Bank of St. Louis. (2018). "Personal consumption expenditures excluding food and energy [DPCCRC1M027SBEA]." Retrieved from: <https://fred.stlouisfed.org/series/DPCCRC1M027SBEA>.

with some changes and reorganization. Nothing in proposed § 618.460 departs in substance from 20 CFR 617.48 except for the requirements that an AAW be covered by a certification as a condition of the State accepting an application, and that workers submit documentation supporting all lodging, transportation, and meal expenses to be reimbursed by the State. This documentation requirement is proposed for the same reasons it has been proposed for workers seeking reimbursement of expenses from a job search allowance. Proposed § 618.460 otherwise reorganizes the provisions of 20 CFR 617.48 and revises them for greater clarity.

Proposed paragraphs (a) and (b) contain and somewhat revise the requirements in 20 CFR 617.48(a). Proposed paragraph (a) departs from 20 CFR 617.48(a) by omitting any reference to determinations before a worker becomes an AAW; this reflects that proposed subpart D does not provide for applications before the Department issues a certification. Proposed paragraph (a) also newly requires States to promptly make and record determinations as well as include copies of job search allowance applications and determinations in the AAW's case file. This provision has no comparable counterpart in existing regulations or in administrative guidance. This is to ensure proper administration of job search allowances and mirrors the requirement for job search allowances in proposed § 618.430(a). Proposed paragraph (b) includes provisions from 20 CFR 617.48(a).

Proposed paragraph (c) specifies what the AAW must provide for expenses to be reimbursed by a State under a relocation allowance. This would clarify 20 CFR 617.48(b)(1)(ii) by requiring workers to provide documentation in accordance with the FTR and the Uniform Guidance. At the time of this proposed publication, this includes

receipts for all lodging, purchased transportation, and any expense equal to or greater than \$75.00. Proposed paragraphs (d), (e), and (f) incorporate the provisions from 20 CFR 617.48(b), (c), and (d).

E. Subpart E – Reemployment Trade Adjustment Assistance

Proposed subpart E governs RTAA. TGAAA established the RTAA program to replace the demonstration project known as ATAA, established by TAARA 2002. This proposed subpart prescribes regulations implementing provisions in sec. 246 of the Act and incorporates administrative guidance. There are no existing regulations covering the RTAA program.

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

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

Compared to ATAA, RTAA expands the range of benefits available by permitting training while receiving RTAA, and by allowing receipt of RTAA after such training is completed, if the AAW otherwise meets eligibility requirements. This proposed subpart permits eligible AAWs to remain eligible for RTAA when employed part-time, provided that the AAW is enrolled in TAA approved training. Some AAWs may receive a TRA, the income support component of TAA, before receiving their first RTAA benefit payment. For such workers, sec. 246(a)(4) of the Act requires reduction in the RTAA eligibility period by the number of weeks of TRA received as well as a reduction in the maximum RTAA amount payable.

Section 618.500 Scope.

Proposed § 618.500 provides the scope of this subpart and addresses the governance of RTAA. An AAW may combine wage supplements with other benefits and services, including employment and case management services, TAA approved training, job search and relocation allowances, and, if available, the HCTC.

Section 618.505 Individual eligibility.

Proposed § 618.505 enumerates the eligibility criteria for RTAA, as set forth in sec. 246 of the Act. Proposed paragraph (a) outlines the general age, wage, and reemployment requirements to be eligible for RTAA. An AAW, aged 50 or older, is eligible for RTAA if the following criteria are met:

(1) The AAW must have a full-time job (or combination of jobs that equate to full-time employment as defined by State UI law) or a job of at least 20 hours per week while enrolled in TAA approved training;

(2) The qualifying job in criterion 1 must pay less (or collectively pays less if a combination of jobs) than the AAW's adversely affected employment;

(3) The AAW must be earning wages that do not exceed \$50,000 over a 12-month period; and

(4) The qualifying job in criterion 1 above is not at the firm from which the AAW was separated.

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

This definition of "firm" is used by the Department to identify the "firm" in the certification. To determine that an AAW is eligible for RTAA, the State must make a finding that the new employment obtained by the worker is not at the "firm" from which the worker was separated and that forms the basis for the worker's applicable certification. A State must determine what constitutes the "firm" for purposes of determining RTAA eligibility on a case-by-case basis, depending on the certification. A certification may cover one or more worker groups at either an entire firm or one or more subdivisions of a firm located in one or several States. Proposed paragraph (b)(1) provides instructions to States on how to make decisions relative to determining RTAA eligibility based on whether or not the Department issued a certification for a subdivision

of a firm or the entire firm. Proposed paragraph (b)(2) explains that the term “firm” includes predecessors and successors-in-interest, affiliated firms, and continuity of operations at the same location. The proposed regulatory text establishes several criteria in descending order that the State should apply to determine whether one firm is a successor-in-interest to another, including a list of conditions at paragraphs (b)(3)(i) through (vii) that a State may need to consider when rendering a determination. The intent of this provision is to assist States in determining whether the worker has become employed by a “firm” that is different from the “firm” from which the worker was separated in accordance with sec. 246(a)(3)(B)(iv) of the Act.

Proposed paragraph (c) explains that, for purposes of RTAA, full-time employment is defined by the law applicable to the State in which the reemployment occurs. The Department proposes to define State law in § 618.110 as the State UI law. Following longstanding practice, State UI law means State statutory provisions and their implementing regulations. In the absence of State statutory provisions and regulations, State law may be determined via State court decisions, program letters, manuals, and any other State documents interpreting State UI law. Thus, even if a State did not define full-time employment in the State code, a definition contained in another State-issued document would apply. Proposed paragraph (c)(1) explains that if State law does not contain a definition of full-time employment, the State is required to define full-time employment for RTAA purposes. Proposed paragraph (c)(2) requires the State to verify reemployment in accordance with State policies. Verification of the firm can occur by such communication methods as email, phone call, certified letter, or other means determined by the State. Proposed paragraph (c)(3) establishes that if an AAW has

multiple jobs, the State must combine hours of all employment to determine whether the worker meets the definition of full-time employment. Proposed paragraph (c)(4) provides that if the worker is employed in more than one State, the State must apply the State law with the lowest threshold of hours required for full-time employment.

Proposed paragraph (d) provides that an application or eligibility for UI is not needed for RTAA purposes. There is no direct relationship between UI and RTAA. Eligibility for RTAA is not dependent on eligibility for UI.

Lastly, proposed paragraph (e) explains the types of employment that are considered qualifying reemployment for RTAA. Proposed paragraph (e)(1) establishes that qualifying reemployment under RTAA is the same as covered employment for UI purposes. This provides uniformity in administration. It also provides efficiency, since the rules for covered employment for UI are well defined and familiar to State administrators. However, this paragraph requires that the employment be legal under Federal, State, and local laws. The Department recognizes that there are situations where certain employment may be legal under local or State law but illegal under Federal law. The Department is establishing a requirement that to be qualifying reemployment, the employment must be legal at all levels of government. Proposed paragraph (e)(2) explicitly allows a State to consider employment that provides wages plus commission, and piecework-based employment to be reemployment when determining RTAA eligibility. The Department proposes to authorize these specific types of employment to ensure that States are not limiting reemployment opportunities. Proposed paragraph (e)(3) provides that qualifying reemployment may include multiple jobs. In some instances, an AAW may have multiple part-time jobs instead of a single full-time job. This flexibility

will allow AAWs to combine multiple part-time jobs to be considered full-time employment. Proposed paragraph (e)(4) provides that the State must count hours in which an RTAA-eligible worker is on employer-authorized leave as hours of work for purposes of meeting the full- or part-time employment definitions of this section, provided that doing so is consistent with State law. The Department found that States were not counting holidays or leave as hours of employment. This resulted in States disqualifying AAWs when there was a paid, observed holiday because the AAW did not “work” those hours, or in instances where the worker may have used a sick day.

Section 618.510 Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.

Proposed § 618.510 sets forth the eligibility period for payments of RTAA as provided by sec. 246(a)(4) of the Act. Proposed paragraphs (a) and (b) of this section explain the differences in eligibility periods for AAWs that have not received TRA and those that have received TRA, respectively. Proposed paragraph (a) provides that for an AAW who has not received TRA, the worker may receive RTAA benefits for a period not to exceed 104 weeks (2 years) beginning on the earlier of: the date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely affected employment that is the basis of the certification; or, the date on which the worker first begins qualifying reemployment as described in § 618.505(e). Proposed paragraph (b) provides that for a worker who has received TRA under a certification, the worker may also receive RTAA benefits for a period of 104 weeks (2 years) beginning on the date on which the worker first begins qualifying reemployment, reduced by the total number of weeks for which the worker received TRA. Proposed paragraph (c) describes

that the State will need to know certain applicable dates before making an RTAA determination.

Proposed paragraph (d) establishes an exception to the general rule that all events to establish RTAA eligibility occur when the individual turns 50 years old. Proposed paragraph (d) provides that the AAW may obtain reemployment before the age of 50, which later may be deemed as RTAA-qualifying reemployment when the AAW turns 50. It is at this time (after turning 50) that the AAW may be potentially RTAA-eligible, if all other eligibility requirements are met. This is because upon obtaining the reemployment, which is a date certain, the State can establish the RTAA eligibility period (104 weeks or 2 years, as the case may be) and when the AAW turns 50, they may be eligible during the remaining RTAA eligibility period. The AAW potentially is eligible if the eligibility period is established sometime after turning 48 and consequently such period expires after turning 50. If the RTAA eligibility period has expired by the time the AAW turns 50, the AAW will not be eligible for RTAA. This would foreclose the opportunity for an AAW whose RTAA-eligibility period is established before turning 48 and consequently expires before turning 50. Furthermore, if the AAW obtains employment before age 48, and is not eligible for RTAA at 50, because the 104-week eligibility has expired, the worker cannot obtain other employment to establish RTAA eligibility based on an eligibility period established with subsequent employment after turning 48, and thereafter. RTAA is for workers 50 or older and the Department concludes this worker readjusted.

Proposed paragraph (e) allows for exceptions to the eligibility periods set forth in paragraphs (a) and (b) as well as to the overall filing deadline in instances of judicial

appeals, where the Department later grants a certification of the worker group covered by that petition and the ITC has not indicated that a delay in the certification was attributed to either the petitioner or the AAW.

Section 618.515 Continuing eligibility and timing of payments.

Proposed § 618.515 explains the requirements for an AAW's continued eligibility under RTAA and the timing of payments. Proposed paragraph (a)(1) allows workers to change jobs without loss of access to RTAA so long as the worker continues to meet other eligibility criteria. Proposed paragraph (a)(2) prohibits the payment of RTAA during a period of unemployment and provides that the AAW may resume receipt of RTAA payments upon obtaining qualifying reemployment for the remaining portion of the eligibility period. Section 246(a)(7) of the Act prohibits payment of TRA and RTAA for the same week.

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

Proposed paragraph (b) addresses the timing of RTAA payments and continues a longstanding practice allowing States to pay RTAA on a weekly, biweekly, or monthly basis, for not more than a 104-week period (2 years) under any one certification, beginning no earlier than the date of qualifying reemployment under § 618.505. This proposed regulatory text also allows for retroactive payments, including a lump sum payment, for which an AAW may have been eligible but who may not have known such

benefit was available at the time. The Department has established this provision to require regular payments to RTAA-eligible workers. This allows workers to anticipate regular payments, as this may have been one of the factors in their decision to seek qualifying reemployment and the RTAA benefit.

Proposed paragraph (c) requires the State to verify, on at least a monthly basis, that the AAW continues to meet the eligibility requirements for RTAA. The proposed regulatory text requires the State to determine whether any changes have occurred to the worker's reemployment wages. The NPRM also requires the State to determine whether any changes have occurred to the participant's annualized reemployment wages. This is established to reduce the likelihood and number of overpayments that would otherwise occur.

Proposed paragraph (d) establishes procedures for States to recompute the appropriate RTAA payment based on a change in annualized reemployment wages. These two provisions are added to reduce the likelihood and number of overpayments that would otherwise occur. Proposed paragraph (d)(1) requires States to cease additional payments and issue a determination to a participant if the annualized reemployment wages exceed \$50,000 or if the annualized reemployment wages equal or exceed the annualized separation wages. Proposed paragraph (d)(2) requires States to adjust the RTAA payment if the annualized reemployment wages change but do not exceed \$50,000 or the annualized separation wages.

Section 618.520 Benefits available to eligible adversely affected workers.

Proposed § 618.520 details the benefits available under RTAA as provided by sec. 246 of the Act. Benefits available include wage subsidies, training, job search and

relocation allowances, and, if available, the HCTC. Proposed paragraph (a) explains that eligible RTAA AAWs may receive a total payment of up to \$10,000 over a period of not more than 104 weeks. Proposed paragraph (a)(1) provides that the total amount of RTAA benefit available to an eligible AAW is an amount equal to the annualized wage differential as computed under proposed paragraph (a)(2) or (3) of this section. Proposed paragraph (a)(2) provides, for initial eligibility, the computation of the annualized wage differential for an AAW employed full-time, while proposed paragraph (a)(3) provides the computation of the annualized wage differential, for initial eligibility, for an AAW employed at least 20 hours per week, and enrolled in TAA approved training. The annualized wage differential in either instance is a percentage of the difference between the wages received by the AAW at the time of separation and the wages received by the AAW from reemployment. RTAA benefits are not available if the AAW's annualized separation wages do not exceed the AAW's annualized reemployment wages. This is because sec. 246(a)(2)(A) of the Act establishes the RTAA benefit as 50 percent of the difference between the wages received by the worker at the time of separation and the wages at reemployment. If the wages at reemployment are equal to or greater than the wages at separation, the result would be zero or a negative number.

Proposed paragraph (a)(2) provides that for an eligible AAW employed full-time, the annualized wage differential is an amount equal to 50 percent of the result of the AAW's annualized wages at separation minus the AAW's annualized wages from reemployment.

Proposed paragraphs (a)(2)(i) and (ii) provide the computations for annualized wages at separation and annualized wages from reemployment, respectively. A State

would compute annualized wages at separation by multiplying the AAW's hourly rate during the last full week of the AAW's regular schedule in adversely affected employment by the number of hours the AAW worked during the last full week of such employment, multiplied by 52 (i.e., the number of weeks in a year). Proposed paragraph (a)(2)(i) refers to the AAW's "regular schedule" and also excludes certain types of compensation from the meaning of "wages," because certain types of work hours and compensation are too speculative and cannot be anticipated in computing annualized wages from reemployment under paragraph (a)(2)(ii) of this section. Thus, a State would exclude overtime wages and hours from the computation of annualized wages at separation, along with employer-paid health insurance premiums, employer pension contributions, bonuses, severance payments, buyouts, and similar payments too variable to properly be included in the AAW's regular weekly pay computation. Finally, the computation of annualized wages at separation uses wages earned only in the last full week of the AAW's regular schedule in adversely affected employment, rather than, for example, the AAW's wages during the preceding 12-month period. This is because the Act describes the formula as using the wages received by the AAW "at the time of separation." The Department concludes that this language requires reliance on regular wages toward the end of an AAW's adversely affected employment, rather than during a longer period of time. In the case of an AAW who had a partial separation that resulted in a reduction of the AAW's wage or hours, the computation of annualized wages at separation is based on the wages or hours immediately before the partial separation went into effect. Proposed paragraph (a)(2)(i) does not explicitly address computation of annualized wages at separation for AAWs experiencing partial separations because the

computation as provided already is sufficient to address partial separations. So long as an AAW experiences reductions in both hours and wages to 80 percent of their previous amounts, the AAW's computations are the same as those for an AAW who experiences a total separation from adversely affected employment.

Proposed paragraph (a)(2)(ii) computes the annualized wages from reemployment. The Department proposes here the same criteria for work hours and compensation used for annualized wages at separation, in order to ensure a fair and logical comparison. Proposed paragraph (a)(2)(ii) computes these annualized wages by multiplying the AAW's hourly rate during the first full week of reemployment by the number of hours the AAW worked during the first full week of such reemployment, multiplied by 52 (i.e., the number of weeks in a year). This computation requires combining wages or hours from all jobs, because proposed § 618.505(c)(3) provides that full-time employment may include any combination of part-time jobs. However, as is the case for the computation of annualized wages at separation, the computation of annualized wages from reemployment excludes overtime hours and wages; employer-paid health insurance premiums; employer pension contributions; bonuses; severance payments; buyouts; and similar payments not reflective of weekly pay. For an AAW's initial RTAA determination, the computation of annualized wages from reemployment uses wages earned in the first full week of reemployment because that amount is the only figure available at the outset of an AAW's reemployment. Tips are not included in the proposed computation of annualized wages, either at separation or from reemployment. The Department recognizes that tips are, in fact, an expected form of income supplementing regular wages for restaurant servers and perhaps for workers in other

occupations. However, the Department proposes excluding them from the computations in paragraphs (a)(2)(i) and (ii) because, like other forms of irregular compensation excluded in RTAA computations, they vary in amounts and are unpredictable.

Proposed paragraph (a)(3) governs the computation of the annualized wage differential for initial eligibility of an AAW working at least 20 hours per week and enrolled in TAA approved training. This computation is required by sec. 246(a)(6) of the Act and is the same as under proposed paragraph (a)(2) for an AAW reemployed full-time except for the percentage reduction applied to the difference between the wages received by the AAW at the time of separation and the wages received by the AAW from reemployment. As is the case with an AAW reemployed full-time, proposed paragraph (a)(3) provides that, as part of the RTAA benefit amount computation for an AAW reemployed part-time, the amount of annualized wages from reemployment is multiplied by the ratio of the AAW's number of weekly hours of reemployment to the AAW's number of weekly hours of employment at the time of separation, not to exceed 50 percent.

Proposed paragraph (b) incorporates the provision of the Act at sec. 246(a)(2)(C) that allows RTAA recipients to receive training and other services, including employment and case management services. The Department addresses these services in proposed subparts F (training) and C (employment and case management).

Proposed paragraph (c) explains that RTAA recipients are otherwise eligible for job search and relocation allowances, subject to the provisions of subpart D.

Proposed paragraph (d) incorporates sec. 246(a)(2)(B) of the Act that permits eligible RTAA recipients to apply for the HCTC, if available, to assist in paying their health coverage premiums.

Lastly, proposed paragraph (e) establishes the restriction that once an AAW has received a payment under RTAA, they are no longer eligible to receive TRA. Section 246(a)(4)(B) of the Act provides that an AAW may receive RTAA after receipt of TRA and also provides that a State must reduce RTAA payments as a result of receipt of TRA. The Act does not provide that recipients of RTAA may receive TRA at a later date. In order to limit the administrative complexity of allowing eligible AAWs to move back and forth between RTAA and TRA, this NPRM prohibits receipt of TRA after RTAA. This has been the operating policy of the Department since TAARA 2002.

Section 618.525 Determinations, redeterminations, and appeals.

Proposed § 618.525 explains the requirements related to determinations, redeterminations, and appeals under RTAA. Proposed paragraph (a) provides that specified provisions in proposed subpart H concerning determinations, redeterminations, notice, and appeals and hearings apply to RTAA. Proposed paragraphs (a)(1) through (3) provide further procedural requirements specific to RTAA. Specifically, proposed paragraph (a)(1) provides that in reviewing the application, the State must verify and document the AAW's age, reemployment, and wages in determining whether the worker meets the individual eligibility criteria in proposed § 618.505(a).

Proposed paragraph (a)(2) provides that a determination of eligibility issued to an AAW must include a notice that the State will recompute regularly the benefit amount and may change it if the eligible AAW's wages in reemployment vary. RTAA payments

frequently change; therefore, this requirement would prevent confusion as AAWs see their benefit amounts change.

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

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

Proposed paragraph (b) provides that the recordkeeping and disclosure of information requirements of proposed § 618.852 apply to the State's administration of RTAA. The language of proposed § 618.852 already states that it applies to the administration of the Act, which includes RTAA; however, proposed § 618.525(b) ensures there is no confusion concerning the applicability of proposed § 618.852 to RTAA.

Section 618.530 Reductions of RTAA payments; priority of payments

Proposed § 618.530 explains the requirements related to the reduction of payments and the priority of payments under RTAA. Proposed paragraph (a) explains when a State can deduct court-ordered child support payments from RTAA payments. A State must treat RTAA payments in the same manner as TRA. State laws regarding deductions of payments from UI and TRA must follow the Social Security Act (SSA).

SSA sec. 303(e)(1) defines “child support obligations” as “only includ[ing] obligations which are being enforced pursuant to a plan described in [sec. 454 of SSA] which has been approved by the Secretary of Health and Human Services under part D of title IV of [SSA].” SSA therefore does not permit deductions for alimony or for child support in general, but only for child support obligations of the type specified. Unemployment Insurance Program Letter (UIPL) No. 45-89 (55 FR 1886, Jan. 19, 1990) explained in detail the deductions permitted under SSA sec. 303(e)(2). Proposed paragraph (b) provides that RTAA does not fit into the priority of payments under UI because this benefit is related to employment, not unemployment.

F. Subpart F – Training Services

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

Proposed subpart F sets out the regulations for administering the training benefit under the TAA Program. TAA approval of a training program entitles a trade-affected worker to the payment of the costs of that training and related costs, subject to a number of limitations described in this subpart. Participation in a TAA approved training program

is an eligibility requirement for TRA, with certain exceptions, as explained in subpart G. Under sec. 236(a)(6) of the Act, however, workers may still be entitled to TRA and other TAA Program benefits if other funding sources pay all or part of the costs of a TAA approved training program.

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

Section 618.600 Scope.

Proposed § 618.600 is new and provides the scope of proposed subpart F. This section has been added to give the reader a helpful overview of subpart F. This section explains that the goal of training is to help trade-affected workers obtain the skills necessary to get back to work as quickly as possible at a reasonable training cost. The type of reemployment aimed for is suitable employment. Obtaining suitable employment is an aspirational goal, but not a requirement. Training that leads to reemployment that

pays as much or more than the trade-affected worker's adversely affected employment is another aspirational goal.

Section 618.605 General procedures.

Proposed § 618.605 is new and is derived, in part, from 20 CFR 617.20. The proposed section discusses general procedures for trade-affected workers to apply for training, as well as other procedures States must follow in making determinations on applications for training. Proposed paragraph (a) is new and was developed in conjunction with proposed subpart C in accordance with sec. 235 of the Act. It requires States to ensure that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment has been made available to them, as required in proposed subpart C. Assessments assist in the development of an IEP, as described in proposed subpart C, and must be in place before approving an application for training, or if not in place, the information necessary to determine eligibility for training must be collected and documented in the trade-affected worker's case file. The use of assessments in the development of a worker's IEP is essential to ensure proper coordination with WIOA. Assessments are the foundation of the worker's IEP and they ensure that the appropriate reemployment services, which may include training, are added to the IEP.

Proposed paragraph (b) replaces 20 CFR 617.22(d) and addresses applications for training, as well as for transportation and subsistence payments. It reflects more accurately that applications must be made to the States in accordance with their policies and procedures. Because the use of forms will vary from State to State, the Department is not establishing specific requirements for their use or content and has instead referenced compliance with State policies and procedures.

Proposed paragraph (c) expands upon 20 CFR 617.22(e) by adding that liable and agent State responsibilities apply to various types of decisions, and that decisions on whether to provide TAA Program-funded transportation and subsistence payments are determinations to which apply the sections on determinations and notice, liable and agent State responsibilities, and appeals and hearings. In order to comply with OMB's Uniform Guidance and documentation requirements to ensure access to due process, copies of such applications and all determinations by the State on whether to approve or deny the training, including whether to approve TAA Program-funded transportation and subsistence payments, must be included in the trade-affected worker's case file. The documentation may be made through paper or electronic records or a combination thereof.

Proposed paragraph (d) revises 20 CFR 617.23(a) but retains its intent. Proposed paragraph (d)(1) requires the State to explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find appropriate training where no appropriate training opportunities exists. States, in collaboration with local workforce development boards (LWDBs), one-stop partners, and other partners, must 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 work-based training (e.g., OJT, apprenticeships) and other types of training programs could be adapted to accommodate workers in disciplines that lack training opportunities. Proposed paragraph (d)(2) provides that TAA Program funds may be used to create customized, group training opportunities. Funds may be used to create

trainings including, but not limited to, remedial education classes, English language training, or contextualized occupational training, in order to serve a particular dislocation event where available education and training programs are not sufficient. Contextualized learning is training that combines academic and occupational training. The Department, through its oversight efforts, has observed that a large-scale dislocation can overburden a local area's resources for adult basic education or English language education. TAA Program funds can be used to add additional capacity when that occurs. Proposed paragraph (d)(3) requires States to coordinate with other public and private agencies, in cooperation with LWDBs established under WIOA to ensure a wide-range of training opportunities are available to trade-affected workers in demand occupations.

Proposed paragraph (e) is a new provision, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is authorized under sec. 225 of the Act. Proposed paragraph (e) allows training for trade-affected workers any time after their certification date without regard to whether such worker has applied for or exhausted UI. This new provision was added because the Department has discovered through monitoring and oversight activities that many States use the application for or filing of a UI claim to be the sole trigger for providing trade-affected workers with access to TAA Program benefits and services. Relying on this as the sole outreach strategy to assist trade-affected workers in applying for training may cause a delay in services. Section 225 of the Act makes clear that outreach to trade-affected workers should begin as soon as a certification is issued and that States must provide whatever assistance is necessary to enable trade-affected workers to prepare applications for program benefits, including training, in as timely a fashion as possible.

States should use multiple strategies for providing trade-affected workers with access to TAA Program benefits and services.

Section 618.610 Criteria for approval of training.

Proposed § 618.610, which corresponds to 20 CFR 617.22(a)(1) through (6), implements all six statutory criteria for training approval from sec. 236(a)(1)(A) through (F). The introductory language adds a new requirement that a State must refer to a trade-affected worker's initial or comprehensive and specialized assessments and IEP, if available, before approving training.

Criterion 1, implemented by proposed paragraph (a), is modified from 20 CFR 617.22(a)(1). Section 236(e) of the Act provides the definition of "suitable employment," which appears at proposed § 618.110. This is a change from 20 CFR 617.22(a)(1) where suitable employment is defined within the paragraph rather than in 20 CFR 617.3 with the other definitions. A second change is the elimination of the requirement that no suitable employment is available outside the commuting area in an area in which the worker desires to relocate "with the assistance of a relocation allowance." The Department determined that the language in 20 CFR 617.22(a)(1)(i) created confusion as to whether an application for a relocation allowance is required before determining whether suitable employment is available outside the commuting area. The proposed change clarifies that only a trade-affected worker's stated intent to relocate to a different area is necessary, and this change is intended to eliminate undue delay in the training approval process. Proposed paragraph (a)(2) reflects minor changes to the phrasing of this criterion versus the language used in 20 CFR 617.22(a)(1). However, there is no change to the intent.

Criterion 2, implemented by proposed paragraph (b), contains similar requirements to 20 CFR 617.22(a)(2)(i) but rephrases and reorganizes them. Proposed paragraph (b)(1) emphasizes that for the trade-affected worker to benefit from appropriate training, the training must improve the worker's chances of obtaining employment than would occur without training. The training should also improve the worker's chances of either earning higher wages than would otherwise be the case or that the training will place the worker on a career pathway to do so. The change emphasizes that approved training can provide the worker with access to a career pathway that will lead to higher earnings, even if the initial placement does not. The Department concludes that the 20 CFR 617.22(a)(2)(i) criterion that the worker be job ready on completion of the training program is too vague and does not reflect the most effective or prudent course of action in workforce development programs on career pathways. These changes help ensure that the targeted employment is to be stable and long-term, with the potential for higher wages and growth opportunities for the worker.

This change is also the result of evidence gathered from studies and evaluations of career pathways programs. The Department has recently published the results¹⁰ of a survey of evaluations of career pathways models. Of nine completed studies examining earnings, three found positive results, five found mixed results, and one found mostly negative results. Of 10 completed studies that examined educational outcomes, 7 found positive results, 1 found mixed results, and 2 found mostly negative results. Earnings

¹⁰ Abt Associates. (2018). "Career Pathways Research and Evaluation Synthesis." Retrieved from: <https://www.dol.gov/asp/evaluation/completed-studies/Career-Pathways-Design-Study/2-Career-Pathways-Research-and-Evaluation-Synthesis.pdf>

impacts ranged from an increase of 17 percent to 32 percent in the random assignment studies.

Proposed paragraph (b)(2) follows 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 substituting “knowledge, skills, and abilities” for “mental and physical capabilities” as the test for determining whether a worker can go through the training. This change is proposed to comply with laws that forbid the denial of training to an otherwise qualified trade-affected worker because of a disability. See sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and its implementing regulations at 29 CFR part 32, and WIOA sec. 188 (29 U.S.C. 3248) and its implementing regulations at 29 CFR part 38. Under both secs. 504 and 188, a qualified trade-affected worker in this context is one who satisfies the requisite skill, experience, education, and other training-related requirements, and who with or without a reasonable accommodation can perform the essential functions of such training. See also the definition of “qualified handicapped individual” in 29 CFR 32.3 and “qualified individual with a disability” in 29 CFR 38.4. For similar reasons, the NPRM also proposes replacing “physical and mental capabilities” in 20 CFR 617.22(a)(5) and “capabilities” in 20 CFR 617.22(a)(6) with “knowledge, skills, and abilities” in § 618.610(e)(1) and (f)(1), respectively.

Criterion 3 is implemented by proposed paragraph (c). It retains and expands on the provisions in 20 CFR 617.22(a)(3). This criterion requires States to assess, based on labor market information, whether trade-affected workers who complete an approved training program are likely to find employment using the skills and education acquired

while in the training. This criterion does not limit approval only to training programs that result in suitable employment (except for training programs that include OJT, which must lead to suitable employment with the employer offering the OJT). It is not always feasible to train trade-affected workers for suitable employment. Obtaining suitable employment is a goal, not an inflexible requirement, for the approval of training—except for OJT. However, the expectation is that all training leads to employment and is an inflexible requirement.

Proposed paragraph (c)(1) is derived from 20 CFR 617.22(a)(3) and implements sec. 236(a)(3) of the Act, which states that “a reasonable expectation of employment does not require that employment opportunities for a [trade-affected] worker be available, or offered, immediately upon the completion of approved training.” In addition, paragraph (c)(1) requires that when initially approving such training, there must be a projection based on labor market information of employment opportunities expected to exist at the time of completion of the training program. This criterion requires the State to review current local labor market data and trends. As such, States should use real-time sources of State labor market information.

Proposed paragraphs (c)(2) through (6) are new and based on established administrative guidance. They are proposed after consideration of Department monitoring and oversight findings and technical assistance requests. Paragraph (c)(2) requires States to measure expected job market conditions using pertinent labor market data, including job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. Paragraph (c)(2) also indicates that labor market information should be documented in the trade-affected worker’s case file, and

that the State should work with the LWDBs and its one-stop partners to understand current labor market conditions and opportunities for work-based learning.

Proposed paragraph (c)(3) places a new obligation on the State when determining whether Criterion 3 is met, as part of the process of approving training for a trade-affected worker who desires to relocate upon completion of training. Under proposed paragraph (c)(3), the State must document the labor market information in the area to which the worker intends to relocate. This is because that is the area where the worker will be seeking employment upon completion of training and is the relevant labor market.

Proposed paragraph (c)(4) recognizes that a demand for a single trade-affected worker trained in a specific occupation can exist in the local labor market and permits the State to determine that a reasonable expectation of employment exists in occupations where there are limited job openings. States must verify with businesses in the commuting area or in the area of intended relocation that such demand exists for a worker with such training, and these efforts must be documented in the trade-affected worker's case file. This situation may exist in smaller labor market areas or in larger areas where only a few skilled specialists are needed to meet the current demand (e.g., taxidermy or boat repair). However, States must ensure that they do not create an excess supply of trained workers where there is limited opportunity. In occupations with limited demand, the State must consider the number of workers currently enrolled in training that are likely to meet that demand prior to enrolling additional workers in training for that occupation.

Proposed paragraph (c)(5) recognizes that self-employment may be a viable employment goal. States must review the labor market conditions to determine that the

skills to be obtained in the training will lead to self-employment that will provide the trade-affected worker with wages or earnings at or near their wages in adversely affected employment.

Proposed paragraph (c)(6) codifies the requirement in sec. 236(c)(B)(i) of the Act that an OJT can only be approved that can reasonably be expected to lead to suitable employment with the employer offering the OJT.

Criterion 4 is implemented by proposed paragraph (d) and corresponds to 20 CFR 617.22(a)(4), but is simpler, better organized, and free of outdated references. References to approval of training outside the trade-affected worker's commuting area for cost reasons have been moved to proposed paragraph (f), Criterion 6.

Criterion 5, implemented by proposed paragraph (e), follows the requirements in 20 CFR 617.22(a)(5), but has been reorganized and some minor provisions have been added. Proposed paragraph (e)(1) modernizes the criterion's personal qualification language. Proposed paragraph (e)(2) adds a new requirement directing the State to review the trade-affected worker's initial assessment, and the comprehensive and specialized assessment and IEP, if available, to determine if the proposed training is appropriate based on the worker's current skills. Proposed paragraph (e)(3) 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. Proposed paragraph (e)(3) also provides considerations for determining whether the worker has sufficient financial resources when the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the training. Proposed paragraph (e)(4) requires

information to be documented by the State. Proposed paragraph (e)(5) reiterates 20 CFR 617.22(a)(5)(iii) with minor word changes.

Criterion 6 is implemented by proposed paragraph (f) and generally follows and expands on 20 CFR 617.22(a)(6). Proposed paragraph (f)(1) provides that the determination must be appropriate given the trade-affected worker's knowledge, skills, abilities, background, and experience as identified in proposed paragraph (e). States should compare the trade-affected worker's ability to undertake the training program against the worker's employment goals as identified through the criteria used in proposed paragraph (c) and determine if the training program is suitable based on that comparison. States should also examine the trade-affected worker's IEP, if available, but at minimum, must have the worker's stated employment goal. For example, if a trade-affected worker's stated employment goal is to be a welder and their assessment results, education, past work history, and skills are all compatible with welding, and there is a demand for welders in the local labor market, and the training program will result in the worker being able to meet any certification standards required for a welding position, then the training program for this worker can be considered suitable.

Proposed paragraph (f)(2) discusses reasonable cost. Reasonable cost is a critical determinant in approving training programs. The amount of training funds available to the States is limited by sec. 236(a)(2)(A) of the Act and discussed in more detail in proposed subpart I. When training is approved, a trade-affected worker is entitled to payment of all the costs of the approved training. Due to these conditions, States must control training costs and approve only that training "available at a reasonable cost."

Proposed paragraph (f)(2)(i) corresponds to 20 CFR 617.22(a)(6)(iii)(A) and provides examples of training-related costs that must be considered in the approval of training. The Department has expanded the list of examples from the list in 20 CFR 617.22(a)(6)(iii)(A) to reflect common costs associated with training programs and to ensure that States fully understand the costs of a training program before they approve it. The list is not all-inclusive. States must ensure that training funds are expended wisely, are available for the maximum number of trade-affected workers, and will support workers to ensure that they will complete their selected training program. Proposed paragraph (f)(2)(i) also requires the State to ensure and document that the training program costs are reasonable by researching costs for similar training programs. States must exhaust alternatives before purchasing equipment or related materials for workers, to ensure that those purchases are truly necessary.

Proposed paragraph (f)(2)(ii), based on 20 CFR 617.22(a)(6)(ii), generally prohibits the State from approving training when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. However, there may be instances where a higher cost training program is the better investment of funds, so the NPRM would allow a State to approve higher cost training if it is expected to achieve a higher likelihood of employment, employment retention, or wage replacement, or achieve comparable results in a significantly shorter duration, resulting in reduced weeks of TRA or a more rapid return to employment. Based on this standard, higher cost training must not be approved unless there is a clear difference in the quality and results of the training or unless comparable results can be achieved in a significantly shorter period of time. The latter

standards are consistent with the Act's intent to get trade-affected workers back into employment as rapidly as possible. States should have well-defined policies and procedures addressing this topic to ensure consistency and clear explanations to workers. The definition of "reasonable cost" is further addressed in proposed § 618.650.

Proposed paragraph (f)(2)(iii) follows 20 CFR 617.22(a)(6)(iii)(C) in prohibiting approval where transportation or subsistence payments for training outside the trade-affected worker's commuting area adds substantially to the total cost of training, if other appropriate training in the commuting area is available at a lower cost. In addition, the Department relocated a portion of 20 CFR 617.22(a)(4)(ii) to proposed paragraph (f)(2)(iii) because it is more related to determining reasonable cost. Proposed paragraph (f)(2)(iv) is new and explains that approval of training under Criterion 6 is also subject to the provisions of § 618.650.

Section 618.615 Limitations on training approval.

Proposed § 618.615 discusses the various limitations on a State's approval of a training program. The NPRM relocates some of the limitations on approval of training provisions from 20 CFR 617.25 to sections other than proposed § 618.615, where they more logically fit.

Proposed paragraph (a)(1) retains the single training program rule of 20 CFR 617.22(f)(2). A training program may evolve over the trade-affected worker's period of participation in the TAA Program. For example, during the training, the State may learn that the worker's program needs an OJT component, additional coursework, or remedial training to ensure employment. Changes to an ongoing training program are considered to be part of one training program. The only exception is discussed in proposed paragraph

(d)(4) for certain workers who perform a period of military service. Proposed paragraph (a)(2) retains the State's ability to amend training programs, as explained in proposed § 618.665. This provision is in 20 CFR 617.22(f)(3)(ii). Proposed paragraph (a)(3) codifies existing policy and operation that allows for a training program to consist of multiple types of training. For example, a single training program could consist of remedial training, occupational training, and an OJT.

Proposed paragraph (b) corresponds to 20 CFR 617.22(f)(4) with respect to full-time training but differs significantly by permitting States to approve part-time training, as allowed under sec. 236(g) of the Act. Part-time training may be appropriate when trade-affected workers cannot undertake full-time training and the part-time training is reasonably expected to help them increase their earnings, ideally by helping them secure suitable employment. States must not approve part-time training that does not meet these requirements.

Proposed paragraph (b)(1) retains the provision in 20 CFR 617.22(f)(4) that training is full-time if it is in accordance with the established hours and days (or credit hours) of the training provider.

Proposed paragraph (b)(2) is new and discusses part-time training under the TAA Program. There is no corresponding language in part 617, because the Act did not allow part-time training when the regulations were last promulgated. Paragraph (b)(2)(i) provides that a State may approve part-time training. Proposed paragraph (b)(2)(i) also provides that the maximum duration for part-time approved training is the same as that for other approved training, as set out in proposed paragraph (d)(3)(i). Proposed paragraph (b)(2)(ii) implements sec. 236(g)(2) of the Act's restriction on payment of

TRA to AAWs in part-time training. It also establishes that the training-approval requirements of this section apply to part-time training. Proposed paragraph (b)(2)(iii) clarifies that a trade-affected worker may participate in part-time training while employed either part-time or full-time. Proposed paragraph (b)(2)(iv) requires the State to inform an AAW who chooses part-time training that the worker will not be eligible for TRA and may lose HCTC eligibility, if available, while engaged in part-time training. AAIWs also should be informed of this in the event they are separated and become an AAW.

However, AAIWs are not eligible for either TRA or the HCTC. Proposed paragraph (b)(2)(v) cross-references proposed § 618.780(b)(1)(i), which provides that a State law cannot disqualify an AAW from receiving UI or TRA because such worker is enrolled in or participating in a training program approved under subpart F. However, an AAW enrolled in part-time training is not eligible for TRA and AAIWs are ineligible for TRA. Therefore, proposed paragraph (b)(2)(v) only specifies that State law cannot disqualify an AAW for UI because of part-time training. Proposed paragraph (b)(2)(vi) cross-references proposed § 618.780(b)(1)(ii), which allows a trade-affected worker to refuse work to which the State agency referred the AAW because such work would either stop or interfere with participation in TAA approved training. Because AAWs enrolled in part-time training are not eligible for TRA and AAIWs are not eligible for TRA, proposed paragraph (b)(2)(vi) specifies that this applies to UI or other program benefits.

Proposed paragraph (c) generally follows 20 CFR 617.22(c), but adds language to clarify the process by which (pre-TAA Program) workers who are part of a group of workers that has not yet received a certification under proposed subpart B can transition

to training under the TAA Program from training originally approved under another program, such as WIOA.

Proposed paragraph (d)(1) provides a general statement of appropriate duration, requiring that the duration be appropriate to the skill level needed to facilitate reemployment. The training must be of suitable duration to achieve the desired skill level in the shortest possible time. Proposed paragraph (d)(2) describes factors that may impact the length of training, including a trade-affected worker's full- or part-time employment status, the need for supportive services from partner programs, and scheduled breaks in training.

Proposed paragraph (d)(3) corresponds to 20 CFR 617.22(f)(2) and explains the maximum duration of approvable training. For most workers, the availability of income support is critical to their ability to engage in training. The Department interprets the Act to mean that the maximum number of weeks of training are intended to align with the maximum number of available weeks of income support. There is a maximum of 130 weeks of income support available to an AAW that is totally separated. This includes regular State funded UI, plus basic, additional, and Completion TRA. Therefore, paragraph (d)(3)(i) changes the 104-week regulatory limit on weeks of training to a total of up to 130 weeks, except as otherwise provided for OJT and apprenticeship at proposed § 618.635(a)(3) and (c)(1), respectively, and as provided for certain workers who perform a period of duty in the Uniformed Services in proposed § 618.615(d)(4). Proposed paragraph (d)(3)(ii) updates 20 CFR 617.22(f)(3)(ii) by specifically stating the requirement of counting actual weeks of training when measuring the duration of training. Scheduled breaks in training are not counted as weeks in training.

Proposed paragraph (d)(3)(iii), provides a pathway for approving a training program that exceeds the period during which TRA is available, as allowed under sec. 236(a)(9) of the Act, but is still within the maximum duration of training. It cross-references proposed § 618.610(e)(3), which provides the requirements for determining whether the trade-affected worker has sufficient financial resources available to support the worker through the completion of the training. Many training participants fail to complete training because they run out of income support. Notably, while AAWs are eligible for TRA, AAIWs are not. However, AAIWs will become AAWs if they are separated from adversely affected employment. Thus, both AAWs and AAIWs should be made aware of these limitations, and attention must also be paid to ensuring an AAIW has adequate financial resources to complete training. A State can approve a training program for longer than the duration of income support available if the State determines that the trade-affected worker has sufficient personal resources to support themselves while completing the training program. This does not mean that a trade-affected worker is expected to obtain personal loans or other such funds that they do not already possess. The worker must attest to the State that they have sufficient resources to sustain themselves while in training. The Department encourages comments on the implementation of this requirement and this issue in general.

Proposed paragraph (d)(4) implements sec. 233(i) of the Act, which creates an exception to the duration-of-training requirements for trade-affected workers who are also U.S. Armed Forces reservists ordered to active duty. There is no similar provision in 20 CFR part 617. As Congress has made clear, these workers should not be penalized for serving their country. The exception tolls the duration-of-training requirement so that

workers returning from an involuntary call to active duty can reenroll in a training program upon their return, begin a new training program, or repeat parts of the training, as necessary.

Proposed paragraph (e) retains the provision in 20 CFR 617.22(i) that training must be within the United States. Proposed paragraph (e) clarifies this provision, explaining that both the trade-affected worker and the training provider (including providers of distance training) cannot be physically located outside the United States. Certain criteria for training approval, such as suitable employment, cannot be met if the worker is physically located outside of the United States. This provision is also consistent with Congress's intent in sec. 2 of the Act "to foster the economic growth of and full employment in the United States" and "to safeguard American industry and labor."

Section 618.620 Selection of training program.

Proposed § 618.620, authorized by sec. 236(a)(5) of the Act, provides for the selection of training programs and has substantially changed from 20 CFR 617.23 due to statutory changes. Proposed paragraph (a) represents a change from the language at 20 CFR 617.23, which outlined the selection criteria for training programs and specified evaluation of a training provider's success by placement rates. The State must document the standards and procedures used to select training providers and training(s) in which the training program under this subpart will be approved. Proposed paragraph (a)(1) is similar to 20 CFR 617.23(a) and (b) but updates the language to align with WIOA provisions. The Department suggests that the State work with partners and partner programs to identify jointly appropriate training programs in their communities that will

assist trade-affected workers in obtaining work or place them on a career pathway towards suitable employment leading to higher wages.

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

Proposed paragraph (b) addresses types of training. This replaces 20 CFR 617.23(b) and (c)(1) and (2). The regulation at 20 CFR 617.23(b) is not carried forward into this NPRM in any manner. The regulation at 20 CFR 617.23(c)(1) is replaced because the Act no longer establishes OJT as the preferred training method. Proposed paragraph (b)(1) describes work-based training and provisions for both AAWs and AAIWs. Although the Act no longer mandates work-based learning as the preferred training method, the Department maintains that work-based training options like apprenticeship, OJT, and customized training are excellent training options for establishing a career pathway and rapidly returning trade-affected workers to employment. Successful work-based training requires implementing the business engagement strategies developed under WIOA sec. 107(d)(4) in cooperation with the LWDBs.

Proposed paragraph (b)(2), which describes institutional training, is derived from 20 CFR 617.23(c)(2), but does not contain the requirement establishing priority to public area vocational-technical schools. The Department has added the reference to community colleges in recognition of their importance to the nation's overall training efforts.

Proposed paragraphs (b)(2)(i) through (iv) are new and based on established administrative guidance. These proposed paragraphs establish criteria for the approval of distance learning. Proposed paragraph (b)(2)(i) requires that the provider and trade-affected worker be located within the United States. Paragraph (b)(2)(ii) requires the distance learning program to meet the criteria established under subpart F. Proposed paragraph (b)(2)(iii) requires the State to establish and monitor milestones of a distance learning program. This ensures that a trade-affected worker continues to make progress towards completing the training. Paragraph (b)(2)(iv) establishes that a trade-affected worker that fails to meet the milestones established in paragraph (b)(2)(iii) may be deemed to have ceased participation in training under subpart G (although AAIWs are ineligible for TRA, this may be helpful for States to use as a guideline). Proposed paragraph (b)(3) is new and defines the term “higher education” in accordance with sec. 236(a)(5)(H) of the Act.

Proposed paragraph (c), which provides a nonexclusive list of other specific types of approvable training programs, generally follows 20 CFR 617.24(b) through (f). OJT, from 20 CFR 617.24(a), is discussed under § 618.635(a). The Department is not retaining the heading of “Preferred Training,” as there is no longer a preference requirement in the Act. The selection of training, as discussed in this subpart, must be based on the need of the trade-affected worker to return to employment. This paragraph adds career and technical education to the list of approvable types of training because they are included in the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115-224 (2018)), which supersedes the Carl D. Perkins Career and Technical Education Act

of 2006, which superseded the Vocational Education Act of 1963, to which sec. 236(a)(1)(D) of the Act refers.

Proposed paragraph (d) is new and builds on proposed paragraph (b)(3) of this section and administrative guidance. It reflects the Department's conclusion that TAA Program funds can be used to provide training to trade-affected workers seeking to obtain an advanced degree or to complete coursework towards obtaining an unfinished advanced degree. It clarifies that workers who already possess an advanced degree or credential must not be denied further training for that reason alone. Approved training for advanced degrees is expected to be rare, and States must exercise special care to ensure that the costs are reasonable under the criteria in proposed § 618.610(f)(2)(ii).

Section 618.625 Payment restrictions for training programs.

Proposed § 618.625 makes plain a series of restrictions on payments for training programs. It follows 20 CFR 617.25(b), but has been rewritten, simplified, and condensed. Proposed paragraphs (a)(1) through (3) are unchanged from 20 CFR 617.25(b)(1)(i) through (iii).

Proposed paragraph (b)(1) replaces the last paragraph of 20 CFR 617.25(b)(1). States must ensure that TAA Program funds are not used to duplicate payment of training costs by another source of funds. Proposed paragraph (b)(2) is unchanged from 20 CFR 617.25(b)(4)(i)(A)(2). Proposed paragraph (b)(3) follows 20 CFR 617.25(b)(4)(ii)(B) with only minor word changes and addresses State establishments of nonduplication procedures.

Proposed paragraph (c) permits the State to share training costs. It is based on sec. 236(a)(5)(F) and (6) of the Act, allowing for the sharing of program costs, and is derived from 20 CFR 617.25(b)(2) and (3).

Proposed paragraph (c)(1) contains new provisions. It codifies that TAA Program funds are the primary source of Federal assistance to trade-affected workers. It also implements sec. 236(a)(4)(A) of the Act, which forbids all other funding under Federal law when the TAA Program pays the training costs for a trade-affected worker. However, if the costs of training exceed State TaOA funds, and if the Department has notified the States that there are no remaining TaOA funds to allocate, including reserve funds, then States may use other sources to continue funding training, as provided in proposed paragraph (d)(2)(ii) of this section.

Proposed paragraph (c)(2) is a new provision, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. Proposed paragraph (c)(2) allows States to share training costs with authorities administering non-Federal, State, and private funding sources provided that there are insufficient TAA Program funds to cover the total cost of training. This was added to give States more flexibility to enter into cost-sharing arrangements with non-Federal entities.

Proposed paragraph (c)(3) retains language from 20 CFR 617.25(b)(3)(ii)(A) prohibiting reimbursement from TAA Program funds of any training costs that were accrued before the approval of the training program under the TAA Program. Proposed paragraph (c)(4) corresponds to 20 CFR 617.25(b)(2)(ii) and (b)(3)(ii)(A), describing prearrangements and what is required in prearrangement agreements. Proposed paragraph (c)(4)(i) explains that these agreements may be entered into on a case-by-case basis to

address specific training situations of trade-affected workers or they may be part of a statewide strategy. Prearrangements help prevent duplication of the payment of training costs. They also help ensure that training costs that are reimbursable are not paid from TAA Program funds, which would violate sec. 236(a)(4)(B) of the Act. In addition to describing that prearrangements must be specific, binding agreements entered into before TAA Program funds are obligated, proposed paragraph (c)(4)(ii) provides new flexibility to States to determine that after a training program has been approved and TAA Program funds have been committed if funds become available under another source, the State may decide to continue to pay for the training under the TAA Program or share those costs. If the decision is made to share the costs, then the State must enter into a prearrangement with the other funding source to specify how the worker's training program will be funded. The Department has added this provision for clarity because it specifically covers a situation not previously addressed in the regulations. Many States have adopted tuition-free community-college programs for residents, and States will need to determine which program best meets the needs of trade-affected workers. If a cost-sharing agreement is put in place after the training program has been approved, then the worker's approved training program must be amended to reflect the prearrangement. Proposed paragraph (c)(4)(iii) follows 20 CFR 617.25(b)(3)(ii)(B) and is derived from sec. 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 State providing that TAA Program 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 paragraph (c)(5) follows 20 CFR 617.25(b)(4)(ii)(C) but clarifies it. As required by sec. 236(a)(4)(C) of the Act, in determining the amount of training costs payable from TAA Program funds, the State must not consider payments to the trade-affected worker under other Federal laws that do not directly cover the costs of training. Significantly, subchapter IV of the Higher Education Act of 1965, codified at 20 U.S.C. 1087uu, provides that, “[n]otwithstanding any other provision of law, student financial assistance received under [subchapter IV of the Higher Education Act] . . . shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal . . . program.” This includes, but is not limited to Pell Grants, benefits under Supplemental Educational Opportunity Grants, Federal educational loan programs, Presidential Access Scholarships, Federal student work-study programs, and Bureau of Indian Affairs Student Assistance. Therefore, a State may not consider Federal student financial assistance in determining whether to approve training under the Act and may not require the worker to use such funds to pay the costs of approved training. Federal student financial assistance paid directly to a worker is not deducted from the worker’s TAA Program benefits. This differs from 20 CFR 617.25(b)(4)(ii)(C)(I). The relationship between Federal student financial assistance and TRA is discussed in subpart G. Proposed paragraph (c)(5) also addresses the transition of Federal student financial assistance recipients from WIOA and other programs to the TAA Program. Specifically, WIOA sec. 134(c)(3)(B)(i) (29 U.S.C. 3174(c)(3)(B)(i)) overrides 20 U.S.C. 1087uu and limits WIOA-funded training services to individuals who are unable to obtain other grant assistance for training services, including through Pell Grants, or who require assistance beyond the assistance made

available under other grant assistance programs, including Pell Grants. Federal student financial assistance must cease to be applied to tuition and other training related costs that are covered by TAA Program funds upon transition to the TAA Program.

Proposed paragraph (c)(6) has no existing reference in 20 CFR part 617 and has been added as a result of States' technical assistance questions to the Department. It addresses the situation where a trade-affected worker's firm 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, the 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 require the State to contract with an adversely affected employer 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 State to assume the cost of training and not require the AAW to reimburse the employer. This provides the State with greater flexibility to leverage the use of nongovernmental funds made available by employers to AAWs. Workers funded under this provision are, like all others, still required to attend all classes and participate fully in training to avoid the establishment of an overpayment in the event of a failure.

Proposed paragraph (d)(1) is new and combines requirements at sec. 236(a)(7)(A) through (C) of the Act into a single statement. Section 236(a)(7)(A) through (C) states that the Secretary shall not approve a training program if—

- all or a portion of the costs of such training program are paid under any nongovernmental plan or program;
- the [trade-affected worker] has a right to obtain training or funds for training under such plan or program; and
- such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

Proposed paragraph (d)(1) simplifies these statements by prohibiting the use of TAA Program funds or wages paid under the training program to reimburse all or any portion of training costs from any source, regardless of whether it is from a Federal, State, nongovernmental plan or program, or another source. The authority for this is provided by combining secs. 236(a)(4)(B), (6)(A), and (7)(A) through (C). This is also partially addressed in proposed paragraph (c)(6) of this section. Proposed paragraph (d)(2)(i), modifying 20 CFR 617.25(b)(5)(ii), prohibits the approval of a training program if the trade-affected worker is required to obtain funds or pay training costs from TAA Program funds or any funds belonging to the worker from any source. This prohibition follows sec. 236(a)(1) of the Act, subject to the annual training cap limitation under sec. 236(a)(2)(A). Proposed paragraph (d)(2)(ii) requires that if no TAA Program training funds are available, the States must seek other funding, including the use of WIOA national dislocated worker grant funds, to provide training.

Section 618.630 Training of reemployed trade-affected workers not in suitable employment.

Proposed § 618.630, which follows 20 CFR 617.22(g), derives from sec. 236(d) of the Act. This provision addresses AAWs who cannot find suitable employment but who obtain nonsuitable employment. These AAWs, while employed, continue to be eligible for TAA Program training. 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 a participant in training (as discussed in proposed § 618.615(b)). As provided in sec. 236(d) of the Act, the AAWs may not be determined ineligible or disqualified for UI or TAA Program benefits, including TRA, because they left work that is not suitable employment. However, choosing to continue in such employment, either part- or full-time, may have negative effects on UI and TAA Program benefits, including TRA and the possible loss of the HCTC, if available. The wages earned in such employment may impact the weekly benefits payable under UI or TRA.

Section 618.635 Work-based training.

Proposed § 618.635 modifies 20 CFR 617.25(a) to set forth detailed requirements for OJT, customized training, and apprenticeship. The requirements in proposed paragraph (a) were not fully implemented in 20 CFR part 617, so several new provisions have been proposed to implement statutory requirements from sec. 236(c) of the Act.

Proposed paragraph (a)(1) provides the description of OJT that follows the statutory definition at sec. 247(15) of the Act. OJT must be provided under a contract between the State and an employer, which may be in either the public or private sector, including nonprofits. Proposed paragraphs (a)(1)(i) through (iv) are derived from sec. 236(c)(1)(B) of the Act.

Proposed paragraph (a)(2) describes components of related education. Classroom training sponsored by the employer and as part of the contract may be part of OJT and may be provided for part of the day with the balance of the training day in a productive

setting, or in some other described schedule. Proposed paragraph (a)(3) implements sec. 236(c)(3)(A) of the Act and requires that that the OJT contract specify the duration of the OJT, and be limited in duration as appropriate. Although statutorily limited to a maximum of 104 weeks under sec. 236(c)(3)(B) of the Act, the length of an OJT contract must also be limited to the specific vocational preparation required for the occupation, as listed on O*NET (www.onetonline.org). Proposed paragraph (a)(4) implements the statutory language in sec. 236(c)(4) of the Act, which excludes certain employers from receiving OJT contracts.

Proposed paragraph (a)(5) sets out the reimbursement provisions for the OJT contract at a rate of up to 50 percent of the wage rate for the OJT participant, limited to the duration of the contract, as provided in sec. 236(c)(5)(H) of the Act. Proposed paragraph (a)(6) contains the labor standards required by sec. 236(c)(5) of the Act for approval of the costs of OJT. Proposed paragraphs (a)(5)(i) through (ix) are essentially unchanged from 20 CFR 617.25(a)(1) through (7), (9), and (10), except for minor language changes for clarification. Paragraph (a)(8) of 20 CFR 617.25(a) has been dropped because of the repeal of the previous language of sec. 236(c)(8) of the Act, which required the employer to certify that they will continue to employ such AAW 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.

Proposed paragraph (a)(7) follows sec. 236(c)(2) of the Act, which requires payments for OJT to be made to employers in monthly installments. This is a change from 20 CFR 617.25(a), which requires payment in equal monthly installments. The

dollar amounts of the monthly payments may fluctuate because, though paid at the same rate of pay, the payments may be based on different numbers of hours worked.

Proposed paragraph (a)(8), largely adopted from sec. 233(d) of the Act and 20 CFR 617.18(c), is a reminder that proposed § 618.780(c) provides that AAWs engaged in OJT are not eligible for TRA. It also explains that the AAW may be considered ineligible for the HCTC, if available. Proposed paragraph (a)(9) allows for participants enrolled in OJT to also enroll in RTAA, if they are found eligible and all the requirements are met, as described in subpart E. Proposed paragraph (a)(10) conveys that TAA Program funds may be leveraged with WIOA funds to reach the maximum reimbursement level established under WIOA. Proposed paragraph (a)(11) states that the State must not approve OJT, under sec. 236(a)(5)(i) of the Act, for AAIWs.

Proposed paragraph (b) implements provisions related to customized training, defined by sec. 236(f) of the Act, and sets forth specific requirements. Customized training is a type of work-based training authorized under sec. 236(a)(5)(A) of the Act. Customized training was not addressed in 20 CFR part 617 and is a source of many technical assistance questions. Implementing rules related to customized training will provide clarification about this type of work-based training. Proposed paragraph (b)(1) describes that customized training meets the special requirements of a single employer or a group of employers and may be provided by the same, or a training provider, which could include State or local staff. An example would be a single machine shop or group of small machine shops that require employees with training on a specific tool, software package, or process. Proposed paragraph (b)(2) codifies that for the purposes of customized training, employer(s) must commit to employ a trade-affected worker upon

successful completion of the training. The employer(s) must enter into an agreement with the State that describes the conditions that must be met and reiterates the expectation of employment after training is completed. Proposed paragraph (b)(3) requires the employer(s) to pay for at least 50 percent of the costs for the training. Proposed paragraph (b)(4) explains the limitation from sec. 236(a)(10)(B) of the Act that AAIWs are eligible for customized training if the position is for a position other than their adversely affected position.

Proposed paragraph (c) is new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the National Apprenticeship Act, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of an industry-recognized credential, are approvable TAA Program training activities. The Department encourages comments on implementing these new provisions. These provisions are based on sec. 236(a)(5)(A) of the Act. The requirement that an apprenticeship lead to a recognized postsecondary credential, which includes an industry-recognized credential, differentiates an apprenticeship from a regular OJT. Proposed paragraph (c)(1) limits the duration of the paid work-based learning component of an apprenticeship to a maximum of 130 weeks, in line with the general limitation on training duration in § 618.615(d)(3). However, the length of the educational or instructional training component is limited only by the scheduled completion date of the apprenticeship. In setting these time periods for apprenticeship training, the Department considered that the average total program duration (from FY 2009 to FY 2017) of an apprenticeship participant in the TAA Program was 66 weeks. Only 38 weeks of this time

was spent in training (related instruction component). The average duration for TAA Program participants in an OJT was 80 weeks, with 45 weeks of OJT instruction. The TAA Program has been criticized in the past for keeping trade-affected workers out of the workforce while they are receiving benefits. Such criticism does not apply to OJT or apprenticeship because these are work-based trainings and participants are employed while participating in the TAA Program. The Department concludes that sec. 236(a)(5)(G) of the Act allows the Department to establish apprenticeships as a type of approvable training under the TAA Program and to establish regulations governing them. Apprenticeship is not the same as a regular OJT and is therefore not subject to the duration limit at sec. 236(c)(3)(B) of the Act.

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

Proposed paragraph (c)(3) prohibits States from entering into contracts with sponsors that exhibit a pattern of failing to provide apprentices with the successful attainment of an industry-recognized credential or the apprenticeship completion certificate if a registered apprenticeship under the National Apprenticeship Act.

Proposed paragraph (c)(4) is divided into paragraphs (c)(4)(i) and (ii). Paragraph (c)(4)(i) addresses compliance with registered apprenticeships under the National

Apprenticeship Act. Specifically, the costs for the registered apprenticeship program, discussed in proposed paragraphs (c)(2) and (3), may only be approved by the State if the requirements of 29 CFR parts 29 and 30, and Departmental administrative guidance are met. Paragraph (c)(4)(ii) addresses other apprenticeships. It explains that costs for an apprenticeship program will be approved if certain labor standards are met.¹¹ These are based on the labor standards that apply to OJT under sec. 236(c)(5) of the Act and are applied to apprenticeships other than registered apprenticeships, although the labor standards at sec. 236(c)(5)(H) of the Act is incorporated in proposed paragraph (c)(2)(ii), rather than in proposed paragraph (c)(4)(ii). Proposed paragraph (c)(5) instructs the State to make individual benefit determinations on TRA benefits to AAWs and to inform the AAWs considering apprenticeship of the possible loss of eligibility for TRA and the HCTC, if available. Proposed paragraph (c)(6) allows for the combination of apprenticeship and RTAA, if all eligibility requirements under subpart E are met. Proposed paragraph (c)(7) defines the term “sponsor” as it relates to apprenticeships. Proposed paragraph (c)(8) requires the State to enter into a contract with the sponsor that establishes the terms and conditions of the apprenticeship.

The Department will be monitoring all participant outcomes achieved through apprenticeships approved under the Act via coordination between OTAA and the Office of Apprenticeship to ensure that AAWs who complete apprenticeships continue to successfully retain employment.

Section 618.640 Supplemental assistance.

¹¹ The six criteria for the approval of training at sec. 236(a)(1)(A)-(F) of the Act also apply to apprenticeships.

Proposed § 618.640 discusses the requirements for TAA Program-funded supplemental assistance in the form of subsistence and transportation payments. Proposed paragraphs (a) and (b) describe general information and application instructions and are derived in part from 20 CFR 617.27(a) and (c) and 20 CFR 617.28(a) and (d). It eliminates outdated references to expired workforce programs. Proposed paragraph (a) also requires the need for such payments to be documented in the trade-affected worker's IEP, if available, or case file. Proposed paragraph (b) requires the trade-affected worker to submit an application for supplemental assistance in accordance with subpart H and the processes established by the State.

Proposed paragraphs (c) and (d) correspond to, condense, and clarify 20 CFR 617.27 and 20 CFR 617.28, respectively, regarding payments for subsistence and transportation. They codify the statutory provisions at sec. 236(b) of the Act. Proposed paragraph (c)(1) clarifies that subsistence payments include the costs of temporary living quarters (separate maintenance), meals, and incidental expenses, which was previously inferred by the use of the term “per diem” in 20 CFR 617.27. Proposed paragraph (c)(2) establishes the requirements for subsistence payments. Proposed paragraph (c)(3) limits the amount of subsistence payments to the lesser of the worker's actual per diem expenses for subsistence, or 50 percent of the prevailing per diem allowance rate authorized under the FTR (see 41 CFR chapters 300 through 304) for the location of the training facility. Proposed paragraph (c)(4) requires States to make subsistence payments upon a worker's completion of a week of training, but allows States to advance a subsistence payment for a week if the State determines that doing so is necessary to enable the worker to participate in the approved training.

Proposed paragraph (d) provides that a trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation payments are solely for those miles beyond the worker's 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. Proposed paragraph (d) establishes a maximum limit for transportation payments of 90 percent of the cost per mile at the prevailing personal vehicle mileage rate authorized under the FTR.

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 not within commuting distance of a worker's residence. The Department proposes limiting TAA Program-funded transportation allowances to those miles beyond the regular commuting area for several reasons. The proposed change is fairer to trade-affected workers who travel to training within the commuting area, who receive no allowance. It encourages trade-affected workers to attend training closer to home, which avoids the costs and disruption of a temporary relocation. And it preserves funds for actual training. Moreover, trade-affected workers may still be able to receive transportation reimbursement within their commuting area if they qualify under WIOA or a national dislocated worker grant. See 20 CFR part 680, subpart G.

Proposed paragraph (d)(2) is new and has no comparable counterpart in existing regulations or in administrative guidance. It addresses transportation payments for trade-affected workers who are residing temporarily in the area of training. It clarifies for the

first time that the per diem transportation payment may not exceed the amount of the per diem subsistence payment that would be payable under proposed paragraph (c)(3).

Proposed paragraph (d)(3)(i), which addresses transportation payments, is derived from 20 CFR 617.28(b)(1), except that paragraph (d)(3)(i) does not state that the travel cost begins at the worker's home, as discussed above. Proposed paragraph (d)(3)(ii) updates the reference to the FTR and provides a U.S. General Services Administration reference. Proposed paragraph (d)(4) adds a new provision that a trade-affected worker must receive transportation payments promptly after completion of a week of approved training, and that payments must be made at a minimum on a monthly basis. This was added to make sure that trade-affected workers are not in a situation where they do not have the resources to take transportation to training because they have not been reimbursed within a reasonable period.

Proposed paragraph (e) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is intended to assist States in understanding how subsistence and transportation work together. It explains that payment can be made for both subsistence and transportation, and proposed paragraph (e)(1) newly clarifies that for the first and last day of arriving and departing a training, a trade-affected worker receiving subsistence may receive reimbursement transportation. This means, for example, that workers no longer have to choose between receiving mileage reimbursement for driving to a distant training and receiving reimbursement for the cost of a hotel the night before their training begins. An example of proposed paragraph (e)(1) would be where a worker travels outside of the worker's commuting area for a 1-month training session. The TAA Program would pay for travel on the first

day out to the new location, subsistence during the training, and then for the travel back home. On the first and last day, there could potentially be payments for both travel and subsistence. This exception is also available, as described in proposed paragraph (e)(2) in the event a trade-affected worker fails to complete the training for a justifiable cause, as described in proposed § 618.780(b)(3)(iii).

Proposed paragraph (f) is derived in part from 20 CFR 617.28(d), and requires the State to adjust the payments for transportation and subsistence for any advance payments made to a trade-affected worker in order to take into account the amount of the advance that is more or less than the amount that the worker is entitled to receive. Proposed paragraph (g) is new and has no comparable counterpart in existing regulations or in administrative guidance. It clarifies for the first time that trade-affected workers must submit expense receipts. This will help to ensure proper accounting and management of Federal funds and is consistent with proposed subpart D regarding expenses for job search and relocation allowances available to AAWs.

Section 618.645 Voluntary withdrawal from a training program.

Proposed § 618.645 establishes a new requirement, added for the first time, for a trade-affected worker's voluntary withdrawal from a training program. This provision has no comparable counterpart in existing regulations or in administrative guidance. During its oversight of the TAA Program, the Department has encountered numerous situations where a worker has withdrawn from training. States have also requested technical assistance and interpretations of the Act and regulations related to this topic. This proposed section seeks to provide direction to the States on this topic. Proposed paragraph (a) provides that the State must advise a trade-affected worker who chooses to

withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart H, be established as an overpayment and may, subject to proposed subpart G, result in ineligibility for TRA for AAWs. Proposed paragraph (b) provides an exception for service in the Uniformed Services under the criteria set out in § 618.615(d)(4). Proposed paragraph (c) allows for a trade-affected worker who ceases participation in training for justifiable cause as described in § 618.780(b)(3)(iii) to resume the approved training program. Proposed paragraph (d) recognizes that AAWs 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 618.440 of subpart D. Proposed paragraph (e) is not a new requirement but was clarified in previously issued administrative guidance. The goal of TAA approved training is to help trade-affected workers obtain suitable employment. The acquisition of an apprenticeship completion certificate or industry-recognized credentials forms an important part of that long-term reemployment strategy. Therefore, States must provide training for TAA Program training participants as approved by the State in the training program, even if the AAW becomes employed in suitable employment during that training. The State must evaluate, with input from the AAW, how the employment impacts the AAW's training program (and whether the training program needs to be amended); determine that training completion serves the long-term employment goals of the worker; and the AAW must continue to meet benchmarks that were established as part of the approved training program, even though the employed AAW is not likely to be eligible for TRA payments.

Section 618.650 State standards and procedures for establishing reasonable cost of training.

Proposed § 618.650 is new and does not have a counterpart in 20 CFR part 617. It describes limitations on States that establish a policy defining a ceiling on the amount of training costs payable for trade-affected workers. Section 236(a)(1)(F) of the Act requires States to approve training suitable for the worker and available at a reasonable cost. “Reasonable cost” in proposed § 618.610(f)(2) incorporates § 200.404 of OMB’s Uniform Guidance (2 CFR 200.404) and its interpretive guidance. The expenditure must be prudent under those standards. Section 200.404 provides that “[a] cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.” States must follow the prudent person test to determine if the training costs are reasonable and necessary for the trade-affected worker to achieve the goals of the TAA Program. Additionally, States must also comply with the standards for reasonableness in proposed § 618.610(f)(2), including those permitting States to allow training other than the least-cost option if the extra cost is justified by better worker outcomes or a faster return to the workforce.

To achieve the goal of expanding training opportunities for the largest number of trade-affected workers, the Department determined that States are not prohibited from setting specific training limit amounts, such as matching the training limit amount to the WIOA individual training account limit in each local area, as a tool to ensure they approve training for trade-affected workers at a reasonable cost that will lead to employment. Proposed paragraph (a) informs States that training limits may be

established, and, if limits are established, they must reasonably take into account the varying costs for training throughout the State. The Department is concerned that a statewide training cost ceiling could result in unnecessary barriers to training for trade-affected workers. In addition, the State must have a method to approve training exceeding the training cap, and it must include a requirement that a local area secure State approval to exceed the statewide training cost ceiling prior to approving the training.

Proposed paragraph (b) requires the State to develop a policy that allows for consideration and approval of training costs that exceed the established training cost limits set by the State. If used, this exception will prevent the denial of a training program solely based on a cost limitation. While the Department expects States will be judicious in granting exceptions, the Department recognizes that there will likely be cases in which relief is appropriate. The policy must include transparent standards and procedures that provide for prompt consideration of any request to exceed the training cost limit.

Proposed paragraph (c) requires the State to propose an alternative training program, when training is not approvable due to exceeding the State's maximum amount established in policy and the State policy to exceed, described in proposed paragraph (b), has not been met.

Proposed paragraph (d) requires States to review their established policy on a reasonable cost limit annually and to change or remove the limits when warranted.

Proposed paragraph (e) requires that whenever a State establishes, modifies, or rescinds its policy, the State must notify the Department and provide full documentation supporting its action to the Department for review.

Proposed paragraph (f) explicitly provides that there is no requirement that a State establish a limit on training costs.

The Department also is considering an alternative approach to establishing a definition of available at a reasonable cost. Under this alternative approach, the Department would establish via regulation that the soft cap would be initially established as the local area's established limit for ITAs under WIOA. Under this alternative approach, the local area would be able to request to exceed this cap to meet the needs of the trade affected worker. The Department seeks comments on both proposed paragraph (a) and the alternative approach the Department is considering.

Section 618.655 Training for adversely affected incumbent workers.

Proposed § 618.655 is new and addresses the approval of training for AAIWs. Section 236(a)(1) of the Act includes the phrase "or an [AAIW]" after "[AAW]" in the provision for the approval of training. The Act thus extends to AAIWs the same training benefits provided to AAWs under the Act, except as provided in sec. 236(a)(10) and proposed § 618.635(a)(10) and (b)(4). Section 236(a)(1) of the Act allows workers threatened with total or partial separation from adversely affected employment, AAIWs, to begin TAA approved training before their separation. TAA Program-funded training for AAIWs is intended to allow earlier intervention where layoffs are planned in advance and the employer can specifically identify which workers will be affected, or where the threat of separations are possible. AAIWs may begin training before a layoff, thereby reducing the time needed to complete the training program after the separation occurs and reducing the duration of the worker's weeks of unemployment. Training options for an AAIW should be designed to meet the long-term needs of the AAIW based on the

expectation that the AAIW will be laid off. Training programs may also be amended in accordance with proposed § 618.665. The criteria and limitations for approval of training for AAIWs are the same as they are for AAWs, except for certain exclusions. AAIWs, like AAWs, are entitled to supplemental assistance (transportation and subsistence payments), and employment and case management services. Proposed paragraph (a) clarifies that AAIWs are eligible for approved training before separation, and further clarifies that AAIWs may apply for training and States may approve training for any AAIW at any time after the date on which they are determined to be individually threatened with separation regardless of filing for, receiving, or exhausting UI.

Proposed paragraph (b) clarifies how a State will verify that an AAIW is threatened with total or partial separation. This paragraph explains that an AAIW is threatened with total or partial separation when the AAIW has received a notice of termination or layoff from employment. Verification of a threat of total or partial separation may be obtained from the firm that is trade impacted or another reliable source that the State determines to be appropriate.

Proposed paragraph (c) states that the provisions of subpart F extend to AAIWs, unless otherwise noted. It also lists exceptions that apply to AAIW training. Proposed paragraph (c)(1) explains that training may not be approved for an AAIW if such training includes an OJT component consistent with sec. 236(a)(10)(A) of the Act.

Proposed paragraph (c)(2) implements the statutory requirement in sec. 236(a)(10)(B) of the Act that customized training may not be approved for an AAIW unless the training is for a position other than the AAIW's adversely affected employment.

Proposed paragraph (d) implements sec. 236(a)(11) of the Act, and provides conditions for terminating the approval of training for AAIWs, under certain conditions. Paragraph (d)(1) requires the State to continue to monitor that the threat of total or partial separation continues to exist for the AAIW during the course of training approved under the Act. The State must periodically verify, with the AAIW's employer, that the threat of separation still exists before funding each subsequent portion of the training. Proposed paragraph (d)(2) provides that if the threat of separation is removed, TAA Program funding of the AAIW's training program must cease at the conclusion of the most recently funded portion, or semester or quarter. The AAIW will be allowed to complete any portion of the training program for which the TAA Program has already recognized an accrued expenditure; however, no additional funding will be available while the threat of separation is removed. Funding may resume for the original training program that had been previously approved upon a determination by the State that the threat of separation has been reestablished, or upon total or partial separation from adversely affected employment, if the requirements under § 618.610 are still met. The approved training program must be amended in compliance with proposed § 618.665(a)(1)(ix). Proposed paragraph (d)(3) clarifies that, as with all training approvals under the Act, the AAIW is only eligible for one training program per certification; thus, a training program begun prior to separation and while under a threat of layoff continues to constitute the one allowed training program available to that AAIW. Proposed paragraph (d)(4) provides that the training duration limitations addressed in proposed § 618.615 are applicable to training program approval for AAIWs. Proposed paragraph (d)(5) further emphasizes that an AAIW will not be eligible for a new or different training program when a total or

partial separation occurs; however, the existing training program may be amended under the provisions of proposed § 618.665. Lastly, proposed paragraph (d)(6) provides that the State must not consider the AAIW's threatened employment suitable employment under proposed § 618.610(a). Without this interpretation, training for AAIW would otherwise never be approvable.

Proposed paragraph (e) explains that an AAIW may transition to an AAW. Proposed paragraph (e)(1) provides that the separation must occur prior to the expiration of the petition under which the AAIW was determined to be threatened and the total or partial separation must be for lack of work. Proposed paragraph (e)(2) specifies that once an AAIW has become an AAW under the conditions specified in paragraph (e)(1), the worker's approved training program must be amended, as described in § 618.665, and the State must determine what other benefits under the TAA Program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the duration limits contained in § 618.615.

The Department specifically encourages comment relating to proposed § 618.655, particularly on potential strategies States may use to encourage employers to inform their workers of planned layoffs so that the workers may apply for training as AAIWs as early as possible. The Department also encourages comment on creative solutions for these workers so that they can seamlessly transition from threatened employment into new, good-paying jobs.

Section 618.660 Training benchmarks.

Proposed § 618.660 is new and provides the process for establishing and monitoring compliance with training benchmarks. Benchmarks are required by sec.

233(f)(3)(A) of the Act when the trade-affected worker enrolls in an approved training program that will extend beyond the duration of payable weeks of Basic TRA and Additional TRA, for the purposes of eligibility for Completion TRA, in accordance with subpart G. Although AAIWs are ineligible for TRA, establishing training benchmarks is recommended, as an AAIW may become an AAW. The purpose of training benchmarks is to allow early and ongoing assessment of the performance of a training participant to determine whether the original training program is a good fit. Benchmarks also function as a protection of the appropriate expenditure of TAA Program funds. This section implements existing operations of the TAA Program.

Proposed paragraph (a) requires States to establish and document training benchmarks for AAWs (and it is recommended to do so for AAIWs) so that they can meet Completion TRA eligibility requirements described at proposed § 618.765. The benchmarks must be established when the trade-affected worker enrolls in an approved training program so that the State can monitor the worker's progress toward completing the approved training duration limits at proposed § 618.615. Inclusion of benchmarks should occur when the training program is initially established and approved, and, in the unusual event that benchmarks are not included in the initial training program, at such time the training program is amended. Proposed paragraph (b) requires training benchmarks to be established for all but short-term training programs, such as a 3-month certificate program. The establishment of benchmarks is a useful practice and may be required later in the AAW's training if unanticipated circumstances arise that extend the training beyond the duration of payable weeks of Basic TRA and Additional TRA. Proposed paragraph (c) provides that to review the trade-affected worker's progress

against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc. The case manager may attest to the worker's progress after consultation with the vendor and the worker. Proposed paragraph (d) requires the benchmarks to be described in the trade-affected worker's IEP, if available, or otherwise documented in the worker's case file. Proposed paragraph (e) requires that benchmarks be flexible enough to allow for some variability (e.g., a single course failure or missed week of attendance may contribute to a failed benchmark but should not, on its own, make the AAW ineligible for Completion TRA), and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and State environments. These benchmarks are related to, but differ from, the requirement that an AAW "participate in training" as a condition of eligibility for TRA. "Participation in training" merely requires that an AAW must attend scheduled classes and required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training provider, while training benchmarks measure satisfactory progress of the trade-affected worker during their training. Training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training program in place is appropriate for the trade-affected worker or whether it would be prudent to amend the training program to meet the needs of the worker better.

Section 233(f)(3) of the Act requires an AAW to substantially meet performance benchmarks to remain eligible for Completion TRA. There are two benchmarks that must be met. The first is that the AAW is expected to continue to make progress toward the completion of the training. The second is that they are on schedule to complete the

training during that period of eligibility. In § 618.660(f), the Department interprets these benchmarks to mean that the AAW is maintaining satisfactory academic standing (e.g., not on probation or determined to be “at risk” by the instructor or training provider) and is on schedule to complete training within the timeframe identified in the approved training program. Paragraph (f) requires these benchmarks to be evaluated and documented at least every 60 days, beginning with the start of the approved training program.

Under paragraph (g)(1), upon failure to meet either or both of the benchmarks for the first time during the same evaluation period, the State must provide a warning to the AAW that their eligibility for Completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker’s case file. An AAWs approved training program may be amended after they fail to satisfy one or both training benchmarks for the first time. There is no requirement to wait for a second substandard review. If the first-time benchmark failure is of a magnitude as to make a failure at a later benchmark review likely, then the State should reevaluate the training program, if necessary, to improve the likelihood that the AAW will complete the training program. Similarly, if an AAW is failing two courses in one benchmark assessment period, this will result in only one substandard review; however, if the failure of two courses makes timely completion of training under the approved training program unlikely, then the training program should be amended. Paragraph (g)(2) provides that if an AAW who has previously failed to meet a benchmark under paragraph (g)(1) fails to meet a benchmark during a subsequent benchmark review under paragraph (f), the State must notify the worker of their ineligibility for Completion TRA. An AAW may elect to

continue in the approved training but will not receive any Completion TRA payments; or, the training program must be amended according to proposed § 618.665, and Completion TRA payments may resume. In cases where a State denies payment of Completion TRA because the AAW has not made satisfactory progress toward training benchmarks, the AAW may appeal the determination through the appeal process described in subpart H at § 618.552. An AAW may refuse an amendment to the training program but will not be eligible for Completion TRA.

Section 618.665 Amending approved training.

Proposed § 618.665 provides conditions for amending an approved training program. Proposed § 618.665 greatly expands upon the regulatory provision 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, such as remedial education or specific occupational skills.” Proposed § 618.665 recognizes that more substantial amendments may be necessary to provide trade-affected workers with skills necessary to obtain employment and sets forth the circumstances, and conditions, under which amendments must be made. The ability to amend a training program is not new but does require some additional structure to ensure consistent treatment of trade-affected workers.

Proposed paragraph (a) requires the State to work in cooperation with the trade-affected worker in amending a training program where the need for such amendment was not foreseeable and where the customer demonstrates good cause for the need to amend. Proposed paragraphs (a)(1)(i) through (x) provide the list of conditions to be met for an amendment to be appropriate. One or more of the conditions must be met. Proposed

paragraph (a)(2) provides that the training duration limits at proposed § 618.615(d)(3) apply to amended programs. Proposed paragraph (a)(3) requires an amendment to be made before completion of the original training program. Proposed paragraph (b) sets forth the criteria that must be met in order for a training program to be amended. The Department concludes that since the State is amending an existing approved training program, not all of the training approval criteria described in proposed § 618.610 apply to an amendment. For example, since the State already determined that there was no suitable employment available when the training program was originally approved, it is not reasonable to conduct a subsequent review of available suitable employment in order to amend a training program. As a result, proposed paragraphs (b)(1) through (4) apply only Criteria 3 through 6, from proposed § 618.610 of this subpart F, to amended training programs.

G. Subpart G – Trade Readjustment Allowances

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

Section 618.700 Scope.

Proposed § 618.700 is new and does not have a comparable section in 20 CFR part 617. It describes the scope of this proposed subpart G.

Section 618.705 Definitions.

Proposed § 618.705 is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time definitions of the terms “participating in approved training” and “training allowance” as used in this proposed subpart G. It also addresses the issue of wages as it relates to successor-in-interest. Proposed paragraph (a) redresses the numerous references in 20 CFR part 617 that refer to “participation in training” and replaces the term with “participation in approved training” throughout this subpart G. Part 617 does not interpret or define this term, despite using the phrase “participating in a training program approved under [20 CFR] 617.22(a)” throughout. The term “approved training” takes the place of “training program approved under [20 CFR] 617.22(a).” Proposed paragraph (a)(1) describes “participating in approved training” generally, relative to attendance and taking part in on-site classes, activities, and events as well as covering excused absences. Proposed paragraph (a)(2) describes the term specifically for distance learning but is otherwise the same as proposed paragraph (a)(1) in this section.

Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes, for the first time, a definition of the term “training allowance,” which is used throughout sec. 232 of the Act and in 20 CFR 617.13. The term “training allowance” has been used to describe such Federal programs as Veterans Educational Assistance and Supplemental Educational Opportunity Grants whereas payments would go directly to the AAW, as opposed to payments provided directly to a training provider. Federal student financial assistance is excluded from being a “training allowance” and reasons for the exclusion are discussed in more detail in proposed § 618.745(c)(4).

Proposed paragraph (c) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is not a new interpretation or new concept. Instead, it is an explicit clarification of existing policy. This proposed paragraph is derived from the definition of the term “firm” contained in 29 CFR 90.2 and in proposed § 618.110, which provides that any predecessors or a successor-in-interest are considered part of the same firm for purposes of proposed subpart B. Proposed paragraph (c) extends that logic to the wages earned by a worker that may be reported under the subject firm named on a petition, a predecessor, or a successor-in-interest. For purposes of TRA, wages reported to a State or paid to an AAW by a successor-in-interest are to be treated as wages and weeks in adversely affected employment for purposes of establishing TRA eligibility.

Section 618.710 Categories of Trade Readjustment Allowances.

Proposed § 618.710 is new and explains that there are three categories of TRA: Basic, Additional, and Completion. These three categories of TRA are used throughout subpart G, so the basic explanation here should make the rest of proposed subpart G easier to follow. This proposed section has no parallel in part 617 but is part of administrative guidance.

Proposed paragraphs (a),(b), and (c) identify, respectively, Basic TRA, Additional TRA, and Completion TRA, and reference their respective qualifying requirements contained in later sections in subpart G. Proposed paragraph (a) describes Basic TRA, which is payable to an AAW who meets the requirements of proposed § 618.720. Proposed paragraph (b) describes Additional TRA, which is payable to an AAW who

meets the requirements of proposed § 618.760. Additional TRA begins the first week after exhaustion of Basic TRA.

Proposed paragraph (c), describes Completion TRA, which is payable to an AAW who meets the requirements of proposed § 618.765. Completion TRA is payable after exhaustion of Basic and Additional TRA and only if the AAW is pursuing a program leading to a certificate or industry-recognized credential, participates satisfactorily, and the program is completed by the established eligibility period. The eligibility period will begin once the individual files an initial claim for Completion TRA, files for compensation for a given week while participating in TAA training, and is expected to complete such training in the established 20-week period during which to receive Completion TRA. The State must assist the AAW to meet these strict requirements. The State must work with the AAW to determine the best timing for the start of the 20-week period to ensure that the training will be completed within the established period. The first week of Completion TRA cannot automatically be established as the first week after exhaustion of Additional TRA as doing so could result in an AAW receiving no Completion TRA at all. For example, if a training program required 21 weeks beyond the end of Additional TRA and the first week of Completion TRA were automatically started at the conclusion of Additional TRA, no Completion TRA would be payable as the AAW would not complete the training within the 20-week period.

Section 618.715 Applications for Trade Readjustment Allowances and payment.

Proposed § 618.715 covers applications for TRA and payment. Proposed paragraph (a) modifies 20 CFR 617.10(b) and changes the phrase “may be filed within a reasonable period of time after publication of the determination certifying the appropriate

group of workers” to “must be filed after publication of the certification of the appropriate worker group” to clarify that filing before a certification is issued is not optional. It also omits all references to applications for TRA that appeared in 20 CFR 617.10(b) for weeks of unemployment beginning before the initial application for TRA is filed because it needlessly confuses the requirement that TRA cannot be paid until an AAW is covered by a certification as described in proposed paragraph (d) of this section. Proposed paragraph (a)(2) provides that an application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

Proposed paragraph (b) is nearly the same as 20 CFR 617.10(c) in providing the procedures for filing TRA applications, except that it updates references to this subpart G and newly provides for the filing and processing of applications by any means allowed for UI claims in the State, as reiterated in proposed paragraph (e)(2) of this section. This new provision allows States flexibility in application processing. In addition, proposed paragraph (b) has been edited for clarity.

Proposed paragraph (c) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that TRA determinations are subject to specified requirements in proposed subpart H concerning determinations, appeals, and hearings. It also requires that an AAW’s case file include the worker’s TRA applications and the determinations on the applications. These have been added for clarity, as a result of State monitoring and oversight findings.

Proposed paragraph (d) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It explains when TRA is payable. Proposed paragraph (d)(1) states that TRA payments must not be made until a

certification is issued and the State determines that the AAW is a member of a worker group covered under the certification, in accordance with sec. 231(a) of the Act. Proposed paragraph (d)(2) also implements sec. 231(a) of the Act and provides that the first week of TRA entitlement is the week that begins on or after the certification. This is a change, which eliminates the provision at 20 CFR 617.11(b) establishing the first week of TRA entitlement as the later of: (1) the week that begins more than 60 days after the date of the filing of the petition that resulted in the certification; or (2) the first week beginning after the exhaustion of UI entitlement. The 60-day waiting period was removed from the Act and is no longer applicable. Proposed paragraph (d)(3) is new and specifies that an AAW may receive only one form of TRA (Basic, Additional, or Completion) for any given week. This has been added for clarity.

Proposed paragraph (e) is new and has been added to make clear that an application is required for each TRA benefit type available to the AAW. States must ensure that workers are provided timely information regarding the specific requirements of the benefit for which they are making application, so that AAWs can file applications on time. Proposed paragraph (e)(2) is new and reiterates proposed paragraph (b) of this section, which provides States the flexibility for the filing and processing of applications by any means allowed for UI claims in the State.

Section 618.720 Qualifying requirements for Basic Trade Readjustment Allowances.

Proposed § 618.720 sets forth the requirements for Basic TRA eligibility and is largely taken from 20 CFR 617.11(a)(2) but contains some changes. It replaces the term “individual” with “AAW” or “worker.” It also updates the language about petitions and certifications in subpart B and references the terms “worker group” and “group of

workers” in order to be consistent with this part 618. Proposed paragraph (a) updates 20 CFR 617.11(a)(2)(i) to conform to language specific to part 618. Proposed paragraph (b) replaces 20 CFR 617.11(a)(2)(ii) by replacing paragraphs (a)(2)(ii)(A) and (B) with the term “certification period.” Proposed paragraph (b) also proposes a significant change in eligibility for TRA by incorporating the amended definition of “qualifying separation” that includes partially separated workers. A qualifying separation was previously construed as requiring a total separation, an interpretation provided in 20 CFR 617.3(t)(2), based on sec. 233(a)(2) of the Act. The Department’s exclusion of partially separated workers from the definition of “qualifying separation” has been based on 1988 amendments to the Act, codified in sec. 232(a)(2). The 1988 amendments added a 104-week limitation period on the receipt of Basic TRA that begins “with the first week following the week in which the [AAW] was most recently totally separated from adversely affected employment.” Pub. L. 100-418 sec. 1425(a). The Department’s prior interpretation of sec. 233(a)(2) was that it created a moveable 104-week eligibility period for Basic TRA that only could be initiated based on a total separation. See 59 FR 906 (Jan. 6, 1994); 20 CFR 617.3(m)(1) (basing the “eligibility period” for Basic TRA “upon the most recent such total qualifying separation”).

The Department proposes that under a plain reading of the Act, partially separated workers are eligible for TRA benefits if the requirements in sec. 231 of the Act are otherwise met. The Department’s revised interpretation is based on sec. 231(a) of the Act directing that TRA payments “shall be made to an [AAW]” who meets the requirements for statutory eligibility contained in sec. 231(a)(1) through (5). The term AAW in turn is

defined in sec. 247(2) of the Act as an individual who “has been totally or partially separated” from adversely affected employment because of lack of work.

Section 231 of the Act prescribes the qualifying requirements for receipt of TRA. Section 231(a)(1) explicitly references a partial separation. Further support for this revised interpretation is provided by sec. 231(a)(2) of the Act that refers to partial separations with respect to the earnings requirements to establish TRA eligibility, and sec. 231(a)(3)(A) of the Act that refers to partial separations in the context of the eligibility requirement of UI entitlement. Lastly, sec. 234(a)(2) of the Act explains which State law applies with respect to filing a claim for TRA and references partially separated workers.

The Department’s proposal to revise the definition of the term “qualifying separation” to include partial separations raises the question of how to interpret sec. 231(a)(5)(A)(ii) of the Act that establishes the 26-week training enrollment deadline, as well as sec. 233(a)(2) of the Act that establishes a 104-week eligibility period for Basic TRA, because both sections of the Act reference only total separations. Section 618.725 proposes to use the same 26-week training enrollment deadline for all qualifying separations, regardless of whether the AAW experienced a total or a partial separation. Similarly, § 618.755 limits the receipt of Basic TRA to 104 weeks, regardless of whether the qualifying separation was total or partial.

Proposed paragraph (c)(1) is much the same as 20 CFR 617.11(a)(2)(iii)(A) but has been revised for clarity in accordance with the general changes described in the preamble introduction of proposed § 618.720. The phrase “first qualifying separation, or any subsequent total qualifying separation under the same certification” has been

replaced with “total or partial separation from adversely affected employment during the certification period,” to explain the requirements more specifically that must be met for there to be a “qualifying separation.” The phrase “where there is more than one subdivision, the appropriate subdivision of that firm” has been added to address circumstances where an AAW may have been a member of a certified worker group of an appropriate subdivision. Proposed paragraph (c)(2) updates 20 CFR 617.11(a)(2)(iii)(B) by including references to this part 618, rephrases paragraphs (c)(2)(i) through (iv), and reverses the order of paragraphs (c)(2)(ii) and (iii).

Proposed paragraph (d) is substantially the same as 20 CFR 617.11(a)(2)(iv).

Proposed paragraph (e) requires exhaustion of UI prior to receipt of TRA and sets forth two requirements. Proposed paragraph (e)(1) requires exhaustion of UI entitlement and is based on 20 CFR 617.11(a)(2)(v)(A) and (B), with three changes. First, proposed paragraph (e) contains an exception to the exhaustion requirement in 20 CFR 617.11(a)(2)(v)(B), under sec. 231(a)(3)(B) of the Act, that exhaustion of additional compensation that is funded by a State and not reimbursed from any Federal funds, is not required. This was from an amendment to the Act included in TAARA 2002 and retained by TAARA 2015. Second, it explains that whenever an AAW becomes entitled (or would become entitled if the worker had applied therefore) to UI (except additional compensation that is funded by a State and not reimbursed from any Federal funds) TRA eligibility is suspended until the worker again exhausts UI.

Proposed paragraph (e)(2) codifies sec. 232(d) of the Act. This provision allows an AAW to elect to receive TRA instead of UI under certain circumstances. The new entitlement must be based on employment that occurs after establishing the first UI

benefit period. In such scenarios, an AAW may elect to receive TRA instead of UI, provided that the initial UI claim was exhausted, and the worker is otherwise eligible for TRA.

In adopting this statutory amendment to the WBA payable to an AAW, Congress addressed a longstanding problem resulting from AAWs working after initially establishing TAA Program/TRA eligibility. For example, AAWs may have worked in part-time or short-term employment during summer breaks resulting in earning some wage and thereby establishing a new and/or subsequent UI benefit period with a lower WBA. Previously, TRA eligibility ceased if an AAW established a subsequent UI claim, which in some cases resulted in the AAW dropping out of TAA approved training because the WBA was substantially reduced once the AAW became entitled to UI benefits while continuing or resuming training after a break. This unwarranted outcome discouraged workers from completing training and from seeking employment between training periods. The Department's interpretation is that subsequent employment that forms the basis of the subsequent UI benefit period can be any employment, including recalls to the adversely affected employment.

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

Proposed paragraph (e)(4) provides that if the worker exercises the election to receive TRA, State law governs what happens to the valid UI claim filed. For States where claims may be withdrawn if no benefits are paid, the worker might subsequently file a claim in a later quarter, and the worker might potentially exercise the TRA option a

second time. Furthermore, the election made will be in effect until the election is available once again or the benefit chosen is exhausted.

Finally, it is important to recognize that in most cases, the main driver for the election is the possibility of a lower WBA in the subsequent UI benefit period, but other factors are also relevant. For example, if the break in TAA approved training is longer than allowed for TRA to be payable, the AAW may not be an eligible TAA recipient for purposes of the HCTC, if available. In the latter scenario, it may be more advantageous to opt for the UI eligibility because, during an extended break in TAA approved training in which TRA is not payable, the UI benefit may allow the AAW to be an eligible TAA recipient and potentially be eligible for the HCTC.

Proposed paragraph (e)(5) provides that the AAW must have no unexpired waiting period applicable for such worker for any UI, except when collecting TRA.

Proposed paragraph (f) combines the requirements in 20 CFR 617.11(a)(2)(vi) and 20 CFR 617.17. Proposed paragraph (f) also reorganizes and rephrases the paragraphs containing the specified means for meeting the Extended Benefits (EB) work test requirements in an easier to follow format. Proposed paragraph (f) provides that the AAW must be able and available for work and must meet the EB work test requirements set forth in proposed paragraph (f)(1) for each week TRA is claimed, except while enrolled in, or participating in, approved training, as explained in proposed paragraph (f)(2)(i). In addition, proposed paragraph (f)(2)(ii) provides that the EB work test requirements do not apply during a break in training that does not exceed 30 days. Lastly, proposed paragraph (f)(2)(iii) provides the weeks that the worker is not subject to the EB work test.

Proposed paragraph (f)(3) contains the definition of “suitable work.” Specifically, the term “suitable work” is either 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 sec. 202(a)(3) of the EUCA. The applicable definition depends on an AAW’s job prospects as discussed in 20 CFR 615.8(d). For an AAW with job prospects determined to be “good,” the applicable definition is that of claimants for regular compensation. Conversely, where a worker’s job prospects are “not good,” the EUCA definition applies, and it 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 from the definition of “suitable work.”

Proposed paragraph (g) follows the “participation in training” requirement of 20 CFR 617.11(a)(2)(vii) with a few significant differences. Proposed paragraph (g) no longer contains the definitions for “enrolled in training” and “completed training” in 20 CFR 617.11(a)(2)(vii)(D) because those definitions have been incorporated into subpart A of part 618. Proposed paragraph (g)(1) provides the general requirement that an AAW be enrolled or participating in approved training or have a training waiver approved under proposed § 618.735, of this proposed subpart G, in place in order to receive Basic TRA. Proposed paragraph (g) specifically references Basic TRA because the participation in training requirements differ from Additional TRA and Completion TRA.

Proposed paragraphs (g)(2) through (4) explain the circumstances in which an AAW may receive Basic TRA for weeks in which the general requirement in proposed paragraph (g)(1) has not been met. Proposed paragraph (g)(2) provides the Department’s

position that the participation in training requirement does not apply to a worker before what is commonly referred to as the “26/26-week deadline” for enrollment in training found in sec. 231(a)(5)(A)(ii) of the Act and incorporated into proposed § 618.725. Thus, an AAW may receive Basic TRA up to the applicable training enrollment deadline in proposed § 618.725 without meeting the participation in training requirement. Applying the participation in approved training requirement before the training enrollment deadline would undermine one purpose of the deadlines: to provide sufficient time to identify and make arrangements for an appropriate training program. Further, applying the participation in approved training requirement before the deadlines would cause some AAWs who do not participate in approved training before the training enrollment deadline to be denied eligibility for the HCTC (if available) because, by not meeting a requirement for TRA eligibility, they would not be an “eligible TAA recipient” as is required to receive the HCTC.

Proposed paragraph (g)(3), is substantially similar to 20 CFR 617.11(a)(2)(vii)(B). This proposed provision represents the interpretation announced in administrative guidance (TEGL No. 11-02, Change 3). It waives the training requirement for claims for Basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA (after publication of the certification of the appropriate worker group, as provided in proposed § 618.715(a) of this subpart G), and for weeks before notification that an AAW is covered by a certification and is fully informed of the requirements for enrollment in training.

Proposed paragraph (g)(4) codifies the long-standing Departmental interpretation that an AAW may receive Basic TRA after completing approved training even though the

AAW will no longer be participating in approved training. To continue to receive TRA upon completion of training, the AAW must otherwise be eligible for Basic TRA and must have met the participation in approved training requirements in proposed paragraph (g)(1) of this section in a timely fashion.

Furthermore, an AAW whose participation in a TAA approved training program occurred on a part-time basis, in part or in its entirety, may receive Basic TRA after completing such training, even though no TRA eligibility was established or received at the time. This accommodates the statutory requirement that part-time TAA training is permissible and that after completion of the training, Basic TRA may be payable if the remaining eligibility requirements of the Act are met.

Section 618.725 Training enrollment deadlines.

Proposed § 618.725 does not have a counterpart in 20 CFR part 617 but is administered by States based on administrative guidance. Proposed § 618.725 establishes the deadlines by which an AAW must be enrolled or participating in approved training, or have a training waiver in effect as a condition for receiving TRA. These deadlines are commonly referred to as the training enrollment deadlines or the “26/26-week deadlines.” There are five possible deadlines outlined in sec. 231(a)(5)(A)(ii) of the Act and in proposed § 618.725(a). The training enrollment deadlines are: (1) The last day of the 26th week after the worker's most recent qualifying separation; (2) the last day of the 26th 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; (4) the last day of a period where there was a failure by the State to provide the worker with timely information related to the applicable

deadlines; or (5) the last day of a period to be approved for enrollment after the termination of a waiver. These training enrollment deadlines are implemented in proposed § 618.725(a)(1) through (5) and are discussed below in the preamble discussion of those paragraphs. Although the Act does not provide a deadline for the issuance of a training waiver, the Department's position is that the deadlines in proposed § 618.725(a) are also applicable to the issuance of a training waiver. If the training is approved but not available at the time, a waiver of such training is appropriate.

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

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

Proposed paragraph (a)(4) implements sec. 231(a)(5)(A)(ii)(V) of the Act. The Department determined the “last day of a period determined by the Secretary” to enroll in training to be the Monday of the first week occurring 60 consecutive calendar days following the date of the AAW’s proper notification.

Proposed paragraph (a)(5) implements sec. 231(a)(5)(A)(ii)(V) of the Act, added by TAARA 2002, which directs the Department to determine the deadline by which an AAW must enroll in approved training after the termination of a waiver. The Department provides a deadline of the Monday of the first week occurring 30 consecutive calendar days following the day of termination. The Department has determined that 30 calendar days is sufficient time for a worker whose waiver was terminated or revoked to be advised of, and consider, training options, select an option, and enroll in training.

Proposed paragraph (b) provides three exceptions to the training enrollment deadlines listed in proposed paragraph (a) of this section. Proposed paragraph (b)(1) extends the training enrollment deadline in specific circumstances when a denial of a TRA application is later overturned on appeal or reconsideration. Proposed paragraph (b)(2) is the Department’s interpretation of the Special Rule with Respect to Military Service established in sec. 233(i) of the Act for purposes of the training enrollment deadline. If an AAW who is a member of a reserve component of the Armed Forces and has served a period of duty during the AAW’s Basic TRA eligibility period, but before enrolling in training, the AAW’s training enrollment deadline will be the last day of the 26th week following the last day of the AAW’s period of duty. Additional rules regarding sec. 233(i) of the Act are contained in proposed § 618.884.

Section 618.730 Good cause.

Proposed § 618.730 does not have a counterpart in 20 CFR part 617 but is administered by States based on administrative guidance that implements sec. 234(b) of the Act. The Act uses three different concepts where exceptions to certain deadlines are appropriate: extenuating circumstances, justifiable cause, and good cause. However, the Act does not explicitly define these terms. Upon review of the Act, the Department proposes that for purposes of the TAA Program, extenuating circumstance, justifiable cause, and good cause will have the same meaning and application. In determining whether to apply the exceptions allowed under these provisions, States should consider the following: whether the State failed to provide timely notice of the need to act before the deadline passed; whether factors outside the control of the worker prevented the worker from taking timely action to meet the deadline; whether the worker attempted to seek an extension of time by promptly notifying the State; whether the worker was physically unable to take timely action to meet the deadline; whether the employer warned, instructed, threatened, or coerced the worker in any way that prevented the worker's timely filing of an application for TRA or enrolling in training; whether the State failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA; or whether there are other compelling reasons or circumstances that would prevent a reasonable person from meeting a deadline.

Proposed § 618.730 simplifies previously issued administrative guidance. Proposed paragraph (a) provides that States must apply the good cause exception for waiving the time limitations with respect to an application for TRA, the training enrollment deadline, and the receipt of a training waiver, if the AAW makes a showing of

good cause. Proposed paragraph (b) provides that for good cause to exist, the AAW must have acted diligently yet been unable to complete the task described in proposed paragraph (a) of this section because of exigent circumstances. Finally, proposed paragraph (c) provides that good cause must always be determined on a worker-by-worker basis.

The following factors should be considered when determining whether good cause exists:

(1) Whether the State failed to provide timely notice of the need to act before the deadline passed;

(2) Whether factors outside the control of the worker prevented the worker from taking timely action to meet the deadline;

(3) Whether the worker attempted to seek an extension of time by promptly notifying the State;

(4) Whether the worker was physically unable to take timely action to meet the deadline;

(5) Whether the employer warned, instructed, threatened, or coerced the worker in any way that prevented the worker's timely filing of an application for TRA or enrolling in training;

(6) Whether the State failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA; and

(7) Other compelling reasons or circumstances that would prevent a reasonable person from meeting a deadline.

Section 618.735 Waiver of training requirement for Basic Trade Readjustment Allowances.

Proposed § 618.735 addresses waivers of the training requirement as a condition for receiving Basic TRA. This proposed section differs substantially from the waiver provisions in 20 CFR 617.19(a)(2) and (b) through (d) because there are fewer statutory bases for waiver now. The Act, at sec. 231(c), has three conditions for waivers of the training requirement and the statutory language for these conditions is used in the proposed regulatory text. The Department requests comments offering more descriptive language about the bases of these remaining three waiver criteria.

Proposed paragraph (a) reorganizes and rephrases 20 CFR 617.19(a)(2) and implements the requirement of sec. 231(c) of the Act that a State may issue a waiver of the training requirement to an AAW if it finds that training is not feasible or appropriate for one or more of the reasons listed in proposed paragraph (b) of this section. Proposed paragraph (a) also explains that the waiver must contain the information required in proposed paragraph (c) of this section, and newly specifies for the sake of clarity that no waiver of the training requirement is permitted for Additional TRA or Completion TRA eligibility. Finally, proposed paragraph (a) requires, as discussed in the preamble of proposed § 618.720(g) of this subpart G that a waiver must be issued no later than the latest of the applicable training enrollment deadlines described in proposed § 618.725 of this subpart G.

Proposed paragraph (b) replaces most of 20 CFR 617.19(b)(2)(i) and (ii) implements sec. 231(c) of the Act and sets forth the permissible bases for waiving the training requirement. Before TAAEA, TAARA 2002 permitted a waiver of the training

requirement where one of six conditions for finding that the training requirement is not feasible or appropriate was met. Prior to TAARA 2002, the Department was not limited to prescribed conditions for determining whether training is not feasible or appropriate. TAAEA reduced the waiver conditions to the three that are detailed in proposed § 618.735(b). This reduction in the types of waivers available was to place an additional emphasis on the training component of the TAA Program rather than an emphasis on income support. At least one of these conditions must be cited in any determination that training is not feasible or appropriate for an AAW. Proposed paragraphs (b)(1) through (b)(3) of this section identify the three conditions, 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 the AAW is unable to participate in training for health reasons. Proposed paragraph (b)(2) implements the statutory waiver criterion that the first available enrollment date for the approved training of the worker is within 60 consecutive calendar days after the date of the waiver determination or, if later, there are extenuating circumstances for the delay in enrollment. Proposed paragraph (b)(2) also repeats the 60 consecutive calendar day deadline almost verbatim from the statutory language and, for consistency, interprets the phrase “extenuating circumstances” by applying the good cause provisions at proposed § 618.730 for determining if there are extenuating circumstances. Proposed paragraph (b)(3) implements the statutory waiver criterion that a waiver of the training requirement may be issued if training is unavailable.

Proposed paragraph (c) governs the contents of a waiver and 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 (vii) to account for the statutory change concerning allowable conditions for issuing a waiver, and is 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 and to permit evidence of the AAW's receipt and acknowledgement of the waiver by means other than the worker's signature. Electronic signatures are also permitted. States may use paper-based or electronic files (or a combination thereof) for documentation purposes. Records in either format must be made available to the Department upon request or access to those systems must be provided to the Department upon request for oversight purposes, in accordance with proposed subpart H, and further discussed in proposed paragraph (h) of this section.

Proposed paragraph (d) has no corollary in part 617 and was added to clarify the parameters for requesting a waiver. Proposed paragraph (d) advises that as a best practice, States may find it helpful to determine if an AAW's initial assessment indicates the need for a waiver. Proposed paragraph (d) also allows an AAW to request a waiver from the State before the applicable deadline in § 618.725.

Proposed paragraph (e) slightly modifies 20 CFR 617.19(a)(3) by simplifying the language in order to clarify the required contents of a waiver determination denial. It requires that whenever a waiver determination is a denial, the AAW to whom the denial pertains must be furnished with notice of the denial, and that the notice must contain certain specified information, including the right to appeal consistent with the procedures in proposed § 618.828 of subpart H.

Proposed paragraph (f) replaces 20 CFR 617.19(c)(1) due to statutory revisions. Proposed paragraph (f) implements the provisions of sec. 231(c)(2)(A) and (3)(B) of the Act. Proposed paragraph (f)(1) implements sec. 231(c)(2)(A) of the Act, which requires that a waiver be in effect for not more than 6 months after the date on which it is issued “unless the Secretary determines otherwise.”

Proposed paragraph (f)(2) implements the statutory authority to extend a waiver beyond 6 months by providing two criteria that must be met in order for a State to extend a waiver. The first criterion is that training continues not to be feasible or appropriate for the AAW for one or more of the reasons described in proposed paragraph (b) of this section, even if the original conditions for issuing the waiver no longer apply, and the second criterion is that the worker has not yet exhausted their Basic TRA entitlement. The first criterion maintains the statutory requirement that a waiver be in effect only if one or more of the specified conditions for the waiver are met. The Department is proposing the second criterion because a waiver of the training requirement cannot be extended if the worker has exhausted Basic TRA eligibility. The Department has concluded that these criteria provide the maximum flexibility to extend a waiver within the spirit of the statutory requirements for such waivers.

Paragraph (f)(3) implements sec. 231(c)(3) of the Act by requiring regular review of the waivers. States are required first to review the waiver 3 months after it is issued to determine if one or more of the criteria in paragraph (b) of this section apply, but they are encouraged to review the waiver every 30 consecutive calendar days during this period. After the first 3 months, States are required to review the waivers on a monthly basis. The Department has concluded this requirement will be an effective means of ensuring that

the waiver criteria continue to be met for the duration of the waiver. A failure to review waivers regularly would undermine the statutory requirement that waivers remain in effect only as long as the basis for a waiver continues to apply.

Proposed paragraph (g) revises 20 CFR 617.19(c) and implements sec. 231(c)(2)(B) of the Act, by requiring that a waiver be revoked if the waiver criteria are no longer met and that the AAW be notified in writing of the revocation. The notice to the worker must contain the same information as what would be required in a denial of waiver issued under proposed paragraph (e) of this section. The revocation must contain appeal rights. Omitted from the regulation in proposed paragraph (g) are two suggestions from 20 CFR 617.19(c)(2) and (3) that have been removed because they do not impose substantive requirements. The first states, “For example, a written notice of revocation shall be issued to the [AAW] concurrent with the approval of the training in which the [AAW] has enrolled (if such training is scheduled to commence within 30 days), and shall not be issued prior to such approval.” The second reads, “State agencies may incorporate a revocation section in the waiver form or on a separate revocation form.”

Proposed paragraph (h) revises 20 CFR 617.19(d) and implements the statutory requirement in sec. 231(c)(3)(C) of the Act. Proposed paragraph (h) implements this requirement by requiring States to transmit, upon request only, a copy to the Department of any or all waivers or 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. Information on waivers, at the individual level, is also submitted to the Department via the performance and

service reports submitted by the State under sec. 249B of the Act. Electronic copies are acceptable.

Section 618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.

Proposed § 618.740 is modeled after 20 CFR 617.12 and provides the requirements for evidence of qualification for Basic, Additional, and Completion TRA. If the firm provides a worker list to the State with enough information to assist an AAW to apply for TAA Program benefits and services, the State should make every effort to use the information provided to expedite the application process and not delay the application process by asking the worker for duplicate information.

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

Proposed paragraphs (b) and (c) include only one change from 20 CFR 617.12(b) and (c) and address obtaining alternative information where records are unavailable. Whereas 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 State must base a determination on TRA entitlement and benefit amounts, is substantively similar to 20 CFR 617.12(d), but, rather than requiring the State to make adjustments to the suspect data and make its determinations on the basis of the adjusted data, requires the State to make its determinations from the best available information. This change provides States with more flexibility.

Proposed paragraph (e) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is included as a clarification in response to technical assistance provided to States by the Department. Proposed paragraph (e) instructs States to follow established methods used for processing regular UI claims. If, for example, the employer is provided 10 days to respond to a request for information under regular UI, then the same process should be used for TRA. If an employer does not respond within the established timeframe, the State must act on the best available information.

Section 618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.

Proposed § 618.745, governing the determination of an AAW's weekly amount of TRA, whether Basic, Additional, or Completion, is modeled after 20 CFR 617.13. Proposed paragraph (a) is similar to 20 CFR 617.13(a) except that it reformats the section, simplifies the language, and incorporates the eligibility of partially separated workers for TRA. It specifies that partially separated workers' weekly benefit amount must be calculated under applicable State law. The NPRM removes the language in 20 CFR 617.13(a) that discusses "varying amounts related to wages with separate

employers” because this was an exception used only by one State at the time of the last promulgation of these rules. That State no longer uses that exception, so this language is not needed. Proposed paragraph (b) has been changed from 20 CFR 617.13(b), and replaced with language from sec. 232(b) of the Act, except some language has been simplified and it cross-references proposed § 618.705 of this subpart G, as the term “training allowance” is not defined in the Act.

Proposed paragraph (c), requiring specified reductions to the TRA weekly amount, follows 20 CFR 617.13(c) in some respects. Specifically, proposed paragraph (c)(1) explains that the weekly amount of TRA payable under the section will be reduced (but not below zero) by income that is deductible from UI under the disqualifying income provisions of the applicable State or Federal UI law. The NPRM implements the earnings disregard in sec. 232(a)(2) that allows TRA recipients participating in approved training to earn up to their most recent weekly UI benefit amount without a reduction in their TRA payment. Proposed paragraph (c)(2), which requires a deduction of the training allowance (including a training allowance referred to in proposed paragraph (b) of this section) is modified from 20 CFR 617.13(c)(2). Proposed paragraph (c)(3) is taken directly from sec. 232(c) of the Act but some language is simplified, and again, a cross-reference is provided to § 618.705 to define the term “training allowance.”

Proposed paragraph (c)(4) is intended to resolve a conflict between sec. 232(c) of the Act and a provision in subchapter IV of the Higher Education Act (20 U.S.C. chapter 28, subchapter IV). Specifically, sec. 232(c) of the Act requires that an AAW’s TRA weekly benefit amount be reduced by the amount of a training allowance (note the term “training allowance” is defined in proposed § 618.705) to which the worker was entitled

for that week under any other Federal law. The Higher Education Act, at 20 U.S.C. 1087uu, prohibits taking into account Federal student financial assistance received under subchapter IV of the Higher Education Act, or under Bureau of Indian Affairs student assistance programs, in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal program financed in whole or in part with Federal funds. The provision at 20 CFR 617.13(c)(2) interprets training allowances referred to in sec. 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)(4) resolves this conflict by excluding the receipt of Federal student financial assistance from the definition of “training allowance” in paragraphs (c)(2) and (3) of this section. As a result, the receipt of Federal student financial assistance is not excluded from the weekly amount of TRA payments, nor are weeks in which Federal student financial assistance is paid to be deducted from the maximum number of weeks for which TRA can be paid.

Proposed paragraph (c)(5) is substantially the same as 20 CFR 617.13(c)(3) and requires that TRA payments be reduced by any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law that apply to AAWs in training.

Section 618.750 Maximum amount of Basic Trade Readjustment Allowances.

Proposed § 618.750 explains how to calculate the maximum amount of Basic TRA. It is derived from 20 CFR 617.14, with a few substantive and organizational differences. The calculation in proposed paragraph (a) is largely the same as 20 CFR 617.14(a), except for two changes. The first change is that additional compensation is not

included in the total sum of UI entitlement that must be subtracted as part of the calculation of the maximum amount of Basic TRA. This results from an amendment by TAARA 2002, and retained by TAARA 2015, at sec. 231(a)(3)(B), that an AAW need not exhaust additional compensation funded by a State and not reimbursed from Federal funds and, accordingly, this entitlement is not reduced from the maximum amount of TRA payable in the first benefit period. This allows a State to pay TRA either before or after additional compensation.

The second change concerns the reduction for the total sum of the AAW's UI entitlement. Paragraph (a)(2) of 20 CFR 617.14 provides that a worker's UI reduction must include, in addition to any UI to which the worker was entitled, any UI to which the worker would have been entitled had the worker applied for it during the worker's first benefit period. The last sentence of that paragraph 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 of 20 CFR 617.14(a)(2) created an unintended result for AAWs who, during the first UI benefit period exhausted regular compensation, became eligible for EB under 20 CFR part 615 and, while continuously unemployed, could not receive the full EB entitlement because prior to EB exhaustion, the EB period triggered "off" such that no further EB benefits were payable in the State. This proposition created a "manifest injustice" because, while the statutory and regulatory language implies that the full entitlement must be reduced, the AAW could not have filed and received such benefits. The Department has determined that the reduction of benefits is mandated in the event the AAW could have filed but did not because such AAW was not eligible for

many reasons such as returned to work or chose not to file. In this case, the AAW would have been able to receive the benefit had the worker filed and met all other eligibility requirements. A similar situation occurs when a worker becomes eligible for a supplemental compensation benefit amount, collects a few weeks but forgoes the full entitlement because the worker's benefit year ends and such worker is now entitled to regular compensation in a second benefit year. Reducing the entire supplemental compensation entitlement amounts to another example of a "manifest injustice" if the AAW is not eligible for the remaining entitlement in the future. Accordingly, the Department's revised position is that if, and only if, the benefit was available to the AAW, it must be reduced.

There is another situation to consider and clarify such as when an AAW, during the first UI benefit period, has exhausted regular compensation, became entitled and received TRA, and subsequently becomes eligible for EB or the supplemental compensation (in such first benefit period). The EB and/or supplemental compensation arising from the first UI benefit period must be exhausted prior to resuming TRA. Consequently, TRA must be suspended. The AAW will receive the full entitlement to EB and/or the supplemental compensation until exhaustion or until the worker is eligible for a subsequent UI benefit period. The amount of EB and/or supplemental compensation payable subsequent to the TRA paid during the first UI benefit period reduces the maximum amount of TRA payable such that the AAW will receive the balance, if any. The amount of TRA already paid in the first benefit period also reduces the maximum TRA benefit amount payable. The initial amount of TRA paid is not to be construed as an overpayment, as the AAW was entitled to such benefit at the time and properly paid.

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 20 CFR 617.14(b)(3) that references additional weeks and provides that nothing in that paragraph will affect an AAW's eligibility for supplemental, increased, or additional allowances. The Department has concluded that this language is unnecessary.

Finally, another difference between proposed § 618.750(b) and 20 CFR 617.14(b) is that the heading for proposed § 618.750 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 has determined it can accomplish the same result simply by modifying the section heading.

Section 618.755 Eligibility period for Basic Trade Readjustment Allowances.

Proposed § 618.755, establishing the Basic TRA eligibility period, differs from 20 CFR 617.15. Proposed paragraph (a) uses different phrasing to state that AAWs are ineligible to receive Basic TRA for any week of unemployment beginning after the close of the 104-week period beginning with the first week following the week in which the AAW's most recent qualifying separation occurred except as provided in paragraphs (b) and (c). As provided in the revised definitions on separations, this change is needed to track the plain English meaning and language of the Act. Additional exceptions established under sec. 233(h) of the Act are discussed in proposed § 618.770. Deadlines and eligibility periods may also be impacted by periods of military service, as discussed

in proposed § 618.884, and by equitable tolling, discussed in proposed § 618.888. Use of the word “qualifying separation” in proposed § 618.755(a) in place of “total qualifying separation” as used in 20 CFR 617.15(a) incorporates the same maximum eligibility period in the case of partially separated AAWs. Section 233(a)(2) of the Act provides that no Basic TRA may be paid after the close of the 104-week period after an AAW was most recently “totally separated from adversely affected employment.” The Act does not address when the receipt of Basic TRA must end for partially separated workers, though theirs count as qualifying separations for TRA as proposed in § 618.720(b). The Department proposes to limit the receipt of Basic TRA to 104 weeks for both partially and totally separated workers, and use of the term “qualifying separation” in proposed paragraph (a) effects this result.

Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. This is a longstanding practice that is proposed for codification. It addresses situations where certifications issued after delays associated with litigation following denials of petitions resulted in covered worker groups with a limited eligibility period or expired eligibility periods in which to receive Basic TRA. Proposed paragraph (b) tolls the eligibility period during the pendency of any judicial or administrative appeal of the Department’s denial and establishes the 104-week eligibility period with the week that begins after the certification.

Section 618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.

Proposed § 618.760, establishing the qualifying requirements for, and duration of, Additional TRA, has no specific counterpart in 20 CFR part 617; however, most of the

provisions in proposed § 618.760 are contained in various sections of 20 CFR part 617 and have been updated through administrative guidance in the form of Operating Instructions. These requirements should be codified.

Proposed paragraph (a) contains Additional TRA qualifying requirements and is largely unchanged from 20 CFR 617.11(a)(2) (TRA qualifying requirements), 20 CFR 617.15(b)(2) (training application filing deadlines), and 20 CFR 617.15(b)(3) (requirement of participation in training except during breaks in training). Proposed paragraph (a)(2) specifies that the AAW must have exhausted Basic TRA before establishing eligibility for Additional TRA. This addition is intended to clarify that Additional TRA is not a permissible alternative to Basic TRA for an AAW who missed the training enrollment deadlines in § 618.725 and who lacks good cause for failure to meet such deadlines.

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 AAW may receive up to 65 weeks of Additional TRA during a 78-week period, as required by sec. 233(a)(3) of the Act.

Proposed paragraph (b)(1) addresses the first potential start date for the receipt of Additional TRA, which is the period immediately following the last week of entitlement to Basic TRA. Proposed paragraph (b)(2) provides the second potential start date for the receipt of Additional TRA, which is the period beginning with the first week of approved training, if the training starts after the last week of Basic TRA. Proposed paragraph (b)(3) provides the third possible start date for Additional TRA, which is the first week in which

training already in progress is approved under subpart F. Proposed paragraph (b)(3) is similar to 20 CFR 617.3(m)(2)(iii).

Section 618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.

Proposed § 618.765, providing the qualifying requirements for, and duration of, Completion TRA, is a new section because Completion TRA was added by TAAEA and administrative guidance was issued to States. Proposed § 618.765 codifies sec. 233(f) of the Act as well as provisions in administrative guidance implementing the provision and resolving policy issues arising from the implementation.

Proposed paragraph (a) describes the qualifying requirements and proposed paragraphs (a)(1) through (3) contain the eligibility criteria to receive Completion TRA. Completion TRA can be paid only if the AAW meets the qualifying requirements for, and has subsequently exhausted, Basic and Additional TRA. Proposed paragraph (a)(4) requires that, during the period in which the AAW is eligible to receive Completion TRA, if at any time the AAW fails to meet the eligibility criteria in proposed paragraphs (a)(1) through (3), the State must make no further payments to the AAW. For example, if a worker has been meeting training benchmarks as required in proposed paragraph (a)(3)(i) and was expected to complete approved training within the established period, but at the point of payment of week five, there is an indication that approved training will not be completed within the established period, Completion TRA payments must cease. However, weeks of Completion TRA previously paid based on information that was correct at the time of payment is properly paid, and therefore States must not treat them as overpayments.

Proposed paragraph (b) describes that sec. 233(f) of the Act gives the Department discretion to establish the eligibility period within which the 13 weeks of Completion TRA are payable and training must be completed in order to meet the Completion TRA eligibility requirements. Proposed paragraph (c) explains that the Department determined that the eligibility period for Completion TRA will be the 20-week consecutive calendar period beginning with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended for justifiable cause in accordance with proposed § 618.770(a). Proposed paragraph (d) requires that States have a process for taking Completion TRA applications and goes on to say that although the 20-week period may begin at the end of Additional TRA, a State must not automatically begin Completion TRA the week following the end of Additional TRA. States may not amend the AAWs approved training program to provide for a later 20-week eligibility period for Completion TRA if: (1) training is interrupted after the AAW has filed a claim for Completion TRA; and (2) that interruption leads to a training completion date that occurs after the 20-week eligibility period in the approved training program. The 20-week eligibility period to receive up to 13 weeks of Completion TRA allows for the flexibility of a break in training of up to 7 weeks, but no more. In this scenario, since the amended training completion date is after the 20-week eligibility period in the approved training program, the worker will no longer be eligible for Completion TRA. In the same scenario, if a worker has not yet filed a claim for Completion TRA, the eligibility period for Completion TRA has not begun. In that case, the State may amend the AAWs

approved training program to provide for a later training completion date and correspondingly later 20-week eligibility period for Completion TRA.

Section 618.770 Special rule for justifiable cause.

Proposed § 618.770 addresses the Special Rule for Justifiable Cause contained in sec. 233(h) of the Act. There is no similar provision in 20 CFR part 617. Proposed paragraph (a) allows for an extension of the Basic, Additional, and Completion TRA eligibility periods for good cause according to the same good-cause standard found in proposed § 618.730, as discussed in the preamble for that section. Proposed paragraph (b) specifies that while the eligibility period for Basic, Additional, and Completion TRA may be extended for justifiable cause as determined by the State, the maximum benefit amount and number of weeks this benefit may be received must not change.

Section 618.775 Payment of Trade Readjustment Allowances during breaks in training.

Proposed § 618.775, governing payment of TRA, whether Basic or Additional, during breaks in training, is substantially the same as 20 CFR 617.15(d) except that, as the result of a statutory change to sec. 233(e) 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 paragraph (a) eliminates the provisions in 20 CFR 617.15(d)(5) and (6), concerning the effect of breaks in training on Basic and Additional TRA payments and eligibility periods, because the maximum eligibility periods for Basic and Additional are covered in detail in §§ 618.750, 618.755, and 618.760. Proposed paragraph (b) provides a basis for counting days similar to 20 CFR 617.15(d). Proposed paragraph (c) addresses breaks in training for Completion TRA and references the eligibility period for Completion TRA in proposed § 618.765. No payments for breaks in training are allowed,

and the worker only can be paid Completion TRA for each week of approved training, and then only if all of the Completion TRA eligibility criteria are met. The 20-week consecutive calendar period within which an AAW may receive up to 13 weeks of Completion TRA, in accordance with § 618.765 of this subpart G, allows the further flexibility of continuing eligibility to accommodate any break in training (scheduled or unscheduled) of up to but no longer than 7 weeks, so long as the worker completes the approved training by the end of the 20-week eligibility period.

Section 618.780 Disqualifications.

Proposed § 618.780, governing disqualifications from receiving TRA, is structured the same as 20 CFR 617.18. Proposed paragraph (a) is as the same as 20 CFR 617.18(a) but is titled “General rule” instead of “State law applies.” Proposed paragraph (b)(1)(i) is unchanged from 20 CFR 617.18(b)(2)(i). Proposed paragraph (b)(1)(ii) removes the specific language in 20 CFR 617.18(b)(2)(ii) requiring training combined with work to be more than 8 hours a day or 40 days in a week. Instead, an AAW may refuse work because such work either would require discontinuation of approved training or interfere with successful participation in TAA approved training.

Proposed paragraph (b)(2)(i) follows 20 CFR 617.18(b)(2)(i), except that it adds clarifications. 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 determined this language is both inaccurate and unnecessary. It is inaccurate because participation in training is not an eligibility requirement for job search or relocation allowances, so that a TRA disqualification under proposed paragraph (b)(2)(i) would not affect the AAW's

entitlement to those payments. It is 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 §§ 618.760 and 618.765 prohibit payment of, respectively, Additional TRA and Completion TRA for any week in which the worker did not participate in training.

Secondly, proposed paragraph (b)(2)(i) includes two clarifications not contained in 20 CFR 617.18(b)(2)(i). The first is that an AAW who has justifiable cause (as described in paragraph (b)(3)(iii)) for a failure to begin participation in approved training, or for ceasing participation in such 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 concludes that if an AAW 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. In these situations, a waiver of the training requirement is not needed. The second clarification is that failure to begin participation in training, cessation of participation in training, or revocation of a waiver normally does not change the eligibility periods in proposed §§ 618.755, 618.760(b), and 618.765(b).

Proposed paragraph (b)(2)(ii) is a new provision but is helpful if a person reading proposed § 618.780 in isolation overlooks the exception to the participation in training requirement contained in proposed § 618.720(g)(2). Proposed paragraph (b)(2)(ii) provides that the disqualification in proposed paragraph (b)(2)(i) does not apply to an

AAW 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 they are covered by a TAA Program certification and is fully informed of the disqualification rules.

Proposed paragraph (b)(3) provides the interpretation of three terms used in proposed paragraph (b)(2). Proposed paragraphs (b)(3)(i) and (ii) interpret, respectively, “failed to begin participation” and “ceased participation” in training the same as in 20 CFR 617.18(b)(2)(ii)(A) and (B). Both interpretations require that an AAW participate in all classes and activities in the training program, and the Department thereby 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 justifiable cause. TAA approved training is meant to provide AAWs with the opportunity to find new employment as quickly and efficiently as possible. The Department has determined that the best way to carry out this intent, ensure that TAA Program funds are effectively spent, and improve program performance, is to require that the AAWs who receive those funds participate in every class and activity in their approved training program unless there is justifiable cause.

Proposed paragraph (b)(3)(iii) interprets “justifiable cause” to mean “good cause” under proposed § 618.730 and as discussed in the preamble for that section. Specifically excepted, however, are excused absences, whether or not those would otherwise meet the stringent standard of good cause. This exception is proposed so that workers in training are held to the same standard as other students.

Proposed paragraph (c), prohibiting payment of TRA to an AAW for any week during which the worker is receiving OJT, is substantively similar to 20 CFR 617.18(c).

Proposed paragraph (d), prohibiting payment of TRA to an AAW for any week during which the worker is receiving part-time training, does not have a comparable section in 20 CFR part 617, as it is a new statutory requirement in sec. 236(g) of the Act, which has been implemented provisionally via administrative guidance in the form of Operating Instructions.

H. Subpart H – Administration by Applicable State Agencies

Proposed subpart H governs the administrative requirements and rules that States must follow in delivering TAA Program benefits and services. Proposed subpart H mirrors subpart G of 20 CFR part 617 with a few exceptions. These exceptions include organizing sections differently for improved clarity; revising provisions to reflect recent statutory amendments and policy determinations; and adding new sections to address requirements for veterans' priority of service, general fiscal and administrative requirements, and TAA Program performance. Proposed subpart H also excludes some provisions that are contained in subpart G of 20 CFR part 617 because they are based on expired laws. Other major changes cover topics such as merit staff requirements; actions the Department may take in the absence of an executed Governor-Secretary Agreement; State submissions of administrative rulings and waivers of training; veterans' priority of service requirements; program performance requirements; and overpayment requirements and instructions.

Section 618.800 Scope.

Proposed § 618.800 sets out the scope for subpart H. This provision states that subpart H covers the administrative requirements governing the TAA Program. No similar provision exists in subpart G of 20 CFR part 617. However, OMB's Uniform

Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 also apply to the TAA Program.

Section 618.804 Agreements with the Secretary of Labor.

Proposed § 618.804 addresses the agreements between the States and the Secretary (known as Governor-Secretary Agreements) that are required under sec. 239 of the Act before a State may deliver TAA Program benefits and services. It follows 20 CFR 617.59, but reorders the provisions and edits them for clarity. Proposed § 618.804 omits the provision at 20 CFR 617.59(d) requiring a newly executed agreement following amendments to the Act. The Department concludes that requiring this could delay services to trade-affected workers and cause unnecessary interruptions in program operations. Although the Department will require amended Governor-Secretary Agreements in certain circumstances, including for significant statutory changes, services will not be suspended while that process is completed. This section also lists the contents of the Governor-Secretary Agreements, which derive from the requirements of the Act.

Proposed paragraph (a) is the same as 20 CFR 617.59(a) and requires States to execute a Governor-Secretary Agreement. Proposed paragraph (b), which provides the requirements for executing a Governor-Secretary Agreement, is significantly rephrased but remains substantively unchanged from 20 CFR 617.59(b). Proposed paragraph (b) recognizes the current practice of executing agreements. A new sentence, indicating the statutorily mandated consequences to a State of not entering into a Governor-Secretary Agreement, has been added to proposed paragraph (b). Should a State not execute a Governor-Secretary Agreement, sec. 3302(c)(3) of the Federal Unemployment Tax Act (FUTA) requires that credits provided to employers under FUTA will be suspended in

that State until a Governor-Secretary Agreement is executed. Paragraph (b)(2) also requires the State to execute an amended Governor-Secretary Agreement, upon the Secretary's request, in response to legislative, regulatory, or operational changes. This is a change from 20 CFR 617.59(d), which required the States to execute an amended agreement with the Secretary prior to administering amendments to the TAA provisions of the Act. This revised provision gives the Secretary the authority to require States to execute a new Governor-Secretary Agreement when there are amendments to the Act or other changes to the program that require amending the Governor-Secretary Agreement. This provision does not require a new Governor-Secretary Agreement before the State can continue to implement the program. Proposed paragraph (a)(3) contains the same requirement as 20 CFR 617.59(b), that an agreement will be executed on behalf of the United States by the Secretary.

Proposed paragraph (c) requires that the executed Governor-Secretary Agreement be available for public review to individuals and organizations, upon request. This was previously required in 20 CFR 617.59(c).

Proposed paragraph (d) establishes the CSA as an agent of the United States for purposes of receiving applications and providing payments in accordance with the Act. A similar provision appears in 20 CFR 617.59(e). The changes here act to conform the regulation more closely to secs. 239 and 241 of the Act, which expressly identify CSAs as agents of the United States only for these particular purposes.

Proposed paragraph (e) discusses breach of the Governor-Secretary Agreement, the impact on certain employer tax credits in a State deemed in breach, and requires the Department to provide reasonable notice and an opportunity for a hearing before

determining that a State has breached the Governor-Secretary Agreement. This rephrases 20 CFR 617.59(f), but is not a new provision.

Proposed paragraph (f) provides that the Department is responsible for monitoring and reviewing State compliance with the Governor-Secretary Agreement. It modifies 20 CFR 617.59(g) by removing language assigning this responsibility to the ETA Regional Administrators. Although the ETA Regional Administrators retain primary responsibility for oversight of the grants provided to States under this part, the Department's methods of oversight have changed over time. There are now multiple units within the Department involved in components of grants management and oversight in addition to the regional offices. It also omits the reference in 20 CFR 617.59(g) to "periodic" monitoring and review because Departmental review is now an ongoing process.

Proposed paragraph (g) requires States to comply with the staffing flexibility requirements proposed in § 618.890. There is no similar provision in 20 CFR 617.20.

Proposed paragraph (h) provides a nonexhaustive list of mandatory terms for Governor-Secretary Agreements between the Secretary and States. The terms include the following:

- Provisions consistent with the requirements of sec. 239 of the Act (19 U.S.C. 2311) providing for these Governor-Secretary Agreements (proposed paragraph (h)(1)).
This reminds States of, and ensures compliance with, sec. 239 of the Act without listing all its requirements.
- Authorization for the States to issue waivers under proposed § 618.725 (waiver of the training requirement for Basic TRA) and the requirement that the State submit, upon request, to the Department a copy of each such waiver and, if not already contained

within each waiver, a statement of the reasons for such waiver (proposed paragraph (h)(2)).

- The requirement that the State supply data to the Department on national TAA Program performance goals identified in applicable regulations, the Department's written directives, or any other written means used to communicate such goals (proposed paragraph (h)(3)). This is a new requirement designed to implement guidance from OMB on the Government Performance and Results Act of 1993 (GPRA). GPRA requires, among other things, that Federal agencies take steps to improve the performance outcomes of federally funded programs. While proposed § 618.864 also requires States to report specified data on TAA Program performance outcomes to the Department, the Department has concluded that including a specific provision in the Governor-Secretary Agreements requiring reporting of performance data would emphasize to States the importance of pursuing improved performance outcomes in the TAA Program.
- Provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers (proposed paragraph (h)(4)). There are numerous workforce development programs aimed at serving dislocated workers, but the TAA Program is the only program that specifically serves trade-affected workers. Thus, to ensure the most efficient and effective use of Federal funds, the Department is establishing the TAA Program as the primary source of funds for trade-affected workers. This is not a new requirement. It has been included in Governor-Secretary Agreements. Operationally, this means that while groups of workers covered under a filed petition are to be served with WIOA rapid response and other funds, once a

petition is certified under subpart B, the source of funding must shift to the TAA Program. The Department's regional offices will continue to provide technical assistance related to this matter.

Proposed paragraph (i) is revised from 20 CFR 617.59(i) and provides for the operation of the TAA Program absent a Governor-Secretary Agreement with a State. Proposed paragraph (i) provides that, should the need arise to operate the program in a State without a Governor-Secretary Agreement, the Department will issue administrative guidance informing trade-affected workers within that State, and the other States, about how the program will operate. This paragraph also sets out a list of options the Department may pursue should a State fail to execute a Governor-Secretary Agreement or be found in violation of the Governor-Secretary Agreement. The Department may execute an agreement with another State to operate the TAA Program; execute an agreement with a qualified organization that meets all requirements of the TAA regulations within the State to operate the TAA Program; or may operate the TAA Program directly. In the only instance this has ever occurred since the establishment of the TAA Program, the Department operated the program directly, but each situation is unique and the NPRM maintains the Department's flexibility to choose the option best suited to the circumstances. The Department encourages comments regarding this topic. Proposed paragraph (j) updates 20 CFR 617.59(h) to replace references to programs and services under the Workforce Investment Act with a reference to WIOA and adds a clarification of what constitutes a CSA.

Section 618.808 State rulemaking.

Proposed § 618.808 modifies 20 CFR 617.54 and breaks the section into paragraphs. This section provides States the authority and some flexibility to establish laws, regulations, procedures, or other policies related to the administration of the TAA Program while ensuring the Department can still administer the uniform interpretation of the program throughout the United States. Proposed paragraph (a) rewords 20 CFR 617.54 and replaces the generic term “supplemental procedures” with specific references to the establishment of laws, regulations, procedures, or other policies not inconsistent with the Act, this part 618, or administrative guidance issued by the Department. Proposed paragraph (b) retains the requirement in 20 CFR 617.54 that certified copies of the proposed law, regulation, procedure, or other policy be provided to the Department, but removes the requirement for them to be submitted on a form supplied by the Department to accommodate the improvements in technology that make this process much easier. Proposed paragraph (c) is unchanged from 20 CFR 617.54 and requires that all laws, regulations, procedures, or policies by the States be reviewed and approved by the Department before taking effect. It also authorizes temporary approval by the Department, in cases of administrative necessity, for a period not to exceed 90 days. Proposed paragraph (d) allows the Department, after providing the State notice of at least 30 days, to withdraw a previous approval. This modifies 20 CFR 617.54, which does not have a specific minimum period for reasonable notice. Proposed paragraph (e) differs from 20 CFR 617.54 and requires States to follow State UI law requirements for public notice and opportunity for hearings on rulemaking. Proposed paragraph (e) more broadly also requires the State to follow 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 notice of changes to State plans or procedures, such as WIOA, could apply.

Section 618.812 Subpoenas.

Proposed § 618.812, authorizing States to issue and enforce subpoenas, is substantially the same as 20 CFR 617.53, with one significant clarification. Proposed paragraph (a) changes 20 CFR 617.53 to identify the purposes for which subpoenas may be issued. These provisions align with the Department's longstanding interpretation of the provision. Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that States may use subpoenas to gather information on individual members of a certified worker group. This addition clarifies the Department's position and addresses the challenges that States face in obtaining timely information from employers in order best to serve trade-affected workers. Lastly, proposed paragraph (c) is the same as 20 CFR 617.53 with only minor rewording.

Section 618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.

Proposed § 618.816 contains requirements the States must meet in providing TAA Program benefit information and services to trade-affected workers. It is significantly modified from 20 CFR 617.4 and has been moved from its previous location to this subpart; however, the purpose of 20 CFR 617.4, to instruct what benefit information must be provided, is unchanged. Proposed § 618.816 omits some provisions in 20 CFR 617.4 that the Department concludes are unnecessary or redundant. It updates other provisions and adds new provisions to reflect the various amendments to the Act that have occurred

since the last rulemaking occurred. It also includes some of the requirements historically contained in the agreements with the States, for purposes of formal codification in regulation and allowing for public comment.

Proposed paragraph (a), requiring States to provide general program information and advice to trade-affected workers, is very similar to 20 CFR 617.4(a) and contains only minor language changes. This requirement derives from the obligation in sec. 225(a) of the Act to provide information to trade-affected workers about the benefits and services available to workers and their associated applications and timelines. The information provided to workers must cover all benefits and services available under the TAA Program, including the HCTC, if available.

Proposed paragraph (b) is a new provision mandated by the Act that requires States to provide rapid response assistance and appropriate career services, consistent with sec. 134 of WIOA, to all groups of workers covered by a petition filed under subpart B. The Governor, upon receipt of a petition for TAA, must ensure the availability of WIOA rapid response assistance (described as “rapid response activities” in 20 CFR 682.300, et seq.) and appropriate career services to the groups of workers covered by the petition. These services are to be provided as soon as possible after the petition is filed. The Department strongly encourages States to make the full suite of career services available under title I of WIOA available to groups of workers using rapid response funding to maximize layoff aversion. These services must be made available regardless of whether the petition is ultimately certified.

Proposed paragraph (c) implements sec. 235 of the Act and requires States to provide specified employment and case management services to trade-affected workers.

This is a new provision that replaces 20 CFR 617.21. Proposed paragraph (c)(2) requires that, should there be insufficient TaOA funds available under the TAA Program to provide these services, States must make arrangements to make available these services through other Federal programs, such as WIOA.

Proposed paragraph (d)(1) requires States to provide assistance to groups of workers to file petitions for TAA. It combines requirements contained in 20 CFR 617.4(b) and (e)(2), simplifies the language of those provisions, and adds the authorization for States to file a petition on behalf of a group of workers. Section 239(g)(2) of the Act requires a State to facilitate the early filing of petitions for any group of workers that the State considers “likely” to be determined eligible. Proposed paragraph (d)(2) provides guidance on a determination of “likely to be eligible.” This means that the State has a reasonable belief that a group of workers may be impacted by foreign trade. Likelihood can be determined, for example, by the existence of certifications in the same industry, sector, supply chain, or for another location of the same firm. It may also be based on observations of the State, information provided by impacted workers, the employer, a union, press coverage, industry reports, or other similar sources. Proposed paragraph (d)(3) is reworded from 20 CFR 617.4(b) to remove the specific reference to “unorganized” workers. Proposed paragraph (d)(4) is not addressed in 20 CFR 617.4 but is authorized by sec. 225(a) of the Act, and it establishes that the State shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The State must assist in the filing of the petition where there is a likelihood of eligibility, despite any objections from other entities. Entities that

may object, such as firms, should be reminded that a certification under the TAA Program does not have an additional financial cost to the firm.

Proposed paragraph (e) requires States to provide certain information and assistance to trade-affected workers after issuance of a certification covering their worker group. The provisions in proposed paragraph (e) are substantively similar to 20 CFR 617.4, but this paragraph rephrases and reorganizes them for clarity and simplicity. This section continues to implement sec. 225(b) of the Act, which requires written notices to each trade-affected worker, via the mail, and a general notice through newspaper advertisements. Proposed paragraph (e)(1), which was previously in 20 CFR 617.4(c), implements sec. 225(a) of the Act and requires States to inform the State board on vocational and technical education or equivalent agency, and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B and of projections, if available, of the needs for training under subpart F as a result of such certification. These efforts should be coordinated with State and local workforce development boards (LWDBs) established under WIOA. Proposed paragraph (e)(2) is similar 20 CFR 617.4(d)(1) but adds to the information that must be included in the written notice mailed to each worker covered by a certification, including information regarding the training enrollment deadlines (set forth in proposed § 618.720(c)) that are a condition of TRA eligibility. Proposed paragraph (e)(2)(viii) specifically requires the State to include a Babel notice. A Babel notice is a short statement in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages. Although this is the first explicit reference to this requirement in TAA

Program regulations, this is not a new requirement for workforce development or UI programs. The Department already addressed this practice in administrative guidance, specifically UIPL No. 30-11, “State Responsibilities Regarding Limited English Proficient (LEP) Individuals,” and TEGL No. 26-02, “Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons,” which both seek to ensure full implementation of title VI of the Civil Rights Act. Proposed paragraph (e)(3) provides that it is permissible to obtain a list of workers that are partially or totally separated from adversely affected employment or threatened with separation via subpoena pursuant to proposed § 618.812. Proposed paragraph (e)(4) maintains the requirement that notice of certification be published in a newspaper of general circulation. In particular, the Department is interested in learning what the States believe to be the most effective and least burdensome ways of ensuring that workers covered by a certification receive notice and a meaningful opportunity to receive TAA benefits should they so choose.

This NPRM eliminates the provision in 20 CFR 617.4(d)(2) that exempts the State from publishing a newspaper notice if the State can substantiate that all workers have received written notice about the certification. Upon further review of this regulation, the Department has concluded that this is not consistent with the notification requirements contained in sec. 225(b)(2) of the Act. The Department welcomes comments related to the definition of “newspaper of general circulation” and the interpretation of that term as it relates to the significant expansion in digital media since the original promulgation of 20 CFR part 617.

Proposed paragraph (e)(5) codifies sec. 239(f) of the Act and requires that upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part 618. There is no direct similar provision in the existing rule.

Proposed paragraphs (e)(6) and (7) are new provisions, added for the first time, and have no comparable counterparts in existing regulations or in administrative guidance. Proposed paragraph (e)(6) requires, in addition to the written notices sent by mail, that the State also use one method of modern electronic communication, such as email, to inform workers of the certification. The Department has concluded that the use of modern communication methods will better give notice to workers of their entitlement to TAA benefits and, if applicable, other program opportunities available under the public workforce system. Proposed paragraph (e)(7) allows States the flexibility to use social media and other means to reach workers.

Proposed paragraph (f) requires States to provide specific benefit assistance to workers. In addition to all of the benefits described in detail in this part 618, States must also include information on the HCTC, if available as described in subparagraph (B) of sec. 35(b)(1) of the Internal Revenue Code of 1986. 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 sec. 225(b)(1) of the Act to require that the State provide notice to each member of a worker group that it can reasonably identify as being covered by a certification whether or not that worker has applied for UI. This is

especially important for AAIWs who are still employed and, thus, will not file a UI claim but are still potentially eligible for TAA approved training and employment and case management services. Where a petition has already been certified, the State must provide TAA Program information to all trade-affected workers covered by the certification. Where a petition is still pending, the State must provide the TAA Program information to the trade-affected workers covered by the petition following issuance of the certification.

Proposed paragraph (f)(2) combines the requirements of 20 CFR 617.4(e)(3) and (4) into a single paragraph because they are closely related. The language has been changed to emphasize the need for the State to provide in a timely manner the information and employment and case management services that trade-affected workers are entitled to receive to preserve eligibility for TAA Program benefits.

Section 618.820 Determinations of eligibility; notices to individuals.

Proposed § 618.820 contains procedural requirements that apply to State benefit determination and redetermination processes. There are three substantive changes from 20 CFR 617.50. 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 decided under State law. The second difference is in proposed paragraphs (f) and (g). Proposed paragraph (f) requires the prompt payment of benefits when due, a requirement adopted from standard procedures under UI. Proposed paragraph (g) is unchanged from 20 CFR 617.50(g). Lastly, the language from 20 CFR 617.50(b) has been simplified and incorporated into the NPRM. There is no operational impact as a

result of the revised language. The Department has also made other nonsubstantive changes to simplify the language in this section.

Section 618.824 Liable State and agent State responsibilities.

Proposed § 618.824, concerning the respective responsibilities of a liable State and agent States, updates 20 CFR 617.26 to reflect secs. 235, 237, 238, and 245 of the Act and reorganizes the requirements. In addition, the definitions for agent State and liable State are now found in subpart A of part 618. The changes are discussed below.

Proposed paragraph (a) is largely unchanged from 20 CFR 617.26(a) but reorders information and breaks it up into subordinate paragraphs. Proposed paragraph (a)(3)(i) adds the requirement for liable States to provide rapid response and appropriate career services (as described in sec. 134 of WIOA) to a group of workers for whom a petition is filed as required by sec. 221(a)(2)(A) of the Act. Proposed paragraph (a)(3)(ii) is new and provides that career services established under other Federal laws must also be made available to the group of workers, to the extent authorized by those laws. This NPRM does not attempt to identify all Federal laws that may be applicable. It is included to ensure that trade-affected workers are fully integrated into the public workforce system and are not excluded from any career services available to other dislocated workers. Proposed paragraph (a)(3)(iii) is new and has no comparable counterpart in existing regulations or in administrative guidance. It clarifies for the first time that, in some instances, the liable State may seek assistance from one or more agent States in the provision of rapid response and appropriate career services, especially in situations where residency of the group of workers is divided into two or more States. Proposed paragraph (a)(4) updates language from 20 CFR 617.26(a) but has the same meaning. Proposed

paragraph (a)(5) is new but codifies administrative guidance. It requires a liable State to provide lists of eligible TAA recipients and eligible RTAA recipients to the IRS. These lists are necessary for the IRS to determine who is potentially eligible to receive the HCTC and must be provided if HCTC is available, as States have been doing in accordance with administrative guidance. 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 § 618.816(e)(4).

Proposed § 618.824(b) is largely unchanged from 20 CFR 617.26(b) but reorders information and breaks it up into subordinate paragraphs. Proposed paragraph (b)(4) contains new language requiring the provision of employment and case management services, as described in subpart C. Proposed paragraph (b)(6) contains new language referencing subpart F and requires agent States to secure and pay the cost of any approved training and subsistence and transportation payments, according to determinations issued by the liable State. Whether the agent or liable State was responsible for payment of job search and relocation allowances was omitted from 20 CFR 617.26. Proposed paragraph (b)(7) is new and establishes that the agent State is responsible for the payment of job search and relocation benefits. Lastly, proposed paragraph (b)(8) adds language that requires agent States to assist in other activities and functions required by the Governor-Secretary Agreement, and is modified to specify that this includes assisting in the review of petitions by verifying such information and providing such other assistance as the Department may request. In certain circumstances, especially when layoffs occur near a border between States, there may be multiple agent

States. Workers may choose to access services at a one-stop center closer to their residence rather than near their place of adversely affected employment. This may result in there being multiple agent States involved in serving the same group of workers.

Proposed § 618.824(c) is new and clarifies that in most instances, the liable State and agent State are the same State, and that, when this occurs, the State is responsible for all activities listed in proposed § 618.824(a) and (b).

Section 618.828 Appeals and hearings.

Proposed § 618.828 provides requirements governing appeals and hearings of TAA Program determinations and redeterminations. It reiterates the requirements in 20 CFR 617.51, but slightly rephrases the language for clarity and also adds two new paragraphs. Proposed paragraph (a) largely follows 20 CFR 617.51(a), but notes that there are exceptions to the general rule that the applicable State law applies to appeals of TAA determinations or redeterminations. 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 Department, must be handled in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and/or 38, as provided in proposed § 618.894 (Nondiscrimination and equal opportunity requirements). This clarification helps ensure that proper procedures are followed where a claimant alleges discrimination. Proposed paragraph (c) follows 20 CFR 617.51(b) requiring appeals to be decided with a degree of promptness.

Proposed paragraph (d) is new and has no comparable counterpart in existing regulations or in administrative guidance. It addresses for the first time the impact of a

reversal of a denial of a training program. In the case of a redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed. No costs of training may be paid unless such costs actually were incurred for training in which the individual participated, and no TRA may be paid with respect to any week during which the individual was not actually participating in the training.

Section 618.832 Overpayments; penalties for fraud.

Proposed § 618.832, concerning overpayments, fraud, and penalties for fraud, generally repeats 20 CFR 617.55, but reorganizes the section for clarity. Proposed § 618.832 slightly rephrases some of the provisions in 20 CFR 617.55 and also contains a few substantive differences from 20 CFR 617.55. Proposed § 618.832 omits provisions in 20 CFR 617.55(h) on use of TAA Program funds to offset other debts. Because of the importance the Department places upon these provisions, proposed subpart H devotes a separate proposed section to this issue, § 618.836.

Proposed paragraph (a)(1) updates the requirements in 20 CFR 617.55(a) based on the amended statute. The most significant change is that the decision to waive overpayments under certain conditions is now mandatory rather than optional. While the no-fault requirement remains, as described in proposed § 618.832(a)(1)(i) and (ii), instead of an “equity and good conscience” standard described in 20 CFR 617.55(a)(1)(ii), States must look to whether repayment would constitute a financial hardship. Proposed paragraph (a)(2) provides rules for the administration and interpretation of financial hardship for overpayment waiver purposes.

Proposed paragraph (a)(3) requires that workers be provided a reasonable opportunity to demonstrate that they were without fault and are unable to repay their TAA Program overpayments and, therefore, are eligible for waivers of overpayments. As a result of Congressional action, see Pub. L. 111-5, sec. 1855(2), 123 Stat. 115, 394 (2009), the Department is also changing the language related to financial hardship. A financial hardship exists where the funds would otherwise be needed to pay for ordinary and necessary living expenses after taking into account the income and other resources reasonably available to the individual and their household. This is a significant change in operations and the Department is seeking to establish a national standard. Comments on this topic are encouraged and appreciated.

Proposed paragraph (b) is substantially the same as 20 CFR 617.55(b), but reorders and slightly rewords the language. It provides the statutory requirement for a lifetime disqualification from receipt of benefits under the Act for anyone found to have knowingly provided a false representation or nondisclosure of material fact.

Proposed paragraph (c) follows 20 CFR 617.55 in that, prior to requiring repayment, a State or the Department, as appropriate, must provide notice of the determination to the individual and an opportunity for a fair hearing. Only then, can a decision become final and repayment be required, unless a ruling has already been made by a court, in which case, that requirement has been met and repayment can be required.

Proposed paragraph (d) provides instructions related to overpayments under training, job search and relocation allowances, and RTAA, primarily following the existing provisions in 20 CFR 617.55(c). Proposed paragraph (d)(2) adds some further clarification providing that if an AAW or AAIW (although AAIWs are ineligible for job

search or relocation allowances) fails to complete a training, job search, or relocation without good cause, the portion not completed is an overpayment, but that costs for the completed portions are not overpayments. If, for example, a trade-affected worker completed 3 out of 4 semesters of an approved training program, and then did not complete the last semester without good cause, any payments made for the fourth semester would become overpayments under this part 618. Proposed paragraph (d)(3) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that for purposes of proposed § 618.832(d), a trade-affected worker has good cause if the worker acted diligently yet was unable to complete the training, job search, or relocation because of an exigent circumstance. The State must determine whether good cause exists on a worker-by-worker basis. Proposed paragraph (d)(5) has no corresponding provision in 20 CFR part 617. It provides the rules for addressing overpayments under RTAA. If a State has verified continued eligibility, as required by proposed § 618.515(c), then payments made after an AAW's wages have changed that were correct and accurate at the time they were made (based on all the information available at that time) are considered payments to which the AAW was entitled under sec. 243 of the Act. Such payments are not overpayments subject to proposed § 618.832. The Department encourages comments related to proposed paragraph (d), specifically with respect to how to treat failure to complete as it relates to overpayments.

Proposed paragraph (e) carries forward the provisions from 20 CFR 617.55(a)(2)(ii)(C)(5), with changes concerning recovering an overpayment from the affected person's State UI entitlement and also adds some new provisions. Because 20

CFR 617 contains no provision for cross-program offsets, proposed paragraph (e)(2) adds language requiring overpayment recovery from State UI, as required by the Middle Class Tax Relief and Job Creations Act, subject to the limitation on the amount that may be recovered from any single payment in proposed paragraph (e)(3). Proposed paragraph (e)(3) is new and limits recoveries from all types of UI described in proposed paragraph (e) to no more than 50 percent of each of the affected person's State or Federal UI payments. This limitation would implement the limitation in sec. 243(a)(2) of the Act. However, since the Act sets the 50 percent deduction as a ceiling, proposed paragraph (e)(3) requires each State to follow its own law if its law provides for a lower limit.

Proposed paragraph (f) 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 Program overpayments be "commensurate with" those for UI to a requirement that State procedures be "the same as" those for UI. This language change clarifies that States must apply processes used for the detection and prevention of overpayments under UI to TAA Program benefits as well. The Department concluded from oversight activities that most States' processes did not meet the "commensurate with" standard. Based on oversight reviews conducted by the Department, States have not sufficiently or equitably enforced the detection and prevention of overpayments under the TAA Program. The Department proposes to further clarify that States must apply the same detection and prevention measures to the TAA Program to increase and simplify compliance

Proposed paragraph (g) follows 20 CFR 617.55(i) in explaining who is a "person" for purposes of proposed §§ 618.832 and 618.836, except for two modifications. The

modifications are that proposed paragraph (g) explicitly includes a “training provider as well as the officers and officials thereof” and “a trade-affected worker or other individual.” The first of these changes closes a loophole that may have allowed officers and officials of training providers to avoid culpability and liability in instances of fraud and recovery of debts to the United States. The second change makes it clear that TAA Program participants (trade-affected workers) and nonparticipants (other individuals) may also be found culpable and liable under the fraud and debt recovery portions of this rule.

Proposed paragraph (h) is new and implements sec. 244 of the Act establishing penalties for knowingly making a false statement, not disclosing a material fact, or causing others to do so. The penalties established by the Act are imprisonment for not more than 1 year, a fine under title 18 of the United States Code, or both. Because these penalties are imprisonment or a fine under the Federal criminal code, the Department views the penalties as criminal sanctions rather than administrative penalties, which cannot be imposed absent the safeguards and higher standards of proof afforded criminal defendants. Suspected violations must be reported to the U.S. Department of Labor Office of the Inspector General.

Section 618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.

Proposed § 618.836 governs the use of TAA Program 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 RTAA. 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), which prohibits using TAA Program funds to pay debts owed to any State or other person or entity except that it permits offset for debts owed for child support and alimony required to be collected under State and Federal law. Proposed paragraph (b) changes this to provide that TAA Program benefits may only be used to recover debts owed to others to the same extent allowed under Federal UI law. The Department proposes this change because the exception in 20 CFR 617.55(h)(2) goes beyond Federal law and singles out one specific instance in which SSA requires or permits collection of debts but ignores others. For example, SSA sec. 303(e)(2) requires a State to deduct “child support obligations” from “any unemployment compensation otherwise payable to an individual.” Under SSA sec. 303(e)(2)(B), this deduction is applicable to TRA. However, SSA sec. 303(e)(1) defines “child support obligations” as “only includ[ing] obligations which are being enforced pursuant to a plan described in [sec. 454 of SSA] which has been approved by the Secretary of Health and Human Services under part D of title IV of [SSA].” 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. UIPL No. 45-89 (55 FR 1886, Jan. 19, 1990) explained in detail the deductions permitted under SSA sec. 303(e)(2). Other SSA provisions permit deductions from State UI for other purposes. These SSA provisions, like sec. 303(e)(2), apply to TRA. For example, sec. 303(d)(2)(A) of SSA permits offset of UI to recover uncollected over-issuances of food stamps under sec. 303(e)(2)(B)(iii). The Department concludes

that all TAA Program benefits, which relate closely to TRA and RTAA, should follow the same rules for the offset of benefits as Federal UI law, except as provided under proposed paragraph (a).

Section 618.840 Uniform interpretation and application of the Act and regulations.

Proposed § 618.840 repeats the requirements in 20 CFR 617.52, but with some reorganization and a few substantive changes.

Proposed paragraphs (a) and (b) repeat the requirements in 20 CFR 617.52(a) and (b), except that they replace the references to 20 CFR part 617 with references to part 618. The Department has also revised the rules of construction to remove two references to “the Act.” The Department has reconsidered this language and acknowledges Congress’s statement in sec. 288 of the Act that “[i]t is the sense of Congress that” the Department should apply the provisions of the Act “with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits.” The Department agrees with this goal and this NPRM gives the utmost regard to those petitioning for benefits.

Proposed paragraph (c)(1)(i) modifies the requirement in 20 CFR 617.52(c)(1) that States automatically forward to the Department a copy of each administrative decision rendered under the TAA Program. Instead, States must submit administrative decisions only upon request by the Department. The Department has determined that this requirement is unduly burdensome. There is one exception to this rule, expressed in paragraph (c)(1)(ii). The Department will require States to submit to the Department all decisions appealed to the State’s highest UI administrative appeals authority, which is the highest level of administrative appeal. In some States, this body is known as the Board of

Review, Board of Appeals, or Unemployment Insurance Commission. For States without such an agency, this provision does not apply. This process provides the Department an opportunity to resolve issues before they become judicial actions. States are also encouraged to send to the Department any other administrative decision that it determines is erroneous or contrary to the Act, regulations, or administrative guidance. Proposed paragraph (c)(1)(iii) applies to all State or Federal court decisions and notices of pending State or Federal court actions and requires all State and Federal court decisions and notices to be sent to the Department. This includes notices by a State or Federal court of a hearing date or court date as well as all rulings related to the action.

Proposed § 618.840(c)(2) through (6) retains the provisions in 20 CFR 617.52(c)(2) through (6). These provisions set out the relationship between the Department and the State with regard to determinations, redeterminations, and judicial proceedings under the Act. Proposed paragraph (d) retains the remaining provisions from 20 CFR 617.52(c)(3).

Section 618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.

Proposed § 618.844 repeats the requirements in 20 CFR 617.56 concerning inviolate rights to TAA with no substantive change.

Section 618.848 Veterans' priority of service.

Proposed § 618.848, a new section, establishes priority of service requirements for the TAA Program. Under 38 U.S.C. 4215, eligible veterans and specified covered persons are entitled to priority of service in Department-funded workforce development programs, if the individual otherwise meets the eligibility requirements for the program.

38 U.S.C. 4215(b). This proposed section requires States to give priority for approval and funding of TAA Program benefits and services to trade-affected workers meeting the requirements for veterans' priority of service. In particular, this priority would become effective if the TAA Program has already allocated the full fiscal year funds for TaOA, and States have exhausted a significant proportion of their available funds. In that case, each State must give priority to veterans and to the specified categories of covered persons, over other trade-affected workers' applications for services, in approving and funding TaOA.

Section 618.852 Recordkeeping and disclosure of information requirements.

Proposed § 618.852 repeats the requirements in 20 CFR 617.57 concerning recordkeeping and disclosure of information but makes a few 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 particular report is no longer required. Rather, required reporting will be governed by proposed § 618.864. Second, proposed paragraph (a) adds that States are required to maintain records that contain any information the Department determines to be appropriate in support of any reports the Department may require, including the reports specified in proposed §§ 618.860(f) and 618.864(e). Paragraph (a) also contains a cross-reference to the record retention requirements of the Uniform Guidance at 2 CFR 200.333. Per the Uniform Guidance, States are required to retain records, in general, for 3 years after the last action taken on that record (determination, appeal, payment, inclusion in a performance or financial report, etc.). Proposed paragraph (a)(4) requires States to document that employment and case management services described in subpart C were provided or

offered to a participant. This is not a new requirement; however, this was not previously explicitly stated in regulation. This NPRM allows for paper-based or electronic case management systems, or a combination thereof. All records must be available for review by the Department.

Proposed paragraph (b) retains the requirements in 20 CFR 617.57(b) with regard to confidentiality requirements but reformats the section and adds a subordinate paragraph addressing information a State obtains in support of the Department's investigation of a petition for certification of the eligibility of a group of workers. Proposed paragraph (b)(1) addresses confidentiality and the disclosure of personally identifiable information (PII). The language in proposed paragraph (b) is consistent with the language in the Governor-Secretary Agreements with the States, which more broadly encompasses any State and Federal confidentiality and disclosure requirements that might apply to TAA Program information. To facilitate the provision of services, States should have workers sign a release of information document. Proposed paragraph (b)(2) notes that information obtained by the State for the Department in support of an investigation under subpart B must comply with the requirements in subpart B of this regulation.

Proposed paragraph (c) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It explicitly allows for the use of paper and electronic records or a combination thereof. This paragraph requires that regardless of the medium used, the records must be available for review for oversight purposes. This addition addresses the improvements in technology and means of transmitting, storing, and maintaining documents that have occurred since the publication of 20 CFR part 617.

Proposed paragraph (d) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It addresses the use of electronic signatures. The Electronic Signatures in Global and National Commerce Act (Pub. L. 106-229) establishes that electronic contracts and electronic signatures have the same legal standing and enforcement as traditional paper contracts signed in ink.

Section 618.856 Information, reports, and studies.

Proposed § 618.856 retains the language in 20 CFR 617.61 requiring States to submit such information and reports and conduct such studies as the Department requires for TAA Program purposes.

Section 618.860 General fiscal and administrative requirements and cost classification.

Proposed § 618.860 is a new section that contains general fiscal and administrative requirements applicable to State administration of the TAA Program. It is modeled on WIOA regulations, but with significant differences. Proposed § 618.860 contains no requirements that States are not already required to meet. These requirements come from the Act, OMB guidance at 2 CFR part 200, the Department-specific regulations at 2 CFR 2900, and the Department's administrative guidance and regulations. The Department is including this section in subpart H to highlight these requirements and improve compliance by States and other entities receiving TAA Program funds.

States should consult the appropriate regional office for additional technical assistance related to classification of costs under the TAA Program or other requirements in this section.

Proposed paragraph (a)(1) requires compliance with the Uniform Guidance at 2 CFR part 200 and the Department's specific requirements at 2 CFR part 2900.

Proposed paragraph (a)(2) provides that the period of expenditure for TAA Program funds granted for employment services, training, and job search and relocation allowances is 3 years. This provision follows sec. 245(b) of the Act. Funds to pay TRA and RTAA benefits are available for expenditure only in the fiscal year for which they are awarded.

Proposed paragraph (a)(3) provides that equipment, as described in 2 CFR 200.33, and computing devices, as described in 2 CFR 200.20, includes equipment acquired with TAA Program funds under TAA Program Annual Funding Agreements. This provision restates existing Federal requirements and responds specifically to two situations observed in the States. First, in the case of a State's internal reorganization, any equipment purchased in prior years with TAA Program funds must continue to be used for the TAA Program. Second, proposed paragraph (a)(3) makes clear that the provisions of 2 CFR 200.313 apply to equipment purchased under the TAA Program.

Proposed paragraph (a)(4) requires, (see 2 CFR 200.307(e)(2)), that TAA Program grant recipients apply the addition method to all program income earned under TAA Program grants. The instructions for the quarterly financial report for the TAA Program also contain this requirement.

Proposed paragraph (b) provides guidance on cost classification as administrative costs under the TAA Program, as authorized by sec. 235A of the Act and described in each TAA Program Annual Funding Agreement, which States are required to submit annually. Paragraph (b)(1) provides that the Department will include each fiscal year's administrative cost limitation in grant documents or annual funding agreements. Paragraph (b)(2) provides a definition of "administrative costs" under the TAA Program.

Although the language in this section is similar to WIOA, there is one significant difference. Under the TAA Program, administrative costs do not automatically become program costs when expended at the subrecipient level. Proposed paragraph (b)(2)(i) through (xviii) lists costs deemed administrative costs, following WIOA except as described above. Proposed paragraph (b)(3) addresses when awards to subrecipients or contractors are administrative costs. Proposed paragraph (b)(4) provides that, in compliance with the Uniform Guidance, costs for personnel and nonpersonnel must be properly allocated between program and administrative costs based on time worked or another equitable measure. Proposed paragraph (b)(5) indicates that costs for developing systems and procedures, including management information systems (MIS), required for administrative functions are to be charged as administrative costs. An MIS may include multiple components and while some of those components, or modules, will relate to services to individuals, others will be purely administrative, such as reporting. Where that is the case, States must appropriately allocate costs between the employment and case management and the administrative costs categories. Maintenance and enhancement of electronic case management systems to allow for improved case management services can be charged to employment and case management funds, rather than to related State administration funds. In addition, if multiple programs use an integrated MIS, States must also ensure that costs are properly allocated between those programs. Proposed paragraph (b)(6) reiterates the requirement to minimize duplication of efforts.

Proposed paragraph (c) addresses the requirement in 2 CFR 200.407 that grant recipients obtain the grantor's prior written approval before purchasing equipment, as defined in 2 CFR 200.33, using grant funds. No prior approval is required for the

purchase of equipment with TAA Program funds. As provided in 2 CFR 200.439(b)(1), the Department retains the prior approval requirement for capital expenditures (2 CFR 200.13) and for capital assets (2 CFR 200.12), other than equipment.

Proposed paragraph (d) provides the audit requirements applicable to States and other entities administering the TAA Program under the Uniform Guidance.

Proposed paragraph (e) ensures compliance with the government-wide debarment and suspension requirements and drug-free workplace requirements.

Proposed paragraph (f) contains fiscal reporting requirements for States. This paragraph establishes, in accordance with 2 CFR 200.327 and 2 CFR 2900.14, that States are required to report financial results on an accrual basis. States must submit financial data on program activities as specified in reporting instructions. Paragraph (f)(4) requires States to maintain sufficient records to obligate participant funds on at least a quarterly, but no less than on a fiscal year basis, and periodically review obligations and de-obligate funds when a participant drops, completes, or is no longer eligible for training. States are encouraged to obligate and de-obligate funds on a semester-by-semester basis, when possible, to maximize the availability of funds.

Proposed paragraph (g) provides the statutory limit and minimum for administrative and employment and case management costs, respectively. Administrative costs under the TAA Program are limited to 10 percent of allotted funds under sec. 235A of the Act. The Act also requires States to spend a minimum of 5 percent of funds allotted to them for employment and case management services described in subpart C. There is no corresponding regulation in 20 CFR part 617, but sec. 235A of the Act specifically authorizes this requirement. Compliance with the 10 percent maximum and 5 percent

minimum will be monitored throughout the grant life cycle and enforced during the closeout process.

Paragraph (h) is a new requirement. This paragraph requires States to maintain sufficient and effective technology solutions required for reporting and the provision of services to participants. This requirement derives from several provisions of the Uniform Guidance at 2 CFR part 200. Under 2 CFR 200.205, for example, the Department is required to consider a grantee's quality of management systems, compliance with reporting requirements, and expenditure of funds. Specifically, 2 CFR 200.400(a) states that grantees are "responsible for the efficient and effective administration of the Federal award through the application of sound management practices." The Department, based on its historical oversight of grantees, has found some MIS and information technology (IT) systems insufficient to allow the State to meet the requirement for "efficient and effective administration." This requirement ensures a grantee's ability to serve participants, provide required performance and service reports, and meet financial management and reporting obligations.

Finally, paragraph (i) requires the States to dedicate an appropriate portion of funds (administrative and employment and case management) for the development, maintenance, and upgrading of MIS. An appropriate portion must be allocated to maintain and continuously improve the State's MIS. This portion will vary by State based on MIS deployment and usage. The Department has concluded, based on our oversight of the TAA Program, that States have historically failed to adequately budget for MIS activity. This has resulted in outdated systems that present a risk to the ability of States to

provide TAA Program benefits to trade-affected workers and to provide the required performance and financial reports to the Department.

Section 618.864 Trade Adjustment Assistance Program performance.

Proposed § 618.864 is a new section that contains TAA Program performance requirements, as established by sec. 239(j) of the Act. The NPRM uses the term “worker.” This is taken directly from the Act. For purposes of proposed § 618.864, the term worker means a trade-affected worker. Proposed paragraph (a) requires States to report specified data on TAA Program performance outcomes to the Department and requires a description of the efforts made to improve outcomes for workers under the TAA Program. Specifically, States must report the primary indicators of performance identified in paragraph (b) of this section, which are very similar to those reported under WIOA.

Proposed paragraph (b)(1) identifies the primary indicators of performance. These are from the Act and are very similar to those established under WIOA. The Act uses the term “workers” and in this section the term “workers” refer to AAWs and AAIWs (trade-affected workers) as appropriate. AAIWs are eligible for training and employment and case management services only. However, in addition to reporting on the percentage of workers as WIOA does, the indicators also include a requirement to report on the number of workers who have achieved the indicator. In addition, unlike the WIOA programs, the TAA Program is not subject to the measure on effectiveness of serving employers. The primary indicators of performance under the TAA Program are:

- The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the second calendar quarter after exit from the program;
- The percentage and number of workers who received benefits under the TAA Program and who are in unsubsidized employment during the fourth calendar quarter after exit from the program;
- The median earnings of workers who are in unsubsidized employment during the second calendar quarter after exit from the program;
- The percentage and number of workers who received benefits under the TAA Program (excluding those in OJT and customized training) who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in the program or within 1 year after exit from the program; and
- The percentage and number of workers who received benefits under the TAA Program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.

Paragraph (b)(2) relates to the credential attainment indicator in paragraph (b)(1)(iv) and provides that, under the Act, workers who received benefits under the TAA Program and obtained a secondary school diploma or its recognized equivalent are only included in this indicator if they also obtained employment, or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

Consistent with sec. 239(j)(2)(B) of the Act, proposed paragraph (c) provides that the Department and a State may agree upon and establish additional indicators of performance. The Department is not proposing any additional measures at this time.

Proposed paragraph (d) requires States, under sec. 239(j)(3) of the Act, to use quarterly wage record information, as that term is defined in WIOA regulations at 20 CFR 677.175, in measuring progress on the primary indicators of performance and any additional measures established by the Department. The use of wage record information helps ensure the reporting of more complete and accurate performance outcomes. Per 20 CFR 667.175, quarterly wage record information means intrastate and interstate wages paid to an individual, the Social Security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual. Proposed paragraph (d) authorizes States to use Social Security numbers to measure the progress of TAA Program participants using quarterly wage information. Proposed paragraph (d) permits States to use supplemental information to obtain pertinent wage and employment data in accordance with TEGL No. 26-16, “Guidance on the use of Supplemental Wage Information to implement the Performance Accountability Requirements under the Workforce Innovation and Opportunity Act.” The Department encourages States to participate in data sharing agreements to access wage records. The Department will continue to develop administrative guidance to facilitate this process. Further, the Department, in tandem with the Department of Education, is developing a new State data sharing agreement to aid in the interstate exchange of wage record information to ensure States meet the performance reporting requirements outlined in the NPRM.

Proposed paragraph (e) establishes performance reporting requirements for States. The Department plans initially to require the use of only the Participant Individual Record Layout (PIRL), as part of the DOL-Only Performance Accountability, Information, and Reporting System (OMB Control No. 1205-0521). States use the PIRL to submit required reporting elements. 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 the verification or validation of reports as accurate.

Proposed paragraph (f) provides that the Department will publish the States' TAA Program performance annually in the form of a TAA Annual Report, as required by sec. 239(j)(4) of the Act, including on the Department's website. This program performance information will be provided at the State level. Due to restrictions on the release of PII, files containing the individual records will not be published or made available.

Proposed paragraph (g) implements the control measures required by sec. 239(i) of the Act. States are required to have a formal monitoring program in place that includes the review of participant case files on a regular basis. Section 239(i)(2) of the Act defines control measures as measures that are internal to a system used by a State to collect data and are designed to ensure accuracy and verifiability of such data. A number of administrative guidance documents provided additional information, in addition to the TAA Program and UI Annual Funding Agreements, the Trade Adjustment Assistance Data Integrity review process as described in proposed paragraph (g)(3), grant agreements, and Regional monitoring requirements are all part of effective control measures.

Proposed paragraph (g)(1) implements the control measures. Proposed paragraph (g)(2) describes that systems must be internal to the State. Proposed paragraph (g)(3) explains the purpose of the control measures and sets out a number of requirements. It codifies the Trade Adjustment Assistance Data Integrity review process used by the Department to verify and validate the data reported by the States in accordance with TEGL No. 04-14 (and any subsequent changes), “Trade Adjustment Assistance Data Integrity.” Proposed paragraph (g)(4) requires States to implement a formal monitoring program in compliance with the Uniform Guidance at 2 CFR part 200 and the Department’s exceptions at 2 CFR part 2900. The requirement to conduct program monitoring is not new. In addition to the requirement in the Uniform Guidance to conduct monitoring, administrative guidance established such a requirement, but the explicit inclusion of monitoring in the TAA Program regulations is new. The monitoring program must be designed to identify and share promising State practices, identify and correct deficiencies, and identify and address staff training needs. A minimum quarterly random sample of 20 cases must be audited and must include at least 2 certifications issued under subpart B. The four quarterly samples within a calendar year should also cover at least four different geographic areas of the State administering the program. The Department recognizes that in some States, it may be difficult to meet these requirements based on enrollment levels and the geographic distribution of certifications. If circumstances preclude a State from meeting these criteria, the State must contact the appropriate ETA regional office to design a monitoring program that better suits the TAA Program in that State, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

Proposed paragraph (h) implements sec. 249B(b) of the Act, which requires collection and reporting of specific information, and the proposed paragraph is taken from sec. 249B(b)(2) through (6) of the Act. Proposed paragraph (h) does not include references to sec. 249B(b)(1) of the Act (data on petitions filed, certified, and denied) as these data are collected internally by the Department and included in TAA Annual Report. Changes from statutory language include only the removal of additional statutory citations; proposed paragraph (h)(2), which replaces the phrase credits for health insurance costs under sec. 35 of the Internal Revenue Code with the HCTC; and proposed paragraph (h)(19) consolidates sec. 249B(b)(6) of the Act into one requirement to report on the total amount of the TaOA payments to the States in the aggregate and for each State. TaOA refers to funds to provide employment and case management services; training; and job search and relocation allowances, to trade-affected workers, and for related State administration. Subpart I discusses TaOA more broadly.

Section 618.868 Unemployment Insurance.

Proposed § 618.868 retains the language of 20 CFR 617.58, but changes the reference from part 617 to part 618. This provision ensures that UI benefits are not denied or reduced by receipt of payment TAA benefits.

Section 618.872 Travel under the Trade Adjustment Assistance Program.

Proposed § 618.872 carries forward the FTR at 41 CFR chapters 300 through 304, and the policies of the Department, as the standard for State-provided travel, subsistence, and transportation benefits to TAA Program participants. This is not a new policy. The Department already enforces this requirement under 20 CFR 617.52 by ensuring the uniform interpretation of the rule—in this particular instance as it relates to payment of

benefits related to travel costs. There has been some confusion over the years as to which travel policies apply to TAA Program participants. This NPRM makes it clear that TAA Program participants travel under the same rules as employees of the Department—allowing for consistent treatment of participants regardless of their location within the United States.

Section 618.876 Verification of eligibility for program benefits.

Proposed § 618.876 implements the requirements at sec. 239(k) of the Act for States to verify a participant is in satisfactory immigration status. Section 239(k) of the Act directs States to use the immigration status verification system in 42 U.S.C. 1320b-7(d) for purposes of reestablishing a worker’s eligibility for unemployment compensation. The Department has historically interpreted this verification requirement, for the TAA Program, to require participants to meet the requirements for eligibility under UI, including the requirement that the participant be authorized to work in the United States. This is because UI eligibility is a requirement of TRA and RTAA, and training can be approved only where there is “a reasonable expectation of employment following completion of . . . training” (sec. 236(a)(1)(C) of the Act). Without authorization to work in the United States, there can be no reasonable expectation of employment following completion of training.

While the Personal Responsibility and Work Opportunity Reform Act (PRWORA) ordinarily prescribes the categories of aliens eligible for Federal public benefits, which includes many of the benefits offered under the TAA Program, as a required one-stop partner under WIOA the TAA Program is governed by WIOA sec. 188 and the corresponding regulations, which limit the scope of PRWORA’s

application. WIOA sec. 188(a)(5) specifically requires that participation in programs and activities and receipt of funds under WIOA title I be available to “citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.” 29 U.S.C. 3248(a)(5). Thus, for immigration status verification under the TAA Program, “satisfactory immigration status” is not defined by PRWORA, but by WIOA and the eligibility requirements of the TAA Program itself.

As proposed paragraph (b) explains, for participants who obtained UI, the Act considers the initial verification required by sec. 239(k) of the Act to have been completed through use of the Systematic Alien Verification for Entitlement (or SAVE) program maintained by the United States Customs and Immigration Service (or USCIS) at the time eligibility for UI benefits was determined. The State is not required to reverify the participant’s immigration status unless the documentation used during the initial verification is set to expire during the period the participant is eligible to receive TAA benefits.

Proposed paragraph (c) requires the State to redetermine periodically the eligibility of a noncitizen or national to ensure their continued satisfactory immigration status. The timing of the redetermination is based on the expiration date of materials used during the initial verification process and reverification must be done before the individual’s status expires.

Section 618.884 Special rule with respect to military service.

Proposed § 618.884 codifies the special rule with regard to military service established in sec. 233(i) of the Act. Proposed paragraph (a) provides that a State may

waive any requirement of this part that the State determines is necessary to ensure that an AAW who is a member of a reserve component of the Armed Forces and serves a period of duty described in proposed paragraph (a)(2) is eligible to receive TRA, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty. Proposed paragraph (b) defines period of duty for various classes of military service. Although the Act uses the phrase “may waive,” the Department strongly encourages States to apply this rule broadly to provide service members the most flexible access to the TAA Program allowed by law.

Section 618.888 Equitable tolling.

Proposed § 618.888 originates from administrative guidance. It clarifies that TAA Program deadlines may be equitably tolled and provides the limited circumstances under which equitable tolling may be available. Proposed paragraph (a) sets out a uniform test for determining when equitable tolling is available. It adopts the exacting standards for equitable tolling applied by the U.S. Supreme Court in a variety of contexts. See, e.g., *Menominee Indian Tribe of Wisc. v. United States*, 136 S. Ct. 750, 755 (2016); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

Proposed paragraph (b) sets out a burden-shifting framework for equitable tolling in one unique circumstance—when the State fails to give required notice to a worker of a particular benefit (or potential benefit) and so the deadline for that benefit (or potential benefit) runs without the worker’s knowledge. This circumstance only applies when the particular notice is one expressly required by this part 618. If a worker alleges (or claims) that the State failed to give such required notice, the State can rebut that evidence definitively by showing that the worker received actual notice by other means. Proposed

paragraph (b) acts to emphasize to States the importance of complying with the notice requirements in this part 618. It should not be construed to otherwise lessen or lighten a worker's burden to show entitlement to equitable tolling in other circumstances.

Proposed paragraph (c) explains that a deadline equitably tolled is tolled for as long as the extraordinary circumstance preventing timely filing exists. Once the extraordinary circumstance is removed, then the deadline clock begins ticking again.

Finally, proposed paragraph (d) sets a limit on how long a deadline may be equitably tolled: 36 months. For example, if a deadline were to require the submission of an application by September 15, 2020, but extraordinary circumstances prevented timely submission, the latest the application could possibly be submitted, even with the benefit of equitable tolling, is September 15, 2023. The 36-month limit strikes a balance between, on the one hand, fairness and equity for individual workers and, on the other, the need for clarity and efficiency in the operation of the program as a whole. If equitable tolling were permitted to extend deadlines longer, or indefinitely, at least two adverse consequences would result. First, financial planning for the TAA Program would be more difficult because of potentially large numbers of dormant claims. Second, administration of the program would become more costly as State-level employees and reviewers applied the equitable-tolling test rather than simply accepting or denying claims; the fact-finding difficulties associated with older, stale evidence would compound this problem. All this work would leave fewer resources for workers themselves. The Department seeks comments on the establishment of this limit.

Section 618.890 Staffing flexibility.

Proposed § 618.890 on staffing flexibility amends the current rule at this same section (§ 618.890) to clarify that only certain activities under the TAA Program need to be performed by staff covered by a system meeting Federal merit personnel criteria regardless of whether they are funded by the TAA Program. This is a significant change. The Department has received inquiries in recent years about the applicability of the Federal merit system standards, promulgated by the U.S. Office of Personnel Management (OPM) 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.

The changes give States the freedom to staff employment case management services in the most effective and efficient way, using a combination of State employees, local government employees, contracted services, and other staffing models in the way that makes the most sense for them. This allows States to provide these services in a more seamless manner along with other programs co-located at the American Job Centers. One-size-fits-all merit-personnel-system staffing requirements have been part of the TAA regulations only since 2010, see 75 FR 16988 (Apr. 2, 2010), though they were part of the Governor-Secretary Agreements from 1975 to 2005. Based on program oversight activity and observations of operations at the State and local level, the Department now concludes that States should have the flexibility to use the staffing solutions that are most appropriate for their unique situations. In imposing the staffing requirements in 2010 by regulation, the Department stated that its purpose was promoting consistency, efficiency, accountability, and transparency. See *id.* at 16994–95. The Department values these goals but recognizes that they can be met by approaches other than a requirement mandating

one-size-fits-all merit staffing. This proposed rule fulfills other valuable policy objectives as well. Allowing States flexibility in their administration of the TAA Program gives them the opportunity to innovate, better integrates WIOA services, and may improve efficiency by focusing States on serving employers, workers, and training programs rather than complying with one-size-fits-all staffing requirements. Under the proposed rule, the Department would continue to hold States accountable for complying with their Governor-Secretary Agreements, consistent with the Act and its implementing regulations.

The Act requires States to provide the benefits and services authorized under the Act for trade-affected workers and to secure appropriate services provided through the one-stop delivery system established under WIOA. To avoid imposing barriers to integration of services among the one-stop partner programs, the regulations proposed here allow such services to be provided by State staff, local staff, or other local one-stop center employees. WIOA envisions an integrated workforce development system that provides streamlined service delivery of the WIOA partner programs, including the TAA Program. For services under WIOA's adult, dislocated worker, and youth programs, Congress did not require, nor does the Department require, that they be provided with personnel that meet Federal merit personnel system criteria. States and local areas have discretion in how to staff the provision of WIOA programs and services, and they have adopted a variety of staffing approaches—local-area staff, contractors, and State employees. The specific staffing requirements in the current TAA Program regulations may inhibit full integration of the TAA Program with WIOA's other services. This

proposal, if finalized, would allow States to use the same service-delivery model for both the TAA Program and WIOA.

Some staffing requirements remain. Proposed paragraph (a) provides that the merit staff provisions of SSA apply to the appeals process under applicable State law. This is required by the Act at sec. 239(e) (19 U.S.C. 2311(e)) and also comports with the staffing requirements for State unemployment insurance offices.

Proposed paragraph (b) requires that all determinations on eligibility must be made by State staff, with the exception of the functions in paragraph (a) of this section, which must be carried out by merit staff. This aligns with sec. 239(e) of the Act as well as the staffing requirements for State unemployment insurance offices and ensures access to the appeals process under applicable State law.

Proposed paragraph (c) explains that all other functions under the TAA Program may be carried out using a variety of staffing models. Those models could include State staff under a merit-personnel system, other State staff, local providers, one-stop partners, or a combination of these solutions.

The Department has concluded that it is authorized to provide States this flexibility. When imposing the staffing requirements in 2010, the Department stated that “promulgation of the merit staffing rule is within the discretionary authority delegated to it to interpret the Trade Act and administer the TAA program.” 75 FR 16988, 16990. The Department also noted that “the Trade Act does not directly address merit staffing; the legislative history is ambiguous, and for 30 years Congress did not expressly repudiate the Department’s longstanding interpretation of the Trade Act as requiring merit staffing.” *Id.* The Department also relied on the Federal district court decision in

Michigan v. Herman, 81 F. Supp. 2d 840 (W.D. Mich. 1998), a case construing the staffing requirements under the Wagner-Peyser Act. There, the court held that the Department's interpretation of the Wagner-Peyser Act as requiring merit-personnel staffing was "reasonable and permissible," but also observed that "there is ample basis for a conflicting interpretation of the Wagner-Peyser Act's requirements." *Id.* at 848.

The Department recognized then that it had discretion to impose staffing requirements in the absence of a clear congressional mandate in one direction or the other. By the same token, the Department has discretion to remove those staffing requirements. It proposes to do so here for the reasons described above.

This means that TAA Program funding may be used to pay for employment and case management services rendered by State merit staff, State staff, and non-State staff, such as local providers, one-stop partners, and so on. The NPRM would require all determinations on eligibility for program benefits be approved by State staff.

Section 618.894 Nondiscrimination and equal opportunity requirements.

Proposed § 618.894 has no corresponding section in 20 CFR part 617 and addresses the applicability of the nondiscrimination and equal opportunity requirements contained in 29 CFR parts 31, 32, 35, 36, and 38.

Proposed paragraph (a) notifies States and subrecipients of financial assistance under the TAA Program that, as recipients of Federal financial assistance, they are subject to the requirements of 29 CFR parts 31, 32, 35, and 36, which set forth prohibitions relating to discrimination.

Proposed paragraph (b) notifies States and subrecipients of financial assistance under the TAA Program of the circumstances under which they are subject to 29 CFR

part 38, which implements the nondiscrimination and equal opportunity provisions in sec. 188 of WIOA. It states that WIOA nondiscrimination regulations apply to States and subrecipients that operate their TAA programs and activities “as part of the one-stop delivery system” as provided in 29 CFR 38.2(a)(2). Since States and entities that carry out “activities authorized under chapter 2 of title II of the Trade Act of 1974” (29 U.S.C. 3151(b)(1)(B)(vii)) are required one-stop partners, WIOA nondiscrimination regulations apply to them “to the extent that the programs and activities are being conducted as part of the one-stop delivery system” (29 CFR 38.2(a)(2)). Coverage under this provision is not limited to States or subrecipients that colocate their operations in a one-stop center. Proposed paragraph (b)(2) notifies States and subrecipients they are also subject to 29 CFR part 38 if they otherwise meet the definition of “recipient” in that part.

Proposed paragraph (c) directs those with questions about the cited nondiscrimination provisions to the Department’s Civil Rights Center.

Proposed paragraph (d) explains how the cited nondiscrimination provisions affect the applicability of any other Federal nondiscrimination laws, or any relevant State or local laws, to the TAA Program. Proposed paragraph (d)(1) provides that proposed § 618.894 does not affect any rights regarding, or protections against, discrimination provided by other Federal laws. Proposed paragraph (d)(2) likewise provides that proposed § 618.894 does not affect any rights regarding, or protections against, discrimination provided by other State and local laws, except as described in paragraph (d)(3). Finally, paragraph (d)(3) prohibits States from engaging in discrimination that is prohibited by 29 CFR parts 31, 32, 35, 36, and 38 (as applicable) in the areas pertaining to the TAA Program: the reception of aid, benefits, services, training or employment;

participation in TAA programs and activities; employment at a State; and practice in any occupation or profession. A State or local antidiscrimination law is incompatible if it, among other examples, provides less protection to an individual than that provided by 29 CFR part 31, 32, 35, 36, or 38; if it permits favoritism prohibited by those parts; or if it does not provide an exception to antidiscrimination law provided by those parts.

Section 618.898 Applicable State law.

Proposed § 618.898 is substantially the same as 20 CFR 617.16 and eliminates only minor outdated citations and 20 CFR 617.16(e) describing liable State, which has been incorporated into proposed § 618.824. The term “applicable State law” has been defined in proposed subpart A rather than in this proposed section. The separate paragraph addressing workers entitled to UI under the Railroad Unemployment Insurance Act in 20 CFR 617.16(d) is also proposed for removal because it has been incorporated into the proposed definition of “applicable State law” in § 618.110.

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

Proposed subpart I revises the regulations currently found at 20 CFR 618.900 through 618.940. The Department first published these regulations on April 2, 2010 (75 FR 16988); they became effective May 3, 2010. The proposed updates in this NPRM reflect subsequent statutory revisions and policy updates. Subpart I addresses the Act’s provisions at secs. 236(a)(2) and 245 and establishes how funds appropriated for TaOA are allocated by the Department to the States. Some highlights of changes to the regulation include introduction of a new term, TaOA; a statutory update of the annual funding limit; and an update to the reserve fund request process. This proposed subpart

also addresses the recapture and reallocation provisions established by sec. 245(c) of the Act.

Section 618.900 Annual cap on funds available for Training and Other Activities.

Proposed § 618.900 is revised to remove the introductory sentence and include additional revisions to the existing rule at 20 CFR 618.900, as discussed below. Proposed § 618.900(a) summarizes what services may be paid under the funding, and introduces a new term, “Training and Other Activities,” and its acronym, TaOA, both of which refer to the benefits and services described in secs. 235 through 238 of the Act. TaOA benefits and services are: employment and case management services, training, job search and relocation allowances, and related State administration. Since sec. 236(a)(2)(A) of the Act was amended by TAAEA, and retained in TAARA 2015, to provide that the annual cap applies to funding for TaOA, not just to training under sec. 236, this new term is adopted to include these additional benefits and services. The phrase “payments that may be made” in the existing rule at 20 CFR 618.900 is replaced by “funds made available,” to accord with the language of sec. 236(a)(2)(A) of the Act. This section is also updated to reflect TAARA 2015’s annual funding limit of \$450,000,000 for FYs 2015 through 2021.

Proposed § 618.900(b) is new and explains the statutory period of availability of funds set out at sec. 245(b) of the Act. Funds allocated to States under the TAA Program for TaOA can be spent in the fiscal year awarded and the next 2 fiscal years, for a maximum altogether of 3 fiscal years.

Section 618.910 Initial allocation of funds.

Proposed § 618.910 updates the language in the existing rule at 20 CFR 618.910 to reflect statutory changes and minor grammatical corrections and other clarifications. These changes primarily relate to indicating, consistent with proposed § 618.900(a), that the annual funding cap in sec. 236(a)(2)(A) of the Act applies to TaOA, not only to the training services described in sec. 236. Proposed § 618.910(a) through (f)(1) contain nonsubstantive changes to enhance the readability of the section.

Proposed § 618.910(f)(2) moves into a separate paragraph the first sentence of the existing rule at 20 CFR 618.910(f)(3) giving each of the four factors listed in proposed paragraphs (f)(1)(i) through (iv) equal weight. Proposed § 618.910(f)(3) retains the rest of the existing rule at 20 CFR 618.910(f)(3) but removes the word “weighted” in referring to the factors.

The existing rules at 20 CFR 618.910(f)(2) and (4) are both removed. However, under its authority at sec. 236(a)(2)(C)(ii)(V) of the Act, the Department may, through promulgation of changes to the rule, adjust the weights provided in proposed paragraph (f)(2), or add additional factors. Any needed changes to the formula in the future can be done through rulemaking, which will benefit from the views of the public and the procedural safeguards of the notice-and-comment process.

Section 618.920 Reserve fund distributions.

Proposed § 618.920 describes the reserve fund request process established by sec. 236(a)(2)(D). Proposed § 618.920(a) updates the existing rule at 20 CFR 618.920(a) by removing the language that restricts a State from receiving additional funds for administrative costs or employment and case management costs without also requesting additional funds for training. Funds are not awarded by the Department against these

specific line items, so there is no way for the Department to award funds in this manner. Furthermore, the statutory limitation on administrative cost, established by sec. 235A(1) of the Act, always applies.

The existing rule at 20 CFR 618.920(b) is divided into proposed § 618.920(b) and (c) for organizational purposes. There are minor edits in the NPRM, as well as a reference to TaOA instead of training funds. There are no substantive changes to the existing rule at 20 CFR 618.920(b).

Section 618.930 Second distribution.

Proposed § 618.930 updates the existing rule at 20 CFR 618.930 regarding the second distribution of TaOA funds, by changing the reference from training funds to TaOA funds, and makes other minor language clarifications and organizational changes.

Section 618.940 Insufficient funds.

Proposed § 618.940 modifies the existing rule at 20 CFR 618.940 to include the expanded list of benefits and services in addition to training for which funds may be expended. The Department will communicate by administrative guidance to States as necessary regarding the continued operation of the TAA Program if the Department determines that there are insufficient funds available for the remainder of a fiscal year. The intent of the existing rule at 20 CFR 618.940 is unchanged.

Section 618.950 Recapture and reallocation of Training and Other Activities funds.

Proposed § 618.950 is new and provides the description of recapture and reallocation procedures that the Department may use to implement the recapture and reallocation provisions of sec. 245(c) of the Act. Although the Department is including

this provision in the NPRM, this is an extreme action that will only be taken in the event of a catastrophic event. This will not be an annual process.

Consistent with sec. 245(c) of the Act, proposed § 618.950(a)(1) provides that funds remaining unobligated at the end of the second or third fiscal year after the funds were provided to the State may be recaptured. Proposed § 618.950(a)(2) provides that those recaptured funds may be reallocated in accordance with the procedures established in this section of the NPRM.

Proposed § 618.950(b) sets out the circumstances under which the Department may recapture and reallocate funds. The Department may recapture and reallocate unobligated funds when it is determined there are, or are projected to be, insufficient funds in a State or States to carry out TaOA for a fiscal year, or when the recapture and reallocation of funds would likely promote the more efficient and effective use of funds among the States. The Department concludes these procedures provide the necessary flexibility to promote sound financial practices, and use the limited available funds most effectively, by directing unobligated funds that are not likely to be spent to those States that are more in need of such funds in order to continue to provide program services.

Proposed § 618.950(c) and (d) provide the methodology that will be used during the recapture and reallocation process. If the Department determines that there are, or are projected to be, insufficient funds in a State or States to carry out TaOA for a fiscal year, proposed § 618.950(c) allows the Department to recapture unobligated funds from the State or States with the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the year in which the funds were awarded, and reallocate them to the States with, or projected to have, insufficient funds.

Proposed § 618.950(d) allows the Department to recapture funds from the State or States with the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the year in which the funds were awarded, and reallocate them to the States with the lowest percentage of unobligated or unexpended funds or to all States from which funds are not being recaptured.

Proposed § 618.950(e) provides that if the Department determines to recapture and reallocate funds under this section, an administrative notice must be sent to the States describing the methodology used and the amounts to be recaptured from and reallocated to each affected State not less than 15 business days in advance of the recapture of funds.

Lastly, proposed § 618.950(f) makes clear that the reallocation of funds under this section does not extend the period of availability for those funds.

Neither 20 CFR part 617 nor 20 CFR part 618 discuss funding for TRA or RTAA. This NPRM does not provide regulatory text for TRA or RTAA funding since those allocations are made through the Department's administration of the UI Program. The one exception, as provided by sec. 235A(1)(C) of the Act, and addressed in proposed subpart H, involves the use of TAA Program funds for the administration of RTAA.

V. Agency Determinations

A. Legal Authority

The Trade Act of 1974 (Pub. L. 93-618), title II, chapter 2, established the programs collectively known as the Trade Adjustment Assistance Program (TAA Program) (codified at 19 U.S.C. 2271 et seq.). This statute has been amended many times since its enactment, including multiple amendments since 2002 that have substantially affected the TAA Program (e.g., Pub. L. 107-210 (2002); Pub. L. 111-5 (2009); Pub. L.

112-40 (2011); Pub. L. 114-27 (2015)). The Department's existing regulations under the Act, codified at 20 CFR parts 617 and 618, and 29 CFR part 90, have not been fully updated in response to the various statutory amendments to the Act. As a result, some portions of the existing regulations may not reflect current law. Section 248(a) of the Act (19 U.S.C. 2320(a)) requires that the Department prescribe such regulations as are necessary to carry out the provisions of the Act. Therefore, the Department seeks to develop and issue an NPRM that proposes to update and consolidate the existing regulations in order to fully implement all statutory amendments to the TAA Program.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563
(Improving Regulation and Regulatory Review), and 13771 (Reducing
Regulation and Controlling Regulatory Costs)

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set

forth in the E.O. Id. Based on the analysis below, this NPRM is not an economically significant regulatory action under sec. 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This NPRM is expected to be an E.O. 13771 deregulatory action, because the cost savings associated with the rule are larger than the anticipated costs of the rule. Costs associated with the rule are from rule familiarization, the development of IEPs for trade-affected workers seeking training or job search allowances, and the implementation of two IC forms. Cost savings associated with the rule are from revisions to the definition of “final determination” related to judicial appeals and from streamlining the reconsideration process.

Outline of the Analysis

Section V.B.1 describes the need for the NPRM, and section V.B.2 describes the process used to estimate the costs of the NPRM and the general inputs used such as wages and number of affected entities. Section V.B.3 explains how the provisions of the NPRM would result in quantifiable costs, cost savings, and transfer payments, and

presents the calculations the Department used to estimate them. In addition, section V.B.3 describes the qualitative costs, transfer payments, and benefits of the NPRM. Finally, section V.B.4 summarizes the estimated first-year and 10-year total costs, cost savings, net cost savings, and transfer payments of the NPRM. Section V.B.5 describes the regulatory alternatives that were considered during the development of the NPRM.

Summary of the Analysis

The Department estimates that the NPRM would result in costs, cost savings, and transfer payments. As shown in Exhibit 1, the NPRM is expected to have an average annual cost of \$5,952 and a total 10-year cost of \$46,383 (with 7-percent discounting). The NPRM is estimated to have annual cost savings of \$79,654 and total 10-year cost savings of \$559,456 (with 7-percent discounting). Cost savings associated with the rule are from revisions to the definition of “final determination” related to judicial appeals and from streamlining the reconsideration process. In addition, the NPRM is estimated to result in annual transfer payments of \$564,257 and total 10-year transfer payments of \$3,963,105 (with 7-percent discounting). The Department estimates that the NPRM would result in net cost savings of \$626,333 discounted at 3 percent and \$513,073 discounted at 7 percent, both expressed in 2018 dollars. For the purpose of E.O. 13771, the annualized net cost savings in 2016 dollars, when perpetuated, is \$71,434 discounted at 7 percent.¹²

¹² Based on OMB’s E.O. 13771 guidance memo, M-17-21, perpetuated net cost savings for the purposes of E.O. 13771 are presented in 2016 dollars. Net cost savings in 2018 dollars are converted to 2016 dollars using the GDP deflator from the Bureau of Economic Analysis. BEA. (2019). “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.” Retrieved from: https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&select_all_years=0&nipa_table_list=13&series=a&first_year=2000&scale=-99&last_year=2019&categories=survey&thetable=x.

Exhibit 1: Estimated Monetized Costs, Cost Savings, Net Cost Savings, and Transfer Payments of the NPRM (2018 dollars)				
	Costs	Cost Savings	Net Cost Savings^a	Transfer Payments
Undiscounted 10-Year Total	\$59,523	\$796,540	\$737,017	\$5,642,570
10-Year Total with 3% Discounting	\$53,132	\$679,465	\$626,333	\$4,813,227
10-Year Total with 7% Discounting	\$46,383	\$559,456	\$513,073	\$3,963,105
10-Year Average	\$5,952	\$79,654	\$73,702	\$564,257
Annualized with 3% Discounting	\$6,229	\$79,654	\$73,425	\$564,257
Annualized with 7% Discounting	\$6,604	\$79,654	\$73,050	\$564,257
Perpetuated Net Cost Savings ^a with 7% Discounting (2016 dollars)		\$71,434		

^aNet Cost Savings = [Total Cost Savings] – [Total Costs]

The costs of the NPRM are those associated with State staff needing to familiarize themselves with the new regulations, the development of IEPs for trade-affected workers, and the implementation of two IC forms (i.e., ETA Form 8561, Study of Domestic Industry, and ETA Form 9185, Application for Reconsideration). The largest contributors to the cost savings of the NPRM are from revisions to the definition of “final determination” related to judicial appeals and from streamlining the reconsideration process. See the cost and cost savings subsections of section V.A.3 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify one cost, three transfer payments, and the benefits of the NPRM. We describe these costs and transfer payments, along with the rule benefits, qualitatively in section V.A.3 (Subject-by-Subject Analysis).

1. Need for Regulation

On June 29, 2015, the Trade Preferences Extension Act of 2015 (Pub. L. 114-27) was signed into law. Title IV reauthorizes the TAA for Workers program through 2021; it is known as TAARA 2015.

The regulations governing the current TAA Program were last updated in 1994, with only minor changes made in 2007¹³ and 2010. Since that time, multiple TAA Program reauthorizations and amendments have occurred. In addition, a recent reauthorization and reform of the public workforce system, WIOA (Pub. L. 113-128), reaffirms the TAA Program as a mandatory partner program in the one-stop delivery system.

The Department has addressed all TAA Program reauthorizations and amendments through administrative guidance. As a result, a combination of regulations and a patchwork of administrative guidance guides the worker-group certification process at the Federal level and the administration of individual benefits and services at the State level.

The NPRM would promote transparency by setting out in binding regulation the major principles by which the TAA Program operates, and they would provide the public and courts with the Department's authoritative interpretation of the Act. The NPRM would also include changes that increase States' flexibility to administer the program,

¹³ Minor changes were made to 29 CFR part 90.

improve service delivery, and reduce costs. In addition, the NPRM would incorporate clarifications that draw upon the Department's expertise gained from decades of experience operating the TAA Program.

Through the NPRM, the Department seeks to modernize its TAA Program regulations to reflect changes to the workforce, technology, and the administration of the program that have occurred since the Department's last comprehensive update to the regulations in 1994. The Department also seeks to consolidate all applicable program regulations into a single section of the CFR.

The goal of the TAA Program is to help each participating worker obtain, as quickly as possible, suitable employment when possible and unsuitable employment otherwise. This goal will be accomplished by providing trade-affected workers access to training that will allow workers to compete for work at the highest skill levels and highest wages achievable, given the workers' preexisting skill levels, abilities, and education, and the current and projected labor market, and do so as quickly as possible. The TAA Program includes the RTAA benefit, which may be available to workers 50 years of age or older. The TAARA 2015 reauthorization and amendment of the TAA Program restored the major expansions in TAA worker group eligibility to service sector workers and workers who are affected by trade from any country, including countries that do not have Free Trade Agreements with the United States, including China and India.

2. Analysis Considerations

The Department estimated the costs, cost savings, and transfer payments of the NPRM relative to the existing baseline, that is, the current practices for complying with, at a minimum, the TAA Program as currently codified at 20 CFR parts 617 and 618, and

29 CFR part 90, as well as in administrative guidance.¹⁴ The Department explains how the required actions of States, government agencies, and other related entities were linked to the expected costs, cost savings, transfer payments, and benefits.

In accordance with the regulatory analysis guidance articulated in OMB Circular A-4 and consistent with the Department’s practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the NPRM (i.e., costs, cost savings, transfer payments, and benefits that accrue to entities affected). The analysis covers 10 years (2019 through 2028) to ensure it captures major costs, cost savings, and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2018 dollars and uses 3-percent and 7-percent discounting following OMB Circular A-4.

Exhibit 2 presents the number of entities that would be affected by the requirements of the NPRM. The Department provides these estimates and uses them throughout this analysis to estimate the costs, cost savings, and transfer payments of the NPRM.

Exhibit 2: Number of Affected Entities by Type^a	
Entity Type	Number
States (total) ^b	52
Additional trade-affected workers that will require an IEP due to a comprehensive and specialized assessment (annual) ^c	23
Number of firms that will participate in domestic industry study each year (annual) ^d	12

¹⁴ Current TEGLs related to the TAA Program can be found at <https://www.doleta.gov/tradeact/law/directives-guidance/>.

Exhibit 2: Number of Affected Entities by Type^a	
Entity Type	Number
Number of applications for reconsideration submitted each year (annual)	25

^a Unless otherwise noted, the number of affected entities was obtained from Trade Act Participant Report (TAPR) – State quarterly reporting and record keeping information; Management Information System (MIS) – OTAA’s petition database. Data as of December 5, 2017.

^b The 52 States used for purposes of this analysis consist of the 50 States, the District of Columbia, and Puerto Rico.

^c The Department derived this number by taking the average of the annual number of individuals who received training, job search, or relocation allowances (i.e., program exiters) in FY 2013 through FY 2017.

^d Since 1998, the Department has conducted three domestic industry studies. However, for purposes of this analysis, the Department estimates that it will conduct one study per year.

Estimated Number of Workers and Level of Effort¹⁵

The Department presents the estimated average number of trade-affected workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. To derive these estimates, Department TAA Program experts estimated the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (i.e., the current practice under the TAA Program). These estimates are the national averages for all States; thus, some States could experience higher actual costs, cost savings, or transfer payments, while these impacts could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Department presents the labor and other costs associated with the implementation of the provisions of the NPRM. Exhibit 3 presents the compensation rates for the occupational categories expected to experience a change in the level of effort (workload) due to the NPRM. We use Bureau of Labor

¹⁵ Trade Act Participant Report (TAPR) – State quarterly reporting and record keeping information; Management Information System (MIS) – OTAA’s petition database. (2017). Unpublished data.

Statistics (BLS) mean hourly wage rates for State government and private sector employees.^{16 17 18} We use OPM and U.S. courts wage rates for Federal employees.^{19 20} We adjust the wage rates to reflect total compensation, which includes nonwage factors such as overhead²¹ and fringe benefits (e.g., health and retirement benefits). For the State government employees, we use an overhead rate of 41 percent and a fringe benefits rate of 59 percent. The fringe benefits rate is derived from the ratio of average total

¹⁶ BLS. (2019). “May 2018 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999200 – State government, excluding schools and hospitals (OES designation).” Retrieved from: http://www.bls.gov/oes/current/naics4_999200.htm. The May 2018 mean hourly wages were adjusted to December 2018 values using Employment Cost Indices (ECI) for State and local government workers. ECI data were obtained from “Table 7. Employment Cost Index for total compensation, for State and local government workers, by occupation and industry (not seasonally adjusted).” BLS. (2019). “Employment Cost Index Historical Listing – Volume V, Continuous Occupational and Industry Series, September 1975-March 2019 (December 2005=100).” Retrieved from: <https://www.bls.gov/web/eci/ecicois.pdf>.

¹⁷ BLS. (2019). “May 2018 National Occupational Employment and Wage Estimates by Ownership: Cross-industry, private ownership only: SOC Major Groups in Cross-industry, private ownership only (OES designation).” Retrieved from: <https://www.bls.gov/oes/current/000001.htm>. The May 2018 mean hourly wages were adjusted to December 2018 values using Employment Cost Indices (ECI) for private industry workers. ECI data were obtained from “Table 5. Employment Cost Index for total compensation, for private industry workers, by occupation and industry, Continuous occupational and industry series (not seasonally adjusted).” BLS. (2019). “Employment Cost Index Historical Listing – Volume V - Continuous Occupational and Industry Series, September 1975-March 2019 (December 2005=100).” Retrieved from: <https://www.bls.gov/web/eci/ecicois.pdf>.

¹⁸ ETA Form 9185 (Application for Reconsideration) may be filed by a company official, a union representative, two workers, or a State. To estimate the average hourly wage rate for the person completing ETA Form 9185, the Department used a weighted-average based on the percent of petitioners by type (in FY 2017) and the corresponding hourly rate: (1) company/union officials account for 21% of petitioners at an hourly labor wage rate of \$60.60 per hour; (2) workers account for 17% of petitioners at an hourly labor wage rate of \$24.71 per hour; (3) States account for 62% of petitioners at an hourly labor wage rate of \$24.96 per hour. This calculation results in a weighted average resulted of \$32.40 ($[0.21 \times \$60.60] + [0.17 \times \$24.71] + [0.62 \times \$24.96]$).

¹⁹ Office of Personnel Management (OPM). (2018). “Salary Table 2018-DCB Incorporating the 1.4% General Schedule Increase and a Locality Payment of 28.22% for the Locality Pay Area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA.” Retrieved from: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf. Federal employee wage rates are used to estimate cost savings associated with reconsiderations and judicial appeals. Because these two processes are conducted by Headquarter staff, the Department uses DC-MD-VA-WV-PA wage rates to estimate labor costs.

²⁰ U.S. Courts. (2019). “Judicial Compensation.” Retrieved from: <http://www.uscourts.gov/judges-judgeships/judicial-compensation>.

²¹ The Department derived these overhead factors based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

compensation²² to average wages and salaries in 2018.²³ For the private sector employees, we use an overhead rate of 57 percent and a fringe benefits rate of 43 percent.²⁴ The fringe benefits rate is derived from the ratio of average total compensation²⁵ to average wages and salaries in 2018 for the private sector.²⁶ For the Federal Government, we use an overhead rate of 37 percent²⁷ and a fringe benefits rate of 63 percent.²⁸ We then multiply the loaded wage factor by the corresponding occupational category wage rate to calculate an hourly compensation rate.

The Department uses the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

Exhibit 3: Compensation Rates (2018 dollars)				
Position	Grade Level	Average Hourly Wage	Loaded Wage Factor Components	Hourly Compensation Rate

²² BLS. (2019). “2018 Employer Costs for Employee Compensation.” Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Total compensation for all workers. Average Series ID CMU3010000000000D, CMU3010000000000P. To calculate the average total compensation in 2018, we averaged the total compensation for all workers for Quarters 1 through 4.

²³ BLS. (2019). “2018 Employer Costs for Employee Compensation.” Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Wages and salaries for all workers. Average Series ID CMU3020000000000D, CMU3020000000000P. To calculate the average wage and salary in 2018, we averaged the wages and salaries for all workers for Quarters 1 through 4.

²⁴ The Department derived this overhead factor based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

²⁵ BLS. (2019). “2018 Employer Costs for Employee Compensation.” Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Total compensation for all workers. Average Series ID CMU2010000000000D, CMU2010000000000P. To calculate the average total compensation in 2018, we averaged the total compensation for all workers for Quarters 1 through 4.

²⁶ BLS. (2019). “2018 Employer Costs for Employee Compensation.” Retrieved from: <https://www.bls.gov/ncs/ect/data.htm>. Wages and salaries for all workers. Average Series ID CMU2020000000000D, CMU2020000000000P. To calculate the average wage and salary in 2018, we averaged the wages and salaries for all workers for Quarters 1 through 4.

²⁷ The Department derived this overhead factor based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

²⁸ Department of Labor. (2018). “DOL-Only Performance Accountability, Information, and Reporting System; OMB Control No. 1205-0521.” Retrieved from: https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201802-1205-003.

		Rate	Overhead Factor	Fringe Benefits Factor	
		a	b	c	$d = a + (a \times b) + (a \times c)$
Private Sector Employees					
Employment Counselor	N/A	\$21.79	0.57	0.43	\$43.58
Attorney		\$74.49			\$148.98
Individual Completing ETA Form 8561, Domestic Industry Study		\$60.60			\$121.20
Individual Completing ETA Form 9185, Application for Reconsideration		\$32.40			\$64.80
State Government Employees					
Employment Counselor	N/A	\$24.96	0.40	0.60	\$49.92
Attorney		\$45.20			\$90.40
Federal Government Employees					
Investigator	GS-11, Step 5	\$36.95	0.37	0.63	\$73.90
Certifying Officer	GS-14, Step 5	\$62.23			\$124.46
Attorney	GS-14, Step 7	\$65.89			\$131.78
District Court Clerk	GS-13, Step	\$36.36			\$72.72
District Court Judge	N/A 1	\$100.00			\$200.00

Transfer Payments

The Department provides an assessment of transfer payments associated with the NPRM. In accordance with OMB Circular A-4, we consider transfer payments as payments from one group to another that do not affect total resources available to society.

3. Subject-by-Subject Analysis

The Department's analysis below covers the expected costs, cost savings, and transfer payments of the NPRM.

The Department emphasizes that many of the provisions in the NPRM are existing requirements in regulation, statute, or administrative guidance. The NPRM would codify these practices under one set of regulations and, therefore, they are not considered "new" burdens resulting from the NPRM. Accordingly, the regulatory analysis focuses on new costs, cost savings, and transfer payments that can be attributed exclusively to the NPRM.

Costs

The following sections describe the costs of the NPRM.

Quantifiable Costs

a. Rule Familiarization

When the NPRM takes effect, State staff will need to read and interpret the regulations. Through this review, State staff will familiarize themselves with the structure of the new regulation. Based on previous experience on similar rulemaking efforts, the Department anticipates that non-legal (program) staff will review the new regulations during the first year to identify any new provisions relevant to their operations. The Department also anticipates that legal staff will review the new regulations during the second year, as denials and other legal issues need to be resolved. As a result, reviewing the new regulation will impose an initial one-time cost in each of the first 2 years.

To estimate the first year cost of rule familiarization, the Department multiplied the number of States (52) by the estimated number of non-legal staff that will conduct the

activity (2 State employment counselors). The Department then multiplied this product by the amount of time required to review the rule (2 hours) and by the hourly compensation rate (\$49.92 per hour). This calculation results in a one-time undiscounted cost of \$10,383 in the first year of the NPRM.

In the second year, the Department estimates that two-thirds of the States will have legal staff review the rule. Therefore, to calculate the one-time cost of rule familiarization in the second year, the Department multiplied the number of States (52) by two-thirds ($2/3$ or 0.67) and by the estimated number of legal staff conducting the activity (2 State attorneys). The Department then multiplied this product by the amount of time required to review the rule (2 hours), and by the hourly compensation rate (\$90.40 per hour). This calculation results in a one-time undiscounted cost of \$12,656 in the second year of the NPRM.

The sum of these first- and second-year one-time costs yields a total average annual undiscounted cost of \$2,304. The total costs over the 10-year period are estimated at \$23,039 undiscounted, or \$22,010 and \$20,758 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$2,580 and \$2,956 at 3- and 7-percent discount rates, respectively.

b. Development of IEPs for Trade-Affected Workers Seeking Training or Job Search Allowances

Under proposed § 618.350(a), States must make available an IEP to all trade-affected workers and establish an IEP for trade-affected workers who apply for training under subpart F, or AAWs who apply for a job search allowance under subpart D, prior to the worker receiving those benefits and services. An IEP is an individualized career

service under WIOA sec. 134(c)(2)(A)(xii)(II) and is developed jointly by the WIOA program participant and career planner when determined appropriate by the one-stop center or one-stop partner. The IEP is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of service for the participant to achieve their employment goals. To ensure efficient use of time and resources, the Department is proposing that, if an IEP has been developed under WIOA, or other partner program, it will be reviewed once the participant becomes a trade-affected worker to ensure it has certain components required by the TAA Program, as listed in proposed § 618.350(c). If the IEP does not contain all required components, the IEP must be supplemented by the State in conjunction with the trade-affected worker to ensure it is fully compliant with the TAA Program requirements.

Based on program data, the Department estimates that, each year, States will need to develop or supplement IEPs for 23 trade-affected workers²⁹ that apply for training and job search allowances and do not yet have an IEP or whose IEP does not contain all of the required components.

To estimate the costs associated with developing or supplementing IEPs, as a result of requiring IEPs for training and job search allowance applicants, the Department multiplied the estimated number of affected trade-affected workers (23) by the cost per IEP (\$24.96).³⁰ This calculation results in an annual undiscounted cost of \$574. The total cost over the 10-year period is estimated at \$5,740 undiscounted, or \$4,896 and \$4,032 at

²⁹ The Department derived this number by calculating the average of the annual number of individuals who received training, job search, or relocation allowances (i.e., program exiters) in FY 2013 through FY 2017.

³⁰ The cost per IEP is estimated by multiplying the hourly compensation rate of a State employment counselor (\$49.92 per hour) by the time spent developing the IEP (0.50 hours), resulting in a cost estimate of \$24.96.

3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$574 at both 3- and 7-percent discount rates.

c. Other Quantifiable Costs

Other quantifiable costs of the NPRM stem from the implementation of two IC forms: (1) ETA Form 8561, Study of Domestic Industry; and (2) ETA Form 9185, Application for Reconsideration.

The Department is reactivating ETA Form 8561 A/B/C, Standard Questionnaire for Manufacturing Firms, by revising it as ETA Form 8561, Study of Domestic Industry. The Department will use ETA Form 8561 to collect information from firms within an industry subject to an investigation by the International Trade Commission under sec. 202 of the Act. The Department then will use the information collected to produce a report for the President, as required under sec. 224 of the Act. The report will contain information on the number of workers in the domestic industry producing the like, or directly competitive, article who have been, or are likely to be, certified as eligible for adjustment assistance, and the extent to which the adjustment of such workers to the import competition may be facilitated using existing programs. The Department anticipates conducting one industry study per year, and that each firm will submit one response. To estimate the costs associated with the implementation of ETA Form 8561, the Department multiplied the number of firms that will participate in each industry study (12) by the amount of time required to complete the form (1 hour) and by the hourly compensation rate (\$121.20 per hour). This calculation results in an annual undiscounted cost of \$1,454.

The Department is also implementing a new form: ETA Form 9185, Application for Reconsideration. ETA Form 9185 standardizes the information required by regulations for an aggrieved party to seek administrative reconsideration of a termination of investigation, termination or partial termination of a certification, or a negative determination of a petition. To estimate the costs associated with this form, the Department multiplied the estimated number of applications that will be submitted each year (25) by the amount of time required to complete the application (1 hour) and by the hourly compensation rate (\$64.80 per hour). This calculation results in an annual undiscounted cost of \$1,620.

The sum of these costs yields a total annual undiscounted cost of \$3,074. The total cost over the 10-year period is estimated at \$30,744 undiscounted, or \$26,225 and \$21,593 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is \$3,074 at both 3-and 7-percent discount rates.

Nonquantifiable Costs

a. Criteria for Certification of Worker Groups

Proposed § 618.225 substantially updates 29 CFR 90.16(b) to describe the criteria the Department uses to certify worker groups, which has expanded significantly under sec. 222 of the Act. It also identifies factors under consideration in determining whether a criterion has been met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used. The proposed new provisions reflect the requirements of the Act, existing Departmental practices, and, in some instances, thresholds for select criteria. The proposed provision also includes teleworkers and staffed workers because they are frequently performing the

same work as other trade-affected workers in the subject firm or subdivision and are under the subject firm's control.

As a result of this proposed change, the Department will need to spend de minimis time to update forms. The Department has no data to determine if the number of applications that will be submitted would change and, therefore, cannot quantify any potential cost related to a change in the number of applications due to this proposed change.

Cost Savings

The following sections describe the cost savings of the NPRM.

Quantifiable Cost Savings

a. Reconsideration

Currently, the process for reconsiderations (29 CFR 90.18) has two steps. Applicants request a reconsideration, and the Department either accepts or denies the request. Acceptance or denial results in a posting to the *Federal Register* and a notification to the applicant. If accepted, the reconsideration process begins, and a decision is reached. If denied, the petitioner likely will appeal to the USCIT.

The Department proposes to eliminate the step requiring the certifying officer to make and issue a determination on whether or not a reconsideration will be initiated (29 CFR 90.18(c)). The Department concluded that eliminating this step would decrease time and burden, and simplify the process.

Under the new process in proposed § 618.245, the Department will initiate an investigation on all valid reconsideration applications, conduct the required review, and post the results via the *Federal Register* and the Department's website. Although this new

process will not eliminate reconsiderations, the Department estimates that it will reduce the processing time involved for all reconsiderations by approximately 33 percent, as there will be no initial review of the request or related notification. Thus, under the new process, the cost per reconsideration will be 67 percent of the cost under the current process. The Department estimates that the cost per reconsideration under the current process is \$1,857.³¹ Under the new process, the Department estimates that the cost per reconsideration will be \$1,244 ($0.67 \times \$1,857$ per reconsideration). Under the current and revised processes, approximately 25 reconsiderations are filed per year, and the Department concludes that will not change. To estimate the cost savings associated with this proposed change, the Department subtracted the cost per reconsideration under the new process (\$1,244) from the cost per reconsideration under the current process (\$1,857) and then multiplied by the number of reconsiderations filed per year (25). This

³¹ The Department estimates the cost to process a reconsideration based on the cost to process a full petition due to data availability. The Department estimates that the cost to process a reconsideration under the current process is 86 percent of the cost to process a full petition. This estimate is based on an average of 60 days to process a reconsideration compared to a median of 70 days to process a full petition ($60 / 70 = 86$ percent).

The Department estimates an investigator spends 100 percent of their time, or 2,080 hours, processing petitions. The investigator processes 100 petitions per year. Therefore, the cost per petition for an investigator to process is estimated by multiplying the hourly compensation rate (\$73.90 per hour) by the hours they work per year (2,080 hours) and dividing by the number of petitions processed per year (100 petitions per year). This results in a cost per petition for an investigator of \$1,537. The Department estimates a certifying officer manager spends 75 percent of their time (1,560 hours) and a nonmanager certifying officer spends 100 percent of their time (2,080 hours) processing petitions. Certifying officers process an estimated 376 full petitions per year. Based on this data, a manager certifying officer spends 4 hours per petition ($1,560 / 376$) and a nonmanager certifying officer spends 6 hours per petition ($2,080 / 376$). The Department uses an average of nonmanager and manager hours per petition to estimate the average certifying officer's time to process a petition (5 hours). To estimate the cost per petition for a certifying officer, the Department multiplied the hourly compensation rate (\$124.46 per hour) by the number of hours spent processing a full petition (5 hours). This results in a cost per petition for a certifying officer of \$622.

The Department, therefore, estimates the full cost of processing a full petition as the sum of the cost for an investigator to process a petition and the cost for a certifying officer to process a petition. Summing these costs results in an estimated cost of \$2,159 to process a petition. The cost per reconsideration is, therefore, estimated as \$1,857 based on the cost per reconsideration being 86 percent of the cost of processing a full petition.

yields an average annual undiscounted cost savings of \$15,325. The total cost savings from the new reconsideration process over the 10-year period is estimated at \$153,250 undiscounted, or \$130,725 and \$107,636 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$15,325 at both 3- percent and 7-percent discount rates.

b. Judicial Appeals

Under existing regulations, all determinations rendered by the Department are final determinations subject to judicial review. As a result, nearly any determination rendered by the Department can be appealed to the USCIT (29 CFR 90.19).

In the NPRM, the Department would define only determinations on reconsideration issued under §§ 618.240(g) and 618.245 as final determinations and, therefore, only these determinations are subject to judicial review through the USCIT. This will reduce the time and effort spent by Department employees, petitioners, and the USCIT on appeals that have not yet been subject to the reconsideration process. These appeals require legal counsel for the Department and for the appellant, and associated fees are involved with the proceedings. By revising the definition of “final determinations” and through the revisions to the reconsideration process, the Department concludes that the number of judicial appeals will be reduced to one per year.

The Department estimates the cost savings from reducing the number of judicial appeals by subtracting the estimated number of judicial appeals under the NPRM (one per year) from the current number of judicial appeals per year (five per year) and

multiplying by the cost per appeal (\$21,443).³² This yields average annual undiscounted cost savings of \$64,329. The total cost savings from the reduction in judicial appeals over the 10-year period is estimated at \$643,290 undiscounted, or \$548,739 and \$451,820 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$64,329 at both 3- and 7-percent discount rates.

Relative to the baseline (i.e., current practice under the TAA Program), the two issues described above are expected to result in average annual undiscounted cost savings of \$79,654. The total cost savings over the 10-year period is estimated at \$796,540 undiscounted, or \$679,465 and \$559,456 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is estimated at \$79,654 at both 3- and 7-percent discount rates.

Transfer Payments

³² The cost per appeal is estimated from the cost to the appellant, the Department, and the USCIT to process an appeal. Based on USCIT court fees (<https://www.cit.uscourts.gov/sites/cit/files/Schedule%20of%20Fees.pdf>), the appellant must pay fees for attorney admission (\$81), a filing fee (\$400), and a charge for each type of fee (\$304) for a total of \$785 in fees to appeal. The appellant also must have a private sector attorney prepare for the appeal and appear in court. The Department estimates this cost by multiplying the hourly compensation rate (\$148.98 per hour) by the sum of time the private sector attorney must spend to prepare (40 hours) and the time spent in court (12 hours). These estimates include time spent responding to filings and other actions outside of court proceedings. The result is a cost per appeal for the appellant of \$8,532.

The Department has a cost per appeal for a DOL and DOJ attorney to prepare and attend court and a remand cost. The Department estimates the remand cost by multiplying the current cost per reconsideration (\$1,857) by 1.5, resulting in a remand cost of \$2,785. To estimate the cost of a DOL and DOJ attorney, the Department multiplied the hourly compensation rate (\$131.78 per hour) by the sum of time the DOL and DOJ attorney must spend to prepare (40 hours) and the time spent in court (12 hours). The result is a cost per appeal for the Department of \$9,638.

The cost to the USCIT is the court time for a district court judge and district court clerk. The Department estimates the cost of court time for a judge by multiplying the hourly compensation rate (\$200.00 per hour) by the time spent in court and the time spent reviewing the filings related to the appeal (12 hours), resulting in a cost estimate of \$2,400. The Department estimates the cost of court time for a clerk by multiplying the hourly compensation rate (\$72.72 per hour) by the time spent in court (12 hours), resulting in a cost estimate of \$873. The cost to the USCIT for an appeal is therefore estimated as \$3,273.

The cost per appeal is therefore estimated as the sum of the cost to the appellant (\$8,532), the cost to the Department (\$9,638), and the cost to the USCIT (\$3,273). This cost is \$21,443.

The following sections describe the transfer payments of the NPRM.

Quantifiable Transfer Payments

a. Merit versus Non-Merit Staff

Currently, States must engage only State merit staff to perform TAA-funded functions undertaken to carry out the State's responsibilities under the Act (20 CFR 618.890). Non-merit staff that provide employment and case management services to trade-affected workers cannot charge their time to TAA Program funds.

Proposed § 618.890 on staffing flexibility amends the current regulation to clarify that only certain activities under the TAA Program need to be performed by personnel covered by a system meeting the criteria of the Federal merit personnel system regardless of whether they are funded by the TAA Program. This results in a transfer payment because non-merit staff will be performing the same work at a lower wage than the currently used merit staff. As a result, providing employment and case management services by non-merit staff will result in transfer payments from employees to the States because there are no labor-hours freed and only a decline in wages.

The Department estimates that half the States, and therefore half the participants, will take advantage of the flexibility provided by the NPRM.

The Department estimates that the cost of providing employment and case management services by State merit staff is \$8,885,710 annually.³³ The Department

³³ To estimate the cost of State merit staff providing employment and case management services, the Department first estimated the amount of time spent providing the services. Of the 16,375 total exiters in 2017, 9,803 received training and 6,572 received only case management services. The average duration of training is 413 days, and the average duration of case management services is 195 days. Staff have a minimum contact requirement of 30 days, and contact is estimated to take 1 hour. Therefore, the Department estimated the time spent by staff providing training services to an exiter by dividing the average duration of training (413 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 13.8 hours. The Department, therefore, estimates the

estimates the cost of providing employment and case management services by non-merit staff is \$7,757,196 annually, due to the lower hourly wage for the typical non-merit staff employee.³⁴ The Department, therefore, estimates transfer payments associated with removing the restriction to allow States to charge time for non-merit staff to TAA Program funds by subtracting the cost of non-merit staff (\$7,757,196) from the cost of State merit staff (\$8,885,710) and multiplying by 0.5 to account for the Department's estimate that half the States will use the flexibility provided by the NPRM. This yields average annual undiscounted transfer payments of \$564,257. The total transfer payments from removing the restriction to allow States to charge time for non-merit staff to TAA Program funds over the 10-year period is estimated at \$5,642,570 undiscounted, or \$4,813,227 and \$3,963,105 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is \$564,257 at both 3- and 7-percent discount rates.

hours required for training services to all exiters that received training by multiplying the number of exiters receiving training (9,803) by the time spent by staff providing them services (13.8 hours), resulting in an estimate of 135,281 hours. The Department estimated the time spent by staff providing case management services only to an exiter by dividing the average duration of case management (195 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 6.5 hours per exiter receiving case management services. The Department, therefore, estimates the hours required for case management services to all exiters that received case management services only by multiplying the number of exiters receiving only case management services (6,572) by the time spent by staff providing them services (6.5 hours), resulting in an estimate of 42,718 hours.

To estimate the cost of State merit staff providing employment and case management services, the Department summed the time required to provide training services (135,281 hours) and the time required to provide case management services only (42,718 hours), which results in a total of 177,999 hours. The Department then multiplied the total hours by the hourly compensation rate of a State employment counselor (\$49.92 per hour) resulting in a cost estimate of \$8,885,710.

³⁴ To estimate the cost of non-merit staff in providing employment and case management services, the Department summed the time required to provide training services (134,955 hours) and the time required to provide case management services only (42,718 hours), which results in a total of 177,999 hours. The Department then multiplied the total hours by the hourly compensation rate of a private sector employment counselor (\$43.58 per hour), resulting in a cost estimate of \$7,757,196.

Nonquantifiable Transfer Payments

a. Change in the Definition of “Group”

Under proposed § 618.110 (definition of “group of workers”), the Department updates the definition of “group” to mean at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The proposed definition also includes teleworkers and staffed workers, because they are frequently performing the same work as other trade-affected workers in the subject firm or subdivision and are under the subject firm’s control. Separated workers are included in the definition because they, too, may be trade-affected workers. Because of a lack of data on the additional number of beneficiaries, the Department is unable to quantify the transfer. The Department expects the change to be small.

b. Suitable Work versus Suitable Employment

Proposed § 618.400 explains the scope of the subpart, and is a provision not contained in current regulations. Proposed § 618.400 contains one substantive departure from current regulations in that it identifies the goal of providing job search and relocation allowances to help AAWs secure and, if necessary, relocate to “suitable employment” as defined in sec. 236 of the Act, instead of merely assisting AAWs in finding “suitable work” as current regulations have provided. Proposed § 618.405 contains general provisions and revises and consolidates current 20 CFR 617.30 and 617.40. Proposed § 618.405(a) retains the content in 20 CFR 617.30, except that it replaces the reference to “securing a job” with “suitable employment” to align with the change to the goal of the subpart.

This proposed change would modify the eligibility requirement, for both job search and relocation allowances, that there be no “suitable work” available in the local area to the requirement that there be no “suitable employment” available in the local area. “Suitable employment” is generally work at higher skill levels and wage rates than is “suitable work” (i.e., a job is less likely to meet the higher “suitable employment” standard and such jobs will, therefore, be less likely to be available). Thus, this proposed change would simplify the operation of the TAA Program by using the same standard—suitable employment—as the factor for approval of training, job search allowances, and relocation allowances. Program performance data shows that AAWs who relocate have a wage replacement rate exceeding 100 percent, which means that this proposed change should have little or no impact on the number of AAWs and is not quantifiable.

c. Length of Training and Apprenticeships

Proposed § 618.635(c) is new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the National Apprenticeship Act, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of a recognized postsecondary credential, are approvable TAA Program training activities. These provisions are based on a combination of secs. 236(a)(5)(A)(iii) and 236(a)(5)(G) of the Act. The requirement that an apprenticeship lead to an industry-recognized credential differentiates an apprenticeship from regular OJT.

The NPRM would revise TAA length of training requirements applicable to apprenticeships. In addition, under the NPRM, TAA Program funds could be used to pay for the educational and instructional component of the apprenticeship until completion of

the apprenticeship, which, in some cases, could be up to 5 years. In particular, the TAA Program would provide for reimbursement to the employer for the paid-work component of the apprenticeship for up to 130 weeks. Reimbursement would be up to 50 percent of the employer's training costs based on the wage rate of the trade-affected worker.

The increased flexibility in the use of TAA Program funds may result in an increase in apprenticeships; however, the Department is unable to quantify this and seeks public comment. The Department expects that funding adjustments would need to be made for trade-affected workers requiring additional funding due to participation in a registered apprenticeship. The proposed provision would result in transfers of funds between States and the Federal Government. The total amount of expenditures that may be accrued at the national level, however, will not change and is therefore not quantified.

Other Key Changes with No Economic Impact

TGAAA and TAAEA introduced statutory program changes, and the TAARA 2015 amendments restored these improvements. The NPRM proposes to codify the provisions associated with these improvements, currently implemented via administrative guidance, into the TAA Program regulations. The Department analyzed these proposed provisions to determine if they have any additional cost or result in transfer payments when compared to the baseline. Based on this analysis, the Department determined that no costs or transfer payments are associated with the program improvement provisions.

- a. A set of provisions requiring services to all trade-affected workers, including AAIWs who have not yet separated from adversely affected employment but are threatened with separation (subpart A, § 618.110; subpart C, § 618.310; and subpart F, § 618.655)

Under this set of provisions, AAIWs must be provided TAA Program services, as appropriate, before the worker's separation from employment, ideally allowing these workers to transition to new employment without experiencing a gap in employment or by reducing the amount of time needed to complete the training program after the separation, or both, and reducing the worker's overall period of unemployment. Under the current regulations, the Department could not begin providing services to serve AAIWs until they are laid off. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- b. Provisions that expand trade-affected worker eligibility to include those workers in firms that supply service-sector workers, expanding coverage to the largest growing sector of the economy (subpart B, § 618.225(a) and (b))

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- c. Provision that makes workers in firms identified in International Trade Commission "injury" determinations "automatically" certified (subpart B, § 618.225(c))

No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

- d. Provisions providing funding for individualized case management services (subpart C, §§ 618.310, 618.330, 618.335, 618.345, 618.350, and 618.360)

Employment counseling and reemployment services have been required under the TAA Program since implementation of chapter 2 of title II of the Trade Act of 1974. The current requirements are found at 20 CFR 617.20 and 617.21. This set of provisions

includes the development of a reemployment plan and assessments. The language in the existing regulation, however, uses outdated terminology. The NPRM would update this language. Case managers are to ensure trade-affected workers receive job placement services, develop individual assessment-based employment and training programs, and provide career counseling. Under the current regulations, funds for individualized case management services are not authorized, requiring these services to be made available through partner programs such as Wagner-Peyser or WIOA. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- e. Provisions that eliminate the requirement for AAWs to apply for and wait to attain a separate group certification to be eligible for the RTAA program (subpart E, §§ 618.500 and 618.505)

AAWs receiving RTAA can work full time or part time and receive training, which would allow this population to regain skills to stay competitive. RTAA replaces ATAA, a program piloted in the TAA Program under TAARA 2002. Neither RTAA nor ATAA are included in current regulations. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- f. Provisions that introduce Completion TRA and require trade-affected worker training benchmarks to monitor training progress regularly and allow for amendments of a training program to help ensure successful training outcomes (subpart F, § 618.660; and subpart G, § 618.755)

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- g. A provision that eliminates training waivers based on recall, marketable skills, and retirement (subpart G, § 618.725(b))

No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

- h. A set of provisions that expands the deadline for enrolling in training to qualify for TRA, providing trade-affected workers more time to consider their training options (subpart G, § 618.720(c)(1), (2), and (4))

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

- i. A provision that allows States to apply Federal “good cause” waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances (subpart G, § 618.720(c)(5))

This provision allows States to apply Federal “good cause” waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

- j. Subpart G, § 618.775

This provision enables AAWs to elect TRA over UI based on a second UI claim in circumstances that result in lower weekly benefit amounts from part-time or short-term work. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

Qualitative Benefits Discussion

The TAA Program includes the RTAA benefit, which may be available to AAWs 50 years of age or older. Reauthorization of the program restored the major expansions in TAA worker group eligibility to service sector workers and to workers affected by trade from any country, including countries that do not have Free Trade Agreements with the United States including China and India.

A 2012 evaluation of the TAA Program showed that TAA Program participants who undertook training recorded better employment outcomes than those who received only income support and that TAA Program participants almost entirely closed the gap between their wages in the previous employment and their wages in the new employment within 4 years, and, by one measure, had pulled slightly ahead.³⁵ The evaluation also found that TAA Program participants were engaged in some form of productive activity at about the same rate as the comparison group.

a. Streamlining and Consolidation of TAA Program Regulations

As stated above, the regulations governing the TAA Program have not been updated since 1994. Since that time, multiple reauthorizations and amendments have occurred. All TAA Program reauthorizations and amendments were implemented through administrative guidance. As a result, the States must use a combination of regulations and a patchwork of administrative guidance to operate the program.

The NPRM would provide a legally binding set of rules to guide the worker-group certification process at the Federal level and the individual benefit and training

³⁵ Social Policy Associates and Mathematica Policy Research. (2012). “The Evaluation of the Trade Adjustment Assistance Program: A Synthesis of Major Findings.” Retrieved from: https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_08.pdf.

authorization process at the State level, and provide Federal and State courts with the Department's authoritative interpretation of TAARA 2015. The NPRM also would update the TAA Program and consolidate all applicable program regulations into a single section of the CFR.

b. Support to American Workers that Have Lost Their Jobs as a Result of Foreign Trade

The objective of the TAA Program is to provide trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to (re)build skills for future jobs. For over 40 years, the TAA Program has assisted U.S. workers who have lost or may lose their jobs as a result of foreign trade. Benefits and services include: employment and case management services (e.g., career counseling); training; job search and relocation allowances; TRA; RTAA for AAWs aged 50 and older; and, if available, the HCTC.

Since 1975, the TAA Program has served over two million U.S. trade-affected workers. In FY 2017, an estimated 94,017 trade-affected workers became eligible for TAA Program benefits and services. Nearly 75 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program, and over 90 percent of those who found work retained their jobs 6 months later.

Trade-affected workers come from a variety of backgrounds and industries, and therefore, many enter the program with a wide array of skills and experience. Most trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, an average age of 49, and an average of 12 years of experience in a specific job that may no

longer exist.³⁶ The TAA Program is designed to serve the needs of this unique population best, which it continues to do.

An ever-changing global marketplace drives the 21st-century economy. For America to outcompete other countries, its workers need to have the skills and support to take advantage of new opportunities the 21st-century economy presents. The TAA Program sets out to do that by providing the best opportunities for American workers to reenter the workforce.

4. Summary of the Analysis

Exhibit 4 summarizes the estimated total costs, cost savings, and transfer payments of the NPRM over the 10-year analysis period. The annual costs, cost savings, and transfer payments do not reach \$100 million in any given year. Thus, the NPRM is not economically significant.

The Department estimates the annualized costs of the NPRM at \$6,604, the annualized cost savings at \$79,654, and the annualized transfer payments at \$564,257, at the 7-percent discount rate. When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized costs of the rule are \$5,101, the annualized cost savings are \$79,654, and the annualized transfer payments are \$564,257, all at 7-percent discounting.

The Department estimates the net cost savings of the NPRM at \$513,073 at a discount rate of 7 percent.

³⁶ U.S. Department of Labor, Employment and Training Administration. (2018). “Trade Adjustment Assistance for Workers Program: Fiscal Year 2017.” Retrieved from: <https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf>.

Exhibit 4: Estimated Monetized Costs, Cost Savings, Net Cost Savings, and Transfer Payments of the NPRM (2018 dollars)				
	Costs	Cost Savings	Net Cost Savings^a	Transfer Payments
2019	\$14,032	\$79,654	\$65,622	\$564,257
2020	\$16,304	\$79,654	\$63,350	\$564,257
2021	\$3,648	\$79,654	\$76,006	\$564,257
2022	\$3,648	\$79,654	\$76,006	\$564,257
2023	\$3,648	\$79,654	\$76,006	\$564,257
2024	\$3,648	\$79,654	\$76,006	\$564,257
2025	\$3,648	\$79,654	\$76,006	\$564,257
2026	\$3,648	\$79,654	\$76,006	\$564,257
2027	\$3,648	\$79,654	\$76,006	\$564,257
2028	\$3,648	\$79,654	\$76,006	\$564,257
Undiscounted 10-Year Total	\$59,523	\$796,540	\$737,017	\$5,642,570
10-Year Total with 3% Discounting	\$53,132	\$679,465	\$626,333	\$4,813,227
10-Year Total with 7% Discounting	\$46,383	\$559,456	\$513,073	\$3,963,105
10-Year Average	\$5,952	\$79,654	\$73,702	\$564,257
Annualized with 3% Discounting	\$6,229	\$79,654	\$73,425	\$564,257
Annualized with 7% Discounting	\$6,604	\$79,654	\$73,050	\$564,257
Perpetuated Net Cost Savings ^a with 7% Discounting (2016 dollars)		\$71,434		

^aNet Cost Savings = [Total Cost Savings] – [Total Costs]

5. Regulatory Alternatives

OMB Circular A-4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. The Department has considered three alternatives as part of determining whether to issue this NPRM. These alternatives include: (1) to take no action, that is, make no regulatory changes; (2) to reduce the number and types of provisions in the regulations; and (3) to propose more stringent, less flexible regulations and provide clarification in administrative guidance. Each alternative is discussed in more detail below.

The Department considered the “no action” alternative, thereby, leaving the regulations in three separate parts in the CFR (i.e., 20 CFR parts 617 and 618, and 29 CFR part 90) and continuing to use administrative guidance to operate the TAA Program. This alternative has the disadvantage of forcing States to use a combination of outdated regulations and a patchwork of administrative guidance to operate the program. The TAA Program requirements have changed substantially since 1994. As a result, the implementation of new regulations is necessary to achieve program compliance, integrate the TAA Program with the workforce development and education systems, and reduce the Department’s and States’ legal burden concerning petition issues raised in court cases and appeals.

The Department also considered scaling back the number and types of provisions in the regulations, except for those areas where there are statutory requirements for the Department to promulgate regulations. Examples of provisions that could be excluded are: (1) the primary indicators of performance; (2) the expansion of State responsibility

for providing employment and case management services; (3) the integration of the TAA Program into the one-stop delivery system under WIOA and alignment with the WIOA Final Rule; (4) the increase in the maximum limit for job search and relocation allowances; (5) the addition of the RTAA, which was established under the 2009 Program amendments; (6) the addition of Completion TRA; and (7) the study and notifications regarding certain affirmative determinations. This regulatory alternative has the disadvantage of forcing the regulated community to follow statutory language for implementation. Considering many of these provisions are new, the statutory language would not provide sufficient detailed guidance to implement the provisions effectively, thereby, increasing the risk of noncompliance.

Finally, the Department considered proposing more stringent, less flexible regulations and relying on administrative guidance to provide clarification. Examples of provisions where the Department could be more prescriptive are: (1) worker group eligibility requirements (2) employment and case management services; (3) training (e.g., approval, cost, and type); (4) job search and relocation allowances; (5) Completion TRA and training benchmarks; and (6) RTAA. This alternative has the disadvantage of not providing enough flexibility to mold the TAA Program to the evolving needs of displaced workers and the changing economic landscape. Not only could this negatively affect participants, it could cost States and the Department more through decreases in efficiency from having to adhere to more restrictive and complex regulations. This would ultimately lead to participants being underserved due to the time and budgetary burdens that more stringent regulations would impose. Also, administrative guidance is not legally binding, and, therefore, not as an effective tool as flexible regulations.

The Department considered the three options above in accordance with the provisions of E.O. 12866 and chose to publish the NPRM to increase flexibility to States and trade-affected workers, improve participant outcomes, clarify overly technical or confusing language, update references and procedures, and codify elements from administrative guidance.

The Department invites comments on these or other possible alternatives with the goal of ensuring a thorough consideration and discussion at the final rule stage.

C. Regulatory Flexibility Act, Small Business Regulatory Enforcement

Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

Because the entities impacted by the NPRM are the States, which do not qualify as small entities, the Department has determined that the NPRM would impact no small entities. Based on this determination, the Department certifies that the NPRM would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The purposes of the PRA, 44 U.S.C. 3501 et seq., include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations that require any party to obtain, maintain, retain, report, or disclose information. The IC requirements must also be submitted to OMB for approval.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of

information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The following information collections are part of the States' administration of the TAA Program. They have been previously reviewed and approved. They have not been impacted by this rule:

OMB Control Number 1205-0275 - Trade Adjustment Assistance Program
Reserve Funding Request

OMB Control Number 1205-0222 - Unemployment Insurance Materials
Transmittal

OMB Control Number 1205-0521 - DOL-Only Performance Accountability,
Information, and Reporting System

OMB Control Number 1205-0461 – Employment and Training Administration
Financial Report Form ETA-9130

The Department has determined that there is a new information collection contained in this rule. This collection is related to an aggrieved party seeking administrative reconsideration of a negative determination under sec. 222 of the Act, and the domestic industry study required by sec. 202 of the Act.

Petition Requirements; Investigations; Domestic Industry Study; Application for Reconsideration

Agency: DOL-ETA.

Title of Collection: Petition Requirements; Investigations; Domestic Industry Study; Application for Reconsideration.

Type of Review: New.

OMB Control Number: 1205-0NEW.

Description: The information contained in this collection is submitted by various parties, including individuals, company officials, unions, and State agencies. This information is collected in paper, by fax, via online forms, and by email. The information provided by these groups is used as part of an investigation by the Department to determine whether or not a group of workers has been adversely affected by foreign trade under the conditions and criteria established in sec. 222 of the Act. The Department is taking this opportunity to make changes to the forms in OMB Control Number 1205-0342 used in the petition and investigation process. These changes are designed to reduce burden, provide better instructions, and simplify the forms for use by the public. Form ETA-9185 is a new form used by aggrieved parties to seek administrative reconsideration of a negative determination. As part of this collection, the Department is reactivating Form ETA-8561 A/B/C, Standard, by renaming as Form ETA-8561, Study of Domestic Industry, and revising the content of the form. This was previously approved under OMB Control Number 1205-0194, and was in use until 1990 when it was discontinued. Form ETA-8561 is submitted by a firm within an industry subject to an investigation by the ITC under sec. 202 of the Act. This collection will eventually be included in OMB Control Number 1205-0342, however, the Department is not submitting this ICR under that control number because the reginfo.gov database, which is OMB's system for processing requests, allows only one ICR per control number to be pending at OMB during any given time, and the Department expects the unrelated ICR under control number 1205-0342 will be pending at OMB at the same time as this rule-related ICR; thus the existing control number will be encumbered. Requesting approval for a new

information collection is a workaround used for administrative convenience. Once all of the outstanding actions are complete, the Department intends to submit a non-material change request to merge the collections so that the new requirements will be added to OMB Control Number 1205-0342.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 5,317.

Estimated Total Annual Responses: 5,497.

Estimated Total Annual Burden Hours: 12,977.

Estimated Total Annual Other Burden Costs: \$1,545,779.76.

Regulations sections: 20 CFR 618.205, 618.210, 618.215, 618.220, 618.225, 618.230, 618.235, 618.240, 618.245, 618.250, 618.260.

Interested parties may obtain a copy free of charge of one or more of the IC requests submitted to OMB on the reginfo.gov website at <http://www.reginfo.gov/public/do/PRAMain>. From this webpage select Department of Labor from the “Currently under Review” dropdown menu and look up the collection. You may also request a free copy of the IC by contacting the person named in the ADDRESSES section of this NPRM.

In addition to the 30 days provided for public comment on this proposal, the Department is providing an additional 30 days—for a total of 60 days from the date this notice is published in the Federal Register—for public comment on the information collection requirements contained in the proposed rule as required by 5 CFR 1320.11(c).

Members of the public who wish to comment on the revisions to the paperwork requirements should direct comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Fax: (202) 395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

The Department encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket, Docket Number ETA-2019-0009, along with their comments on other parts of the proposed rule. After the 30 day comment period for Docket Number ETA-2019-0009 expires, commenters may submit IC-related comments on Docket Number ETA-2019-0010 for an additional 30 days.

The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
 - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of IT (e.g., permitting electronic submission of responses).

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

The Department has reviewed this NPRM revising the operation of a Federal benefit program in accordance with Executive Order 13132 and found that this rulemaking has no federalism implications. The TAA Program is a nationwide program funded with Federal funds in which the States voluntarily participate. Thus, the NPRM would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, codified at 2 U.S.C. 1501 et seq.) requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and on private industry, except to the extent the regulations incorporate requirements specifically set forth in law. Title II of the

UMRA directs agencies to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in \$100 million or more expenditure (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

As explained in section V.B above, this NPRM does not include any Federal mandate that could result in increased expenditure by State, local, and tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. State governments administer the TAA Program as agents of the United States and are provided appropriated Federal funds for all TAA Program expenses.

G. Executive Order 13175 (Indian Tribal Governments)

E.O. 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. It requires Federal agencies to take certain actions when regulations have tribal implications. Required actions include consulting with tribal governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. E.O. 13175 defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Because this NPRM addresses the worker-certification process at the Federal level, the individual benefit and training authorization process at the State level, State administration of the TAA

Program, and the Department's distribution of TAA Program funds to the States, the Department concludes that it does not have tribal implications.

List of Subjects

20 CFR Part 617

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements.

20 CFR Part 618

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements, Trade adjustment assistance.

29 CFR Part 90

Administrative practice and procedure, Grant programs—labor, Reporting and recordkeeping requirements, Trade adjustment assistance.

Under the authority of 19 U.S.C. 2320(a) and for the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR parts 617 and 618 and 29 CFR part 90 as follows:

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

1. The authority citation for 20 CFR part 617 continues to read as follows:

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

Appendices A, B, and C to Part 617 – [Transferred to Part 618 and Redesignated]

2. Transfer appendices A, B, and C of part 617 to part 618 and redesignate the appendices as appendices to part 618.

PART 617 – [REMOVED AND RESERVED]

3. Remove and reserve part 617.

4. Revise 20 CFR part 618 to read as follows:

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

Subpart A—General

Sec.	
618.100	Purpose and scope.
618.110	Definitions.

Subpart B—Petitions, Investigations, and Determinations

Sec.	
618.200	Scope.
618.205	Petitions.
618.210	Investigation.
618.215	Public hearings.
618.220	Use of subpoena.
618.225	Criteria for certification of a group of workers.
618.230	Evidence.
618.235	Determinations.
618.240	Termination of certification.
618.245	Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.
618.250	Amendments of certifications.
618.255	Judicial review of determinations.
618.260	Study regarding certain affirmative determinations by the Commission.
618.265	Availability of information to the public.

Subpart C—Employment and Case Management Services

Sec.

618.300	Scope.
618.305	The Trade Adjustment Assistance Program as a one-stop partner.
618.310	Responsibilities for the delivery of employment and case management services.
618.325	Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.
618.330	Assessment of trade-affected workers.
618.335	Initial assessment of trade-affected workers.
618.345	Comprehensive and specialized assessment of trade-affected workers.
618.350	Individual employment plans for trade-affected workers.
618.355	Knowledge, skills, and abilities of staff performing assessments.
618.360	Employment and case management services for trade-affected workers in training.

Subpart D—Job Search and Relocation Allowances

Sec.	
618.400	Scope.
618.405	General.
618.410	Applying for a job search allowance.
618.415	Eligibility for a job search allowance.
618.420	Findings required.
618.425	Amount of a job search allowance.
618.430	Determination and payment of a job search allowance.
618.435	Job search program participation.
618.440	Applying for a relocation allowance.
618.445	Eligibility for a relocation allowance.
618.450	Findings required.
618.455	Determining the amount of a relocation allowance.
618.460	Determinations and payment of a relocation allowance.

Subpart E—Reemployment Trade Adjustment Assistance

Sec.	
618.500	Scope.
618.505	Individual eligibility.
618.510	Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.
618.515	Continuing eligibility and timing of payments.
618.520	Benefits available to eligible adversely affected workers.
618.525	Determinations, redeterminations, and appeals.
618.530	Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.

Subpart F—Training Services

Sec.	
618.600	Scope.
618.605	General procedures.
618.610	Criteria for approval of training.
618.615	Limitations on training approval.
618.620	Selection of training program.
618.625	Payment restrictions for training programs.
618.630	Training of reemployed trade-affected workers not in suitable employment.
618.635	Work-based training.
618.640	Supplemental assistance.
618.645	Voluntary withdrawal from a training program.
618.650	State standards and procedures for establishing reasonable cost of training.
618.655	Training for adversely affected incumbent workers.
618.660	Training benchmarks.
618.665	Amending approved training.

Subpart G—Trade Readjustment Allowances

Sec.	
618.700	Scope.
618.705	Definitions.
618.710	Categories of Trade Readjustment Allowances.
618.715	Applications for Trade Readjustment Allowances and payment.
618.720	Qualifying requirements for Basic Trade Readjustment Allowances.
618.725	Training enrollment deadlines.
618.730	Good cause.
618.735	Waiver of training requirement for Basic Trade Readjustment Allowances.
618.740	Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.
618.745	Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.
618.750	Maximum amount of Basic Trade Readjustment Allowances.
618.755	Eligibility period for Basic Trade Readjustment Allowances.
618.760	Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.
618.765	Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.
618.770	Special rule for justifiable cause.
618.775	Payment of Trade Readjustment Allowances during breaks in training.
618.780	Disqualifications.

Subpart H—Administration by Applicable State Agencies

Sec.	
618.800	Scope.
618.804	Agreements with the Secretary of Labor.
618.808	State rulemaking.
618.812	Subpoenas.
618.816	Trade Adjustment Assistance Program benefit information and provision of services to workers.
618.820	Determinations of eligibility; notices to individuals.
618.824	Liable State and agent State responsibilities.
618.828	Appeals and hearings.
618.832	Overpayments; penalties for fraud.
618.836	Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.
618.840	Uniform interpretation and application of this part.
618.844	Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.
618.848	Veterans' priority of service.
618.852	Recordkeeping and disclosure of information requirements.
618.856	Information, reports, and studies.
618.860	General fiscal and administrative requirements and cost classification.
618.864	Trade Adjustment Assistance Program performance.
618.868	Unemployment Insurance.
618.872	Travel under the Trade Adjustment Assistance Program.
618.876	Verification of eligibility for program benefits.
618.884	Special rule with respect to military service.
618.888	Equitable tolling.
618.890	Staffing flexibility.
618.894	Nondiscrimination and equal opportunity requirements.
618.898	Applicable State law.

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

Sec.	
618.900	Annual cap on funds available for Training and Other Activities.
618.910	Initial allocation of funds.
618.920	Reserve fund distributions.
618.930	Second distribution.
618.940	Insufficient funds.
618.950	Recapture and reallocation of Training and Other Activities funds.

Authority: 19 U.S.C. 2320; Secretary's Order No. 03-2009, 74 FR 2279 (Jan. 14, 2009).

Subpart A—General

§ 618.100 Purpose and scope.

(a) *Purpose.* The Act establishes a Trade Adjustment Assistance for Workers (TAA) Program. The goal of the TAA Program is to help each worker participating in the program obtain suitable employment whenever possible, and to return to employment as quickly as possible.

(b) *Scope.* Global trade impacts thousands of workers each year across the United States. The TAA Program provides trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to become reemployed in a good job. The TAA Program's benefits and services include: employment and case management services, training, out-of-area job search and relocation allowances, income support through Trade Readjustment Allowances (TRA), the Reemployment Trade Adjustment Assistance (RTAA) benefit for workers aged 50 or older who find qualifying reemployment, and, if available, the Health Coverage Tax Credit (HCTC). Together with its workforce development partners in the one-stop delivery system authorized under the Workforce Innovation and Opportunity Act (WIOA), the TAA Program helps retrain, retool, and rebuild the American workforce.

(c) *Effect.* The regulations in this part are issued to implement the Act.

§ 618.110 Definitions.

The following definitions apply solely in this part.

Act means chapter 2 of title II of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended.

Administrator means the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Washington, DC, who has responsibility for administering the TAA Program, or their designee.

Adversely affected employment means employment in a firm or appropriate subdivision, if workers of the firm or appropriate subdivision are certified as eligible to apply for the TAA Program under subpart B of this part.

Adversely affected worker or *AAW* (also referred to, in combination with an *AAIW*, as a trade-affected worker) means an individual, including an employer, who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment.

Adversely affected incumbent worker or *AAIW* (also referred to, in combination with an *AAW*, as a trade-affected worker) means a worker who:

(1) Is a member of a worker group certified as eligible to apply for the TAA Program under subpart B of this part;

(2) Has not been totally or partially separated from adversely affected employment; and

(3) The Department determines, on an individual basis, is threatened with total or partial separation.

Agent State means, with respect to any trade-affected worker, any State that provides services or benefits for such trade-affected worker other than the State that is the liable State. (See also definition for *liable State* in this section.)

Applicable State law means, for any worker, the State law of the State:

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

(2) If the worker is not so entitled to UI under the State law of any State immediately following such first separation, or is entitled to UI under the Railroad Unemployment Insurance Act (RRUI), the State law of the State in which such first separation occurred.

Appropriate subdivision means an establishment, facility or facilities, an organizational department, a product line, a project team, an operational unit, or part or combination thereof. The appropriate subdivision is determined on a case-by-case basis and includes all workers or a subset of workers working at, or reporting to, the location(s) identified in the petition, or subsequently identified during the course of the investigation, whose employment is dependent upon the production of the specific article or supply of the specific service identified in the petition, or identified during the course of the investigation.

Appropriate week means the week in which the AAW's first separation occurred.

Approved training or *TAA approved training* means a training program approved under subpart F of this part (§ 618.610).

Article means a tangible good or an intangible good sold or produced by a firm. The good must be the subject of the sale or production, and not an object that is produced incidentally to the sale or production. An article can be measured in individual production units or commercial production units, such as with commodities. Sale of an article is the means by which revenue is generated, accumulated, or calculated.

Average weekly hours means the average hours worked by an AAW (excluding overtime) in the employment from which the worker has been or claims to have been separated in the 52 consecutive calendar weeks (excluding weeks during which the worker was sick or on vacation) immediately preceding the worker's total separation or, for a partially separated worker, the week before the appropriate week. The average is obtained by dividing:

(1) Total hours worked (excluding overtime) in the 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation); by

(2) The number of weeks in such 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation).

Average weekly wage means one-thirteenth of the total wages paid to an AAW in the high quarter. For purposes of this computation, the high quarter is the quarter in which the worker's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately preceding the week in which total separation occurred or, in cases where partial separation is claimed, the appropriate week.

Benefit period means, with respect to an AAW:

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

(2) The equivalent to such a benefit year or ensuing period provided for under Federal UI law.

Certification or affirmative determination or petition certification means a determination issued under § 618.235(a), or an amendment under § 618.250, of eligibility to apply for the TAA Program, with respect to a specified worker group of a firm or appropriate subdivision. Excluded from this definition are “certifications” in secs. 223(d), 236(a)(5)(H), 239(a)(3), and 247(19) of the Act, and “affirmative determinations” in secs. 222(e) and 224 of the Act.

Certification date or date of certification means the date on which the certifying officer signs the certification. This is the date that the certification takes effect.

Certification period means the period of time during which total, partial, or threat of separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by a certification for worker groups eligible to apply for assistance under sec. 222(a) and (b) of the Act. It also means the period of time during which total or partial separations from adversely affected employment within a firm are covered by a certification for worker groups eligible to apply for assistance under sec. 222(e) of the Act. The certification period begins on the impact date and, unless stated otherwise in the certification, ends 2 years after the certification date. A certification may expire sooner than 2 years after the certification date as a result of a termination under § 618.240, an amendment under § 618.250, or if a certification is based on a determination issued by the International Trade Commission (ITC) under sec. 222(e) of the Act.

Certifying Officer means an official, including the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, who has been delegated responsibility to make determinations and issue

certifications of eligibility to apply for the TAA Program, and to perform such further duties as may be required.

Co-enrollment means enrollment in the TAA Program and at least one other program that operates as part of the one-stop delivery system, such as the dislocated worker program under title I of WIOA.

Commission or *International Trade Commission* or *ITC* means the U.S. International Trade Commission.

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

Completion of training or *complete training* or *completed training* means that the trade-affected worker has finished all required coursework (including required externships or internships), testing, and professional licensing exams related to TAA approved training.

Component part means an input (tangible or intangible article) that is directly incorporated into the production of another article, although it need not retain its original form or characteristics.

Confidential business information means trade secrets and commercial or financial information received by the Department, or by the States on the Department's behalf, during an investigation under subpart B of this part, which the Department considers to be privileged or confidential as set forth in the Trade Secrets Act (18 U.S.C. 1905), 5 U.S.C. 552(b)(4), or 29 CFR part 70. It does not include publicly available business information, or business information with respect to which the firm or customer

submitting the information had notice, at the time of submitting the information, that the information would be released by the Department or the States, or if the firm or customer subsequently consents to the release of the information.

Contributed importantly means a cause that is important but not necessarily more important than any other cause.

Cooperating State agency or *CSA* means the agency at the State level that will act as agent of the Department in receiving applications from and providing benefits and services to trade-affected workers in coordination with the State agency that administers the UI law, if applicable, and such other agency or agencies of the State as the Governor of the State may designate to cooperate with such CSA for performance accountability reporting and other purposes.

Customized training means work-based training that is:

- (1) Designed to meet the special requirements of a single employer or group of employers;
- (2) Conducted with a commitment by the employer or group of employers to employ a trade-affected worker upon successful completion of the training; and
- (3) For which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training.

Denial or *negative determination* or *petition denial* means a determination issued under § 618.235(b) that a group of workers is not eligible for TAA Program benefits.

Department of Labor or *Department* means the U.S. Department of Labor.

Downstream producer means a firm that performs additional, value-added production processes or services, such as final assembly, finishing, testing, packaging, or

maintenance or transportation services. The value-added production processes or services must be performed directly for another firm that has a worker group certified to apply for the TAA Program under § 618.225, and the production processes or services must be carried out with respect to the article or service on which the certification under § 618.225 was based.

Eligible RTAA recipient means, for HCTC purposes (see definition of *HCTC*), an AAW eligible for RTAA and who is participating in RTAA for a month and is receiving an RTAA benefit for that month.

Eligible TAA recipient means, for HCTC purposes (see definition of *HCTC*), an AAW who receives TRA for any day of the month or who would be eligible to receive TRA but for the fact that the worker has not exhausted their UI entitlement.

Employer means any individual or type of organization, including the Federal Government, a State government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

Employment means any service performed for an employer by an officer of a corporation or by an individual for wages.

Enrolled in training means that a worker's application for training is approved by the State under subpart F of this part, and the training provider has furnished written notice to the State that the worker has been accepted in the approved training program, which is to begin within 30 calendar days of the date of such approval.

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

(1) Spouse;

(2) Domestic partner;

(3) Children of the adversely affected worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the worker, of the worker's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the worker's effective date of transfer.);

(4) Dependent parents (including step and legally adoptive parents) of the worker, of the worker's spouse, or of the worker's domestic partner; and

(5) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

Filing date means the date on which the petition and attachments to the petition form are determined to be valid by the Department's Office of Trade Adjustment Assistance, in accordance with § 618.205.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in

bankruptcy, or receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons may be considered a single firm. Where the term “firm” appears in this part, it means “firm or appropriate subdivision.” Firm also means an agricultural firm or service sector firm or an appropriate subdivision thereof. For purposes of subpart B of this part only, firm does not include a public agency or any subdivision of a public agency, as defined in 29 U.S.C. 203(x).

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

Full-time training means:

(1) Attendance in training in accordance with the training provider’s established full-time hours in a day (or credit hours) and days in a week; and

(2) In the last semester of training, if the remaining course(s) to complete the training approved under subpart F of this part do not meet the training provider’s usual definition of full-time, States must consider the participation in training as full-time training, if no additional training or coursework will be required to complete the training program.

Group of workers means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision thereof, including teleworkers and staffed workers, who file a petition for certification under subpart B of this part, or for whom a petition is filed.

Health Coverage Tax Credit or HCTC means the tax credit equal to a specific percentage of the costs of qualified health insurance premiums, which is administered by

the Internal Revenue Service under sec. 35 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 35). When the tax credit is available, eligible TAA and RTAA recipients (see definitions of *eligible TAA recipient* and *eligible RTAA recipient*) and qualifying family members may apply for advance payment of the credit or claim the credit on their income tax return.

Impact date means the date stated in a certification of eligibility to apply for the TAA Program, on which the total or partial separations of the workers covered by the certification began or threatened to begin, but in most cases, is not more than 1 year before the petition date.

Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period will be 1 year consisting of the 4 quarters immediately preceding the date that is 12 months prior to the date of the petition.

Individual employment plan or *IEP* means a revisable document containing an ongoing strategy, jointly developed by the trade-affected worker and the State, identifying the worker's employment goals, appropriate achievement objectives, and appropriate services for the worker to achieve their employment goals, objectives, and benchmarks while in training or receiving employment and case management services.

Job finding club means a job search workshop that includes a period of 1 to 2 weeks of structured, supervised activity in which trade-affected workers attempt to obtain jobs.

Job search program or *JSP* means a job search workshop or job finding club.

Job search workshop means a short (1 to 3 days) seminar designed to provide workers with knowledge that will enable the workers to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

Lack of work means that the employer does not have work for the worker to perform or does not make that work available to the worker, and includes, but is not limited to, circumstances when:

(1) Work is unavailable because the employer suspends or ceases operations or institutes a lockout; or

(2) Work is unavailable because the employer downsizes the workforce by means of attrition or layoff.

Layoff means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of time.

Liabile State means, with respect to a trade-affected worker making claims for TAA Program benefits, the State whose State UI law is the applicable State law.

Like or directly competitive means, for articles, that articles have characteristics that are substantially identical in inherent or intrinsic characteristics (i.e., material from which the articles are made, appearance, quality) or are used for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable; and for services, services that have characteristics that are substantially identical in inherent or intrinsic characteristics (i.e., processes and procedures that comprise the activity, sequence of steps or component elements required in the provision

of the service or both) or are used for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable.

Office of Trade Adjustment Assistance or *OTAA* means the organization within the U.S. Department of Labor, Employment and Training Administration that administers the TAA Program, or OTAA's successor organization.

One-stop delivery system means the nationwide system of one-stop career centers, known as American Job Centers, which administer and deliver workforce development, educational, and training activities, as well as supportive services to workers and job seekers, in accordance with title I of WIOA.

On-the-job training or *OJT* means work-based training, provided—under contract with an employer in the public, nonprofit, or private sector—to an AAW who is employed by the employer.

Partial separation or *partially separated* means, with respect to an AAW who has not been totally separated, that:

(1) For purposes of subpart B of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm, or appropriate subdivision thereof during the period of investigation; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm, or appropriate subdivision thereof during the period of investigation.

(2) For this subpart and subparts C through I of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours in adversely affected employment during the certification period; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage in adversely affected employment during the certification period.

Period of duty means active duty served by an AAW before completing training under subpart F of this part for a period of more than 30 days under a call or order to active duty of more than 30 days or, in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, full-time National Guard duty under sec. 502(f) of title 32, U.S. Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

Petition date means the date a petition form is signed by the petitioner(s). When petitioners sign on different dates, the petition date is the latest of those dates.

Prerequisite education or prerequisite coursework or prerequisite training means any coursework or training required by a training provider before advancing to further training.

Program of remedial education or remedial education or remedial training means coursework or training that is designed to enhance the employability of a trade-affected worker by upgrading basic academic knowledge through such courses as adult basic education (ABE), basic math and literacy, English language acquisition (ELA) for nonnative speakers, and high school equivalency (HSE) courses, among others.

Qualifying separation means any total or partial separation of an AAW from adversely affected employment within the certification period for the purposes of determining their eligibility to receive Basic TRA; 26-week period for enrollment in approved training; and Basic TRA eligibility period. The first qualifying separation is used to determine the weekly and maximum amounts of Basic TRA payable to an AAW.

Reemployment Trade Adjustment Assistance or *RTAA* means the TAA Program benefit available to certain AAWs 50 years of age and older who obtain qualifying reemployment.

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

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

Separation date means:

(1) For a total separation:

(i) For a worker in employment status and not on employer-authorized leave, the last day worked; or

(ii) For a worker on employer-authorized leave, including leave for military service, the last day the worker would have worked had the worker not been on the employer-authorized leave.

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

Service means the work performed by a worker for a service firm or appropriate subdivision. The work of a service firm is measured in units of time, labor, and tasks

completed. Services may include the incidental production of an article, such as a license, ticket, certificate, permit, model, drawing, or prototype. Services are intangible but may involve the use of tangible objects during the supply of the service (such as textbooks in the supply of educational services). Where the revenue of the firm, or appropriate subdivision, is generated from the sale of a service, the firm, or appropriate subdivision, is deemed to be engaged in activity related to the supply of a service.

Significant number or proportion of the workers means:

(1) The lesser of 50 workers or 5 percent of the workers within a firm, or appropriate subdivision, have been totally or partially separated, or both, or are threatened with total or partial separation; or

(2) 2 or more workers within a firm, or appropriate subdivision, with a workforce of fewer than 50 workers, have been totally or partially separated, or both, or are threatened with total or partial separation.

Staffed worker means a worker directly employed by one firm to perform work under the operational control of another firm that is the subject of a petition investigation. These workers were previously referred to as “leased workers.” The term excludes independent contractors.

State means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and the term “United States,” when used in the geographical sense, includes the Commonwealth of Puerto Rico.

State agency means the agency at the State level that administers the State law.

State law means the UI law of a State under sec. 3304 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304).

Successor-in-interest means a firm, whether or not named on a certification issued under subpart B of this part, from which trade-affected workers are separated, or threatened with separation, and where most or all of the factors in paragraphs (1) through (7) of this definition are present, relative to a firm named on a determination issued under subpart B:

- (1) There is continuity in business operations.
- (2) There is continuity in location.
- (3) There is continuity in the workforce.
- (4) There is continuity in supervisory personnel.
- (5) The same jobs exist under similar conditions.
- (6) There is continuity in machinery, equipment, and process.
- (7) There is continuity in product/service.

Suitable employment means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work that are not less than 80 percent of the worker's average weekly wage. Part-time, temporary, short-term, or threatened employment is not suitable employment.

Supplier means a firm that produces and supplies directly to another firm component parts for articles, or services, used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under § 618.225 of a worker group employed by such other firm. There is no direct supply where an intervening customer, supplier, or another entity receives the component

parts, aside from in a delivery or bailment capacity, or in the case of a service supplier, if an intervening entity performs the service.

Supportive services means services such as local transportation, child care, dependent care, and housing, provided through WIOA or other programs, that are needed to enable an individual to participate in activities authorized under the Act.

Threatened to become totally or partially separated means that there is evidence of intent to separate workers or that imminent separations are reasonably anticipated.

Threatened to begin means, in the context of reasonably anticipated total or partial separations, the date(s) on which imminent separations will begin.

Total separation or totally separated means:

(1) For purposes of subpart B of this part, the layoff or severance of an AAW from a firm or appropriate subdivision thereof; or

(2) For all other purposes under this part, the layoff or severance of a worker from adversely affected employment with a firm, or appropriate subdivision thereof.

Trade Adjustment Assistance for Workers or Trade Adjustment Assistance or TAA Program means chapter 2 of title II of the Act, Pub. L. 93-618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended, which establishes the Trade Adjustment Assistance for Workers (TAA) Program. The benefits and services established under the Act, including RTAA, are collectively referred to as the Trade Adjustment Assistance Program (TAA Program) and provide assistance to workers adversely affected by foreign trade, as described in this part.

Trade-affected worker means both “adversely affected workers” and “adversely affected incumbent workers.”

Trade Readjustment Allowances or *TRA* means a weekly allowance payable to an AAW who meets the requirements of subpart G of this part. There are three types of TRA: Basic, Additional, and Completion, as described in § 618.710.

Unemployment Insurance or *UI* means the unemployment compensation payable to a worker under any State law or Federal UI law, including chapter 85 of title 5 of the U.S. Code and the RRUI. UI includes:

(1) *Regular compensation* means compensation payable to a worker under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

(2) *Additional compensation* means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(3) *Extended compensation* means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to a worker under those provisions of the State law that satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 (note)) with respect to the payment of extended compensation, including one-hundred percent federally funded unemployment compensation extensions.

Value-added production processes or services means such processes or services similar to and including final assembly, finishing, testing, packaging, or maintenance or transportation services.

Wages means 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 UI law.

Worker group means two or more workers of the same firm, or appropriate subdivision thereof, named in a certification rendered under subpart B of this part as eligible to apply for TAA Program benefits and services, inclusive of teleworkers and staffed workers.

Workforce Innovation and Opportunity Act or *WIOA* means the Workforce Innovation and Opportunity Act (Pub. L. 113-128, as amended).

Subpart B--Petitions, Investigations, and Determinations

§ 618.200 Scope.

This subpart relates to petitions, investigations, and determinations of eligibility for a group of workers to apply for adjustment assistance under the Act. This subpart specifically applies to the initiation, conduct, and effective processing of petitions for certification of eligibility to apply for adjustment assistance. This subpart also contains general provisions with respect to filing of documents, public availability of documents, and the appeals process.

§ 618.205 Petitions.

(a) *Who may file a petition.* A group of workers must file its petition for certification of eligibility to apply for adjustment assistance simultaneously with the Department and with the Governor of the State in which such workers' firm is located, by any of the following:

(1) A group of two or more workers from the same firm, on whose behalf the petition is filed;

(2) A union, or other duly authorized representative of the group of workers;

(3) The employer(s) of the group of workers; or

(4) One-stop center operators or one-stop partners, including State workforce officials, employment security agencies, or dislocated worker unit and rapid response team members.

(b) *Form and contents.* A group of workers must file its petition for certification of eligibility to apply for adjustment assistance with the Department. Petitioners may obtain a petition form and instructions online at: <http://www.doleta.gov/tradeact>, at a one-stop center (also known as an American Job Center), or by writing to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210. A petition, which may include attachments, must provide the following information to be considered valid and for an investigation to commence:

(1) The name and contact information for each petitioner;

(2) The name of the firm employing the group of workers;

(3) The address of the location(s) where the group of workers who have been totally or partially separated or threatened with separation report to work (for a teleworker, the address of the location to which they report);

(4) The name and contact information of an official within the employer firm or an individual authorized to provide information regarding the operation of the group of workers' firm;

(5) The article produced or service supplied by the firm;

(6) The actual or approximate date on which total or partial separations are threatened to occur or did occur;

(7) The actual or estimated total number of workers who have been or may be separated;

(8) A reason why the petitioner believes that worker separations have occurred or may occur at the employer's firm due to foreign trade impacts, or a reason why a request to amend an existing and active certification should be granted; and

(9)(i) Every petition must be signed and dated by at least two members of the petitioning group, or by an official of a certified or recognized union or other duly authorized representative, or by a representative of one of the organizations listed in paragraph (a)(4) of this section.

(ii) Signing of a petition must constitute acknowledgement that the information provided on the petition form will be used for the purposes of determining worker group eligibility and providing notice to petitioners, workers, and the general public that the petition has been filed, and whether the worker group is eligible to apply for TAA Program benefits and services. Knowingly falsifying any information on the petition form

is a Federal offense (18 U.S.C. 1001) and a violation of the Act (19 U.S.C. 2316). For the petition to be valid, the petitioner(s) listed on the form must sign and date the form, attesting to the fact that they are authorized to file a petition.

(c) *Supplemental information.* Providing supplemental information, while not required, may assist the investigation. Attachments to the petition form are part of the petition.

(d) *Filing.* (1) Petitions should be filed electronically with the Office of Trade Adjustment Assistance, via www.doleta.gov/tradeact. Individuals requiring assistance in filing online should contact their nearest one-stop center or the State's rapid response unit.

(2) Alternatively, petitions may be filed via email to taa.petition@dol.gov, via fax at (202) 693-3584 or (202) 693-3585, or by mail to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(e) *Industry notification of ITC determinations.* Upon receiving notification from the ITC that it has issued an affirmative determination of injury or threat of injury under sec. 202 or 421 of the Act, under an applicable safeguard provision enacted to implement a trade agreement to which the United States is a party, or an affirmative final determination of material injury or threat thereof in investigation under sec. 705 or 735 of the Tariff Act of 1930, the Department will notify the affected parties listed in paragraph (e)(1) of this section. To the extent practicable, the Department may also notify other duly authorized representatives of the industry to which the ITC determination applies.

(1) Parties the Department will notify under paragraph (e) of this section include:

- (i) Representatives of the domestic industry affected by the determination;
 - (ii) Firms publicly identified by name during the proceeding related to the ITC determination; and
 - (iii) Unions representing workers in firms covered by the determination.
- (2) The notice provided by the Department under paragraph (e) of this section will include:
- (i) A summary of the ITC determination;
 - (ii) Information about the workers' potential eligibility for TAA Program benefits;
 - (iii) The benefits and services available under the TAA Program;
 - (iv) Information regarding the process for filing of petitions; and
 - (v) The availability of assistance from the State for filing petitions.
- (3) The Department will also notify the Governor of each State in which one or more firms covered by an ITC determination are located and will identify those firms to the State.
- (f) *Acceptance of petitions.* The Department will review a petition, including attachments, to determine if it is valid within 2 business days of receipt of the petition by the Department. The date on which the petition is determined to be valid under paragraph (b) of this section is the filing date. The Department will not initiate the investigation until it has determined that the petition is valid.
- (g) *Multiple petitions for same group of workers.* If the Department receives multiple petitions regarding the same group of workers, it will base the filing date upon the first petition received.

(h) *Publication of notice in the Federal Register.* The Department will publish a notice in the *Federal Register* and on the Department's website announcing the initiation of an investigation into all valid petitions filed.

(i) *Public access to petitions.* A petition, including attachments, is a record that is available, in redacted form, in accordance with the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), Executive Order 12600, and 29 CFR part 70. The Department will post all petitions, in redacted form, to the Department's website and make them available for review at the Office of Trade Adjustment Assistance, Washington, DC.

(j) *Receipt of petition by the State.* If the State receives a petition, the State must verify that the Department has also received the petition. If the petition has not been posted to the Department's website within 10 calendar days of receipt by the State, the State must forward the petition to the Department.

§ 618.210 Investigation.

(a) *Timing.* The Department will initiate an investigation once it has deemed the petition valid in accordance with § 618.205(f).

(b) *Period of investigation.* For purposes of this subpart, the period of investigation is the time period it takes to investigate each of the criteria that are part of the Department's determination. The period of investigation varies for some eligibility criteria; § 618.225 describes the period of investigation for each criterion.

(c) *Investigative process.* To determine whether the petitioning group of workers' eligibility criteria for certification have been met, the Department may take as many of

the steps in paragraphs (c)(1) through (8) of this section during the investigation as it deems necessary to identify the group of workers and to reach a determination of eligibility to apply for TAA Program benefits for the identified worker group:

- (1) Verify information on the petition form by contacting the petitioner(s);
- (2) Provide the petitioner(s) the opportunity to submit additional evidence in support of the petition;
- (3) Obtain publicly available information about the workers' firm and industry;
- (4) Request information from the workers' firm;
- (5) Request information from the customers of the workers' firm;
- (6) Request information from the officials of certified or recognized unions or other duly authorized representatives of the group of workers;
- (7) Request information from one-stop center operators or one-stop partners; or
- (8) Use other available sources of information as necessary.

(d) *Protection of confidential business information.* (1) The Department will determine whether information submitted by a firm or customer is confidential business information in accordance with FOIA, as amended (5 U.S.C. 552), Executive Order 12600, the Trade Secrets Act (18 U.S.C. 1905), and 29 CFR part 70.

(2) The Department will not disclose confidential business information without the consent of the submitting firm or customer, unless under a court order to do so or as otherwise required by law.

(e) *Termination of investigation.* (1) The Department will notify the petitioner of the termination of an investigation, publish a Notice of Termination of Investigation in

the *Federal Register*, and post on the Department's website. The Department may terminate an investigation if the investigation establishes one of the following:

(i) The petition is invalid, which includes petitions identifying a nonexistent group of workers, filed under false pretenses, or perpetuating fraud;

(ii) The petitioner has withdrawn the petition in writing;

(iii) The group of workers identified in the investigation is the same as a group of workers identified in another pending investigation;

(iv) The group of workers identified in the investigation already has been issued a denial, and the period of investigation applicable to the current investigation and the previous denial is the same; or

(v) The group of workers identified in the investigation is already covered by a certification that does not expire within 90 calendar days of the determination.

(2) If appropriate to protect the interests of the group of workers covered by a petition filed and terminated under paragraph (e)(1)(i) or (ii) of this section, the Department may use the original impact date of the terminated petition for the identical group of workers covered under a later, valid, petition covering the identical group of workers, provided that it is filed within 30 calendar days of the filing date of the first petition. Under no circumstances will the Department use the impact date of an earlier petition when that petition was terminated for being invalid under paragraph (e)(1)(i) of this section because it was filed under false pretenses or to perpetuate a fraud.

(3) Section 618.245 describes reconsideration of a termination of investigation.

(f) *Investigative record.* The investigative record of a determination will include the petition that initiated the investigation, the documents and other materials provided to

the Department in connection with the determination on the petition, research conducted by the Department, and records of investigation activities (including but not limited to telephone logs and email correspondence, and any determination under § 618.225(a), (b) or (c)). The investigative record excludes information that is privileged or otherwise exempt from disclosure. Personally identifiable information and confidential business information will be protected consistent with all Federal authorities and Departmental administrative guidance.

(g) *Site visits.* The investigation may include one or more site visits to confirm information furnished by the petitioner(s) and to elicit other relevant information, where other methods to obtain or confirm information or both, are unsuccessful.

§ 618.215 Public hearings.

(a) *When held.* (1) A public hearing must be held in connection with an investigation initiated under § 618.210 whenever, but not later than 10 days after the date of publication in the *Federal Register* of the notice of receipt of the petition, such a hearing is requested in writing by:

(i) The petitioner; or

(ii) Any other person found by the Administrator to have a substantial interest in the proceedings.

(2) Such petitioner and other interested persons must be afforded an opportunity to be present, to produce evidence, and to be heard.

(3) An explanation of why the requestor is requesting the hearing must be provided to the Department.

(b) *Form of request.* A request for public hearing must be filed, in letter format, in the same manner as provided for other documents under § 618.205(d)(2). The request must contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing;

(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the petition's subject matter; and

(3) An explanation of why the person, organization, or requestor is the hearing is interested in the matter.

(c) *Time, place, and scope.* The time, place, and scope of a public hearing will be set by the presiding officers and published in the *Federal Register* a reasonable period of time before the scheduled hearing.

(d) *Presiding officer.* The Administrator, or their designee, must conduct and preside over public hearings.

(e) *Order of testimony.* Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, the presiding officer or an agent designated by the presiding officer may question the witness. Any person who has entered an appearance in accordance with paragraph (k) of this section may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) *Evidence.* Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) *Briefs*. Parties who have entered an appearance may file briefs regarding the evidence produced at the hearing. The briefs must be filed with the presiding officer within 10 days of the completion of the hearing.

(h) *Oral argument*. The presiding officer must provide opportunity for oral argument by parties listed in paragraphs (a)(1)(i) and (ii) of this section after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Authentication of evidence*. Evidence, oral or written, submitted at hearings, will, upon order of the presiding officer, be subject to verification from books, papers, and records of the parties submitting such evidence and from any other available sources.

(j) *Transcripts*. All hearings will be transcribed or recorded in compliance with the standards of the Department. Persons interested in records of the hearings may inspect them at the U.S. Department of Labor in Washington, DC.

(k) *Appearances*. Any person showing a substantial interest in the proceedings may enter an appearance at a hearing, either in person or by a duly authorized representative.

§ 618.220 Use of subpoena.

(a) The Administrator may require, by subpoena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official deems necessary to make a determination under this subpart.

(b) The Department will issue a subpoena to secure evidence from a firm, customer, petitioner, or other person who fails to provide requested information within 20

days of the request, unless the recipient of the subpoena demonstrates to the satisfaction of the Department that the information will be provided within a reasonable time. In making this determination, the Department will consider the following factors:

- (1) Submission of a portion of the required information;
- (2) Prompt cooperation with inquiries about the information;
- (3) Cooperation in previous responses to information requests;
- (4) Evidence of effort to obtain the required information; and
- (5) Other information the Department determines to be relevant.

(c) Witnesses subpoenaed under this section to appear in person must be paid the same fees and mileage as are paid for like services in the District Court of the United States within the jurisdiction of which the proceeding is taking place. The Department must pay the witness fees and mileage.

(d) Subpoenas issued under paragraph (a) of this section must be signed by the Administrator, or their designee, and must be served consistent with Rule 5(b) of the Federal Rules of Civil Procedure. The date for compliance must be 7 calendar days following service of the subpoena, unless otherwise indicated.

(e) If the recipient of the subpoena refuses to provide the requested information, the Department may petition the appropriate District Court of the United States to seek enforcement of the subpoena.

§ 618.225 Criteria for certification of a group of workers.

(a) *Increased imports.* (1) This paragraph (a) includes criteria for certification of a group of workers based upon increased imports of:

(i) Articles like or directly competitive with the articles produced by the workers' firm;

(ii) Services like or directly competitive with the services supplied by the workers' firm;

(iii) Articles like or directly competitive with articles into which one or more component parts produced by the workers' firm are directly incorporated;

(iv) Articles like or directly competitive with articles that are produced directly using services supplied by the workers' firm; or

(v) Articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by the workers' firm.

(2) After review of the relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as impacted by increased imports if all four of the criteria in paragraphs (a)(2)(i) through (iv) of this section are met.

(i) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with such separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

(1) A questionnaire;

(2) State workforce agencies;

(3) Unions;

(4) Displaced workers;

(5) Public records; and

(6) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

(1) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(2) Review of employment activity during the 1-year period prior to the petition date; and

(3) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

(1) A Worker Adjustment and Retraining Notice (WARN) letter;

(2) A separation schedule;

(3) Information provided to the public, such as a news release or notice on the workers' firm website;

(4) Information provided to the worker group; or

(5) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2*. Sales or production, or both, of the workers' firm has decreased during the 1-year period prior to the petition date.

(A) Information regarding sales or production may be collected from:

(1) Questionnaires;

(2) Public records; and

(3) Other reliable sources.

(B) Analysis of sales or production data must generally consist of a comparison of sales or production data on the petition date to sales or production data on the date that is 1 year prior to the petition date.

(iii) *Criterion 3.* Imports of the article or service have increased during the 1-year period prior to the petition date.

(A) Information regarding imports may be collected from:

(1) Questionnaires issued to the workers' firm or customer(s);

(2) Public records; and

(3) Other reliable sources.

(B) Analysis of the workers' firm import activity must generally consist of a comparison of the workers' firm import data on the petition date to the workers' firm import data on the date that is 1 year prior to the petition date.

(C) Analysis of customer import activity must generally consist of a comparison of the aggregate of customer import data on the petition date to the aggregate of customer import data on the date that is 1 year prior to the petition date.

(iv) *Criterion 4.* Increased imports have contributed importantly to worker separations, or threat of separation, and the decline in sales or production at the workers' firm.

(A) Analysis of the impact of increased imports on worker separations and declines in sales or production at the workers' firm must generally consist of determining:

(1) Whether there are one or more events, or factors, that lessen or sever the causal nexus between the increase in imports and worker separations or threat of separation, and the decline in sales and production at the workers' firm;

(2) What percentage of the workers' firm sales or production declines was attributable to the firm's increased imports;

(3) What percentage of the workers' firm customer(s) sales or production declines was attributable to the firm's increased imports; and

(4) Whether there are other events or factors that mitigate or amplify the impact of increased imports on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(b) *Shift*. (1) This paragraph (b) includes criteria for certification of a worker group based on a shift:

(i) In production of like or directly competitive articles by the workers' firm to another country; or

(ii) In the supply of like or directly competitive services by the workers' firm to another country.

(2) After a review of relevant information necessary to make a determination, the certifying officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a shift in production or supply of service if all of the criteria in paragraphs (b)(2)(i) through (iii) of this section of are met.

(i) *Criterion 1*. A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

- (1) A questionnaire;
- (2) State workforce agencies;
- (3) Unions;
- (4) Displaced workers;
- (5) Public records; and
- (6) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

- (1) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;
- (2) Review of employment activity during the 1-year period prior to the petition date; and
- (3) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

- (1) A WARN letter;
- (2) A separation schedule;
- (3) Information provided to the public, such as a news release or notice on the workers' firm website;
- (4) Information provided to the worker group; or
- (5) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2*. There has been a shift in the production or supply of services by the workers' firm to a foreign country.

(A) Information regarding shift activity may be collected from:

- (1) A questionnaire;
- (2) Public records; and
- (3) Other reliable sources.

(B) Analysis of shift activity must generally consist of a:

- (1) Comparison of shift data on the petition date to shift data on the date that is 1 year prior to the petition date;
- (2) Review of shift activity during the 1-year period prior to the petition date; and
- (3) Review of evidence provided by the workers' firm regarding shift activity scheduled to occur after the petition date.

(C) Evidence of future planned shift activity must include more than a stated intent to shift activity to a foreign country and includes, but is not limited to, a reassignment of production or service supply; a reassignment of discrete aspects or stages of production or service supply; securing a facility in a foreign country; shipping resources to a foreign country; or acquiring personnel in a foreign country.

(iii) *Criterion 3.* The shift to a foreign country has contributed importantly to worker separations or threat of separation.

(A) Analysis of impact of shift activity on worker separations must generally consist of determining:

- (1) Whether there are one or more events or factors that sever or lessen the causal nexus between the shift activity and worker separations or threat of separation;
- (2) What percentage of the workers' firm sales or production declines was attributable to the firm's shift activity;

(3) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than operations at the foreign facility or facilities; and

(4) Whether there are other events or factors that mitigate or amplify the impact of shift activity on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(c) *Foreign acquisition.* This paragraph (c) includes criteria for certification of a worker group based on a foreign acquisition of like or directly competitive articles by the workers' firm from another country. After review of relevant information necessary to make a determination, the certifying officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a foreign acquisition of articles or services if all of the criteria in paragraphs (c)(1) through (3) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* There has been an acquisition of articles or supply of services by the workers' firm from an entity in a foreign country.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of acquisition data must generally consist of a:

(A) Comparison of acquisition data on the petition date to acquisition data on the date that is 1 year prior to the petition date;

(B) Review of acquisition data during the 1-year period prior to the petition date;
and

(C) Review of evidence provided by the workers' firm regarding acquisition activity scheduled to occur after the petition date.

(iii) Evidence of future planned acquisitions requires more than a stated intent to procure production of an article or supply of services from an entity in a foreign country and may include, but is not limited to, entering into a contract with a licensee; reassignment of production or service supply to a contractor or licensee; and a reassignment of discrete aspects or stages of production or service supply to a contractor or licensee.

(3) *Criterion 3.* The acquisition from a foreign country has contributed importantly to worker separations or threat of separation.

(i) Analysis of impact of acquisition data on worker separations must generally consist of determining:

(A) Whether there are one or more events or factors that lessen or sever the causal nexus between the acquisition activity and worker separations or threat of separation;

(B) What percentage of the workers' firm sales or production declines was attributable to the firm's acquisition activity;

(C) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than contractor or licensee operations in the foreign country; and

(D) Whether there are other events or factors that mitigate or amplify the impact of acquisition activity on the workers' firm.

(ii) The impact may be determined using a quantitative or qualitative analysis.

(d) *Supplier of component parts or services.* This paragraph (d) contains criteria for certification of a worker group as a supplier to a worker group. After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as a supplier to a worker group if all of the criteria in paragraphs (d)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm supplied component parts or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (d)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (d)(2) of this section was based on an article or service related to the component part produced or service supplied by the workers' firm.

(5) *Criterion 5.* The component parts supplied to the firm identified in paragraph (d)(2) of this section, represented at least 20 percent of the supplier's production or sales

during the 1-year period prior to the petition date, or loss of business with the firm identified in paragraph (d)(2) of this section, during the 1-year period prior to the petition date, contributed importantly to separations or threat of separation at the workers' firm.

(e) *Downstream producer.* After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as a downstream producer if all of the criteria in paragraphs (e)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from a questionnaire, State workforce agencies, unions, displaced workers, public records, and other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm provided value-added production processes or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (e)(2) of this section was based on an article or service related to the value-added production processes or services supplied by the workers' firm.

(5) *Criterion 5.* Loss of business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date contributed importantly to separations or threat of separation at the workers' firm.

(f) *ITC determinations.* After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA based on a determination issued by the ITC if all of the criteria in paragraphs (f)(1) through (3) of this section are met.

(1) *Criterion 1.* The ITC has publicly identified the workers' firm, by name, as a member of a domestic industry in an investigation resulting in:

(i) An affirmative determination of serious injury or threat thereof under sec. 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

(ii) An affirmative determination of market disruption or threat thereof under sec. 421(b)(1) of the Act (19 U.S.C. 2451(b)(1)); or

(iii) An affirmative final determination of material injury or threat thereof under sec. 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)).

(2) *Criterion 2.* The petition is filed during the 1-year period beginning on the date on which:

(i) A summary of the report submitted to the President by the ITC under sec. 202(f)(1) of the Act with respect to the affirmative determination described in paragraph (f)(1)(i) of this section is published in the *Federal Register* under sec. 202(f)(3) of the Act; or

(ii) Notice of an affirmative determination described in paragraph (f)(1)(ii) or (iii) of this section is published in the *Federal Register*.

(3) *Criterion 3.* The workers have become totally or partially separated from the workers' firm within:

(i) The 1-year period described in paragraph (f)(2) of this section; or

(ii) The 1-year period preceding the 1-year period described in paragraph (f)(2) of this section.

(g) *Sales or production decline criteria.* For paragraphs (a) through (c) of this section, in assessing sales or production decline for the period 1 year prior to the petition date, the Department will use a comparison of the latest 2 full calendar year periods and will use a comparison of the year to date period (from the year the petition was filed) to the same year to date period from the prior year. This paragraph (g) does not apply to

determining whether a significant number of workers have been separated or threatened with separation.

(h) *Oil and gas.* For workers employed by firms engaged in exploration or drilling for crude oil and natural gas:

(1) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas must be considered to be a firm producing oil or natural gas;

(2) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, must be considered to be producing articles directly competitive with imports of oil and with imports of natural gas; and

(3) The Department may conduct a parallel investigation to determine whether the group of workers meets the criteria for certification of worker groups under this section for the services provided by the group of workers. The Department will render a determination after all appropriate avenues are considered.

(i) *Staffed workers.* The Department considers staffed workers to be members of a worker group even if they are not specifically mentioned within the determination document issued under § 618.235. The Department will collect information from the workers' firm during the investigation to establish which leasing or staffing entity or entities the firm used under a contract. Once identified, an evaluation of operational control will occur. If a certification is rendered, the Department will notify States regarding the appropriate contact information of the known leasing or staffing entity or entities in order to expedite worker notification of their eligibility to apply individually

for TAA Program benefits and services. Factors to be considered in evaluating operational control include:

(1) Whether the contract workers perform only tasks that are independent, discrete projects for the workers' firm (as opposed to performing tasks that are part of the regular business operations of the firm);

(2) Whether the workers' firm has the discretion to hire, fire, and discipline the contract workers;

(3) Whether the workers' firm has the ability to terminate the contract workers' employment with such firm through the staffing or leasing contracted firm;

(4) Whether the workers' firm exercises the authority to supervise the contract workers' daily work activities, including assigning and managing work, and determining how, where, and when the work of contract worker takes place (e.g., factors such as the hours of work, the selection of work, and the manner in which the work is to be performed by each contract worker are relevant);

(5) Whether the services of the contract workers are offered on the open market;

(6) Whether the contract workers work exclusively for the workers' firm;

(7) Whether the workers' firm is responsible for establishing wage rates and the payment of salaries of the contract workers;

(8) Whether the workers' firm provides skills training to the contract workers; and

(9) Whether there are other facts indicating that the workers' firm exercises control over the contract workers.

(j) *Teleworkers*. The Department considers teleworkers (also known as remote, or home-based workers) to be members of a worker group even if they are not specifically

mentioned within the determination document issued under § 618.235 when they would be a part of the worker group if they worked on-site. Teleworkers do not have to be physically based at the location of the subject firm or in the same city or same State of the location that is identified on the determination document to be members of the certified worker group.

(k) *Successor-in-interest.* The Department considers workers employed by a firm that is a successor-in-interest to be members of a worker group even if they are not mentioned specifically within the determination document issued under § 618.235.

§ 618.230 Evidence.

(a) The Department will verify information obtained during an investigation before considering such information in support of a petition.

(b) Evidence may be accepted from such sources including, but not limited to, petitioners, company officials, current and former workers of the firm, customers of the firm, trade associations, union representatives, Federal agencies, and public sources such as State agencies and academic institutions.

(c) The Department may share affidavits, testimonials, news articles, and other types of information proffered in support of a petition with appropriate parties for verification.

§ 618.235 Determinations.

Based on the findings of the investigation as set forth in § 618.230, a certifying officer will make a determination on a petition as provided under paragraph (a) or (b) of this section.

(a) *Affirmative determination or certification.* When the investigation establishes that a group of workers meets the eligibility criteria of § 618.225, the certifying officer will issue a certification of worker group eligibility to apply for TAA Program benefits and services. The certification will include the name of the firm or appropriate subdivision thereof at which the trade-affected workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j), the certification period, and the certification date.

(1) A certification covers any worker in the worker group eligible to apply for assistance under sec. 222(a) and (b) of the Act, whose last total or partial separation, or threat of a separation, from a firm or appropriate subdivision took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the petition date; and

(ii) On or before the day the certification expires, which is 2 years after the certification date, or an earlier date on which the certifying officer determines that separations from adversely affected employment may no longer be attributed to the conditions underlying the certification, as described in § 618.240, or the date identified in an amendment described in § 618.250.

(2) A certification covers any worker in the worker group eligible to apply for TAA Program benefits and services under sec. 222(e) whose last total or partial separation from a firm took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the ITC publication in the *Federal Register*; and

(ii) On or before the day the certification expires, which is the date 1 year from the ITC publication in the *Federal Register*.

(3) A trade-affected worker who is a member of the worker group covered by the certification may apply to the State for benefits and services under subparts C through G of this part.

(b) *Negative determination or denial.* When the investigation establishes that the group of workers does not meet the criteria for eligibility, as described in § 618.225, the certifying officer will issue a denial. The denial will include the name of the firm or appropriate subdivision thereof at which the workers covered by the denial have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j).

(c) *Determination.* The certifying official prepares a determination identifying the article(s) produced or service(s) provided and describing the worker group covered by the certification or denial and stating the reasons for the determination (excluding information designated as confidential business information). The Department will provide a copy of the determination to the petitioner(s) and to the State(s) covered by the determination. The Department will publish in the *Federal Register*, and on the Department's website, a summary of the determination issued under paragraph (a) or (b)

of this section, along with a general statement of the reasons for the determination (except for confidential business information).

(d) *Amended determination.* The Department may amend a certification to limit or expand the eligible worker group or other elements of the certification. The Department also may, without an outside request for redetermination, reconsider a denial. An amended determination will not take effect until the previous determination becomes final, either after the period in which to request reconsideration has lapsed or after the Department makes a determination on reconsideration. Amended certifications are discussed in more detail in § 618.250.

§ 618.240 Termination of certification.

(a) *Initiation.* Whenever the Administrator of the Office of Trade Adjustment Assistance has reason to believe, with respect to any nonexpired certification, that the total or partial separations or threat of separation from a firm, or appropriate subdivision thereof, are no longer attributable to the conditions specified in sec. 222 of the Act and § 618.225, the Administrator must promptly conduct an investigation.

(1) Certifications, as described in § 618.235(a)(1)(ii), will include a standard date of termination, also called expiration date, which is 2 years from the date of certification, unless otherwise designated through an earlier termination under this section.

(2) Certifications for firms identified by the ITC, as described in § 618.225(f), will include a standard date of termination, also called expiration date, which is 1 year from the date the determination is published in the *Federal Register*.

(b) *Notice.* A notice of the initiation of an investigation to terminate a certification must be published in the *Federal Register*, and on the Department's website, and provided to the petitioner(s) of the certification under investigation, the firm official(s), and State(s) that contain the location(s) of the workers comprising the worker group covered by the certification. The State(s) must also promptly notify the workers in the worker group.

(c) *Opportunity for comment.* Within 10 calendar days after publication of the notice under paragraph (b) of this section, members of the worker group or any other person who has a substantial interest in the matter may provide evidence in writing supporting the continuation of eligibility of certification to show why the certification should not be terminated. If a hearing is requested, it will be conducted in accordance with § 618.215. If no evidence is provided by any interested party within 10 days from the date of publication to the *Federal Register* or on the Department's website, whichever is later, a determination must be issued once the investigation is complete. Evidence (except at a timely requested hearing) and hearing requests submitted outside the 10-day period will not be accepted.

(d) *Investigation of termination of a certification.* The Department will conduct a review of the record on which the certification was based, any evidence timely filed under paragraph (c) of this section, and any data submitted with the petition or provided subsequent to the filing of the petition. The period of investigation of termination of a certification will remain the same as the period of investigation for the original certification.

(e) *Determination to terminate or partially terminate a certification.* A

determination to terminate a certification may cover the entire worker group specified in the certification or a portion of that group. Such termination or partial termination must apply only with respect to total or partial separations occurring after the termination date specified in the determination notice and must only take effect after the determination becomes final, either after the period in which to request reconsideration has lapsed or after a determination on reconsideration is made.

(1) Upon making a determination that the certification should be terminated for all or part of the worker group specified in the certification, the Department will issue a determination, either a Notice of Total Termination of Certification or a Notice of Partial Termination of Certification, which will contain the reasons for making such determination (redacting confidential business information) and notify the petitioner(s) of the original certification, the firm official(s), and the State(s). The Department will also publish the notice in the *Federal Register*, and on the Department's website. The State will notify the worker group of the termination or partial termination.

(2) The termination date specified in the determination notice must not be earlier than the date of publication in the *Federal Register*.

(f) *Determination of continuation of certification.* After an investigation resulting in a decision that the certification should not be terminated, the Department will notify the petitioner(s) of the original certification, firm official(s), and the State(s). The State(s) will notify the worker group of the determination of continuation of certification. The Department will publish (redacting confidential business information) the determination as a Notice of Continuation of Certification in the *Federal Register* and on the

Department's website. After receiving notice by the Department, the State(s) must notify the worker group of the continuation of certification.

(g) *Reconsideration of termination or partial termination of a certification.* Any party that is eligible under § 618.225 to submit a petition may file an application for reconsideration with the Department, following the procedures described in § 618.245.

§ 618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.

(a) *Application for reconsideration; contents.* (1) Any party who is eligible to file a petition under § 618.205, and any worker in the group of workers, may file a written application seeking reconsideration of a termination of an investigation under § 618.210(e); a negative determination issued under § 618.235(b); or a termination or partial termination of certification issued under § 618.240, via email:

reconsiderations.taa@dol.gov; fax: (202) 693-3584 or (202) 693-3585; or mail: U.S.

Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(2) An application for reconsideration must contain the following information to be complete and valid:

(i) The name(s) and contact information of the applicant(s);

(ii) The name or a description of the group of workers on whose behalf the application for reconsideration is filed in the case of an application for reconsideration of a termination of an investigation or a negative determination, or the name or a description

of the worker group on whose behalf the application for reconsideration of a termination or partial termination of a certification is filed;

(iii) The petition number identified on the petition or determination that is the subject of the application for reconsideration;

(iv) The reasons for believing that the termination of the investigation, negative determination, or termination or partial termination of a certification identified in paragraph (a)(1) of this section is erroneous, including any issues that the applicant asserts require further investigation;

(v) Any information that may support the application for reconsideration, including material not considered prior to the termination of the investigation, negative determination, or termination or partial termination of a certification; and

(viii) The signature(s) of the party, or representative thereof, requesting reconsideration.

(b) *Time for filing.* An application for reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification must be filed no later than 30 calendar days after the notice of the termination of the investigation, negative determination, or termination or partial termination of a certification has been published in the *Federal Register*. If an application is filed after that time, it will be returned as untimely filed.

(c) *Return of incomplete applications for reconsideration.* The Department will review an application for reconsideration within 2 business days upon its receipt to determine if the application contains all of the necessary information required under paragraph (a)(2) of this section. The Department will not accept an incomplete

application for filing, but will return it to the applicant with a brief statement explaining why it is incomplete. Should an applicant wish to refile an application for reconsideration, the refiling must occur no later than 30 calendar days after the notice of the determination has been published in the *Federal Register*, within the 30-day period identified in paragraph (b) of this section or, if the application is returned less than 5 days before the end of that period, within 5 days of receipt.

(d) *Notice of an application for reconsideration.* After receipt of a complete and timely application for reconsideration, the Department will notify the applicant and publish in the *Federal Register* and on the Department's website the notice of the application and the initiation of an investigation on reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification.

(e) *Opportunity for comment and submission of data on reconsideration.* Within 10 calendar days after publication of a notice under paragraph (d) of this section, any party who is eligible to file a petition under § 618.205 may make written submissions to show why the determination under reconsideration should or should not be modified.

(f) *Investigation on reconsideration.* The Department will conduct a review of the record on which the termination of the investigation, negative determination, or termination or partial termination of a certification was based, any comments timely filed under paragraph (a)(2)(iv), (a)(2)(v), or (e) of this section, and any data submitted with the original petition or provided subsequent to the filing of the petition. The period of investigation under reconsideration will remain the same as the period of investigation for the original petition.

(g) *Determinations on reconsideration.* The Department will issue a final determination affirming, reversing, or modifying the termination of the investigation, negative determination, or termination or partial termination of a certification within 60 days after the date of receiving a complete and valid application for reconsideration. The Department will notify the applicant(s), the petitioner(s) of the original petition, firm official(s), and the State(s); and publish notice in the *Federal Register* of the determination on reconsideration and the reasons for it (redacting confidential business information). The State continues to be responsible for notifying trade-affected workers in a certified worker group of their eligibility to apply for TAA, in accordance with § 618.820. If 60 days pass without a determination on reconsideration, the Department will contact the applicant to ascertain whether the applicant wishes the Department to continue the reconsideration investigation and issue a determination on reconsideration or wishes the Department to terminate the reconsideration investigation, which renders the initial determination as the Department's final determination.

§ 618.250 Amendments of certifications.

(a) *Types of amendments.* A certifying officer may amend a certification, as appropriate, to include all workers of the applicable firm who were identified as adversely affected by foreign trade. Amendments must not extend the impact date more than 1 year prior to the petition date unless there is a statutory exception, as described in § 618.235(a)(1)(iii)(A). Reasons for amendments include, but are not limited to:

- (1) Identifying an ownership change affecting the applicable firm;
- (2) Correcting technical errors; or

(3) Clarifying the identification of the worker group.

(b) *Petition filing*. Amendments must be requested through the regular petition process described in § 618.205.

(c) *Notification of amendment*. The Department will publish the amended certification in the *Federal Register* and on the Department's website. The Department will also notify the affected States and the State must notify any additional certified trade-affected workers, as required by § 618.820.

§ 618.255 Judicial review of determinations.

(a) *General*. A worker, group of workers, certified or recognized union, or authorized representative of such worker or group may commence a civil action for review of the determination by filing a complaint with the United States Court of International Trade (USCIT) within 60 days after the date of publication of the notice of a final determination in the *Federal Register*, as provided under sec. 284 of the Act (19 U.S.C. 2395).

(b) *Final determination*. Only determinations issued under §§ 618.240(g) and 618.245 are final determinations for purposes of judicial review.

(c) *Certified record of the Department*. Upon receiving a copy of the summons and complaint from the clerk of the USCIT, the Department will file with the court a certified record meeting the requirements of the rules of the USCIT. When the certified record contains confidential business information, the Department will file a public version of the record redacting the confidential business information, and a separate

version that includes the confidential business information, in accordance with the rules of the USCIT.

(d) *Further proceedings.* Upon remand by the USCIT, the Department will conduct an additional investigation and the certifying officer will make new or modified findings of fact and will modify or affirm the previous determination. Upon making this subsequent determination, the certifying officer will publish a summary of the determination and the reasons for the determination in the *Federal Register*, redacting any confidential business information from the published summary. The certifying officer also will file the determination upon remand and the record on which the determination is based with the USCIT, in accordance with the rules of USCIT.

(e) *Standard of review.* The determination and findings of fact by the certifying officer are conclusive if the USCIT determines that they are supported by substantial evidence, as provided under sec. 284 of the Act (19 U.S.C. 2395).

(f) *Individual benefits denials.* Appeals of denials of individual benefits are not determinations under sec. 222 of the Act and are not subject to review by the USCIT under sec. 284 of the Act.

(g) *Manner of filing.* Requests for judicial review must be filed in accordance with the rules of the USCIT.

§ 618.260 Study regarding certain affirmative determinations by the Commission.

(a) Upon notification from the Commission that it has begun an investigation under sec. 202 of the Act with respect to an industry, the Department must immediately begin a study of:

(1) The number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, which includes, but is not limited to, analysis of:

(i) The estimated number of certified workers within the domestic industry named in the ITC affirmative determination;

(ii) Information obtained during the investigation of TAA Program determinations;

(iii) Responses from Domestic Industry Study;

(iv) Information obtained by consultation with ITC Commission industry experts; and

(v) Other pertinent workforce and trade-impact data of companies who are currently participating in the industry.

(2) The extent to which the adjustment of such workers to the import competition may be facilitated through the use of the TAA Program, other Departmental programs and resources, and programs administered by other Federal agencies.

(b) The report of the Department's study under paragraph (a) of this section must be made to the President not later than 15 days after the day on which the Commission makes its report under sec. 202(f)(1) of the Act. The Department will also publish the report in the *Federal Register* and on the Department's website.

§ 618.265 Availability of information to the public.

(a) *Information available to the public.* The Department posts all determinations on the Department's website. The Department also posts redacted versions of all petitions

on the Department's website. Upon request to the Administrator of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with the Administrator, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this subpart, public notices concerning trade-affected worker assistance under the Act and other reports and documents issued for general distribution, in accordance with the Department's record retention schedule, FOIA, and the Privacy Act.

(b) *Information not available to the public.* Confidential business information must not be made available to the public.

Subpart C—Employment and Case Management Services

§ 618.300 Scope.

This subpart describes the employment and case management services that the State must make available to trade-affected workers, either directly through the TAA Program or through arrangements with partner programs. This subpart requires States, under the Governor-Secretary Agreement at § 618.804, to integrate the provision of benefits and services available to trade-affected workers under the TAA Program with the delivery of employment services and other assistance provided through the one-stop delivery system (established under title I of WIOA), as required by secs. 235 and 239(a), (e), and (g) of the Act. It also implements the requirements of sec. 221(a)(2)(A) of the Act for the provision of rapid response assistance and appropriate career services described in §§ 682.300 through 682.370, and 680.150 of this chapter, respectively, for workers upon receipt of a petition filed covering a group of workers.

§ 618.305 The Trade Adjustment Assistance Program as a one-stop partner.

(a) As provided by WIOA sec. 121(b)(1)(B)(vii), the TAA Program is a required one-stop partner under WIOA.

(b) The State must ensure that the TAA Program complies with WIOA's one-stop partnership requirements at WIOA sec. 121(b)(1)(A)(i) through (v). This includes, among the other requirements, paying infrastructure costs where the TAA Program is being carried out.

(c) The TAA Program must also comply with, and be a party to, the memorandum of understanding required under the regulations implementing WIOA at § 678.500 of this chapter, where the TAA Program is being carried out.

§ 618.310 Responsibilities for the delivery of employment and case management services.

(a) The State is responsible for providing information to workers about the TAA Program, as required in § 618.820;

(b) As part of the delivery of services, the State must:

(1) Conduct intake, which includes interviewing each trade-affected worker and reviewing suitable training opportunities reasonably available to each worker under subpart F of this part;

(2) Inform trade-affected workers of the employment services and allowances available under the Act and this part, including the application procedures, the filing

requirements for such services, and enrollment deadlines for receiving TRA, as described in subpart G of this part;

(3) Determine whether suitable employment, as defined in § 618.110, is available, and assist in job search activities related to securing suitable employment;

(4) Accept applications for training;

(5) Provide information on which training providers offer training programs at a reasonable cost and with a reasonable expectation of employment following the completion of such training, and assist in acquiring such training;

(6) Monitor the progress and attendance of trade-affected workers in approved training programs;

(7) Develop and implement a procedure for determining whether to issue a training waiver and to review waivers to determine whether the conditions under which they were issued have changed, in compliance with subpart G of this part;

(8) Provide access to workshops and other resources related to job search strategies, resume building, interviewing, and other topics available through the TAA Program or through the one-stop delivery system; and

(9) Coordinate the administration and delivery of additional appropriate employment services, benefits, training, supportive services, and supplemental assistance for workers with partner programs for which the trade-affected worker may be eligible.

(c) The State must make available the employment and case management services in paragraphs (c)(1) through (7) of this section to trade-affected workers under a certification of eligibility to apply for TAA Program benefits and services, and that those workers are informed of the availability of:

(1) Comprehensive and specialized assessment of skill levels and service needs, including through:

- (i) Diagnostic testing and use of other assessment tools; and
- (ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(2) Development of an individual employment plan (IEP) to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(3) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in sec. 402F of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a-16), where applicable, and notifying workers that they may request that financial aid administrators at institutions of higher education (as defined in sec. 102 of HEA (20 U.S.C. 1002)) use the administrators' discretion under sec. 479A of HEA (20 U.S.C. 1087tt) to use current-year income data, rather than preceding-year income data, for determining the amount of the workers' need for Federal financial assistance under title IV of HEA (20 U.S.C. 1070 et seq.).

(4) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare trade-affected workers for employment or training.

(5) Individual and group career counseling, including job search and placement counseling, during the period in which the worker is receiving a trade adjustment allowance or training under this chapter, and after receiving such training for purposes of job placement and employment retention.

(6) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

- (i) Job-vacancy listings in such labor market areas;
- (ii) Information on the job skills necessary to obtain the jobs identified in the job-vacancy listings described in paragraph (c)(6)(i) of this section;
- (iii) Information relating to local occupations that are in demand and the earning potential of those occupations; and
- (iv) Skills requirements for local occupations described in paragraph (c)(6)(iii) of this section.

(7) Information relating to the availability of supportive services, available through partner programs, including services relating to childcare, transportation, dependent care, housing assistance, and needs related payments that are necessary to enable a trade-affected worker to participate in training.

(d) To make available, with respect to the employment and case management services described in paragraph (c) of this section, means:

- (1) That the State must inform the trade-affected worker of the full suite of services available; and
- (2) That the State must offer and provide appropriate services to the trade-affected worker, as requested by the worker or deemed appropriate for the worker; and
- (3) That the State must document each service provided to the trade-affected worker and document the reason any service listed in paragraph (c) of this section was

not provided. The documentation must be included in the worker's case file, either through case notes or as a stand-alone document.

§ 618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.

(a)(1) A State must co-enroll trade-affected workers who are eligible for WIOA's dislocated worker program. Workers may choose to decline co-enrollment in WIOA. A State cannot deny such a worker benefits or services under the TAA Program solely for declining co-enrollment in WIOA.

(2) A State must also make co-enrollment available to trade-affected workers who are eligible for other one-stop partner programs to ensure that all necessary and appropriate services, including supportive services, are available to the worker.

(b)(1) *Trade-affected worker dislocated worker eligibility.* Most trade-affected workers meet the eligibility criteria of a dislocated worker defined at WIOA sec. 3(15).

(2) *Partially separated worker and AAIW dislocated worker eligibility.* In certain circumstances, such as a general announcement of a closure, partially separated workers and AAIWs may meet the eligibility criteria as a dislocated worker under WIOA and must also be co-enrolled.

(3) *Trade-affected worker dislocated worker ineligibility.* Some trade-affected workers are ineligible for the WIOA dislocated worker program, including those that do not meet the Selective Service registration requirement, and will be exempt from the co-enrollment requirement in this section.

§ 618.330 Assessment of trade-affected workers.

(a) The assessment process forms the basis for determining which TAA Program benefits and services, including training, are most appropriate to enable trade-affected workers to successfully become reemployed.

(b) The State must schedule an initial assessment that provides sufficient time and information for the trade-affected worker to consider, request, and enroll in training or obtain a waiver of the training requirement in § 618.720(g) to protect their eligibility to receive TRA under subpart G of this part.

(c) Assessments are administered with the cooperation of the trade-affected worker and should include discussion of the worker's interests, skills, aptitudes, and abilities.

(d) The results of assessments must be documented in the case file, either through case notes or as a stand-alone document.

(e) If an assessment has already been administered by a partner program, it must be reviewed once a worker becomes a trade-affected worker to ensure it has the required components as listed in § 618.335 for an initial assessment and, if necessary, § 618.345 for a comprehensive and specialized assessment. If the assessment(s) does not contain the required components, the assessment(s) must be supplemented by the State, in conjunction with the trade-affected worker, to ensure it is fully compliant with TAA Program requirements in this part.

(f) The State must make the trade-affected worker aware of the advantages of receiving an assessment(s). However, a worker may refuse an assessment. Since portions of the assessment(s) are necessary to determine eligibility for certain TAA Program benefits, a worker's refusal to provide necessary information, either as part of the

assessment or outside of the assessment process, may result in a denial of a those benefits. This is detailed further in the applicable benefit sections throughout this part.

§ 618.335 Initial assessment of trade-affected workers.

(a) A State must carry out an initial assessment for each trade-affected worker as part of the intake process described in sec. 239(g) of the Act. When applicable, a State must use the results of an assessment developed by a partner program, supplemented if necessary, as described in § 618.330(e).

(b) The results of the initial assessment will determine the best service strategy to assist the trade-affected worker in obtaining reemployment and provide insight into which benefits and services under the TAA Program and partner programs would be most beneficial to the worker. The initial assessment of the availability of suitable employment to the worker in the local labor market must take into consideration the following factors:

(1) Prevailing local labor market conditions, including the unemployment rate, local employer skill demands and hiring prerequisites;

(2) The worker's knowledge, skills, and abilities from their education and previous employment;

(3) Transferable skills that the worker may possess that would be of interest to other local employers;

(4) Evaluation of a worker's skill levels (including literacy, numeracy, and English language proficiency), aptitudes, abilities (including skills gaps), and supportive service needs; and

(5) Any barriers to the worker's reemployment, such as:

(i) Lack of applicability of skills from the worker's present occupation to other occupations;

(ii) Skills that are in excess supply in the labor market area; or

(iii) Other barriers as outlined in WIOA sec. 3(24).

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

(1) Determine that suitable employment is available to the trade-affected worker, and if so, the State must make available employment and case management services. If the worker disagrees with the determination, the State must make available to the worker a comprehensive and specialized assessment (under § 618.345) to obtain additional information to determine whether the initial assessment was correct.

(2) Determine that no suitable employment is available to the worker and, if so, the State must make available services as described in § 618.310 (responsibilities for the delivery of employment and case management services) and a comprehensive and specialized assessment (as described in § 618.345) to develop a comprehensive service strategy for the trade-affected worker.

(d) If the State determines under paragraph (c) of this section that suitable employment is not available to a trade-affected worker, even with additional employment and case management services, the State must advise the worker to apply for training under subpart F of this part.

§ 618.345 Comprehensive and specialized assessment of trade-affected workers.

(a) The State must make available a comprehensive and specialized assessment to all trade-affected workers.

(b) The comprehensive and specialized assessment must take into account the trade-affected worker's goals and interests as they relate to employment opportunities either in the worker's commuting area or, where there is no reasonable expectation of securing employment in their commuting area and the worker is interested in relocation, the employment opportunities and demand in the area to which they propose to relocate.

(c) The comprehensive and specialized assessment must expand upon the initial assessment regarding the trade-affected worker's interests, skills, aptitudes, and abilities. This may include use of diagnostic testing tools and instruments and in-depth interviewing and evaluation to identify barriers to employment and appropriate employment goals. The in-depth interviewing of trade-affected workers must include discussion of training opportunities reasonably available to each trade-affected worker, as described in subpart F of this part; reviewing the opportunities with each trade-affected worker; and informing each trade-affected worker of the requirements for participating in training, including the enrollment deadlines required for TRA eligibility.

(d) The State may use information from the comprehensive and specialized assessment to determine whether the trade-affected worker has met the six criteria for approval of training listed in subpart F of this part.

§ 618.350 Individual employment plans for trade-affected workers.

(a) A State must:

(1) Make available an IEP; and

(2) Document an IEP for any trade-affected worker seeking training under subpart F of this part or a job search allowance under subpart D of this part, before the worker receives those benefits and services.

(b) An IEP must use the results of the initial and, if available, comprehensive and specialized assessments to assist in documenting a strategy to provide the trade-affected worker with the services needed to obtain employment, including the items listed in paragraph (c) of this section.

(c) An IEP must document:

(1) The trade-affected worker's employment goal, including the targeted occupation and industry;

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

(3) Any services that will be needed by the worker to obtain suitable employment, including career services, supportive services provided through partner programs, and post-training case management services; and

(4) If applicable, any supplemental assistance (subsistence or transportation payments) required for participation in training and the basis for their calculation.

(d) If an IEP has been previously developed with a trade-affected worker by a partner program, it must be reviewed once the worker becomes TAA Program-eligible to ensure it has the components required by paragraph (c) of this section. If the IEP does not contain the components, the IEP must be supplemented by the State in conjunction with the worker to ensure it is fully compliant with the TAA Program requirements in this part.

(e) The State must monitor the progress of the trade-affected worker in meeting the worker's responsibilities as listed in the IEP, including attendance and achievement in approved training programs.

(f)(1) The State must modify the IEP as necessary to facilitate a successful performance outcome for the trade-affected worker.

(2) The modification must be done with the worker's input.

(3) At a minimum, the IEP must be modified when there is a change in the training program, receipt of supplemental assistance, or both.

(g) The State must make the trade-affected worker aware of the advantages of receiving an IEP. However, a worker may refuse to complete an IEP. Since portions of the IEP are necessary to determine eligibility for job search allowances under subpart D of this part and training under subpart F of this part, a worker's refusal to provide necessary information, either as part of the IEP or outside of the IEP process, may result in a denial of a those benefits and services. This is detailed further in subparts D and F of this part.

§ 618.355 Knowledge, skills, and abilities of staff performing assessments.

(a) Staff performing either the initial or comprehensive and specialized assessment must possess the following knowledge and abilities:

(1) Knowledge of the local labor market;

(2) Knowledge of local employer and occupation skill demands and hiring prerequisites, such as educational requirements and professional certifications;

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

(4) The ability to evaluate quickly a worker's ability to conduct a self-directed job search; and

(5) The ability to identify barriers to a worker's employment that could be overcome with training and case management services.

(b) The staff performing these initial and comprehensive and specialized assessments may be from any partner program.

(c) Funds under sec. 235A(1) of the Act may be used to improve and maintain the knowledge and abilities of staff conducting assessments for trade-affected workers.

§ 618.360 Employment and case management services for trade-affected workers in training.

The State must make employment and case management services available, including placement and other appropriate employment and case management services (including referrals to supportive services and follow-up services available through partner programs), to trade-affected workers during training, and upon completion of training, and for AAWs on a waiver from training.

Subpart D—Job Search and Relocation Allowances

§ 618.400 Scope.

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

§ 618.405 General.

(a) A State must grant a job search allowance to an AAW to help the worker secure suitable employment within the United States if the AAW meets the requirements in this subpart.

(b) A State must grant a relocation allowance to an AAW to help the worker and the worker's family relocate within the United States if the AAW meets the requirements in this subpart. A State may grant a relocation allowance to a worker only once under a certification. A State may grant a relocation allowance to only one member of a family for the same relocation, even if there are multiple AAWs in the same family. If more than one member of a family applies for a relocation allowance for the same relocation, then the State must pay the allowance to the AAW who files first, if that AAW is otherwise eligible.

§ 618.410 Applying for a job search allowance.

(a) *Forms.* To receive a job search allowance, an AAW must apply to the State, using the State's process.

(b) *Submittal.* An AAW who has a total or partial separation may apply to the State for a job search allowance after the Department has issued a certification covering the worker. The worker must apply for a job search allowance before beginning a job search to be funded by such an allowance, and the State must not approve the job search allowance until the State has determined that the worker is covered by a certification.

§ 618.415 Eligibility for a job search allowance.

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

(1) File an application before either:

(i) The later of the 365th day after either the date of the certification under which they are covered, or the 365th day after their last total separation; or

(ii) The 182nd day after the date of concluding approved training;

(2) Be an AAW totally separated from the job covered under the certification when beginning the job search;

(3) Receive a determination by the State that the AAW cannot reasonably expect to secure suitable employment in the commuting area, can reasonably expect to obtain either suitable employment or employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the suitable employment requirements in the area of the job search;

(4) Receive a determination by the State that the worker cannot reasonably expect to secure suitable employment by alternatives to being physically present in the area of

the job search, such as by searching and interviewing for employment by means of the internet and other technology;

(5) Not previously have received a relocation allowance under the same certification; and

(6) Complete a State-approved job search within 30 calendar days after the worker leaves the commuting area to begin the job search.

(b) *Completion of job search.* (1) An AAW has completed a job search when the worker either:

(i) Obtains a bona fide offer of employment; or

(ii) Has, with State verification, as provided in § 618.420(a)(2), contacted each employer the worker planned to contact, or to whom the State or other one-stop partner referred the worker as part of the job search.

(2) The job search is complete when one of the actions in paragraph (b)(1) of this section occurs, whichever comes first. For purposes of paragraph (b)(1)(i) of this section, “bona fide” means the offer of suitable employment is made in good faith by a prospective employer.

§ 618.420 Findings required.

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

(1) Find that the AAW meets the eligibility requirements for a job search allowance specified in § 618.415(a)(1) through (6); and

(2) Verify that the worker contacted each employer the State certified or to whom the State or one-stop center referred the worker as part of the job search and must find that the worker completed the job search, as described in § 618.415(b) within the time limits stated in § 618.415(a)(6).

(b) *Assistance by agent State.* (1) When an AAW files an application for a job search allowance to conduct a job search in an agent State, the agent State in which the worker conducts the job search is responsible for assisting the worker in conducting the job search, for assisting the liable State by furnishing any information required for the liable State's determination of the claim, and for paying the job search allowance.

(2) The agent State must cooperate fully with the liable State in carrying out its activities and functions with regard to such applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

§ 618.425 Amount of a job search allowance.

(a) *Computation.* The job search allowance is 90 percent of the total costs of an AAW's travel (as defined in paragraph (a)(1) of this section) and lodging and meals (as defined in paragraph (a)(2) of this section), up to the limit in paragraph (b) of this section:

(1) *Travel.* The worker's allowable travel expenses may not exceed 90 percent of the prevailing cost per mile by privately owned vehicle under 41 CFR chapters 300 through 304, the Federal Travel Regulation (FTR), found at <https://www.gsa.gov/>, for

round trip travel by the usual route from the worker's home to the job search area, though other forms of transportation may be utilized.

(2) *Lodging and meals.* The worker's allowable lodging and meals costs cannot exceed the lesser of:

(i) The actual cost for lodging and meals while engaged in the job search; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at <https://www.gsa.gov/>, for the worker's job search area.

(b) *Limit.* The AAW's total job search allowance under a certification may not exceed \$1,250, no matter how many job searches they undertake. If the worker is entitled to be paid or reimbursed by another source for any of these travel, lodging, and meals expenses, the State must reduce the job search allowance by the amount of the reimbursement.

(c) *Choice of mode of transportation.* With respect to the limits established in paragraph (a)(1) of this section, an AAW may elect to use a different mode of transportation than the one for which the State calculated the applicable reimbursement amount. However, the State must limit the reimbursement to the worker to the amount calculated under paragraph (a)(1) of this section.

§ 618.430 Determination and payment of a job search allowance.

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW's eligibility for a job search allowance. Sections 618.820 (determinations and notice) and 618.828 (appeals and hearings) apply to these

determinations. States must include copies of such applications and all determinations by the State in the AAW's case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment promptly after the worker has completed a job search and complied with paragraph (d) of this section, provided that funds are available for job search allowances.

(c) *Advances.* Once the State determines that the AAW is eligible for a job search allowance, it may advance the worker up to 60 percent of the estimated amount of the job search allowance subject to the limit in § 618.425(b), but not exceeding \$750, within 5 days before the commencement of a job search. The State must deduct the advance from any payment under paragraph (b) of this section.

(d) *Worker evidence.* Once the AAW has completed a job search, they must certify to the State as to the employer contacts made and must provide documentation of expenses in accordance with FTR and Uniform Guidance at 2 CFR part 200, which may include receipts for all lodging, purchased transportation, or other expenses. The State must make an adjustment if the amount advanced is less or more than the amount to which the worker is eligible under this section.

§ 618.435 Job search program participation.

(a) *Requirements.* An AAW who participates in an approved job search program (JSP), may receive reimbursement for necessary expenses of subsistence and transportation incurred for the worker's participation in the approved JSP, regardless of

the worker's approval for, or receipt of, a job search allowance under §§ 618.420 and 618.430.

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

(1) The JSP is provided through WIOA, the public employment service, or any other Federal- or State-funded program, and meets the definition provided in § 618.110; or

(2) The JSP is sponsored by the firm from which the AAW has been separated.

(c) *JSP allowances*. Subsistence and transportation costs, whether inside or outside the AAW's commuting area, must be approved for workers participating in JSPs in accordance with § 618.640(a) and within available State funding levels.

§ 618.440 Applying for a relocation allowance.

(a) *Forms*. To receive a relocation allowance, an AAW must apply to the State using the State's process.

(b) *Submittal*. An AAW who has a total or partial separation may apply for a relocation allowance after the Department has issued a certification covering the worker. The worker must apply for a relocation allowance and the State must approve the worker for a relocation allowance before the relocation begins. The State must make a timely determination on a relocation application submitted to allow the worker to promptly begin the relocation.

§ 618.445 Eligibility for a relocation allowance.

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

- (1) File an application before either:
 - (i) The later of the 425th day after the date of the certification under which the worker is covered, or the 425th day after the date of the worker's last total separation; or
 - (ii) The 182nd day after the date the worker concluded training;
- (2) Be an AAW totally separated from adversely affected employment when the relocation begins;
- (3) Not have already received a relocation allowance under the same certification;
- (4) Relocate within the United States but outside the worker's commuting area;
- (5) Receive a determination by the State that the worker has no reasonable expectation of securing suitable employment in the commuting area, and has obtained either suitable employment or employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the suitable employment requirements, or a bona fide offer of such employment, in the area of intended relocation;
- (6) Begin the relocation as promptly as possible after the date of certification but no later than:
 - (i) 182 days after the worker filed the application for a relocation allowance; or
 - (ii) 182 days after the conclusion of an approved training program, if the worker entered a training program that received supplemental assistance approved under § 618.640(c) (subsistence payments) and (d) (transportation payments), for training outside the worker's commuting area; and

(7) Complete the relocation, as described in § 618.460(f), within a reasonable time as determined in accordance with FTR with the State giving consideration to, among other factors, whether:

- (i) Suitable housing is available in the area of relocation;
- (ii) The worker can dispose of the worker's residence;
- (iii) The worker or a family member is ill; and
- (iv) A member of the family is attending school, and when the family can best transfer the member to a school in the area of relocation.

(b) *Job search allowances.* The State may not approve a relocation allowance and a job search allowance for an AAW at the same time. However, if the worker has received a job search allowance, they may receive a relocation allowance at a later time or receive a relocation allowance as a result of a successful job search for which the worker received a job search allowance.

§ 618.450 Findings required.

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

- (1) That the AAW meets the eligibility requirements for a relocation allowance specified in § 618.445(a)(1) through (7) and is not also simultaneously receiving a job search allowance as specified in § 618.445(b);
- (2) That the worker submitted the application for a relocation allowance within the time limits specified in § 618.440(c);

(3) That the worker began and completed the relocation within the time limitations specified in § 618.445(a)(6) and (7); and

(4) That the worker obtained suitable employment, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 618.445(a)(5). The liable State must verify (directly or through the agent State) the suitable employment, or the bona fide offer, with the employer.

(b) *Assistance by agent State.* (1) When an AAW relocates to an agent State, the agent State is responsible for:

(i) Assisting the worker in relocating to the State, completing an application for a relocation allowance with the liable State, and paying the relocation allowance; and

(ii) Assisting the liable State by furnishing any information required for the liable State's determination on the claim.

(2) The agent State must cooperate with the liable State in carrying out its activities and functions with regard to relocation applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

§ 618.455 Determining the amount of a relocation allowance.

The AAW's relocation allowance includes the information in paragraphs (a) through (c) of this section, as applicable:

(a) *Reimbursement--(1) Travel.* (i) The State may reimburse the AAW for up to 90 percent of the prevailing cost per mile by privately owned vehicle under the FTR, found at <https://www.gsa.gov/>, for travel from their old home to their new home.

(ii) Separate travel of a family member or members who, for good cause and with the approval of the State, must travel separately to their new home, may also be reimbursed. For purposes of this paragraph (a)(1)(ii), good cause includes, but is not limited to, reasons such as a family member's health, schooling, job, or economic circumstances.

(2) *Lodging and meals.* The State may reimburse the worker for 90 percent of lodging and meal expenses for the worker and their 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 their family while they are traveling; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at <https://www.gsa.gov/>, for the relocation area for those days while the worker and their family are traveling.

(3) *Movement of household goods.* (i) The State may reimburse the worker for 90 percent of the allowable costs of moving the workers and family's household goods and personal effects in accordance with the FTR (41 CFR chapter 302). This includes 90 percent of the costs of moving by the most economical commercial carrier the State can reasonably expect the worker to use, moving by rental truck or trailer (for rental, mileage, and fuel), or moving a house trailer or mobile home. It also includes 90 percent of the costs of temporary storage of household goods for up to 60 days. In

approving the move of a house trailer or mobile home, the State must follow the specific requirements of the FTR, found at <https://www.gsa.gov>.

(ii) For a commercial carrier move of household goods or house trailer or mobile home, the worker must obtain an estimate of the moving cost and provide this to the liable State. The estimate may include the cost of insuring such goods and effects for their actual value or \$40,000 as delineated in the FTR, whichever is less, against loss or damage in transit.

(iii) If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. No such arrangement releases a carrier from liability otherwise provided by law or contract for loss or damage to the worker's goods and effects. Any contract for moving and insuring an AAW's household goods must provide that the United States must not be or become liable to either party for personal injury or property loss damage under any circumstances.

(iv) The maximum net weight of the household goods relocated from the worker's old home to the relocation area may not exceed that set by the FTR.

(4) *Lump sum.* As part of the relocation allowance, the worker will receive a lump sum equivalent to three times their average weekly wage, not to exceed \$1,250.

(b) *Reduction.* If the AAW is eligible to receive or has received moving expenses from any other source for the same relocation, the State must deduct the amount received from the amount of the relocation allowance as determined in paragraphs (a)(1) through (3) of this section.

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

§ 618.460 Determinations and payment of a relocation allowance.

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW's eligibility for a relocation allowance. Sections 618.820 (determinations and notice) and 618.828 (appeals and hearings) apply to these determinations. The State must include copies of such applications and all determinations by the State in the AAW's case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment as promptly as possible.

(c) *Travel allowances--(1) Payment.* The State must pay the allowances computed under § 618.455 10 days in advance of, or at the time of, the AAW's scheduled departure to begin relocation. The State must make the payment for a family member approved for separate travel 10 days in advance of, or at the time of that family member's scheduled departure.

(2) *Worker evidence.* After an AAW completes the relocation, they must certify to the State the expenses associated with the relocation, in accordance with the FTR and Uniform Guidance in 2 CFR part 200. This may include receipts for all lodging, purchased transportation, or other expenses. If an advance the worker received was more or less than the actual allowance, the State must make an appropriate adjustment and pay the balance entitled, if any, or the worker must repay any excess received, if any.

(d) *Movement of household goods.* The State must pay the amount equal to 90 percent of the estimate of the costs of moving the AAW's household goods by the most economical commercial carrier the State can reasonably expect the worker to use (as described in § 618.455(a)(3) (determining the amount of a relocation allowance) as follows:

(1) *Commercial carrier.* If a commercial carrier moves the worker's household goods and personal effects, the State must provide the worker with an advance equal to 90 percent of the estimated cost of the move, including any other charges that the State has approved, such as insurance. The State must advance the funds to the carrier and insurer and deliver payment to the worker 10 days in advance of, or at the time of, the scheduled shipment.

(i) On completion of the move, as determined under paragraph (f) of this section, the worker must promptly submit to the State a copy of the carrier's bill of lading, including a receipt showing payment of moving costs.

(ii) If the amount the worker received as an advance is greater than 90 percent of the actual approved moving costs, they must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must reimburse the worker for the difference.

(iii) If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer subject to the condition of § 618.455(a)(3)(iii).

(2) *Private truck and trailer, rental truck or trailer, or house trailer move*--(i)

Private vehicle with trailer. If the move is by private vehicle and trailer, the State must advance 90 percent of the estimated cost for the use of the private vehicle within 10 days in advance of the scheduled move.

(ii) *Truck and trailer rental.* If the move is by rental truck or rental trailer, the State must advance 90 percent of the estimated rental cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental company.

(iii) *House trailer.* If a house trailer or mobile home is moved by commercial carrier, the State must advance 90 percent of the approved estimated cost to the worker within 10 days in advance of the scheduled move. The State may make payment to either the worker or the carrier.

(iv) *Itemized receipt.* Upon completion of the move, the worker must promptly submit an itemized receipt to the State for payment of the rental charges and fuel costs. If the amount the worker received as an advance is greater than 90 percent of the actual moving costs, they must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must pay the worker for the difference.

(3) *Temporary storage.* If temporary storage, not to exceed 60 days, of household goods and personal effects is necessary for the relocation, then the State must advance 90 percent of the approved estimated cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental agency.

(e) *Lump sum allowance.* The State must pay the lump sum allowance provided in § 618.455(a)(4) when arrangements for the relocation are finalized, but not more than 10 days before the earlier of the AAW's anticipated departure from their old home, or the anticipated date of shipment of the worker's household goods and personal effects.

(f) *Relocation completed.* An AAW completes a relocation when the worker and family, if any, along with household goods and personal effects are delivered to the new residence in the area of relocation or to temporary storage. If the worker moves no household goods and personal effects, then a worker completes relocation when the worker and family, if any, arrive in the area of relocation and establish a residence in the new area. When a family member is approved for separate travel, the later arrival of such family member does not alter the date on which the State must consider the relocation completed.

Subpart E—Reemployment Trade Adjustment Assistance

§ 618.500 Scope.

This subpart provides the rules for RTAA. RTAA, authorized under sec. 246 of the Act, provides 50 percent of the difference between the wages received by the AAW at the time of separation from adversely affected employment and the wages received by the worker from reemployment for workers aged 50 and older who meet the eligibility criteria described in this subpart. This subpart identifies the eligibility criteria and the benefits available to AAWs who are eligible for RTAA.

§ 618.505 Individual eligibility.

(a) *Eligibility criteria.* An AAW from a worker group certified under § 618.225 may elect to receive RTAA benefits if the AAW:

(1) Is at least 50 years of age;

(2) Earns not more than \$50,000 in reemployment wages each calendar year during the eligibility period, excluding overtime pay, as further defined in § 618.520(a);

(3) Earns less than the AAW's annualized wages at separation, as further defined in § 618.520(a);

(4)(i) Is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in any training program approved under subpart F of this part; or

(ii) Is employed at least 20 hours per week and is enrolled in a TAA approved training program; and

(5) Is not employed at the firm, as further defined in paragraph (b) of this section, from which the worker was separated.

(b) *Eligibility-relevant definitions.* For purposes of RTAA, the following definitions apply:

(1) *Firm.* The State must determine on a case-by-case basis what constitutes the “firm” for purposes of determining RTAA eligibility based on the certification. If the Department issues the certification under subpart B of this part for a worker group in an appropriate subdivision of a firm, an AAW in that group is not eligible for RTAA upon a return to employment within that subdivision, but may be eligible for RTAA upon a return to employment at another subdivision of the firm. If, however, the Department issues the certification for a worker group composed of all workers from the firm rather

than from a subdivision, then the worker is not eligible for RTAA based on a return to employment in any subdivision of that firm.

(2) *Successor-in-interest.* The State must determine if the firm now employing the AAW is the same firm as the one from which the AAW was separated.

(i) In making its determination, the State should first review the certification under which the worker was covered, look for any amendments to the certification, and compare the name and address of the firm in the certification to the name and address of the firm in which the worker has found reemployment. If they are the same, this is, in most cases, dispositive: the firms are the same and the worker is not eligible for RTAA.

(ii) If, despite the information gathered under paragraph (b)(2)(i) of this section, it nonetheless remains unclear whether the firms are the same, the State may need to obtain further information about the firm reemploying the worker, from the employer and otherwise, to make that determination. To do so, the State should determine whether the firm at which the worker found reemployment is a “successor-in-interest” to the firm from which the worker was separated. If the reemploying firm merged with, acquired, or purchased the assets of the firm from which the worker was separated, then the reemploying firm is a successor-in-interest.

(iii) If the reemploying firm does not meet the criteria in paragraph (b)(2)(ii) of this section, or if that information is unavailable, then the State should consider the factors identified in paragraphs (b)(3)(i) through (vii) of this section to determine whether the reemploying firm is a successor-in-interest. If the State determines that the worker returned to employment with a successor-in-interest to the firm from which the worker was separated, then the worker is not eligible for RTAA. The State must make the

determination based on the individual application of the worker. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially owned by substantially the same persons, is considered a single firm. If the State determines that the reemployment is with a successor-in-interest the State also must seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA Program, as provided in § 618.816(e).

(3) *Successor-in-interest factors.* A State may consider a firm a successor-in-interest to another firm, if a majority of the following factors are present:

- (i) There is continuity in business operations.
- (ii) There is continuity in location.
- (iii) There is continuity in the workforce.
- (iv) There is continuity in supervisory personnel.
- (v) The same jobs exist under similar conditions.
- (vi) There is continuity in machinery, equipment, and process.
- (vii) There is continuity in product/service.

(c) *Full-time employment.* For purposes of RTAA, full-time employment is defined per State law in which the reemployment occurs.

(1) If there is no State law addressing the definition of full-time employment referenced under paragraph (a)(4)(i) of this section, the State must issue a definition of full-time employment for RTAA purposes.

(2) The State must verify reemployment and do so in accordance with State policies.

(3) Where an AAW seeks to establish RTAA eligibility based upon more than one job, the State must combine employment hours in order to determine whether the worker has the number of hours needed to qualify for RTAA.

(4) If the AAW is employed in more than one State, the State must determine full-time employment for the entire duration of the AAW's RTAA eligibility under a single certification under the law of the State in which the AAW has the lowest threshold of hours required to meet the definition of full-time employment.

(d) *Relevance of UI eligibility.* UI eligibility is not a requirement for RTAA eligibility.

(e) *Eligible employment.* (1) Employment for purposes of paragraph (a)(4) of this section must be covered employment under State law; however, employment may not include activity that is unlawful under Federal, State, or local law.

(2) Work involving wages plus commission or piece work may be considered qualifying employment for the purpose of establishing RTAA eligibility, if it otherwise meets the criteria in paragraph (e)(1) of this section.

(3) For purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section, employment may include one or more jobs unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the AAW is employed provides otherwise.

(4) A State must count hours in which an AAW is on employer-authorized leave as hours of work for purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the worker is employed provides otherwise.

§ 618.510 Eligibility period for payments of Reemployment Trade Adjustment

Assistance and application deadline.

(a) *Adversely affected worker who has not received TRA.* (1) In the case of an AAW who has not received TRA, the worker may receive benefits as described in § 618.520(a) for a period not to exceed 104 weeks beginning on the earlier of:

(i) The date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely affected employment that is the basis of the certification; or

(ii) The date on which the worker first begins qualifying reemployment as described in § 618.505(e).

(2) Where a worker has more than one separation from adversely affected employment, the relevant separation for determining the date on which the “worker exhausts all rights to UI” referenced in paragraph (a)(1)(i) of this section is the worker’s last separation from adversely affected employment that qualifies the worker as an AAW. The Department uses the last separation because that separation is the one that triggers the worker’s application for RTAA. Accordingly, the State must determine the worker’s last separation for lack of work from adversely affected employment before the RTAA application. This principle applies only to the determination of the eligibility period and does not apply to the calculation of RTAA payments, where wages at separation are defined as the annualized hourly rate at the time of the most recent separation, as explained in § 618.520(a).

(b) *Adversely affected worker who has received TRA.* In the case of an AAW who has received TRA, the worker may also receive RTAA benefits based on the same certification for a period of 104 weeks beginning on the date on which the worker first begins qualifying reemployment, reduced by the total number of weeks for which the worker received such TRA.

(c) *Applicable dates.* To make the RTAA determination, the State will need to know the applicable dates for the AAW: the date of reemployment and either the date the worker exhausted all rights to UI, or the dates the worker began and ended receipt of TRA before the date of reemployment. These dates must occur within the 104-week eligibility period identified in the Act.

(d) *Age of AAW when obtaining RTAA-qualifying employment.* An AAW may obtain employment before turning 50 years old and receive RTAA benefits after turning 50 years old, if the employment is determined to be RTAA-qualifying reemployment, as provided at § 618.505(e), and the RTAA eligibility period established after obtaining such employment has not expired when the individual turned 50 years old.

(e) *Exception to filing deadline and eligibility periods.* The filing deadline and eligibility periods in paragraphs (a) and (b) of this section do not apply where:

(1) A negative determination on a petition filed under subpart B of this part has been appealed to the USCIT;

(2) A certification of the worker group covered by that petition is later made; and

(3) The delay in the certification is not attributable to the petitioner or the AAW.

(f) *Reasonable accommodation of filing deadline and eligibility periods.* In the event the filing deadline and eligibility periods in paragraphs (a) and (b) of this section do

not apply because the certification meets the conditions in paragraph (e) of this section, the filing deadline and eligibility periods for RTAA will be extended by the State for the period necessary to make RTAA reasonably available to AAWs.

§ 618.515 Continuing eligibility and timing of payments.

(a) *Continuing eligibility for RTAA.* (1) Changing jobs during reemployment does not disqualify an otherwise eligible AAW from receiving subsequent RTAA payments for the remainder of the 104-week (2-year) eligibility period if the new reemployment meets the requirements of § 618.505.

(2) An AAW already receiving RTAA payments who has a period of unemployment will not be eligible to receive RTAA for that period. Upon reemployment, the AAW must notify the State. If the new reemployment meets the requirements of § 618.505 and the worker meets all other eligibility requirements in this part, the AAW will be eligible to receive RTAA in accordance with the requirements of this section for the remaining portion of the 104-week (2-year) eligibility period.

(3) If during a calendar year during the 2-year eligibility period an AAW's cumulative wages exceed \$50,000, the AAW will no longer be eligible to receive additional RTAA payments within that calendar year. The AAW will be eligible for RTAA benefits in the next calendar year and RTAA payments will resume until wages exceed \$50,000 or until the \$10,000 benefit limit is reached.

(b) *Timing of RTAA payments.* The State must make RTAA payments on a regular basis, either weekly, biweekly, or monthly, for no more than a 104-week (2-year) period for an AAW under any one certification, beginning no earlier than the first day of

reemployment that satisfies the requirements of § 618.505. An AAW may receive retroactive payments, in a lump sum, for payments for which the AAW was eligible, but for which the AAW had not yet applied.

(c) *Periodic verification of employment and reemployment wages.* No less than once a month, the State must review whether an AAW receiving RTAA payments continues to meet the eligibility requirements of § 618.505 and determine whether changes have occurred in the AAW's reemployment wages, as described in § 618.520(a).

(d) *Change in reemployment wages.* The State must recompute the appropriate amount of the RTAA payments if, during its review under paragraph (c) of this section, it determines that an AAW's reemployment wages have changed.

(1) If reemployment wages exceed \$50,000 in a calendar year during the eligibility period, then the State must immediately issue a determination that the AAW is ineligible for further RTAA payments, notify the AAW of this determination, and cease such RTAA payments.

(2) If reemployment wages change but do not exceed \$50,000 in a calendar year during the eligibility period then the RTAA payment must be recomputed every time such a change in reemployment wages occurs. The State must then continue periodic verification in accordance with paragraph (c) of this section, or recommence periodic verification if RTAA payments resume in the second calendar year after such scenario as described in paragraph (a)(3) of this section occurs.

§ 618.520 Benefits available to eligible adversely affected workers.

(a) *Payment.* A RTAA-eligible AAW may receive a maximum of \$10,000 over a period of not more than 104 weeks (2 years). If the AAW received TRA, each week of TRA received reduces the total weeks of RTAA available by 1 week and reduces the total RTAA payment amount available in proportion to the reduction in the number of total weeks.

(1) *Total amount of benefits.* RTAA supplements a worker's wages for up to 104 weeks (2 years) (reduced by the number of weeks of TRA received) or \$10,000 (reduced in proportion to the reduction in the number of total weeks of TRA received), whichever occurs first, by an amount equal to the annualized wage differential as computed under paragraph (a)(2) of this section for an AAW employed full-time or paragraph (a)(3) of this section for an AAW employed less than full-time.

(2) *Annualized wage differential for initial eligibility of an AAW employed full-time.* This amount is equal to 50 percent of: the AAW's annualized separation wages (as computed under paragraph (a)(2)(i) of this section) minus the amount of the AAW's annualized reemployment wages (as computed under paragraph (a)(2)(ii) of this section).

(i) Annualized separation wages are the product of the AAW's hourly rate during the last full week of the AAW's regular schedule in adversely affected employment, multiplied by the number of hours the AAW worked during the last full week of such employment, multiplied by 52. The computation of annualized wages at separation excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay. $[(\text{hourly rate} \times \text{hours worked}) \times 52]$

(ii) Annualized reemployment wages are the product of the AAW's hourly rate during the first full week of reemployment, multiplied by the number of hours the AAW worked during the first full week of such reemployment, multiplied by 52 [(hourly rate \times hours worked) \times 52]. If the AAW's wages from reemployment change during the eligibility period, then the State must recompute the AAW's annualized wages from reemployment at the new hourly wage and must likewise recompute the appropriate RTAA payment as required by § 618.515(d). The computation of annualized wages from reemployment excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay.

(3) *Annualized wage differential for initial eligibility of an AAW employed less than full-time.* This amount, for an AAW employed at least 20 hours per week and enrolled in TAA approved training, is the annualized wages as computed under paragraph (a)(2) of this section multiplied by the ratio of the AAW's number of weekly hours of reemployment to the AAW's number of weekly hours of employment at the time of separation, but in no case more than 50 percent.

(4) *Adjustment to total amount of RTAA benefits for AAWs who received TRA.* A State must adjust of the maximum RTAA benefit for an RTAA-eligible AAW who has received TRA. The RTAA-eligible AAW may receive up to the adjusted RTAA benefit as described in this section within the eligibility period as provided in § 618.510(b). RTAA eligibility is terminated once the AAW reaches either the number of weeks permitted pursuant to § 618.510 or the adjusted RTAA benefit. The adjusted RTAA benefit is calculated by subtracting the number of TRA paid weeks from the 104-week

RTAA eligibility period to determine the percentage of reduced weeks that payments may be made. The maximum payable benefit of \$10,000 is then reduced by the same percentage. Once the reduction in RTAA payable weeks and the reduction in the RTAA total payable are reduced by the same percentage, they become the new maximum number of payable weeks and maximum payable benefit.

(b) *Training and related services.* Recipients of RTAA are eligible to receive training approved under subpart F of this part and employment and case management services under subpart C of this part.

(c) *Job search and relocation allowances.* Recipients of RTAA are eligible to receive job search and relocation allowances under subpart D of this part, subject to the eligibility requirements and rules of subpart D.

(d) *HCTC.* Recipients of RTAA are eligible to apply for or claim the HCTC, if available.

(e) *TRA.* Once an AAW has received a payment under RTAA, they are no longer eligible for TRA under the same petition. Receipt of TRA prior to RTAA will result in a reduction of RTAA benefits as described at paragraph (a)(4) of this section.

§ 618.525 Determinations, redeterminations, and appeals.

(a) *Determinations, redeterminations, and appeals.* States must apply the requirements of §§ 618.825 (covering determinations and notice) and 618.835 (covering hearings and appeals), respectively, to all determinations, redeterminations, and appeals under this subpart.

(1) Before issuing a determination or redetermination, the State must verify and document the AAW's age, reemployment, and wages in determining whether the worker has met eligibility requirements of § 618.505(a).

(2) A determination of eligibility issued to an AAW must include a notice that the benefit amount will be regularly recomputed (as required by § 618.515(d)) and will change if the eligible AAW's reemployment wages change.

(3) An AAW denied individual eligibility based on a first reemployment may file a new application for a subsequent reemployment.

(4) A State may approve an RTAA payment retroactively if an AAW becomes reemployed before the Department issues a certification under subpart B of this part, provided that the AAW otherwise meets the eligibility requirements of § 618.505(a).

(b) *Recordkeeping requirements.* The recordkeeping and disclosure of information requirements of § 618.852 apply to the State's administration of RTAA.

§ 618.530 Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.

(a) *Ordered child support payments.* State laws regarding deductions of payments from UI, TRA, and RTAA must comply with the Social Security Act (SSA). SSA sec. 303(e)(1) defines child support obligations as only including obligations which are being enforced pursuant to a plan described in sec. 454 of SSA which has been approved by the Secretary of Health and Human Services under part D of title IV of SSA. SSA does not otherwise permit deductions for alimony or for child support.

(b) *Priority of UI payments.* RTAA does not fit into priority of payments under UI because RTAA is related to employment, not unemployment. UI and RTAA are two separate programs that operate independently of one another.

Subpart F—Training Services

§ 618.600 Scope.

This subpart sets forth the conditions and procedures under which a trade-affected worker may apply for and receive training to help secure reemployment. Training provided under this subpart must, at a reasonable cost and as quickly as possible, assist a trade-affected worker in obtaining the necessary skills to have a reasonable expectation of reemployment. All else being equal, States should prefer training that replaces 100 percent or more of a trade-affected worker's wages in adversely affected employment or that qualifies as suitable employment.

§ 618.605 General procedures.

(a) *Assessments.* The State must ensure and document that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment is made available, as described in subpart C of this part. If a worker refused to take an assessment, the information necessary to determine eligibility for training must be documented. If a trade-affected worker has an IEP, the assessment results must support the training program set out in the worker's IEP, as described in subpart C of this part, before an application for training is approved. As with assessments, if a worker refused to

develop an IEP, the information necessary to determine eligibility for training must be documented.

(b) *Applications.* Applications for training, including requests for TAA Program-funded transportation and subsistence payments, must be made to the State in accordance with any policies and procedures established by the State.

(c) *Determinations.* Decisions on selection for, approval of, or referral of a trade-affected worker to training, including whether to provide TAA Program-funded transportation and subsistence payments, under this subpart, or a decision with respect to any specific training or nonselection, nonapproval, or nonreferral for any reason is a determination to which §§ 618.820 (determinations and notice), 618.824 (liable and agent State responsibilities), and 618.828 (appeals and hearings) apply.

(d) *Training opportunities.* (1) The State must explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find alternatives when local training resources cannot adequately train trade-affected workers for reemployment. Training resources may be inadequate when they cannot train workers quickly, or at a reasonable cost, or equip workers with skills that meet the demands of the job market.

(2) When available training is inadequate, TAA Program funds may be used to create customized, group training opportunities in response to a particular dislocation event. Funds may be used for trainings that provide intensive remedial education classes, English language training, or contextualized occupational training, which combines academic and occupational training. These group trainings must adhere to the principles described in § 618.600.

(3) States are required to coordinate with other public and private agencies, in cooperation with local workforce development boards (LWDBs) established under WIOA, to ensure a wide-range of training opportunities are available to trade-affected workers in demand occupations.

(e) *Timing of application and approval of training.* A trade-affected worker may apply for training and a State may approve training at any time after the certification date on which their worker group is certified under subpart B of this part, without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

§ 618.610 Criteria for approval of training.

The State must consult the trade-affected worker's assessment results and IEP, if available, as described respectively under §§ 618.345 and 618.350, before approving an application for training. Training must be approved for a trade-affected worker if the State determines that all of the criteria in paragraphs (a) through (f) of this section are met:

(a) *Criterion 1.* There is no suitable employment available for the trade-affected worker.

(1) There is no suitable employment available for a trade-affected worker in either the commuting area or another area outside the commuting area to which the worker intends to relocate, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future.

(2) If a training program, or an application for training, is denied under paragraph (a)(1) of this section, the State must document the availability of suitable employment through traditional and real-time labor market information including, but not limited to, projections data, job postings, and job vacancy surveys.

(b) *Criterion 2.* The trade-affected worker would benefit from appropriate training.

(1) The worker would benefit from appropriate training when training, skills training, or remedial education would increase the likelihood of obtaining employment. Appropriate training should improve the worker's chances of obtaining employment at higher wages than in the absence of training or place them on a career pathway to do so.

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

(c) *Criterion 3.* There is a reasonable expectation of employment following completion of such training. Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(1) "A reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training program. When initially approving such training, there must be a

projection, based on labor market information, of employment opportunities expected to exist at the time of completion of the training program.

(2) The State must measure expected job market conditions using pertinent labor market data, including but not limited to job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. This labor market information should be documented in the trade-affected worker's case file. The State should also work with the LWDBs and their one-stop partners, especially business team members, to understand current labor market conditions and opportunities for work-based learning.

(3) When a worker desires to relocate within the United States, but outside the worker's present commuting area, upon completion of training, the State must document the labor market information, described in paragraph (c)(2) of this section, for the area of the planned relocation.

(4) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in an area to which they desire to relocate. A limited demand for such an occupation does not preclude the approval of training in an occupation where the State has determined that there is a reasonable expectation that the worker can secure employment in that occupation. States must verify with businesses in the commuting area or in the area of intended relocation that demand exists for an individual with such training. These efforts must be documented in the trade-affected workers case file. Before approving training in occupations with limited demand, the State must consider the number of individuals

currently enrolled in training that are likely to meet that demand before enrolling additional workers in training for that occupation.

(5) A State may approve a training program in an occupation if it finds that there is a reasonable expectation that the training will lead to self-employment in the occupation for which the worker requests training and that such self-employment will provide the worker with wages or earnings at or near their wages in adversely affected employment.

(6) Training programs that consist solely of OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with sec. 236(c)(1)(B)(i) of the Act.

(d) *Criterion 4.* Training is reasonably available to the trade-affected worker. In determining whether training is reasonably available, States must first consider training opportunities available within the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the training program must be available at a reasonable cost as prescribed in paragraph (f) of this section.

(e) *Criterion 5.* The trade-affected worker is qualified to undertake and complete such training. States must ensure the following:

(1) The worker's knowledge, skills, abilities, educational background, work experience, and financial resources are adequate to undertake and complete the specific training program being considered.

(2) Any initial assessment, comprehensive and specialized assessment, and IEP developed under subpart C of this part must be consulted to support the trade-affected worker's ability to undertake and complete the training program.

(3) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d). In making this determination, the State must consider:

(i) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed training program;

(ii) Other sources of income support available to the worker, including severance, earnings of other family members, and other family resources;

(iii) Other fixed financial obligations and expenses of the worker and family;

(iv) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance including, but not limited to, nongovernmental scholarships, awards, or grants; and

(v) Whether or not the worker is employed while attending training.

(4) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the training program that exceeds the duration of UI and TRA payments.

(5) If a worker has insufficient financial resources to complete the worker's proposed training program that exceeds the duration of UI and TRA payments, then the

State must not approve that training program and must instead consider other training opportunities available to the worker.

(f) *Criterion 6.* Such training is suitable for the trade-affected worker and available at a reasonable cost.

(1) *Suitable for the worker.* The training program being considered must address the criteria set out in paragraphs (e)(1) and (2) of this section and be determined by the State to be appropriate given the worker's knowledge, skills and abilities, background, and experience relative to the worker's employment goal, and criteria set out in paragraph (c) of this section.

(2) *Available at a reasonable cost.* (i) Costs of a training program may include, but are not limited to, tuition and related expenses (e.g., books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the approved training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(A) The State must ensure and document that the training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(B) Related expenses must be necessary for the worker to complete the training program. Other options should be explored before purchasing equipment or related materials.

(ii) Available at a reasonable cost means that training must not be approved at one provider when, all costs being considered, training better or substantially similar in quality, content, and results can be obtained from another provider at a lower total cost within a similar time frame. Training must not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(iii) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (f)(2)(ii) of this section applies.

(iv) Approval of training under paragraph (f) of this section (Criterion 6) is also subject to the provisions of § 618.650.

§ 618.615 Limitations on training approval.

(a) *One training program per certification.* (1) Except as provided under paragraph (d)(4) of this section, no trade-affected worker may receive more than one approved training program under a single certification.

(2) A training program may be amended, as needed, in compliance with § 618.665.

(3) A training program may consist of multiple forms of training, including any or all of the types of training identified in § 618.620, subject to any restrictions or eligibility requirements that may exist.

(b) *Full-time or part-time training.* A State may approve a training program on a full-time or part-time basis. A trade-affected worker's approved training program may consist of either part-time or full-time training, or a combination of both. A worker may switch from part-time to full-time training or from full-time to part-time training during the period of their participation in the program. The training program must be amended each time this occurs, in accordance with § 618.665.

(1) *Full-time.* Full-time training means that the training is in accordance with the training provider's established full-time hours in a day (or credit hours) and days in a week. If a worker in full-time training has obtained employment that is not suitable employment, then the worker may choose to continue with such employment while completing the approved training program, provided the worker is willing and able to accommodate a full-time training schedule under the training provider's standard for full-time training.

(2) *Part-time.* (i) A State may approve part-time training. Part time training is any training program that is not full time in accordance with the established standards of the

training provider. The maximum duration for approved training provided in paragraph (d)(3)(i) of this section also applies to part-time training.

(ii) A worker enrolled in part-time training is not eligible for TRA under subpart G of this part, including a worker who ceases full-time training to engage in part-time training. The training approval requirements found in this section also apply to part-time training.

(iii) A worker may participate in part-time training while employed in either part-time or full-time employment.

(iv) The State must clearly inform the worker, before the worker chooses part-time training, that TRA is not available to workers in approved part-time training and that the worker may lose eligibility for the HCTC, if available, while engaged in part-time training.

(v) As provided in § 618.780(b)(1)(i), a worker may not be determined to be ineligible or disqualified for UI, because the worker is enrolled in training approved under § 618.610, including part-time training.

(vi) As further described at § 618.780(b)(1)(ii), State or Federal UI statutes relating to the able, available, or active work search requirements as well as refusal to accept work will not disqualify a worker for UI or other program benefits, during any week of training approved under § 618.610, including part-time training.

(c) *Previous approval of training under other law.* When a TAA Program petition has been filed by or on behalf of a group of workers but a determination of group eligibility has not been made, training may be approved for a worker under another State or Federal law or other authority. Training approved for a worker under another State or

Federal law or other authority is not training approved under § 618.610. After eligibility has been determined, any such training may be approved under § 618.610 (criteria for approval of training), if it meets all of the requirements and limitations of § 618.610 and the other provisions of this subpart. Such approval must not be retroactive for any of the purposes of this part, including payment of the costs of the training and payment of TRA to the trade-affected worker participating in the training, except in the case of a redetermination or decision reversing a training denial as addressed in § 618.828(d), in which case the approval must be retroactive to the date of that denial. Systems must be in place to accommodate a change in funding seamlessly, as appropriate, after TAA Program training program approval is obtained. The cost of training must shift to the TAA Program at the next logical break in training—such as the end of a semester—for workers who become eligible for the TAA Program and whose training is approved under the TAA Program. Training approved under other programs may be amended by the TAA Program to allow a worker additional training in order to meet additional retraining needs identified in the worker’s IEP.

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

(1) *Time necessary to achieve desired skill level.* The training must be of suitable duration to achieve the desired skill level in the shortest possible time, and not in excess of, the limits established in paragraph (d)(3) of this section.

(2) *Factors.* Factors that may impact the length of training include, but are not limited to, the trade-affected worker’s employment status (full- or part-time) under § 618.630 (training of reemployed workers not in suitable employment), the need for

supportive services from partner programs, and breaks in training due to class schedules and availability.

(3) *Duration.* (i) Except as otherwise provided for OJT, apprenticeship, and the exception provided in paragraph (d)(4) of this section, the maximum duration for approvable training under the TAA Program is 130 weeks.

(ii) Only weeks spent in actual training are counted. Scheduled breaks in training, as provided in § 618.760, are not counted.

(iii) If a training program satisfies the duration requirement of paragraph (d)(3)(i) of this section but will extend beyond the period during which TRA is available, the State must determine, under § 618.610(e)(3) (criteria for approval of training), whether the worker has sufficient personal resources (i.e., funds for their living expenses) to support themselves while completing the training, while not requiring the worker to obtain such funds as a condition of training approval. The worker must attest to the State that they have sufficient resources to sustain themselves while in training.

(4) *Exception for certain workers who perform a period of duty in the Uniformed Services.* A member of one of the reserve components of the U.S. Armed Forces who serves a period of duty will have the period for training, under paragraph (a)(3) of this section, suspended upon being called up to duty, provided the requirements specified in paragraphs (a)(4)(i) through (iii) of this section are met. Any such reserve component member may either resume training upon discharge from active service for the training period that remained at the time the reservist left the training program to report for active duty, or be allowed to repeat portions of the training if doing so is necessary for completion of the approved training program or, where appropriate, begin a new

approved training program. Where the reservist repeats a training program or begins a new training program, the reservist will be entitled to a new 130-week period to complete approved training. To be eligible to resume, repeat, or begin a new approved training program, the reservist must meet the following requirements:

(i) Before completing training under this subpart, the worker has given prior oral or written notice of the active duty service to the State, unless providing such notice is precluded by military necessity or is otherwise impossible or unreasonable.

(ii) The returning service member must apply to the State for training within 90 days following release from active duty service.

(iii) For purposes of the exception in this paragraph (d)(4), period of duty means:

(A) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(e) *Training outside the United States.* A trade-affected worker must not be approved for training under this subpart for any training that is conducted totally or partially at a location outside the United States or if the worker is physically located outside the United States while participating in training. For distance training, this means both the provider and participant must be located within the United States.

§ 618.620 Selection of training program.

(a) *Standards and procedures for selection of training.* The State must document the standards and procedures used to select training providers and training(s) in which the training program under this subpart will be approved.

(1) In determining the types of training to be approved and provided under the standards, the State should consult with partner agencies, including State partner agencies (e.g., State apprenticeship agencies or Federal Offices of Apprenticeship located in the States), WIOA one-stop partners, local employers, appropriate labor organizations, local educational organizations, the LWDB, State and local apprenticeship programs, local advisory councils established under the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115-224 (2018), as codified at 20 U.S.C. 2301 et seq.), and postsecondary institutions.

(2)(i) States may choose an eligible training provider (ETP) established under WIOA sec. 122 without establishing additional standards or procedures under the TAA Program.

(ii) As provided in sec. 236 of the Act, States must not limit training approved under this section to only programs on the ETP list under title I of WIOA.

(b) *Training types.* Eligible trade-affected workers must be provided training using either one, or a combination of, the following methods:

(1) Work-based training, such as apprenticeships, OJT, or customized training, may be approved for AAWs. Customized training with the worker's current employer may only be approved for AAIWs if the training is for a position other than their threatened position. See § 618.655(c)(2). AAIWs must not be approved for OJTs. See

§ 618.655(c)(1). The State must inform the worker of the potential negative effects of work-based training on TRA and the HCTC, if available; or

(2) Institutional training, including training at public area career and technical education schools, as well as community colleges, may be approved alone or in combination with work-based training. This also includes distance learning, including online training, where a worker may complete all or part of an educational or vocational program in a geographical location apart from the institution hosting the training program, and where the final certificate or degree conferred is equivalent in standard of achievement and content to the same program completed on campus or at another institutional training location.

(i) A provider of the distance learning must be based in the United States for training provided to be approved. In addition, the worker must be physically within the United States when participating in distance learning to remain eligible for benefits under the Act.

(ii) Distance learning is subject to all training approval criteria described in this subpart.

(iii) The State must establish and monitor the milestones of a distance-learning program based on the worker's IEP, as described in subpart C of this part, if available.

(iv) A worker who does not meet the requirements or milestones of a distance-learning program may be determined to have ceased participation in training, as described in § 618.780(b)(3)(ii).

(3) Higher education includes any training or coursework at an accredited institution, as described in sec. 102 of the Higher Education Act of 1965, as amended (20

U.S.C. 1002), including training or coursework for the purpose of obtaining a degree or certification, or for completing a degree or certification that the worker had begun previously at an accredited institution of higher education. Higher education may be approved alone or in combination with work-based training. The distance learning requirements in paragraph (b)(2) of this section also apply to this paragraph (b)(3).

(c) *Other training.* In addition to the training programs discussed in paragraph (b) of this section, training programs that may be approved under § 618.610 (criteria for approval of training) include, but are not limited to:

(1)(i) Any program of remedial education, including ABE courses and other remedial education courses, ELA courses, and HSE preparation courses.

(ii) Remedial education may occur before, or while participating in, the requested training program;

(2) Career and technical education;

(3) Any training program approvable under § 618.610 for which all, or any portion, of the costs of training the trade-affected worker are paid:

(i) Under any other Federal or State program other than the TAA Program; or

(ii) From any source other than this part;

(4) Any training program provided by a State pursuant to title I of WIOA or any training program approved by an LWDB established under sec. 102 of WIOA;

(5) Any program of prerequisite education or coursework required by a training provider before advancing to further training; or

(6) Any other training program approved by the State that complies with this subpart.

(d) *Advanced degrees.* Training programs that will lead to an advanced degree may be approved; however, the time limits described at § 618.615(a)(3) must be met. States may not restrict access to advanced degrees where the other criteria of this subpart are met. All training programs must be evaluated on their individual merit.

§ 618.625 Payment restrictions for training programs.

(a) *Funding of training programs.* The costs of a training program approved under the Act may be paid:

- (1) Solely from TAA Program funds;
- (2) Solely from other public or private funds; or
- (3) Partly from TAA Program funds and partly from other public or private funds.

(b) *No duplication of costs allowed.* (1) Any use of TAA Program funds to duplicate the payment of training costs by another source is prohibited.

(2) When the payment of the costs of training has already been made under any other Federal law, or the costs are reimbursable under any other Federal law and a portion of the costs has already been paid under other such Federal law, payment of such training costs may not be made from TAA Program funds.

(3) When the direct costs of a training program approvable under § 618.610 (criteria for approval of training) are payable from TAA Program funds and are also wholly or partially payable from any other source, the State must establish procedures to ensure TAA Program funds will not duplicate funds available from the other source(s). This preclusion of duplication does not prohibit and should not discourage sharing of costs under prearrangements authorized under paragraph (c)(2) of this section.

(c) *Cost sharing permitted.* (1) TAA Program funds are the primary source of Federal assistance to trade-affected workers, as identified in § 618.804(h)(4). If the costs of training a trade-affected worker can be paid under the TAA Program, no other payment for such costs may be made under any other provision of Federal law.

(2) States may share training costs with authorities administering other non-Federal, State, and private funding sources. Sharing training costs with other Federal sources may only occur if TAA Program funds are not available to cover the total cost of training, as described in paragraph (d)(2)(ii) of this section.

(3) Sharing the future costs of training is authorized where prior costs were paid from another source, but this paragraph (c)(3) does not authorize reimbursement from TAA Program funds of any training costs that were accrued before the date the training program was approved under the TAA Program.

(4) When a mix of TAA Program funds and other funds are used for paying the costs of a training program approved under this subpart, the State must enter into a prearrangement with any entity providing the other source of funds. Any such prearrangement must contain specific commitments from the other authorities to pay the costs they agree to assume and must comply with the nonduplication provisions contained in this part.

(i) Agreements may be entered into on a case-by-case basis to address specific training situations of workers or they may be part of an overall statewide strategy to effectively use and maximize available resources from the TAA Program, workforce development, and other programs.

(ii) Where training costs are shared between the TAA Program and any other funding source, the State must enter into a prearrangement with the other funding source to agree upon the proportion of TAA Program funds and other funds to be used to pay the costs of a training program. A prearrangement must be a specific, binding agreement with the other source(s) to pay the costs they agree to assume, and must be entered into before any TAA Program funds are obligated. If, after TAA Program funds are already committed to a training program, other funds become available to pay for that training, the State may decide to share the costs of the remainder of training program or the State may continue funding the training program in full using TAA Program funds. If the State decides to share the costs, it must enter into a prearrangement with respect to the newly available funds. If the State makes a change to how the training program will be funded going forward, the existing training program must be amended in accordance with § 618.665.

(iii) Before approving any training program under this subpart, which may involve the sharing of training costs under the authority of paragraph (a)(3) of this section, the State must require the worker to enter into a written agreement with the State, under which TAA Program funds will not be applied for or used to pay any portion of the costs of the training the worker has reason to believe will be paid by any other source.

(5)(i) A State may not take into account Federal student financial assistance, including Pell Grants, or any funds provided under any other provision of Federal law that are used for purposes other than the direct payment of training costs, even though they may have the effect of indirectly paying all or a portion of the training costs.

(ii) States must ensure that upon the approval of a training program under this subpart, payments of Federal student financial assistance cease to be applied to the training participant's tuition or other training-related costs covered by TAA Program funds.

(iii) If payments of Federal student financial assistance or other training allowances from other Federal funding sources were made to the training provider instead of the worker and were applied towards the worker's approved training costs, the State must deduct the amount of those other payments from the amount of TAA Program funds payable to the training provider in order to prevent duplication in the payment of training costs.

(iv) A worker may use Federal student financial assistance for other expenses, as allowable under applicable rules for such financial assistance.

(6) If the worker's trade-affected firm agrees to fund all or a portion of the worker's training costs, the State must, if the training is otherwise approvable, enter into a prearrangement with the firm to assume any unfunded training costs on the worker's behalf.

(d) *No training fees or costs to be paid by trade-affected worker from TAA Program funds.* (1) A training program must not be approved if the trade-affected worker is required to reimburse any portion of the costs of such training program from TAA Program funds, or from wages paid under such training program.

(2)(i) A training program must not be approved if the trade-affected worker is required to pay any of the costs of the training program from funds belonging to the

worker, including funds from relatives or friends, or from personal or educational loans that will require repayment.

(ii) As required by § 618.940, if the Department determines that the amount of funds necessary to provide Training and Other Activities (TaOA) will exceed the annual cap under § 618.900 in a fiscal year, the Department will promptly inform the States. If a State estimates that it will exceed all available TAA Program training funds (including TaOA funds remaining from current or prior fiscal years) then the State must seek funding from other sources (other than from trade-affected workers), including WIOA national dislocated worker grants under part 687 of this chapter to cover the costs of training approved under § 618.610. To the extent that a State is unable to fund training costs from those other sources, the agency may approve training where the worker pays those unfunded costs. Where the worker chooses to pay those unfunded costs under this paragraph (d)(2)(ii), the State is not liable for paying those costs and must document this prearrangement in the worker's case file. Where the worker chooses not to pay the unfunded costs, the State must waive the training requirement in § 618.720(g) on the basis that training is not available, in order to preserve any remaining Basic TRA eligibility under § 618.735(b)(3) (waiver of training requirement for Basic TRA).

§ 618.630 Training of reemployed trade-affected workers not in suitable employment.

(a) An AAW who obtains new employment that is not suitable employment and who has been approved for a training program may elect to terminate the employment, reduce the hours worked in the employment, or continue in full- or part-time

employment. Such a worker is not subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment. A worker who continues such full- or part-time employment while a participant in training is considered to be in training under § 618.780(b) (disqualifications). If the worker continues in full- or part-time employment that is not suitable employment while a participant in an approved training program, the State must inform the worker in writing that such employment may have negative effects on UI and TRA benefit amounts and duration due to income earned from the employment (and also because a worker participating in part-time training is not eligible for TRA), which could also lead to the loss of the HCTC, if available. The State must apply the earnings disregard provisions in subpart G of this part, as appropriate.

(b) An AAW who has been totally separated as described in paragraph (a) of this section may also be eligible for job search and relocation allowances under subpart D of this part.

§ 618.635 Work-based training.

(a) *OJT--(1) Description.* OJT is work-based training provided under contract with an employer in the public, nonprofit, or private sector to an AAW who is employed by the employer. OJT may be approved if the worker meets the requirements under §§ 618.610, 618.615, and 618.665. The State must determine that the OJT in question:

(i) Can reasonably be expected to lead to suitable employment with the employer offering the OJT;

(ii) Is compatible with the skills of the worker;

(iii) Includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) Can be measured by standards or targets that indicate the worker is gaining such knowledge or skills.

(2) *Related education.* Related skills training provided as part of the OJT contract and sponsored by the employer may be provided in conjunction with the OJT. Such training may be provided at the employment site, or at educational institutions, or other locations. TAA Program funds can be used to pay the OJT participant's expenses associated with the educational or instructional component (e.g., classroom and distance learning, tools, uniforms, equipment, and books) for an AAW's participation in an OJT program.

(3) *Duration.* The OJT contract with the employer must specify the duration of the OJT. The duration of the OJT must be appropriate to the occupational goal for which the AAW is being trained, taking into consideration the skills requirements of the job for which the AAW is being trained, the academic and occupational skill level of the AAW, and the work experience of the AAW, as documented in the worker's IEP, if available. The duration of the training must be long enough for the worker to become sufficiently proficient in the occupation for which the training is being provided to enable the worker to perform as well as workers in comparable positions within the firm. The OJT:

(i) Must not exceed the specific vocational preparation required for the occupation, as listed on O*NET (www.onetonline.org); and

(ii) Must not exceed 104 weeks in any case.

(4) *Exclusion of certain employers.* The State may not enter into a contract for OJT with an employer that exhibits a pattern of failing to provide workers receiving OJT from the employer with:

- (i) Continued long-term employment as regular employees; and
- (ii) Wages, benefits, and working conditions that are equivalent to the wages, benefits and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving the OJT from the employer.

(5) *Reimbursement.* (i) Pursuant to the OJT contract, the employer is provided reimbursement of not more than 50 percent of the wage rate of the OJT participant, for the costs of providing the training and additional supervision related to the training.

(ii) The reimbursement for OJT must be limited to the duration of approved training as specified in the OJT contract.

(6) *Approval of the costs of OJT.* OJT costs for an AAW may be approved by a State only if a determination is made that:

(i) No currently employed individual is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the AAW;

(ii) Such training does not impair existing contracts for services or collective bargaining agreements;

(iii) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(iv) No other individual is on layoff from the same or any substantially equivalent job for which the AAW is being trained;

(v) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy by hiring the AAW;

(vi) The job for which the AAW is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(vii) The training is not for the same occupation from which the AAW was separated with respect to which the AAW's worker group is covered under a certification rendered under subpart B of this part;

(viii) The employer has not received payment under the TAA Program or under any other Federal law for any other OJT provided by such employer that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(ix) The employer has not taken, at any time, any action that violated the terms of this section with respect to any other OJT provided by the employer for which the State has made a payment under the TAA Program.

(7) *Payment of the costs of OJT.* The costs of OJT that are paid from TAA Program funds must be paid in monthly installments.

(8) *TRA eligibility during OJT.* Under § 618.780(c), an AAW may not be paid TRA for any week during which the worker is in OJT and, therefore, may be ineligible for the HCTC, if available.

(9) *RTAA eligibility during OJT*. Participants enrolled in OJT may be eligible for RTAA. All the requirements at subpart E of this part must be met.

(10) *Use of WIOA funds for OJT*. TAA Program funds may be leveraged with WIOA funds to provide a reimbursement rate equal to that allowable under WIOA. See WIOA sec. 134(c)(3)(H) (29 U.S.C. 3174(b)(3)(H)).

(11) *No OJT for AAIWs*. The State must not approve OJT for AAIWs.

(b) *Customized training*. (1) Customized training is designed to meet the special requirements of a single employer or a group of employers. The training may be conducted by a training provider, a single employer, or group of employers.

(2) Customized training must be conducted with a commitment by the employer or group of employers to employ an AAW upon successful completion of the training. For purposes of customized training, a commitment by the employer(s) to employ a worker upon successful completion of the training, as required by sec. 236(f)(2) of the Act, means that the employer(s) must enter into an agreement with the State that describes the conditions that must be met for successful completion of the training and the expectation of employment after the training is completed.

(3) The employer must pay at least 50 percent for the cost of the training.

(4) For AAIWs, approval is limited to customized training for other than their current position in adversely affected employment. See § 618.655(c)(2).

(c) *Apprenticeship*. Apprenticeship includes registered apprenticeships under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.), as well as other training programs that include a paid work-based learning component and required educational or instructional

component that results in the issuance of a recognized postsecondary credential, which includes an industry-recognized credential.

(1) *Duration.* Apprenticeships are not subject to the 104-week statutory duration of OJT training limit. The length of the paid work-based learning component must not exceed 130 weeks. However, the length of the educational or instructional training component of the apprenticeship may exceed 130 weeks and continue through the scheduled completion of that specific apprenticeship training.

(2) *Eligible apprenticeship expenses.* TAA Program funds can be used to pay for:

(i) The expenses associated with the educational or instructional component (e.g., classroom and distance learning, tools, uniforms, equipment, and books) for the apprentice; and

(ii) The sponsor may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the training and additional supervision related to the work-based learning component provided by the sponsor.

(3) *Exclusion of certain sponsors.* The State may not enter into a contract for apprenticeship with an employer and/or apprenticeship sponsor that exhibits a pattern of failing to provide apprentices with successful attainment of an industry-recognized credential or the apprenticeship completion certificate in the case of registered apprenticeship, as issued by the U.S. Department of Labor or State apprenticeship agency.

(4) *Approval of the costs of apprenticeship--(i) Registered apprenticeships under the National Apprenticeship Act.* Costs for an apprenticeship program may be approved

by a State only if the requirements of the National Apprenticeship Act, 29 CFR parts 29 and 30, and Departmental administrative guidance are met.

(ii) *Other apprenticeships.* Costs for an apprenticeship program may be approved by a State only if a determination is made that:

(A) No currently employed worker is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the apprentice;

(B) Such training does not impair existing contracts for services or collective bargaining agreements;

(C) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(D) No other worker is on layoff from the same or any substantially equivalent job for which the apprentice is being trained;

(E) The sponsor has not terminated the employment of any regular employee or otherwise reduced the workforce of the sponsor with the intention of filling the vacancy so created by hiring the apprentice;

(F) The job for which the apprentice is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed workers;

(G) The training is not for the same occupation as the apprentice's adversely affected employment;

(H) The sponsor has not received payment under the TAA Program or under any other Federal law for any other apprenticeship provided by such sponsor that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(I) The sponsor has not taken, at any time, any action that violated the terms of this section with respect to any other apprenticeship provided by the sponsor for which the State has made a payment under the TAA Program.

(5) *TRA and HCTC eligibility during apprenticeships.* Workers enrolled in an apprenticeship program, in most cases, will not be able to access TRA income support due to their income earned through wages, but the State must still make individual determinations on TRA benefits. This could also impact HCTC eligibility, if HCTC is available. States must advise workers considering this training option of these issues.

(6) *RTAA eligibility during apprenticeships.* AAWs age 50 or older enrolled in an apprenticeship program may be eligible for RTAA under subpart E of this part.

(7) *Meaning of apprenticeship sponsor.* For purposes of paragraph (c) of this section, a sponsor means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

(8) *State contract with apprenticeship sponsor.* The State must enter into a contract with the sponsor that provides the terms and conditions of the apprenticeship.

§ 618.640 Supplemental assistance.

(a) *General.* Supplemental assistance in the form of subsistence and transportation payments must be provided to a trade-affected worker whose training program has been approved under § 618.610 (Criteria for approval of training), to defray reasonable subsistence and transportation expenses while the worker attends training at a facility outside the worker's commuting area. The need for such subsistence and transportation payments must be documented on the worker's IEP, if available, or in the worker's case file. Subsistence and transportation payments may also be documented on a training approval form, or other such form as the State chooses, to ensure that the supplemental assistance is documented in the worker's case file.

(b) *Applications for supplemental assistance.* A trade-affected worker must submit an application for subsistence or transportation payments in accordance with subpart H of this part and processes established by the State. A determination on an application submitted under this section is subject to §§ 618.820 (determinations and notice) and 618.828 (appeals and hearings).

(c) *Subsistence payments--(1) General.* Subsistence payments must be made for the reasonable costs of meals and incidental expenses, and of separate maintenance, which means maintaining temporary living quarters, when the training facility is located outside the trade-affected worker's commuting area.

(2) *Requirements for subsistence payments.* (i) A worker must be reimbursed for subsistence only for the period when they are not receiving or authorized to receive reimbursement or separate payments for such costs from any other source.

(ii) Subsistence payments must not be made for any day such worker receives a daily commuting transportation payment from TAA Program funds or from any other source, except as specified in paragraph (e) of this section.

(iii) Subsistence payments must not be made for any day of unexcused absence from the training program, as certified by the training provider.

(3) *Amount of subsistence payments.* The State may make a subsistence payment to a trade-affected worker only for the lesser of:

(i) The worker's actual per diem expenses for subsistence; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the FTR (see 41 CFR chapters 300 through 304) for the location of the training facility.

(4) *Timing of subsistence payments.* The State must make subsistence payments upon a worker's completion of a week of training, but may advance a subsistence payment for a week if the State determines that such advance is necessary to enable the worker to participate in the approved training.

(d) *Transportation payments.* A trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation expenses, funded by the TAA Program, are payable only for the actual days traveled. Mileage eligible for reimbursement is, round-trip, from the first mile outside the boundary of the worker's commuting area to the location of the training facility.

(1) Transportation payments must not be paid when:

(i) Transportation is arranged and paid for by the State for one or more workers;

(ii) Such payments are being provided under any other law; or

(iii) The worker is authorized to be paid or reimbursed for such expenses from any other source.

(2) The daily transportation payment may not exceed the amount of a daily subsistence payment that would be payable under paragraph (c)(3) of this section if the worker resided temporarily in the area of the training.

(3) In addition, while other forms of transportation may be used, transportation payments to a worker may not exceed the cost per mile at the prevailing personal vehicle mileage rate authorized under the FTR. See <http://www.gsa.gov>.

(4) A worker must receive transportation payments promptly after completion of a week of approved training, but at a minimum on a monthly basis. These payments also may be made in advance in order to facilitate the worker's attendance at the training.

(e) *When payment can be made for both subsistence and transportation.* A trade-affected worker receiving subsistence payments may also receive transportation payments only:

(1) At the beginning of the training that the worker is attending outside their commuting area and at the end of the training for travel back to the worker's commuting area; or

(2) When the worker fails, for justifiable cause, as described in § 618.780(b)(3)(iii), to complete the training outside their commuting area, and must return home before the scheduled end of the training.

(f) *Adjustments to subsistence and transportation payment advances.* If the State advances subsistence or transportation funds, the State must adjust subsequent subsistence and transportation payments to take into account the amount of the advance

that is more or less than the amount that the trade-affected worker is entitled to receive under paragraphs (c) and (d) of this section.

(g) *Worker evidence.* The trade-affected worker must provide receipts for all lodging, purchased transportation expenses, and meals.

§ 618.645 Voluntary withdrawal from a training program.

(a)(1) The State must advise a trade-affected worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart H of this part, result in an overpayment.

(2) The State must advise a worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart G of this part, result in loss of eligibility for TRA.

(b) A trade-affected worker who qualifies for an exception for service in the Uniformed Services, under the criteria set out in § 618.615(d)(4), may voluntarily withdraw from a training program.

(c) A trade-affected worker who ceases participation in training for justifiable cause, as described in § 618.780(b)(3)(iii) (disqualifications), may resume the approved training program.

(d) The trade-affected worker's eligibility for job search and relocation allowances will not be affected by the decision to withdraw from training. To be eligible for these allowances, the worker must meet all eligibility requirements for these benefits as set forth in §§ 618.410 (job search allowances) and 618.440 (relocation allowances).

(e) If the trade-affected worker obtains suitable employment before training is completed yet remains in their training program:

(1) The State must continue funding the approved training program if:

(i) The State determines that training completion serves the long-term employment goals of the worker; and

(ii) Training benchmarks, described at § 618.660, continue to be satisfactorily met.

(2) The State must consider whether to amend the worker's training program; and

(3) The State must discuss with the worker whether the training program continues to serve a useful purpose.

§ 618.650 State standards and procedures for establishing reasonable cost of training.

(a) A State is not prohibited from setting a statewide limit or limits for local workforce development areas on the amount of training costs considered reasonable and appropriate for training programs. Any limit(s) must reasonably take into account the costs of training available in the local workforce development areas throughout the State and the expenditure must be prudent under the standards of the Office of Management and Budget's (OMB's) Uniform Guidance (2 CFR 200.404) and its attendant interpretive administrative guidance. Additionally, States must comply with the standards for reasonableness in § 618.610(f)(2), including those permitting States to allow training other than the least-cost option if the extra cost is justified by better trade-affected worker outcomes or a faster return to the workforce. If the State chooses to implement a

statewide limit, it must arrive at a reasonable limit based upon training costs throughout the State, recognizing that costs may vary significantly between urban areas and rural areas. The State must also develop and implement a method to exceed the limit(s), which must require the local area to secure State approval, as described in paragraph (b) of this section, before training is approved.

(b) The State must develop transparent standards and procedures that provide for prompt consideration of any request for approval of training costs that exceed the established training cost limit(s) set by the State under paragraph (a) of this section. The review standards developed by the State under this paragraph (b) must allow for approval of costs that exceed the applicable training cost limit when a training program that exceeds the cost limit(s) will provide the most reasonable way of returning a particular trade-affected worker to employment at higher wages—or on a career pathway to do so—than in the absence of training.

(c) The State must propose an alternative training program consistent with the reasonable cost criteria, as described at § 618.610, when a training program is not approvable under the established limits and does not meet the requirements in paragraph (b) of this section.

(d) The State must review any limits established under paragraph (a) of this section on an annual basis to determine whether they are still appropriate, and change or end such limits when they no longer reasonably reflect the average cost of training available in the local workforce development areas throughout the State.

(e) Whenever a State establishes, changes, or ends State-established limits on training costs payable under paragraph (a) of this section, the State must provide written

notice and full documentation supporting its action to the Department for review.

(f) States are not required to establish a limit on training costs.

§ 618.655 Training for adversely affected incumbent workers.

(a) *AAIW training.* Pursuant to secs. 236(a)(1) and 247(18) of the Act, a State may approve training for an AAIW, or training for a worker before separation occurs. An AAIW may apply for training and a State may approve training at any time after the date on which they are determined to be individually threatened with layoff without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

(b) *Threat of layoff.* A State may determine that a worker has been individually threatened with total or partial separation when the worker has received a notice of termination or layoff from employment. Other documentation of a threat of total or partial separation from the firm or other reliable source may be accepted.

(c) *Approval of training.* Except as specified in this section, the provisions of this subpart extend to AAIWs. The following exceptions to the training approval requirements apply to AAIWs:

(1) The State may not approve OJT under § 618.635(a) for AAIWs.

(2) Customized training for AAIWs under § 618.635(b) may be approved only if the training is for a position other than the AAIW's adversely affected position.

(d) *Disqualification and restrictions.* (1) The State must periodically verify that the threat of total or partial separation continues to exist for the AAIW for the duration of the approved training. This may be accomplished by verifying with the AAIW's

employer that the threat of separation still exists before funding each subsequent portion of the training.

(2) Funding of a training program must cease upon the removal of the threat. The AAIW must cease the training upon the conclusion of the most recently funded portion, semester or quarter for which expenses have already been accrued. No additional funding will be available while the threat of separation is removed. Funding may resume for the original training program that had been previously approved upon a determination by the State that the threat of separation has been reestablished, or upon total or partial separation from adversely affected employment, if the requirements under § 618.610 are still met. The AAIW's approved training program must be amended, as appropriate, in compliance with § 618.665.

(3) The one training program per certification rule, as described under § 618.615, is applicable to AAIWs. Thus, a training program begun prior to separation and while under a threat of layoff constitutes the one allowed training program available to that AAIW.

(4) The duration of training limitations, at § 618.615(d)(3) are applicable to AAIWs.

(5) An AAIW will not be eligible for a new training program when total or partial separation occurs; however, the existing training may be amended under the provisions of § 618.665.

(6) The State must not consider the AAIW's threatened employment to be suitable employment under § 618.610(a).

(e) *Separation from threatened employment.* (1) Upon a total or partial separation from threatened employment, an AAIW becomes an AAW under the following conditions:

(i) The separation must occur prior to the expiration of the certification period under which they were determined to be threatened; and

(ii) The total or partial separation must be for lack of work.

(2) When an AAIW becomes an AAW under the conditions in paragraph (e)(1) of this section:

(i) The State must amend the worker's approved training program, as described in § 618.665; and

(ii) The State must determine what other benefits under the TAA Program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the duration limits contained in § 618.615.

§ 618.660 Training benchmarks.

(a) *Requirement for training benchmarks.* A State must establish and document training benchmarks, as provided in paragraph (f) of this section, for individual AAWs so that they can meet Completion TRA eligibility requirements, described at § 618.765. The benchmarks must be established when the worker enrolls in an approved training program, so that the State can monitor the worker's progress toward completing the approved training duration limits established at § 618.615.

(b) *Scope of requirement.* Training benchmarks must be established for all but short-term training programs.

(c) *Measurement against training benchmark.* To review the AAW's progress against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc. The case manager may attest to the worker's progress after consultation with the vendor and the worker.

(d) *Must be included in IEP.* The training benchmarks must be described in the AAW's IEP, if available, or otherwise documented in the worker's case file.

(e) *Benchmark qualities.* Benchmarks must be flexible enough to allow for some variability, and both practical and measurable enough to allow administration across a broad spectrum of training scenarios.

(f) *Review of benchmarks.* The State must evaluate and document satisfactory progress against the benchmarks in paragraphs (f)(1) and (2) of this section at intervals of not more than 60 days, beginning with the start of the approved training program:

(1) The AAW is maintaining satisfactory academic standing (e.g., not on probation or determined to be "at risk" by the instructor or training provider); and

(2) The AAW is on schedule to complete training within the timeframe identified in the approved training program.

(g) *Actions following failure to meet a benchmark.* (1) Upon failure to meet a benchmark, the State must provide a warning to the AAW that their eligibility for Completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker's case file. In consultation with the worker, the State may amend a worker's training program as described in § 618.665.

(2) If a worker who has previously failed to meet a benchmark under paragraph (g)(1) of this section fails to meet a benchmark during a subsequent review under paragraph (f) of this section, the State must notify the worker of their ineligibility for Completion TRA. The worker may elect to continue in the approved training but will not receive any Completion TRA payments; or the training program must be amended, according to § 618.665, and Completion TRA may resume.

§ 618.665 Amending approved training.

(a) *Conditions for amending approved training.* The State must, with the cooperation of the trade-affected worker, amend a worker's approved training program under the following conditions:

(1) The State determines that one or more of these conditions are present:

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

(ii) A course or courses added to the training program will enhance and complement the worker's original training program, such as preparatory courses to obtain an industry-recognized credential, certification, or license that will improve the worker's chance of being hired;

(iii) Additional assistance such as tutoring or the use of translators would benefit the worker, keep the worker qualified for the training in which they are enrolled, and be sufficient for the worker to complete the training program;

(iv) Approval of a longer-term training program that will improve the likelihood of employment upon the completion of such training;

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

(vi) The originally approved training program is determined to be of inferior quality;

(vii) Training in another occupation will lead to a greater likelihood of training completion or a better employment outcome, as a result of a change in labor market conditions or the worker's experience in the originally approved training program, or other similar factor;

(viii) The worker is moving from full-time training to part-time training or from part-time training to full-time training;

(ix) An AAIW has been separated from adversely affected employment and has transitioned to become an AAW, or an AAIW is continuing training after a threat of separation was first removed, then resumed; or

(x) An additional source of funding becomes available for which a prearrangement is required under § 618.625(c)(4).

(2) The combination of time spent in the originally approved training program and the time it will take to complete the amended training program will not exceed the duration of training limit for the type of training included in the training program, as provided at § 618.615(d)(3).

(3) Amending the approved training program occurs before a worker finishes the originally approved training program and prior to the originally scheduled date of completion.

(b) *Criteria for amending a training program.* The State must determine that the following criteria are met before amending a training program:

(1) *Criterion 1: A reasonable expectation of employment following completion of such training continues to exist.* Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(i) "A reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training.

(ii) The State must review the expected job market conditions using pertinent labor market data in the worker's case file to ensure it continues to apply to the amended training program and the worker's occupational goal as identified on the worker's IEP, if available, and in the worker's case file.

(iii) When a worker desires to relocate within the United States but outside the worker's present commuting area upon completion of training, the State must ensure the labor market information (described in § 618.610(c)(2)) supports the determination that a reasonable expectation of employment continues to exist within the area of the planned relocation. The labor market information must be in the area of planned relocation.

(iv) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in the area to

which they desire to relocate. The State must determine that there continues to be a reasonable expectation that the worker can secure employment in the limited demand occupation.

(v) A State may approve an amended training program in an occupation if it finds that there is a reasonable expectation that the additional training will lead to self-employment in the occupation for which the worker requests training, and that such self-employment will provide the worker with wages or earnings at or near their wages in adversely affected employment.

(vi) Amended training programs that consist of solely OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with sec. 236(c)(1)(B)(i) of the Act.

(2) *Criterion 2: Training continues to be reasonably available to the worker.* In determining whether training continues to be reasonably available to the worker, the State must first consider training opportunities available in the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the amended training program must be available at a reasonable cost as prescribed in paragraph (b)(4) of this section.

(3) *Criterion 3: The worker continues to be qualified to undertake and complete such amended training.* States must ensure the following:

(i) The worker's knowledge, skills, and abilities, educational background, work experience, and financial resources remain sufficient to undertake and complete the specific amendment to the training program being considered.

(ii) The initial assessment or comprehensive and specialized assessment, and IEP, if available, developed under subpart C of this part are to be consulted in order to support the trade-affected worker's ability to undertake and complete the proposed amended training program.

(iii) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the amended training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d) (limitations on approval of training). In making this determination, the State must consider:

(A) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed amended training program;

(B) Other sources of income support available to the worker including severance, earnings of other family members, and other family resources;

(C) Other fixed financial obligations and expenses of the worker and family;

(D) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance, including, but not limited to, nongovernmental scholarships, awards, or grants; and

(E) Whether or not the worker is employed while attending training.

(iv) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the amended training program that exceeds the duration of UI and TRA payments.

(v) If a worker has insufficient financial resources to complete the proposed amended training program that exceeds the duration of UI and TRA payments, then the State must not approve that amended training and must instead consider resuming the originally approved training program or other training opportunities available to the worker.

(4) *Criterion 4: Such amended training continues to be suitable for the worker and available at a reasonable cost--*(i) *Suitable for the worker.* The amended training being considered must address the criteria set out in paragraph (b)(3) of this section (Criterion 3), this paragraph (b)(4), and be determined by the State to be appropriate given the worker's knowledge, skills, and abilities, background, and experience relative to the worker's employment goal, and criteria set out in paragraph (b)(1) of this section (Criterion 1).

(ii) *Available at a reasonable cost.* (A) Costs of an amended training program may include, but are not limited to, tuition and related expenses (e.g., books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the amended training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(I) The State must ensure and document that the amended training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(2) Related expenses must be necessary for the worker to complete the amended training program. Other options should be explored before purchasing equipment or related materials.

(B) Available at a reasonable cost means that amended training must not be approved at one provider when, all costs being considered, training better or substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. Amended training must not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(C) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the amended training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (b)(4)(ii)(B) of this section applies.

(D) Approval of amended training under paragraph (b)(4) of this section (Criterion 4) is also subject to the provisions of § 618.650.

Subpart G—Trade Readjustment Allowances

§ 618.700 Scope.

This subpart explains the requirements for eligibility, amounts, and duration of Basic TRA, Additional TRA, and Completion TRA, all of which are income support in the form of cash payments for an AAW.

§ 618.705 Definitions.

(a) For purposes of TRA, an AAW is “participating in approved training” if:

(1) The worker is either attending and taking part in all scheduled classes, required activities, and required events in a given week, or the training provider has excused the worker’s absence or failure to take part in accordance with its written policies.

(2) In the case of distance learning, the worker is either meeting all the requirements of the training provider in a given week in accordance with its rules, regulations, and standards, or the training provider has excused the worker’s failure to meet those requirements in accordance with its written policies.

(b) For purposes of TRA, the term “training allowance” means any assistance or payment, excluding Federal student financial assistance, that can be used for the same purpose as funds for the costs of training covered by the TAA Program, and that is given or paid directly to the AAW.

(c) For purposes of TRA, the term “adversely affected employment” includes employment at a successor-in-interest, and such wages reported to the State or received by an AAW from a successor-in-interest are included as wages under § 618.720(c).

§ 618.710 Categories of Trade Readjustment Allowances.

(a) *Basic TRA*. Basic TRA is payable to an AAW who meets the requirements of § 618.720. Basic TRA is payable for weeks of unemployment after the worker meets the criteria for exhaustion of UI under § 618.720(e) and, consistent with § 618.725, for weeks of unemployment during which the worker either is enrolled in, is participating in, or has completed approved training, or has received a waiver of the training requirement under § 618.735.

(b) *Additional TRA*. Additional TRA is payable to an AAW who meets the requirements of § 618.760. Additional TRA is payable only for weeks of unemployment during which the worker is participating in approved training and only after the worker has exhausted all rights to Basic TRA.

(c) *Completion TRA*. Completion TRA is payable to an AAW who meets the requirements of § 618.765. Completion TRA is payable only for weeks of unemployment during which the worker is participating in approved training. Completion TRA is payable only after the worker has exhausted all rights to Basic and Additional TRA.

§ 618.715 Applications for Trade Readjustment Allowances and payment.

(a) *Timing of applications*. (1) An initial application for TRA must be filed after publication of the certification of the appropriate worker group.

(2) An application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

(b) *Applicable procedures*. Applications must be filed in accordance with this subpart and on forms furnished to AAWs by the State. The State's procedures for filing applications for TRA, and for reporting, must be consistent with this part and the

Department's "Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services," Employment Security Manual, part V, secs. 5000 through 5004 (appendix A to this part), except that such procedures may allow for the filing and processing of applications by paper, telephone, the internet, or other similar methods as provided for in paragraph (e)(2) of this section.

(c) *Treatment of determinations.* Determinations on TRA applications are determinations to which §§ 618.820 (determinations and notice), 618.824 (liable and agent State responsibilities), and 618.828 (appeals and hearings) apply. Copies of such applications for TRA and all determinations by the State on such applications must be included in the AAW's case file.

(d) *Payment of TRA.* (1) A State must not make any payment of TRA until a certification is issued and the State determines that the AAW is a member of a worker group covered under the specified certification.

(2) An AAW, if they otherwise meet the eligibility requirements of this subpart, including exhaustion of UI, may be entitled to TRA for any week of unemployment that begins on or after the date of the applicable certification.

(3) An AAW may receive only one form of TRA (Basic, Additional, or Completion) for any given week.

(e) *Taking of applications.* (1) An application is required for each TRA benefit type available to the AAW. The State must take an initial application for each type of TRA (Basic, Additional, and Completion).

(2) Applications may be filed and processed by any means allowed for UI claims in the State.

§ 618.720 Qualifying requirements for Basic Trade Readjustment Allowances.

To qualify for Basic TRA for a week of unemployment, an AAW must meet each of the requirements in paragraphs (a) through (g) of this section:

(a) *Certification*. The AAW must be a member of a worker group certified under subpart B of this part.

(b) *Separation*. The AAW must have experienced a qualifying separation during the certification period of the certification in paragraph (a) of this section.

(c) *Wages and employment*. The AAW must meet the following wage and other requirements:

(1) In the 52-week period (i.e., 52 consecutive calendar weeks) ending with the week of the AAW's total or partial separation from adversely affected employment during the certification period, the worker must have had at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or, where there is more than one subdivision, the appropriate subdivision of that firm. Evidence that the worker meets the requirement in this paragraph (c)(1) must be obtained as provided in § 618.740. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(2) The categories of weeks in paragraphs (c)(2)(i) through (iv) of this section also must be treated as weeks of employment at wages of \$30 or more (for purposes of paragraph (c)(1) of this section), regardless of whether the AAW actually receives any wages during such weeks:

(i) All weeks, up to a maximum of 7 weeks, during which the AAW is on employer-authorized leave for vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(ii) All weeks, up to a maximum of 7 weeks, during which the AAW had adversely affected employment interrupted to serve as a full-time representative of a labor organization in the firm or subdivision referenced in paragraph (c)(1) of this section;

(iii) All weeks, up to a maximum of 26 weeks, during which the AAW has a disability compensable under a workers' compensation law or plan of a State or the United States; and

(iv) All weeks, up to a maximum of 26 weeks, during which the AAW is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States, if such active duty is "Federal service" as defined in 5 U.S.C. 8521(a)(1), but not more than 7 weeks, in the case of weeks described in paragraph (c)(2)(i) or (ii) of this section that occur during the active duty. States may waive provisions of this paragraph (c)(2)(iv) consistent with § 618.884.

(d) *Entitlement to UI.* The AAW must have been entitled to (or would have been entitled to if the worker had applied therefor) UI for a week within the first benefit period.

(e) *Exhaustion of UI.* The AAW must meet the following requirements:

(1) The AAW must have exhausted all rights to any UI, except additional compensation that is funded by a State and not reimbursed from any Federal funds to which such worker was entitled (or would have been entitled had such worker applied

therefor), and not have any unexpired waiting period applicable to the worker for any such UI. Thus, except as provided by paragraph (e)(2) of this section, whenever an AAW becomes entitled (or would become entitled if the worker applied therefor) to any type of UI, except additional compensation funded by a State and not reimbursed from any Federal funds, after the start of the AAW's receipt of TRA, the payment of TRA must be suspended until such worker exhausts entitlement to such UI. After the AAW exhausts that entitlement, payments of TRA to which the worker is still entitled may resume.

(2) The AAW may elect to receive TRA instead of UI during any week with respect to which the worker:

(i) Is entitled and is able to receive UI as a result of a new benefit year based on employment in which the worker engaged after establishing TRA eligibility following a total separation from adversely affected employment. The entitlement must be after the first UI benefit period. It must also be based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment that established such first UI benefit period. This new employment may include the same adversely affected employment; and

(ii) Is otherwise entitled to TRA, except that the AAW need not have exhausted all rights to UI in the new benefit year.

(3) For AAWs meeting the requirements in paragraph (e)(2) of this section, the State must provide the AAW a summary of their potential UI benefits and potential TRA benefits in writing and document the AAW's choice in the case file.

(4) State law applies to the status of the UI claim based upon the second benefit year. For States where a claim establishes a benefit year, no subsequent claim may be

established in a later quarter during that benefit year, and any available entitlement remains, consistent with State law, once TRA is exhausted.

(5) The AAW must have no unexpired waiting period applicable to such worker for any UI.

(f) *Extended Benefits (EB) work test.* The AAW must be able to work and be available for work, as defined in the applicable State law for UI claimants, under the EB work test for each week by the means described in this paragraph (f), unless an exception in paragraph (f)(2) of this section applies.

(1) *Criteria.* The EB work test requirement must be met by:

(i) Registering for work with the State, in accordance with the applicable provisions of State law that apply to EB claimants and that are consistent with part 615 of this chapter;

(ii) Actively engaging in seeking work;

(iii) Furnishing the State with tangible evidence of work search efforts each week;

and

(iv) Accepting any offer of suitable work, including those referred by the State.

(2) *Exceptions.* The able and available requirement and the EB work test requirement in this paragraph (f) do not apply for purposes of TRA eligibility:

(i) When the AAW is enrolled in or participating in approved training;

(ii) During a break in training that does not exceed 30 days as counted in accordance with § 618.775(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 that begins before the AAW

is notified of coverage by a certification and is fully informed of the EB work test requirements. Before such notification and advice, the worker must not be subject to the EB work test requirements for TRA eligibility purposes, nor to any State timely filing requirement, but must be required to be unemployed and able to work and available for work under State law with respect to any such week except as provided in paragraphs (f)(2)(i) and (ii) of this section for AAWs enrolled in or participating in approved training.

(3) *Suitable work.* (i) For purposes of this subpart, suitable work means, with respect to a worker, whichever of the following laws is applicable:

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

(B) Suitable work as defined in applicable State law provisions consistent with sec. 202(a)(3) of EUCA.

(ii) Regardless of which of the laws in paragraph (f)(3)(i)(A) or (B) of this section apply, suitable work does not in any case include self-employment or employment as an independent contractor.

(g) *Participation in approved training.* (1) As a condition for receiving Basic TRA, except as provided for in § 618.730, the AAW, after a total or partial separation from the adversely affected employment within the certification period, and by the applicable deadlines in § 618.725 must:

(i) Be enrolled in training, as defined in subpart A of this part;

(ii) Be participating in approved training (as defined in § 618.705); or

(iii) Have a waiver granted under § 618.735 in effect.

(2) An AAW who has not met the requirements in paragraph (g)(1) of this section may, if otherwise eligible, receive Basic TRA before expiration of the applicable training enrollment deadline in § 618.725. Once the training enrollment deadline is reached, the training requirements in paragraph (g)(1) of this section must be met. Basic TRA payments must cease beginning the first week for which the requirements in paragraph (g)(1) of this section were required but not met.

(3) The requirements in paragraph (g)(1) of this section do not apply to an AAW with respect to claims for Basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA after publication of the certification of the appropriate worker group as provided in § 618.715(a), nor for any week that begins before the AAW is notified that they are covered by a certification and is fully informed of the requirements of this section.

(4) An AAW who meets the participation in approved training requirement in paragraph (g)(1) of this section by the applicable deadlines in § 618.725 may continue to receive Basic TRA after the AAW has completed training, even if such participation in training was on a part-time basis, provided that the worker meets all other eligibility requirements for Basic TRA.

§ 618.725 Training enrollment deadlines.

(a) *Training enrollment deadlines.* As a condition for receiving Basic TRA, an AAW must meet the participation in approved training requirement in § 618.720(g)(1) no later than the latest of:

(1) The last day of the 26th week after the AAW's most recent qualifying separation;

(2) The last day of the 26th week after the week in which the certification was issued; or

(3) 45 days after the later of the dates specified in paragraph (a)(1) or (2) of this section, if there are extenuating circumstances that justify an extension of the enrollment period. Extenuating circumstances that justify the 45-day extension are circumstances that would constitute good cause, as established by § 618.730; that is, circumstances under which the AAW acted diligently yet was unable to enroll because of exigent circumstances.

(4) In the case of an AAW who fails to enroll by the date required by paragraph (a)(1), (2), or (3) of this section due to a failure by the State to provide the AAW with timely information regarding the applicable training enrollment deadline, the AAW must be enrolled in training or obtain a waiver by the Monday of the first week occurring 60 consecutive calendar days following the date the worker was properly notified; or

(5) The Monday of the first week occurring 30 consecutive calendar days (or, if the State is closed that last day because that day falls on a weekend or holiday or for any other reason, the next business day) following the day of termination, whether by revocation or expiration or revocation of a waiver under § 618.735.

(b) *Exceptions--(1) Extended training enrollment deadline for delayed approval of application for TRA.* (i) The training enrollment deadlines of paragraph (a) of this section do not apply where:

(A) A State's negative determination on an initial application for TRA under § 618.715 has been reversed through redetermination or appeal;

(B) The AAW is unable to meet the training enrollment deadline because of the delay in obtaining the reversal of the negative determination; and

(C) The delay in obtaining the reversal is not attributable to the AAW.

(ii) Where the conditions of paragraph (b)(1)(i) of this section are met, the AAW will have until the last day of the 26th week following the date on which the negative determination was reversed to enroll in training or have a training waiver in effect.

(2) *Extended training enrollment deadline for period of duty in military service.* If an AAW who is a member of a reserve component of the Armed Forces and has served a period of duty during the AAW's Basic TRA eligibility period but before enrolling in training, the AAW's training enrollment deadline will be the last day of the 26th week following the last day of the AAW's period of duty.

(3) *Good cause.* The training enrollment deadline may be extended for good cause as provided for in § 618.730.

§ 618.730 Good cause.

(a) States must waive the time limitations with respect to an application for TRA, enrollment in training, or receipt of a training waiver in this subpart if the AAW shows good cause.

(b) Good cause exists if the AAW acted diligently yet was unable to complete in a timely manner the relevant task at issue described in paragraph (a) of this section because of exigent circumstances.

(c) The State must determine good cause on a worker-by-worker basis.

§ 618.735 Waiver of training requirement for Basic Trade Readjustment

Allowances.

(a) *Waiver for Basic TRA.* A State may issue a waiver of the requirement in § 618.720(g) that an AAW be enrolled in or participating in approved training as a condition of Basic TRA eligibility upon a finding that training for such worker is not feasible or appropriate for one or more reasons identified in paragraph (b) of this section. The waiver must contain the information required in paragraph (c) of this section. No waiver of the training requirement is permitted for Additional TRA or Completion TRA eligibility. Waivers must be issued no later than the latest of the applicable deadlines described in § 618.725.

(b) *Bases for a waiver.* The State, in order to issue a written waiver to an AAW, must conclude after assessing the worker that training is not feasible or appropriate for one or more of the reasons in paragraphs (b)(1) through (3) of this section, which must be cited on the waiver:

(1) *Health.* The worker is unable to participate in training due to the health of the worker. A waiver granted for this reason does not exempt the worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(2) *Enrollment unavailable.* The first available enrollment date for approved training is within 60 consecutive calendar days after the date on which a waiver determination is made or, if later, there are extenuating circumstances, as determined under the criteria in § 618.725(a)(3), that apply to the delay in enrollment in training.

(3) *Training not available.* Approved training is not reasonably available to the worker from governmental agencies or private sources (which may include area vocational education schools, as defined in sec. 3 of the Strengthening Career and Technical Education for the 21st Century Act (20 U.S.C. 2302), and employers), or suitable training is not available at a reasonable cost, or no training funds are available.

(c) *Contents of a waiver.* (1) A waiver issued under this section may not take effect unless it contains, at a minimum, the following information:

(i) The AAW's name and a unique identifying designation used by the State;

(ii) The name and location of the worker group and the petition number under which the AAW's group was certified;

(iii) A statement of the reasons why training is not feasible or appropriate for the AAW, citing to one or more reasons identified in paragraph (b) of this section;

(iv) The effective date and expiration date of the waiver;

(v) A statement that the waiver must be revoked immediately upon a determination that the basis or bases for the waiver no longer apply; and

(vi) The signature of an official of the State authorized to grant the waiver, and the signature of the AAW or other evidence of the worker's acknowledgement of receipt of the waiver.

(2) Waivers and the required signatures may be issued and maintained electronically.

(d) *Request for a waiver.* States may analyze whether an AAW may qualify for a waiver as part of the AAW's initial assessment, as described in subpart C of this part. An

AAW may also request a waiver from the State before the applicable deadline in § 618.725.

(e) *Denial of a waiver.* In any case in which a determination is made to deny a waiver under this section, the AAW to whom the denial pertains must be furnished with a notice of the denial of waiver. The notice of denial of waiver must contain, at minimum, the information in paragraphs (c)(1)(i), (ii), and (vi) of this section; the specific reason(s) for the denial; the date of the denial; and notice of the AAW's appeal rights.

(f) *Duration of a waiver.* (1) A waiver issued under this section may be for a period not to exceed 6 months, or the AAW's period of Basic TRA entitlement, whichever ends first;

(2) Notwithstanding the 6-month limitation in paragraph (f)(1) of this section, a State may extend an AAW's waiver beyond 6 months if:

(i) Training continues not to be feasible or appropriate for such worker for one or more of the reasons described in paragraph (b) of this section; and

(ii) Such worker has not yet exhausted their Basic TRA entitlement.

(3) Waivers must be reviewed 3 months after the date on which the State issues the waiver to determine if one or more of the bases in paragraph (b) of this section continue to apply, and every 30 consecutive calendar days thereafter.

(g) *Revocation of a waiver.* The State must revoke a waiver issued under this section if the waiver criteria are no longer met. The State must notify the AAW of the revocation. The notice of revocation must be appealable and must contain the same information as a denial of waiver issued under paragraph (e) of this section.

(h) *Submission of waivers and notices.* The State must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, and must submit to the Department, only upon specific request, a record or copy of any or all waivers issued under this section together with a statement of reasons for each such waiver, and a record or copy of any or all notices of revocation of waiver issued under this section together with a statement of reasons for each such revocation. The statements of reason required under paragraphs (c)(1)(iii) and (e) of this section, as applicable, fulfill the requirement for a statement of reasons under this paragraph (h). Electronic records and copies are acceptable.

§ 618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.

(a) *State action.* When an AAW applies for Basic, Additional, or Completion TRA, the State having jurisdiction under § 618.820 (determinations of eligibility) must obtain information necessary to establish:

(1) Whether the AAW meets the qualifying requirements in § 618.720 for Basic TRA, in § 618.760 for Additional TRA, or in § 618.765 for Completion TRA; and

(2) For a partially separated AAW, the average weekly hours and average weekly wage in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State records or from any employer, the State must require the AAW to submit a signed statement setting forth such information as may be required for the State to make the determinations required by paragraph (a) of this section.

(c) *Verification.* A statement made under paragraph (b) of this section must be certified by the AAW to be true to the best of the worker's knowledge and belief and must be supported by evidence including W-2 forms, paycheck stubs, union records, income tax returns, or statements of fellow workers, and must, whenever possible, be verified by the employer.

(d) *Determinations.* The State must make the necessary determinations on the basis of information obtained under this section, except that if, after reviewing information obtained under paragraphs (b) and (c) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it must make the determination on the basis of the best available information.

(e) *Timing.* The State must follow the established method used for processing regular UI claims. If an employer does not respond within the timeframe established for UI claims, then the State must act on the best available information.

§ 618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.

(a) *TRA amount.* The amount of Basic, Additional, or Completion TRA payable for a week of unemployment (including a week of approved training) is an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the AAW for a week of total unemployment preceding the worker's first exhaustion of UI following the worker's first qualifying separation, except that:

(1) Where a State calculates a base period amount of UI and calculates dependents' allowances on a weekly supplemental basis, TRA weekly benefit amounts

must be calculated in the same manner and under the same terms and conditions as apply to claimants for UI except that the base amount must not change.

(2) For partially separated workers, the weekly amount of TRA must be calculated as determined under the applicable State law.

(b) *Workers who are undergoing training.* Any AAW in approved training who is thereby entitled for any week to TRA and a training allowance (as defined in § 618.705) under any other Federal law for the training of workers, will be paid for each week in which they are undergoing approved training, TRA in the amount (computed for each week) equal to the amount computed under paragraph (a) of this section or, if greater, the amount of any weekly allowance for such training to which the AAW would be entitled under any other Federal law for the training of workers, if the AAW applied for such allowance. TRA must be paid in lieu of any payment for training made directly to the AAW to which the AAW is entitled under such other Federal law.

(c) *Reductions to the TRA weekly amount.* The weekly amount of TRA payable under this section will be reduced (but not below zero) by:

(1) Income that is deductible from UI under the disqualifying income provisions of the applicable State law or Federal UI law, except that in the case of an AAW who is participating in approved training, such income must not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the UI payable to the worker for a week of total unemployment preceding the worker's first exhaustion of UI (as determined for purposes of sec. 231(a)(3)(B) of the Act).

(2) If the amount of a training allowance as defined in § 618.705 (including a training allowance referred to in paragraph (b) of this section) under any Federal law that

the AAW receives for such week is less than the amount of TRA otherwise payable to the AAW for a week, the AAW must, when applying for TRA for the week, be paid TRA in an amount not to exceed the difference between the AAW's regular weekly TRA amount, as determined under § 618.745(a) (regular allowance), and the amount of the training allowance paid to the AAW for the week.

(3) Except as provided in paragraph (c)(4) of this section, if a training allowance under any Federal law other than the Act, is paid to an AAW for any week of unemployment with respect to which the AAW would be entitled (determined without regard to any disqualification under paragraph (b) of this section) to TRA, if they applied for TRA, each such week must be deducted from the total number of weeks of TRA otherwise payable to the AAW when the worker applies for and is determined to be entitled to TRA. If such training allowance paid directly to the worker for any week of unemployment is less than the amount of TRA to which the AAW would be entitled if the worker had applied for it, the AAW must receive (when the worker applies for and is determined to be entitled to TRA) TRA for such week equal to such difference.

(4) If the training allowance (as defined in § 618.705) referred to in paragraphs (c)(2) and (3) of this section is Federal student financial assistance, then the amount of TRA will not be reduced. In the case of an AAW to whom the Federal student financial assistance is available, the State will rely on prearrangements for the sharing of training costs under § 618.625(c)(2) (payment restrictions for training programs) in order to harmonize the provision of Federal student financial assistance with the worker's TRA.

(5) Any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law that applies to AAWs in approved training.

§ 618.750 Maximum amount of Basic Trade Readjustment Allowances.

(a) *General rule.* Except as provided in paragraph (b) of this section, the maximum amount of Basic TRA payable to an AAW is the product of 52 multiplied by the TRA weekly amount for a week of total unemployment, calculated under § 618.745(a) (weekly amounts of TRA), reduced by the total sum of UI (except State-funded additional compensation) that the AAW was entitled or would have been entitled to had the worker applied in such worker's first benefit period.

(b) *Exceptions.* The maximum amount of TRA determined under paragraph (a) of this section does not include:

(1) The amount of dependents' allowances paid as a supplement to the base weekly amount determined under § 618.745; or

(2) The amount of the difference between the AAW's weekly increased allowances determined under § 618.745(b) and such worker's weekly amount determined under § 618.745(a).

§ 618.755 Eligibility period for Basic Trade Readjustment Allowances.

(a) Except as provided in paragraphs (b) and (c) of this section, an AAW is ineligible to receive Basic TRA for any week of unemployment beginning after the close of the 104-week period beginning with the first week following the week in which the

AAW's most recent qualifying separation occurred or after certification, whichever is later.

(b) A State may not count any period during which a judicial or administrative appeal is pending with respect to a denial of a petition filed under subpart B of this part for the purpose of calculating the period of separation described in paragraph (a) of this section. The separation will be deemed as having occurred on the certification date and the Basic TRA eligibility period will begin on the week that follows the certification date.

§ 618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.

(a) *Qualifying requirements for Additional TRA.* An AAW is eligible to receive Additional TRA for any week only if:

(1) The worker meets all qualifying requirements for receipt of Basic TRA in § 618.720;

(2) The worker subsequently exhausted Basic TRA; and

(3) Except as provided in § 618.775 for a break in training, the AAW is participating in approved training.

(b) *Timing and duration of Additional TRA.* Additional TRA is payable for up to 65 weeks during the 78 consecutive calendar week period that:

(1) Immediately follows the last week of entitlement to Basic TRA otherwise payable to the AAW;

(2) Begins with the first week of approved training, if such training begins after the last week described in paragraph (b)(1) of this section; or

(3) Begins with the first week in which such training is approved under subpart F of this part, if such training is approved after the training already has commenced (although Additional TRA or training costs may not be paid for any week before the week in which the TAA approved training was approved).

§ 618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.

(a) *Qualifying requirements for Completion TRA.* An AAW is eligible to receive Completion TRA if such worker meets all qualifying requirements for receipt of Basic TRA in § 618.720 and Additional TRA in § 618.760, and if the eligibility criteria in paragraphs (a)(1) through (3) of this section are met for that week. The requirements in this paragraph (a) are applied at the time the State approves payment for a week of Completion TRA. The eligibility criteria are:

(1) Payment of Completion TRA is necessary for an AAW to complete the approved training described in paragraph (a)(2) of this section.

(2) The AAW is participating in approved training each week that leads to the completion of a degree or industry-recognized credential and the worker's training program will extend for a period longer than the periods during which Basic and Additional TRA are payable under §§ 618.755 (eligibility period for Basic TRA) and 618.760 (qualifying requirements for, timing and duration of, Additional TRA), and the requested weeks are necessary for the worker to complete training.

(3) The worker –

(i) Has substantially met the performance benchmarks in § 618.660 (training benchmarks) established as part of the approved training under subpart F of this part;

(ii) Is expected to continue to make progress toward the completion of the approved training; and

(iii) Will complete the approved training during the period of eligibility described in paragraph (c) of this section.

(4) If, during the period in which an AAW is eligible to receive Completion TRA, the worker ceases to meet any of the eligibility criteria in paragraphs (a)(1) through (3) of this section, no further Completion TRA is payable to such worker.

(b) *Weeks payable.* A total of up to 13 weeks of payments are allowable during the period of eligibility described in paragraph (c) of this section.

(c) *Eligibility period.* Completion TRA may be payable during the period of 20-week consecutive calendar period that begins with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended if justifiable cause exists, in accordance with § 618.770(a).

(d) *Start date of Completion TRA.* The State must have a process to take applications for Completion TRA. States must not automatically establish the 20-week period for Completion TRA as the week following either expiration of the eligibility period for Additional TRA, or the exhaustion of Additional TRA; filing a claim after either of those first weeks is permitted. Since training that leads to a degree or industry-recognized credential must be completed during the eligibility period described in paragraph (c) of this section, the first week of Completion TRA claimed should be

carefully considered in coordination with case management while the AAW's training program is being developed.

§ 618.770 Special rule for justifiable cause.

(a) The eligibility period during which Basic, Additional, and Completion TRA are payable to an AAW may be extended for justifiable cause, which has the same meaning as good cause in § 618.730.

(b) While the eligibility period for Basic, Additional, and Completion TRA may be extended for justifiable cause as determined by the State, the maximum benefit amount and number of weeks this benefit may be received must not change.

§ 618.775 Payment of Trade Readjustment Allowances during breaks in training.

(a) Basic and Additional TRA are payable to an otherwise eligible AAW during breaks in training (periods within or between courses, terms (quarters or semesters), and academic years) that do not exceed 30 days (counted in accordance with paragraph (b) of this section), only if:

(1) The AAW participated in approved training of this part immediately before the beginning of the break in training;

(2) The break in training was provided in the established schedule of the training provider; and

(3) The AAW resumes participation in the approved training immediately after the break ends.

(b) For the purpose of determining whether a break in training is within the 30-day maximum allowed under this section, all calendar days beginning with the first day of the training break and ending with the last day of the break, as provided in the published schedule of the training provider, must be counted. However, any Saturday, Sunday, or official State or national holiday occurring during the scheduled break in training is excluded from the 30-day count if training normally would not be scheduled in the training program during those days if there was no break.

(c) For Completion TRA, breaks in training are permissible during the 20-week eligibility period. However, payment for breaks in training are not allowed.

§ 618.780 Disqualifications.

(a) *General rule.* Except as stated in paragraph (b)(1) or (c) of this section and in § 618.832(b)(2) (concerning disqualification due to fraud), an AAW may not be paid TRA for any week of unemployment such worker is or would be disqualified from receiving UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law that apply to EB claimants and are consistent with EUCA.

(b) *Disqualification of trainees--(1) State law inapplicable.* A State law may not be applied to disqualify an AAW from receiving UI or TRA because:

- (i) Such worker is enrolled in or participating in an approved training program;
- (ii) Such worker refuses work to which the State referred such worker because such work either would require discontinuation of approved training or interfere with

successful participation in TAA approved training, except that this paragraph (b)(1)(ii) does not apply to an AAW who is ineligible under paragraph (b)(2) of this section;

(iii) Such worker quits work that was not suitable employment and it was reasonable and necessary to quit in order to begin or continue approved training. This includes temporary employment the worker may have engaged in during a break in training;

(iv) Such worker continues full-time or part-time employment while participating in approved training; or

(v) Such worker leaves OJT within the first 30 days because the OJT is not meeting requirements of sec. 236(c)(1)(B) of the Act.

(2) *Disqualifications.* An AAW who, without justifiable cause (as described in paragraph (b)(3)(iii) of this section), fails to begin participation (as described in paragraph (b)(3)(i) of this section) in approved training, or ceases participation (as described in paragraph (b)(3)(ii) of this section) in such training, or for whom a waiver is revoked under § 618.735(f) (waiver of training requirement for Basic TRA), may not receive Basic TRA for any week in which such failure, cessation, or revocation occurred. The disqualification will continue for any succeeding week thereafter until the week in which such worker begins or resumes participation in an approved training program. A worker who has justifiable cause (as described in paragraph (b)(3)(iii) of this section) for such failure to begin, or for ceasing, participation in training may receive Basic TRA for any week in which such failure or cessation occurred if the worker otherwise meets the requirements of this subpart. Such failure, cessation, or revocation normally does not change the eligibility periods defined in §§ 618.755, 618.760(b), and 618.765(b) and (c).

(3) *Disqualification conditions.* For determining the disqualification of trainees for all TAA approved training, the following provisions apply:

(i) *Failed to begin participation.* A worker will be determined to have failed to begin participation in an approved training program when the worker fails to attend one or more scheduled training classes and other training activities in the first week of the approved training program, without justifiable cause.

(ii) *Ceased participation.* A worker will be determined to have ceased participation in an approved training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training provider in any week of the approved training program, without justifiable cause.

(iii) *Justifiable cause.* For purposes of this section, justifiable cause has the same meaning as good cause under § 618.730, except that good cause for absence also includes an absence excused under a training provider's written policy.

(c) *Disqualification while in OJT.* An AAW may not be paid any TRA for any week during which such worker is engaged in OJT, in accordance with § 618.635.

(d) *Disqualification while in part-time training.* An AAW may not be paid any TRA for any week in which the worker is participating in approved training that is part-time. Part-time training is any approved training that does not meet the definition of "full-time training" as defined in § 618.110.

Subpart H—Administration by Applicable State Agencies

§ 618.800 Scope.

This subpart covers the general administrative requirements a State must follow in providing the benefits and services available under the TAA Program. The requirements in this subpart include: the provision rapid response and appropriate career services to groups of workers for whom a petition is filed, delivering TAA Program benefits and services to trade-affected workers, assisting in the filing of petitions for those likely to be eligible for benefits under this part, conducting outreach to groups of workers covered under a petition for TAA filed under subpart B of this part, and notifying UI claimants of the TAA Program.

§ 618.804 Agreements with the Secretary of Labor.

(a) *Authority.* A State or CSA must, before performing any function or exercising any jurisdiction under the Act and this part, execute an Agreement meeting the requirements of the Act with the Secretary.

(b) *Execution.* (1) An Agreement under paragraph (a) of this section must be signed and dated on behalf of the State or the CSA by an authorized official whose authority is certified by the State Attorney General or counsel for the CSA, unless the Agreement is signed by the Governor or the chief elected official of the State. In the event that a State does not execute an Agreement under paragraph (a) of this section, then sec. 3302(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3302(c)(3)) (loss of unemployment tax credits under sec. 3302(a) and (b)), applies.

(2) A State or CSA must execute an amended Agreement with the Secretary, upon the request of the Secretary, in response to legislative or regulatory changes to the TAA Program.

(3) The Secretary will execute an agreement on behalf of the United States.

(c) *Public access to Agreements.* The CSA must make available for inspection and copying, an accurate copy of its Agreement under this section to any individual or organization that requests it. The CSA may furnish copies of the Agreement upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the CSA.

(d) *Agent of the United States.* A State that has executed an Agreement under this section is an agent of the United States for purposes of receiving applications for and providing payments on the basis provided in this part and must carry out fully the purposes of the Act and this part.

(e) *Breach.* If the Secretary determines that the State or CSA has not fulfilled its commitments under its Agreement stated in this section, the Secretary may terminate the Agreement. The Secretary must provide the State or CSA reasonable notice and an opportunity for a hearing before the Secretary makes a finding that the State has not fulfilled its commitments under its Agreement. In the event that the Secretary determines the State or CSA has not fulfilled its commitments under its Agreement, sec. 3302(c)(3) of the Internal Revenue Code of 1986, as amended (regarding loss of unemployment tax credits under sec. 3302(a) and (b)), applies.

(f) *Review of State and CSA compliance.* The Department is responsible for monitoring and reviewing State and CSA compliance with the Agreement entered into under the Act and this section.

(g) *Merit staffing.* States must comply with the staffing flexibility provisions contained in § 618.890.

(h) *Contents.* Each Agreement under this section must contain provisions including, but not limited to, the following:

(1) Provisions consistent with the requirements of sec. 239 of the Act (19 U.S.C. 2311);

(2) Authorization for the State to issue waivers under § 618.725 (waiver of the training requirement for Basic TRA) and the requirement that the State submit, upon request, to the Department a copy of each such waiver and, if not already contained within each waiver, a statement of the reasons for such waiver;

(3) The requirement that the State supply data to the Department on national TAA Program performance goals identified in applicable regulations, the Department's written directives, or any other written means used to communicate such goals; and

(4) Provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers. This means that following certification of a petition under subpart B of this part, the costs for providing services to a worker group should shift from WIOA and other programs to the TAA Program.

(i) *Administration absent State Agreement.* (1) In any State in which no Agreement under this section is in effect, the Secretary will administer the Act and this part through appropriate arrangements made by the Department.

(2) The Secretary will administer TAA in accordance with this part and the provisions of the applicable State law, except to the extent that such State law is inconsistent with this part, sec. 303 of SSA (42 U.S.C. 503), or sec. 3304(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304(a)).

(3) The Secretary will provide for a fair hearing for any individual whose application for TAA is denied. A final determination as to eligibility for TAA will be subject to review as provided in 42 U.S.C 405(g), as required by sec. 240(b) of the Act.

(4)(i) The Department will issue administrative guidance providing additional detail on the operation of the TAA Program within that State.

(ii) Prior to providing administrative guidance, the Department will consult with the Governor, other State agencies, neighboring States, and other organizations to determine how best to ensure access to the TAA Program within that State. Options to administer the program that the Department may consider include, but are not limited to:

(A) Executing an agreement with another State to operate the TAA Program;

(B) Executing an agreement with a qualified organization within the State that adheres to all TAA Program requirements in this part to operate the TAA Program; and

(C) Directly administering the TAA Program.

(j) *Program coordination.* State agencies providing employment and case management services under subpart C of this part and training under subpart F of this part must, in accordance with their Agreements under this section, coordinate such services and payments with programs and services provided by WIOA and with the State agency administering the State law. Any agency of the State jointly administering such provisions under this Agreement must be considered to be a CSA for purposes of this part.

§ 618.808 State rulemaking.

(a) A State may establish laws, regulations, procedures, or policies, not inconsistent with the Act or this part, or administrative guidance issued by the Department.

(b) The State must submit the exact text of such proposed law, regulation, procedure, or policy, certified as accurate by a responsible official, employee, or counsel of the State, to the Department.

(c) No law, regulation, procedure, or policy proposed under paragraph (a) of this section may become effective unless and until approved by the Department. The Department may grant approval on a temporary basis, not to exceed 90 days, in cases of administrative necessity.

(d) The Department may withdraw approval at any time with reasonable notice of no less than 30 days to a State.

(e) If public notice and opportunity for hearing would be required under State law for adoption of a similar law, regulation, procedure, or policy involving UI or other State or Federal law, the State must provide such public notice and opportunity for hearing.

§ 618.812 Subpoenas.

(a) A State may require by subpoena the attendance of witnesses and production of evidence necessary for use in the determination of an individual's eligibility for TAA Program services and benefits or to obtain information needed to assist the Department in the petition determination process.

(b) This power includes the ability of the State to subpoena an employer for information necessary to determine whether a certification covers a worker, including the name, address, and Social Security number of the worker.

(c) The State may enforce compliance with subpoenas as provided under State law and, if a State court declines to enforce a subpoena issued under this section, or the State does not attempt a subpoena under State law, the State must petition for an order requiring compliance with such subpoena to the District Court of the United States with jurisdiction over the proceeding.

§ 618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.

(a) *Providing information to workers.* State agencies must provide information to each worker who applies for UI about the benefit allowances, training, and other services available under this part, and about the application procedures, and the appropriate filing dates, for such allowances, training, and other services.

(b) *Rapid response and appropriate career services.* States must ensure that rapid response assistance and appropriate career services, as described in sec. 134 of WIOA, are made available to members of a group of workers for whom a petition under subpart B of this part has been filed.

(c) *Providing reemployment services.* (1) For trade-affected workers covered by a certification, States must:

(i) Make available employment and case management services described in subpart C of this part, including testing, counseling, assessment, and placement services; and

(ii) Provide referrals to, assistance in securing of, and approvals of training under subpart F of this part.

(2) If funds provided to carry out this part are insufficient to make such services available, States must arrange to make such services available through other Federal programs.

(d) *Petition filing assistance.* (1) States must facilitate the early filing of petitions for a group of workers that the State considers are likely to be eligible for TAA Program benefits.

(2) For purposes of paragraph (d)(1) of this section, “likely to be eligible” means the State has a reasonable belief that a certification will be issued for the group of workers based on observations made by State staff; existence of certifications within the same industry, sector, or supply chain; or information or statements from the firm, union, workers, media coverage, or other reports.

(3) States must provide assistance to enable individuals and other entities eligible to file to prepare petitions or applications for program benefits.

(4) Petitions must be filed under paragraph (d)(1) of this section even if the firm, a union, elected officials, or members of the group of workers oppose the filing.

(e) *Providing information after issuance of a certification.* (1) States must inform the State’s board on vocational and technical education (also called the eligible agency, as defined in 20 U.S.C. 2302(12)) or the equivalent agency in the State and other public

or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B of this part and of projections, if available, of the needs for training under subpart F of this part as a result of such certification.

(2) Upon receipt of a certification issued under subpart B of this part by the Department, the State must provide a written notice through the mail, of the benefits available under this part to each worker known to be covered by the certification when the worker becomes partially or totally separated or as soon as possible after the certification is issued if the worker is already partially or totally separated from adversely affected employment. The State must also provide notice to all workers threatened with separation who may be AAIWs. These notices must contain the following information:

(i) The worker group(s) covered by the TAA certification and the article(s) produced or services rendered as specified in the copy of the certification furnished to the State;

(ii) The name and the address or location of workers' firm;

(iii) The impact, certification, and expiration dates in the certification document.

(iv) A summary of benefits and services available to the workers;

(v) An explanation of how, when, and where the workers may apply for TAA Program benefits and services;

(vi) The training enrollment deadlines (set forth in § 618.720(c)) for TRA qualification;

(vii) Whom to contact to get additional information on the certification; and

(viii) A Babel notice (a short notice in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages).

(3) In order to identify these workers, the State must obtain from the firm, or another reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the agency received the certification, and of all workers who are thereafter partially or totally separated or threatened with separation within the certification period. Provision of this information may be compelled under the subpoena provisions at § 618.812.

(4) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the State must publish a notice of the certification in a newspaper of general circulation in areas in which such workers reside. The published notice must include the same information identified in paragraphs (e)(2)(i) through (viii) of this section.

(5) Upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part.

(6) In addition to the mailed written notice under paragraph (e)(2) of this section, States must also give notice to each worker by at least one method of modern electronic communication reasonably calculated to reach each worker. For example, States may give notice via email to a worker with a known email address, or by text to a worker with a known mobile phone number.

(7) States may also use other modern methods of communication, such as websites and social media, to reach members of certified worker groups.

(f) *Specific benefit assistance to workers.* States must:

(1) Advise each trade-affected worker, as soon as practicable after the worker is separated from adversely affected employment or, if later, after a certification is issued, or upon notice of their threatened status, of the benefits and services available under this part, including the qualifying requirements, procedures, and deadlines for applying for such benefits and services.

(2) Perform an intake interview for each trade-affected worker (unless the worker declines the interview) as soon as practicable after the worker is separated from adversely affected employment, after a certification is issued, or upon notice of their threatened status. The interview must be scheduled in time for the worker to meet the training enrollment deadline set forth in proposed § 618.725(a). During the interview, States must provide information about all of the benefits available under this part.

§ 618.820 Determinations of eligibility; notices to individuals.

(a) *Determinations on initial applications.* The State whose State law is the applicable State law must, upon the filing of an initial application by an individual, promptly determine the individual's eligibility for TAA Program benefits under this part and may accept for such purposes information and findings supplied by another State.

(b) *Determinations on subsequent applications.* The State must, upon the filing of an application for payment of TRA, RTAA, subsistence and transportation, job search

allowance, or relocation allowance, promptly determine whether the individual is eligible for such payment and, if eligible, the amount of such payment.

(c) *Redeterminations.* The provisions for redeterminations under the applicable State law applies to determinations of eligibility for any benefit under this part.

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 618.820, a State must apply the regulations in this part. As to matters committed by this part to be decided under the applicable State law, a CSA, a hearing officer, or a State court must apply the applicable State law and regulations thereunder, including the procedural requirements of the applicable State law or regulations, except that no provision of State law or State regulations on good cause for waiver of any time limit, or for late filing of any claim, will apply to any time limitation referred to or specified in this part, unless such State law or regulation is made applicable by a specific provision of this part. However, States must follow the good cause provision at § 618.730.

(e) *Notices to individuals.* The State must notify individuals in writing of any determination or redetermination of eligibility to TAA Program benefits. Each determination or redetermination must inform the individual of the reason for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of entitlement to UI are subject to redetermination or appeal under the applicable State law.

(f) *Promptness.* States must make full payment of TAA Program benefits when due with the greatest promptness that is administratively feasible.

(g) *Procedure.* Except where otherwise required by the Act or this part, the procedures for making and furnishing determinations, the promptness standards, and written notices of determinations to individuals, must be consistent with the Department's "Standard for Claim Determinations—Separation Information," Employment Security Manual, part V, secs. 6010 through 6015 (appendix B of this part).

(h) *Successor-in-interest.* (1) States are authorized to determine whether a firm is a successor-in-interest to a firm named as the employer of a worker group on a determination issued under subpart B of this part.

(2) The factors to be used to determine whether or not there is a successor-in-interest are established in § 618.110.

(3) If, after reviewing the successor-in-interest factors, the State believes that a denial of benefits is warranted, the State must file a new petition requesting an amendment to the certification under § 618.250.

§ 618.824 Liable State and agent State responsibilities.

(a) *Liable State.* The liable State, as defined in § 618.110, is responsible for:

(1) Making all determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, including job search and relocation allowances under subpart D of this part; RTAA under subpart E of this part; training under subpart F of this part; subsistence and transportation payments under subpart F of this part; Basic, Additional, and Completion TRA under subpart G of this part; and waivers and revocations of waivers under subpart G of this part;

(2) Providing workers with general program information and assistance under § 618.816;

(3)(i) Providing rapid response assistance and appropriate career services, as described under sec. 134 of WIOA, to the group of workers in the State covered by the petition upon receiving notice of any such workers for whom a petition is filed.

(ii) This includes making career services authorized under other Federal laws available to the workers covered by the petition to the extent authorized under such laws.

(iii) In certain situations, based on the residency of the group of workers, it may be appropriate for agent States to also be involved in the provision of these services, but in all instances the liable State must be ultimately responsible for ensuring the provision of these services;

(4) Providing information and assistance to trade-affected workers under § 618.816(c) (reemployment services), (e) (information after a certification is issued), and (f) (specific benefit assistance to workers) upon receiving a certification issued by the Department with respect to affected workers at a firm or appropriate subdivision in the State;

(5) Providing a list of eligible TAA recipients and eligible RTAA recipients, for HCTC purposes, to the Internal Revenue Service if HCTC is available; and

(6) Assisting in other activities and functions required by the Governor-Secretary Agreement at § 618.804, including assisting the Department in the review of petitions by verifying such information and providing such other assistance as the Department may request.

(b) *Agent State*. The agent State, as defined in § 618.110, is responsible for:

- (1) Providing interstate claimants with general program information and assistance under § 618.816(a) and petition filing assistance under § 618.816(d);
- (2) Cooperating fully with and assisting the liable State in carrying out its responsibilities, activities, and functions, including the provision of rapid response and appropriate career services, as needed;
- (3) Cooperating with the liable State in taking applications and claims for TAA Program benefits under this part;
- (4) Providing employment and case management services, as described in subpart C of this part, to trade-affected workers covered by a certification issued by the Department under this part;
- (5) Cooperating with the liable State by providing information that the liable State needs for it to issue determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, as described in paragraph (a)(1) of this section;
- (6) Securing, and paying the cost of, any approved training under subpart F of this part, and payment of subsistence and transportation under subpart F of this part, according to determinations issued by the liable State;
- (7) Paying costs under subpart D of this part for job search and relocation allowances; and
- (8) Assisting in other activities and functions required by the Agreement under § 618.804, including assisting in the review of petitions by verifying information and providing such other assistance as the Department may request.

(c) *Responsibilities under this section.* In most instances, the liable State and agent State will be the same State and is responsible for all of the activities and functions described in paragraphs (a) and (b) of this section.

§ 618.828 Appeals and hearings.

(a) *Applicable State law.* Except as provided in paragraph (b) of this section, a determination or redetermination under this part (other than a determination on the eligibility of a group of workers under subpart B of this part, which is subject to review by the USCIT) is subject to review in the same manner and to the same extent as determinations and redeterminations under the applicable State law, and only in that manner and to that extent. Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of other determinations or redeterminations under the applicable State law where convenient or necessary. The right of appeal and opportunity for fair hearing for these proceedings must be consistent with sec. 303(a)(1) and (3) of SSA (42 U.S.C. 503(a)(1) and (3)).

(b) *Allegations of discrimination.* Complaints alleging that a determination or redetermination under this part violates applicable Federal nondiscrimination laws administered by the U.S. Department of Labor must be handled in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and 38, as applicable, and as provided in § 618.894 (nondiscrimination and equal opportunity requirements).

(c) *Appeals promptness.* Appeals under paragraph (a) of this section must be decided with a degree of promptness meeting the Department's "Standard for Appeals Promptness—Unemployment Compensation" (20 CFR part 650). Any provisions of the

applicable State law for advancement or priority of UI cases on judicial calendars, or other provisions intended to provide for prompt payment of UI when due, must apply equally to proceedings involving eligibility for TAA Program benefits and services under this part.

(d) *Retroactivity.* In the case of a redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed. However, no costs of training may be paid unless such costs actually were incurred for training in which the individual participated. In addition, if a TRA application was filed and denied as a result of the training denial, TRA may only be paid with respect to any week during which the individual was actually participating in the training.

§ 618.832 Overpayments; penalties for fraud.

(a) *Determinations and repayment.* (1) If a State, the Department, or a court of competent jurisdiction determines that any person has received any payment under this part to which the person was not entitled, including a payment referred to in paragraph (b) of this section, such person is required to repay such amount to the State or the Department, as appropriate, except that the State or the Department must waive such repayment if such State or the Department determines that:

- (i) The payment was made without fault on the part of such person; and
- (ii) Requiring such repayment would cause a financial hardship for the person (or their household, if applicable).

(2) States must provide persons determined to have received TAA overpayments a reasonable opportunity to demonstrate their eligibility for waiver under the criteria in paragraphs (a)(1)(i) and (ii) of this section.

(3) A financial hardship exists if recovery of the overpayment would result in the person's (or their household's) loss of or inability to pay for ordinary and necessary living expenses. This determination must take into account the income and resources (including liquid financial resources) reasonably available to the person (and their household).

(4) Fault exists for purposes of paragraph (a)(1)(i) of this section if any of the following criteria are met:

(i) Whether a material statement or representation was made by the person or individual in connection with the application for TAA that resulted in the overpayment, and whether the person knew or should have known that the statement or representation was inaccurate;

(ii) Whether the person failed or caused another to fail to disclose a material fact in connection with an application for TAA that resulted in the overpayment, and whether the person knew or should have known that the fact was material;

(iii) Whether the person knew or should have known that the person or individual was not entitled to the TAA payment;

(iv) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the person or of which the person or individual had knowledge, and that was erroneous or inaccurate or otherwise wrong; or

(v) Whether there has been a determination of fraud under paragraph (b) of this section.

(b) *False representation or nondisclosure of material fact.* In addition to any other penalty provided by law, a person will be permanently ineligible for any further payments under this part if a State, the Department, or a court of competent jurisdiction determines that:

(1) Such person:

(i) Knowingly made, or caused another to make, a false statement or representation of a material fact; or

(ii) Knowingly failed, or caused another to fail, to disclose a material fact; and

(2) As a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part to which the person was not entitled.

(c) *Notice of determination, fair hearing, and finality.* Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a)(1) of this section by the State or the Department, as appropriate, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) *Training, job search and relocation allowances, and RTAA.* (1) If a trade-affected worker fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under this part to such person or individual

properly and necessarily expended in attempting to complete such training, job search, or relocation is not an overpayment.

(2) If a trade-affected worker fails, without good cause, to complete training, a job search, or a relocation, then the portion of a payment for the noncompleted component of a benefit is an overpayment. Costs for the completed portions of the training program, job search, or relocation are not an overpayment.

(3) For purposes of this paragraph (d), good cause exists if the worker acted diligently yet was unable to complete training, a job search, or relocation because of exigent circumstances. The State must determine good cause on a worker-by-worker basis.

(4) An overpayment established under this paragraph (d) must be recovered or waived as provided in this section.

(5) For RTAA, an individual meets the “earns not more than \$50,000 each year in wages from reemployment” requirement in sec. 246 of the Act for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made. Payments derived from the annualized wage projection based on complete and accurate information at the time are valid payments that the individual was entitled to and are not overpayments.

(e) *Overpayment recovery of TAA Program funds by offset.* Unless an overpayment is otherwise recovered or is waived, the State—

(1) Must, subject to the limitation in paragraph (e)(3) of this section, recover the overpayment by deduction from any sums payable to such person under:

(i) This part;

(ii) Any Federal UI law administered by the State; or

(iii) Any other Federal law administered by the State that provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(2) Must recover the overpayment from UI payable to such person under the applicable State law.

(3) Must not allow any single deduction under this paragraph (e) to exceed 50 percent of the amount otherwise payable to the person; except that if the applicable State law provides for an overpayment recovery deduction that is less than 50 percent of the amount otherwise payable, such recovery must be equal to that lesser percentage.

(f) *Fraud detection and prevention.* State procedures for the detection and prevention of fraudulent overpayments of TAA benefits must be, at a minimum, the same as the procedures adopted by the State with respect to State unemployment compensation, and consistent with the Department's "Standard for Fraud and Overpayment Detection," Employment Security Manual, part V, secs. 7510 through 7515 (appendix C to this part).

(g) *Person.* For purposes of this section and § 618.836 (recovery of debts due the United States or others by TAA offset), a person includes, in addition to a trade-affected worker or other individual, any employer or other entity or organization as well as the officers and officials thereof, including any training provider as well as the officers and officials thereof, who may bear individual responsibility for the overpayment.

(h) *Criminal penalties.* (1) Any person who makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact under the

circumstances described in paragraph (h)(1)(i) or (ii) of this section, must be imprisoned for not more than 1 year, fined under title 18, United States Code, or both.

(i) For the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under the Act or pursuant to an agreement under sec. 239 of the Act; or

(ii) When providing information during an investigation of a petition under sec. 221 of the Act.

(2) Whenever a violation under paragraph (h)(1) of this section is suspected, the State or the Department must refer the conduct to the U.S. Department of Labor Office of the Inspector General.

§ 618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.

(a) *Debt due the United States.* Notwithstanding any other provision of this part, the State must apply TAA benefits, payable under this part to a person (as described in § 618.832(g)), for the recovery by offset of any debt due the United States from the person.

(b) *Debt due to others.* The State must not apply TAA Program benefits for the payment of any debt of any person to any State or any other entity or person, except for TRA and RTAA benefits as required by Federal UI law.

§ 618.840 Uniform interpretation and application of this part.

(a) *First rule of construction.* The implementing regulations in this part will be construed liberally to carry out the purposes of the Act.

(b) *Second rule of construction.* The implementing regulations in this part will be construed to assure, insofar as possible, the uniform interpretation and application of the Act and this part throughout the United States.

(c) *Effectuating purposes and rules of construction.* (1) To effectuate the purposes of the Act and this part and to assure uniform interpretation and application of the Act and this part throughout the United States:

(i) A State must, upon request, forward to the Department, not later than 10 days from the date of the request, a copy of any administrative ruling on an individual's eligibility to TAA benefits under this part.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, a State must forward to the Department a copy of any determination or redetermination on an individual's eligibility to TAA benefits under this part appealed to the State's highest UI administrative appeals authority.

(iii) A State must forward to the Department a copy of notice of the institution of a State or Federal court proceeding and any State or Federal court ruling on an individual's eligibility to TAA Program benefits under this part, within 10 days of the notice or ruling.

(2) If the Department concludes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State of the Department's view. Thereafter, the State must issue a redetermination or appeal if possible and must not follow such determination,

redetermination, or decision as a precedent; and, in any subsequent proceedings that involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State must inform the claims deputy or hearing officer or court of the Department's view and must make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department concludes that a determination, redetermination, or decision is patently and flagrantly violates of the Act or this part, the Department may at any time notify the State of the Department's view. If the determination, redetermination, or decision in question denies TAA to an individual, the State must follow the steps outlined in paragraph (c)(2) of this section. If the determination, redetermination, or decision in question awards TAA to an individual, the benefits are “due” within the meaning of sec. 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. However, the State must take the steps outlined in paragraph (c)(2) of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of TAA and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than 2 weeks after the redetermination action is taken. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the 2-week limit, or any

redetermination or decision or order is issued that affirms the determination, redetermination, or decision awarding TAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (c)(2) or (3) of this section, is treated as a precedent for any future application for TAA, the Secretary will decide whether the Agreement with the State entered into under the Act and this part will be terminated and § 618.804(e) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part, including any determination, redetermination, or decision referred to in paragraph (c)(2) or (3) of this section, the Secretary will decide whether the State must restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State will be terminated and § 618.804(e) applied and whether other action must be taken to recover such sums for the United States.

(5) A State may request, in writing, within 10 calendar days of receiving a notice under paragraph (c)(2) or (3) of this section, reconsideration of the notice. The State will have an opportunity to present its views and arguments if desired. The State must submit such a request to the Secretary and may include views and arguments on the matters the Secretary is to decide under paragraph (c)(3) of this section. The Secretary must respond to the State's reconsideration request within 30 calendar days of receiving the request.

(6) Concurrence of the Department with a determination, redetermination, or decision must not be presumed from the absence of a notice issued pursuant to this section.

(d) *Payment when due.* If the determination, redetermination, or decision in question awards TAA Program benefits to an individual, the benefits are “due” within the meaning of sec. 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. Payments to the individual may be temporarily delayed if a redetermination is issued not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the State seeks an expedited appeal decision within not more than 2 calendar weeks after the appeal is filed. If the redetermination is not issued or the appeal is not filed within the time limit in the preceding sentence, or the decision on appeal is not obtained within the 2-calendar week limit in the preceding sentence, or any decision on appeal is issued that affirms the determination, redetermination, or decision awarding benefits under this part or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

§ 618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.

(a) Except as specifically provided in this part, the rights of individuals to TAA Program benefits will be protected in the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law. Such measures must include protection of applicants for TAA Program benefits from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their

rights to TAA Program benefits, except as provided in §§ 618.832 (overpayments; penalties for fraud) and 618.836 (recovery of debts due the United States or others by TAA offset).

(b) In the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law, individuals must be protected from discrimination and obstruction in regard to the right to seek, apply for, and receive any TAA Program benefit.

§ 618.848 Veterans' priority of service.

The State must give priority for approval and funding of TAA Program benefits (including training, where the approval of training criteria are met) to a trade-affected worker meeting the veterans' priority of service criteria established under 38 U.S.C. 4215.

§ 618.852 Recordkeeping and disclosure of information requirements.

(a) *Recordkeeping.* (1) Each State must make and maintain such records pertaining to the administration of the Act as the Department requires and must make all such records available for inspection, examination, and audit by such Federal officials as the Department may designate or as may be required by law.

(2)(i) States must maintain records that contain any information that the Department determines to be appropriate in support of any reports that the Department may require, including those reports specified in §§ 618.860(f) (general fiscal and administrative requirements) and 618.864(e) (TAA Program performance).

(ii) States must maintain records as required by 2 CFR 200.333 for 3 years, or as indicated at 2 CFR 200.333(a) through (f).

(3) States must comply with the records requirements established in the Uniform Guidance at 2 CFR 200.333 through 200.337.

(4) States must document that they provided or offered the employment and case management services described in subpart C of this part to all trade-affected workers, either in a paper-based or electronic case management system. States must make these systems available for review upon request by the Department. Additionally, the case management file of each participant must demonstrate that the State notified each worker of the training enrollment deadlines set forth in proposed § 618.725(a).

(b) *Disclosure of information.* (1) Information in records maintained by a State in administering the Act must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information must not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the employer or other person for the purposes of this part. The provision in this paragraph (b)(1) on the confidentiality of information maintained in the administration of the Act does not apply in the following circumstances:

(i) Disclosures to the Department;

(ii) For the purposes of § 618.832 or paragraph (a) of this section;

(iii) For providing information, reports, and studies required by § 618.856

(information, reports, and studies); or

(iv) Where nondisclosure would be inconsistent with the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a).

(2) Where a State obtains confidential business information as part of assisting in an investigation under subpart B of this part, it must protect that information as required under that subpart.

(c) *Format of records and forms.* Forms and records used and maintained by States in the administration of this part may exist in paper or electronic form or a combination thereof. Regardless of the medium, these records must be available and accessible as required under paragraph (a)(1) of this section for oversight purposes.

(d) *Electronic signatures.* Electronic signatures are allowed where such use is in accordance with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106-229).

§ 618.856 Information, reports, and studies.

A State must furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the Act and this part.

§ 618.860 General fiscal and administrative requirements and cost classification.

(a) *Uniform fiscal and administrative requirements.* (1) Each State receiving funds allocated for the TAA Program from the Department as an agent of the United States, must administer the TAA Program in accordance with the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900 and with the funding agreement.

(2) A State may expend funds awarded to it during a Federal fiscal year to carry out TAA Program activities under secs. 235 through 238 of the Act during that Federal fiscal year and the succeeding 2 Federal fiscal years.

(3) Equipment, as described in 2 CFR 200.33 and computing devices, as described in 2 CFR 200.20, includes equipment acquired with TAA funds under both current and prior Agreements.

(4) The addition method, described at 2 CFR 200.307, must be used for all program income earned under TAA grants. When the cost of generating program income has been charged to such grant, the gross amount earned must be added to such grant. However, when these costs have not been charged to such grant, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under such grant.

(b) *Administrative costs.* (1) The administrative cost limit for the fiscal year program funding allocation for training, job search assistance, and relocation allowances is included in the TAA Program Annual Funding Agreement, with which States must comply.

(2) For purposes of the TAA Program, the costs of administration are the costs associated with performing the overall general administrative functions of the TAA Program in paragraphs (b)(2)(i) through (xviii) of this section and the coordination thereof within the American Job Center network established under WIOA:

- (i) Accounting, budgeting, financial and cash management functions;
- (ii) Procurement and purchasing functions;
- (iii) Property management functions;

- (iv) Personnel management functions;
- (v) Payroll functions;
- (vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;
- (vii) Audit functions;
- (viii) General legal services functions;
- (ix) Developing systems and procedures, including information systems, required for these administrative functions;
- (x) Processing applications for benefits under the Act;
- (xi) Rendering and issuing eligibility determinations under the Act;
- (xii) Performing oversight and monitoring responsibilities related to administrative functions;
- (xiii) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;
- (xiv) Travel costs incurred for official business in carrying out administrative activities or the overall management of the TAA Program;
- (xv) Costs of information systems related to administrative functions (i.e., personnel, procurement, purchasing, property management, accounting, and payroll systems), including the purchase, systems development, and operating costs of such systems;
- (xvi) Processing waivers of training requirements under subpart G of this part;
- (xvii) Collecting, validating, and reporting data required under the Act; and

(xviii) Providing RTAA under subpart E of this part.

(3) Awards to subrecipients or contractors that are solely for the performance of administrative functions constitute administrative costs.

(4) Personnel and related nonpersonnel costs of staff that perform both administrative functions specified in paragraph (b)(2) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(5) Costs of the information systems in paragraphs (b)(5)(i) through (iii) of this section, including the purchase, systems development, and operational costs, are charged to the program category:

(i) Tracking or monitoring of participant and performance information, including employment and case management services and activities;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information. States must leverage existing resources provided under other Federal programs; and

(iii) Maintenance and enhancement of the systems specified in paragraphs (b)(5)(i) and (ii) of this section.

(6) Wherever possible, States must make efforts to streamline the administrative activities and services listed in this section by minimizing duplication and effectively using information technology to improve services and leveraging resources across programs.

(c) *Prior approval.* (1) Equipment purchases under the TAA Program are subject to the provisions at 2 CFR 200.313. In compliance with 2 CFR 2900.16, prior approval is hereby provided for equipment purchases under the TAA Program.

(2) As provided in 2 CFR 200.439(b)(1), the Department retains the prior approval requirement related to capital expenditures (2 CFR 200.13) and for capital assets (2 CFR 200.12) other than equipment.

(d) *Audit and oversight requirements.* (1) All States, local governments, nonprofit organizations, and for-profit entities that are recipients or subrecipients of TAA Program funds must follow the audit requirements under 2 CFR 200.500 through 200.521 and 2 CFR 2900.20.

(2)(i) *Oversight and monitoring.* Each recipient and subrecipient of funds under the Act must conduct regular oversight and monitoring of its program and those of any subrecipients and contractors, as required under sec. 239(i) of the Act, as well as under 2 CFR part 200, including 2 CFR 200.328, 200.330, and 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(A) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in the Act, the regulations in this part, and administrative guidance;

(B) Determine whether there is compliance with other provisions of the Act, the regulations in this part, and administrative guidance;

(C) Assure compliance with 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900; and

(D) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(ii) *Resolution of subrecipient-level findings.* (A) The Governor is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through the Act.

(B) A State must use the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(C) If a State does not have such written procedures as described in paragraph (d)(2)(ii)(B) of this section, it must prescribe standards and procedures to govern this grant program.

(D) For subrecipients awarded funds through a recipient of grant funds, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(iii) *Resolution of State findings.* (A) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under the Act.

(B) The Secretary will use the Department's audit resolution process, consistent with 2 CFR part 2900, subpart F.

(C) A final determination issued by a Grant Officer under the process in this paragraph (d)(2)(iii) may be appealed to the DOL Office of Administrative Law Judges under the procedures in 2 CFR 2900.22.

(e) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All TAA Program fund recipients and subrecipients must comply with the Government-wide requirements for debarment and suspension under subparts G and H of 2 CFR part 180 and the Government-wide requirements for a drug-free workplace at 29 CFR part 98.

(f) *Fiscal reporting requirements for States.* (1) In accordance with 2 CFR 200.327 and 2 CFR 2900.14, each State must submit a quarterly financial report to the Department as specified in the reporting instructions approved by OMB.

(2) States must report financial data on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities as specified in the reporting instructions as approved by OMB.

(3) If the State's accounting system is not on the accrual basis of accounting, the State must develop accrual information through best estimates based on an analysis of the documentation on hand.

(4) The State must:

(i) Obligate funds on not less than a quarterly basis; and

(ii) Periodically review obligations and, in an appropriate and timely manner, de-obligate funds when a participant drops, completes, or is no longer eligible for training.

(g) *Use of funds.* Of the funds awarded to the States to carry out secs. 235 through 238 of the Act for a fiscal year, the State must use:

(1) Not more than 10 percent for the costs of administration, provided in paragraph (b)(2)(i) of this section; and

(2) Not less than 5 percent for employment and case management services under sec. 235 of the Act.

(h) *Technology*. States must maintain sufficient and effective technology for the purpose of tracking and reporting required participant data, and to provide appropriate services under the TAA Program.

(i) *Designation of resources for Management Information Systems (MIS) development*. States are required to dedicate an appropriate portion of administrative and employment and case management funding under TAA for management information systems development, upgrades, and ongoing maintenance.

§ 618.864 Trade Adjustment Assistance Program performance.

(a) *General rule*. Each State must report to the Department comprehensive performance accountability measures, to consist of:

(1) The primary indicators of performance described in paragraph (b) of this section;

(2) The additional indicators of performance established under paragraph (c) of this section, if any; and

(3) A description of efforts made to improve outcomes for workers under the TAA Program that promote efficient and effective program performance as provided in this section.

(b) *Primary indicators of performance--(1) Primary indicators*. The primary indicators of performance shall consist of:

(i) The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the second calendar quarter after exit from the program;

(ii) The percentage and number of workers who received benefits under the TAA Program and who are in unsubsidized employment during the fourth calendar quarter after exit from the program;

(iii) The median earnings of workers who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage and number of workers who received benefits under the TAA Program (excluding those in OJT and customized training) who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in the program or within 1 year after exit from the program; and

(v) The percentage and number of workers who received benefits under the TAA Program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.

(2) *Indicator relating to credential attainment.* For purposes of paragraph (b)(1)(iv) of this section, a worker who received benefits under the TAA Program who obtained a secondary school diploma or its recognized equivalent is included in the percentage counted for purposes of paragraph (b)(1)(iv) of this section only if the worker, in addition to obtaining such a diploma or its recognized equivalent, has obtained or retained employment or is in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

(c) *Additional indicators.* The Department and a State may agree upon additional indicators of performance for the TAA Program, as appropriate.

(d) *Use of wage records.* States must, consistent with State law, use quarterly wage record information, as defined in 20 CFR 677.175, in measuring the progress on program performance indicators in paragraphs (b) and (c) of this section.

(1) The use of Social Security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(2) States that participate in data sharing agreements for the purposes of obtaining wage record information may use such data sharing agreements to obtain wage record information for workers who received benefits under the TAA Program.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of the participant.

(e) *Reporting requirements--*(1) *Data required.* States must report TAA Program demographics, performance, and services data, identified in paragraphs (b) and (c) of this section, to the Department on such forms and in such manner as the Department may prescribe.

(2) *Data reliability and validity.* States are required to establish procedures that are consistent with administrative guidance the Department issues to ensure the data States submit are valid and reliable.

(f) *Publication of performance results.* The Department will publish, annually, through electronic means, including posting on the Department's website, the TAA Program performance results of the States.

(g) *Control measures--(1) In general.* Each State must implement effective control measures to effectively oversee the operation and administration of the TAA Program and ensure the accurate collection of program data.

(2) *Location.* The control measures must be internal to a system used by the State to collect data.

(3) *Purpose.* States will implement these control measures in order to:

(i) Oversee the operation and administration of the TAA Program under this part;

(ii) Improve the timeliness and verifiability of reported data; and

(iii) Verify the accuracy of reported data, and must require:

(A) Periodic staff training;

(B) Participation in data validation and integrity efforts, as directed by the Department;

(C) Data analysis and monitoring on a quarterly basis to identify inaccurate data input;

(D) Data analysis and monitoring on a quarterly basis to identify missing data; and

(E) Resubmission of required reports upon correcting data the State identifies as a result of paragraphs (g)(3)(iii)(B) through (D) of this section.

(4) *Monitoring program.* In order to ensure the effective and efficient operation of the TAA Program, States must adopt a formal monitoring program designed to review and audit worker files.

(i) The monitoring program must be designed to identify and share best practices, identify and correct deficiencies, and identify and address staff training needs.

(ii) A minimum quarterly random sample of 20 cases must be audited as part of the monitoring program and must include cases from at least 2 certifications issued under subpart B of this part.

(iii) The four quarterly samples within a calendar year must also cover at least four different areas of the State administering the program.

(iv) If circumstances preclude a State from meeting the criteria in paragraphs (g)(4)(ii) and (iii) of this section, the State must contact the appropriate ETA regional office to design a monitoring program that better suits the TAA Program in that State, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

(h) *Data on benefits received, training, outcomes, rapid response activities, and spending.* Data submitted by the States must be sufficient to provide, at a minimum, the information required in sec. 249B of the Act, including the following information:

(1) The number of workers receiving benefits under the TAA Program;

(2) The number of workers receiving each type of benefit, including employment and case management services, training, job search and relocation allowances, TRA (Basic, Additional, and Completion) and RTAA payments, and, to the extent feasible, the HCTC, if available;

(3) The average time during which such workers receive each type of benefit;

- (4) The average number of weeks TRA were paid to workers;
- (5) The number of workers who report that they have received benefits under a prior certification in any of the 10 fiscal years preceding the fiscal year for which the data are collected under this section;
- (6) The number of workers who received TAA approved training, classified by major types of training, including but not limited to, classroom training, training through distance learning, training leading to an associate's degree, remedial education, prerequisite education, OJT, and customized training;
- (7) The number of workers who exited TAA approved training, including who received prelayoff training or part-time training at any time during that training;
- (8) The average duration of training and the average duration of training that does not include remedial or prerequisite education;
- (9) The number of training waivers granted, classified by type of waiver;
- (10) The number of workers who exited training and the average duration of such training;
- (11) The number of workers who do not complete training and the average duration of the training such workers completed;
- (12) The average cost per worker of receiving TAA approved training;
- (13) The percentage of workers who received TAA approved training and obtained unsubsidized employment in a field related to that training;
- (14) The age, preprogram educational level, and post-program credential attainment of the workers;

(15) The median earnings of workers during the second calendar quarter after exit from the program, expressed as a percentage of the median earnings of such workers before the calendar quarter in which such workers began receiving benefits under this part;

(16) The sectors in which workers are employed after receiving benefits under this part;

(17) Whether rapid response activities were provided with respect to each petition filed;

(18) The total amount of funds used to pay for TRA by the State; and

(19) The total amount of the TaOA payments to the State.

§ 618.868 Unemployment Insurance.

UI payable to an AAW shall not be denied or reduced for any week by reason of any right to a payment of TAA under the Act and this part.

§ 618.872 Travel under the Trade Adjustment Assistance Program.

(a) TAA Program participants are subject to the FTR at 41 CFR chapters 300 through 304 for all travel paid for with TAA Program funds.

(b) Except for the definition of “commuting area,” States may not apply State or local travel policies and restrictions to TAA Program participants receiving reimbursements for travel under the Act.

(c) In instances where the FTR is silent or defers to the Federal agency’s travel policies, the State must apply the relevant policies of the Department.

§ 618.876 Verification of eligibility for program benefits.

(a) *Overall program eligibility.* In addition to all other eligibility criteria contained in this part, an individual must also be authorized to work in the United States to receive benefits under the TAA Program. States are required to verify the status of participants who are not a citizen or national of the United States.

(b) *Initial verification.* All States are required, under sec. 1137(d) of SSA (42 U.S.C. 1320b-7(d)), to initially verify the immigration status of self-reporting aliens who apply for UI through the system designated by the U.S. Customs and Immigration Service (or USCIS), currently the Systematic Alien Verification for Entitlement (or SAVE) program. No further verification is required except as described in paragraph (c) of this section.

(c) *Reverification.* (1) Once a State has verified satisfactory immigration status initially, the State must reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subchapter.

(2) The State must conduct such redetermination in a timely manner, using the immigration status verification system described in sec. 1137(d) of SSA (42 U.S.C. 1320b-7(d)) or by review of other documentation, as described in that provision.

§ 618.884 Special rule with respect to military service.

(a) *In general.* Notwithstanding any other provision of this part, a State may waive any requirement of this part that the States determines is necessary to ensure that

an AAW who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (b) of this section is eligible to receive a trade readjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(b) *Period of duty described.* An AAW serves a period of duty described in paragraph (a) of this section if, before completing training under sec. 236 of the Act, the worker:

(1) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(2) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

§ 618.888 Equitable tolling.

(a) A TAA Program deadline must be equitably tolled when:

- (1) An extraordinary circumstance prevented an individual's timely action; and
- (2) The individual otherwise acted with diligence.

(b)(1) When an individual fails to take timely action because the State failed to give notice required under this part, that failure is prima facie evidence of an extraordinary circumstance.

(2) If the individual did not receive the required notice, but otherwise received actual notice with sufficient time to take timely action, the lack of receipt of the required notice is not evidence of an extraordinary circumstance.

(c) A TAA Program deadline equitably tolled under this section is tolled for the time period during which the extraordinary circumstance exists. Once that circumstance is resolved, the time period that was tolled begins to run again.

(d) Equitable tolling may extend an otherwise expired TAA Program deadline by no more than 36 months.

§ 618.890 Staffing flexibility.

(a) Staff employed under a merit personnel system as provided in sec. 303(a)(1) of the Social Security Act must be used for all reviews of benefit determinations under applicable State law.

(b) All determinations on eligibility for TAA Program benefits must be made by State staff, with the exception of the functions in paragraph (a) of this section, which must be made by staff meeting the criteria in paragraph (a) of this section.

(c) All other functions under the TAA Program, not subject to paragraphs (a) and (b) of this section, may be provided under a variety of staffing models.

§ 618.894 Nondiscrimination and equal opportunity requirements.

(a) States and subrecipients of financial assistance under the TAA Program are required to comply with the nondiscrimination and equal opportunity provisions codified in the Department's regulations at 29 CFR parts 31, 32, 35, and 36.

(b) States and subrecipients of financial assistance under the TAA Program are required to comply with the nondiscrimination and equal opportunity requirements of WIOA sec. 188 and its implementing regulations at 29 CFR part 38 if the agency or subrecipient:

(1) Operates its TAA programs and activities as part of the one-stop delivery system established under the WIOA; or

(2) Otherwise satisfies the definition of “recipient” in 29 CFR 38.4(z).

(c) Questions about the nondiscrimination requirements cited in this section may be directed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW, Washington, DC 20210.

(d)(1) This section does not affect the rights and protections (and exceptions thereto) available under any other Federal law or regulation regarding discrimination.

(2) This section does not affect the rights and protections (and exceptions thereto) available under any other State or local law or regulation regarding discrimination, except as provided in paragraph (d)(3) of this section.

(3) No State may discriminate on any basis protected by 29 CFR parts 31, 32, 35, 36, and 38 (and exceptions thereto), as applicable, in determining an individual’s eligibility for any of the following:

(i) Receiving aid, benefits, services, training, or employment;

(ii) Participating in any TAA program or activity;

(iii) Being employed by any State; or

(iv) Practicing any occupation or profession.

§ 618.898 Applicable State law.

(a) The applicable State law for an AAW remains the applicable State law for such worker until such worker becomes entitled to UI under the State law of another State (whether or not such worker files a UI claim in that other State).

(b) For purposes of determining the applicable State law for UI entitlement:

(1) A worker is deemed entitled to UI under a State law if such worker satisfies the base period employment and wage qualifying requirements of such State law;

(2) In the case of a combined-wage claim, UI entitlement must be determined under the law of the paying State; and

(3) In case of a Federal UI claim, or a joint State and Federal UI claim, UI entitlement must be determined under the law of the applicable State for such claims.

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

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

§ 618.900 Annual cap on funds available for Training and Other Activities.

(a) The total amount of funds made available for the costs of carrying out secs. 235 through 238 of the Act, referenced here as Training and Other Activities (TaOA), will not exceed the annual cap established under sec. 236(a)(2)(A) of the Act. For each of Fiscal Years (FYs) 2015 through 2021, this cap is \$450,000,000.

(b) Funds obligated during a fiscal year to carry out activities under secs. 235 through 238 of the Act may be expended by the State receiving such funds during that fiscal year and the succeeding 2 fiscal years.

§ 618.910 Initial allocation of funds.

(a) *Initial allocation.* In the initial allocation for a fiscal year, the Department will allocate 65 percent of the funds available under sec. 236(a)(2)(A) of the Act for that fiscal year. The Department will announce the amount of each State's initial allocation of funds, determined in accordance with the requirements of this section, at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the total funds available under the annual cap for that year, even if the full amount has not been appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year's appropriation of funds for TaOA. If the full year's appropriated amount for TaOA is less than the annual cap on funds available for TaOA, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, or required by the appropriation, in no case will the amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation of less than \$100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive an initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance with

this section. A State that does not receive an initial allocation may apply to the Department under § 618.920(b) for reserve funds to obtain funding for TaOA.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is \$100,000 or more, will have its initial allocation adjusted up to its hold harmless amount in accordance with paragraph (c) of this section. If a State's unadjusted allocation is less than \$100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section, and those funds will be distributed among the other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and, in addition, will receive an adjustment equal to the State's share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) Any initial allocation funds remaining after the adjustments to initial allocations are applied as described in paragraph (e)(2)(i) of this section will be distributed among the States with unadjusted initial allocations that were no less than their respective hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by using the formula in paragraph (f) of this section.

This recalculation will disregard States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) Factor 1: The trend in the number of trade-affected workers covered by certifications during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(ii) Factor 2: The trend in the number of workers participating in training during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) Factor 3: The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of workers in training for the State determined in paragraph (f)(1)(ii) of this section by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of workers in training for the fiscal year, using the projection methodology underlying the Department's most recent budget submission or update; and

(iv) Factor 4: The amount of funding estimated to be necessary to provide TAA approved training to such workers during the fiscal year. The estimate will be calculated

by multiplying the estimated number of training participants in paragraph (f)(1)(iii) of this section by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent 4 quarters by the average number of training participants for the same time period.

(2) The four factors listed in paragraphs (f)(1)(i) through (iv) of this section are given equal weight.

(3) For each of the factors in paragraphs (f)(1)(i) through (iv) of this section, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these factors, the Department will determine the percentage that the State will receive of the total amount available for initial allocation for that fiscal year. The percentages of the initial allocation amount for all States combined will total 100 percent of the total amount of the initial allocation.

§ 618.920 Reserve fund distributions.

(a) The 35 percent of the TaOA funds for a fiscal year that remains after the initial allocation will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions to States during the remainder of the fiscal year, including distributions to those States that did not receive an initial allocation. The amount of any distributions of reserve funds will be determined by the Department within the time frame described in § 618.930, as appropriate, considering the information provided in reserve fund requests submitted by States as described in paragraph (b) of this section and the level of reserve funds available.

(b) A State requesting reserve funds must demonstrate that:

(1) At least 50 percent of its TaOA funds from the current year (if any were received) and previous fiscal years have been expended; or

(2) The State needs additional TaOA funds to meet demands for services due to unusual and unexpected events, which includes an unexpected increase in the number of trade-affected workers eligible for TaOA.

(c) A State requesting reserve funds under paragraph (b) of this section also must provide a documented estimate of funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining TaOA funds the State has available.

§ 618.930 Second distribution.

The Department will distribute at least 90 percent of the total TaOA funds (including § 618.920 reserve funds) for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. After these requests are satisfied, any funds remaining will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910. Any funds remaining after the second distribution will be available for allotment under § 618.920.

§ 618.940 Insufficient funds.

If, during a fiscal year, the Department estimates that the amount of funds necessary to provide TaOA will exceed the annual cap under § 618.900, the Department will decide how the available funds that have not been distributed at the time of the estimate will be allocated among the States for the remainder of the fiscal year, and will communicate this decision to States through administrative guidance.

§ 618.950 Recapture and reallocation of Training and Other Activities funds.

(a) The Department may:

(1) Recapture funds that were allocated to any State to carry out secs. 235 through 238 of the Act and that remain unobligated by the State during the second or third fiscal year after the fiscal year in which the funds were provided to the State; and

(2) Reallocate recaptured funds to States to carry out secs. 235 through 238 of the Act, in accordance with procedures established in this section.

(b) The Department may recapture and reallocate funds as authorized by paragraph (a) of this section if the Department determines:

(1) There are, or are projected to be, insufficient funds in a State or States to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year; or

(2) The recapture and reallocation of funds would likely promote the more efficient and effective use of funds among States to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year.

(c) If the Department makes a determination described in paragraph (b)(1) of this section for a fiscal year, the Department may recapture funds, to the extent needed, from one or more of the State or States that have the highest percentage of unobligated or

unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States, as determined by the Department, and reallocate those funds to the States with, or projected to have, insufficient funds. In making the determination that a State has or is projected to have insufficient funds to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year, the Department may consider a request submitted by the State in accordance with information required under § 618.920(b) or base such determination on other information the Department determines is appropriate.

(d) If the Department makes a determination described in paragraph (b)(2) of this section for a fiscal year, the Department may recapture funds from the State or States that have the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds were initially allocated to such States, as determined by the Department, and reallocate those funds to:

(1) The States with the lowest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States as determined by the Department, based on such additional factor or factors as the Department determines is or are appropriate; or

(2) All States from which funds are not being recaptured, in accordance with the formula factors described in § 618.910(f), relating to the initial distribution of funds.

(e) If the Department determines to recapture and reallocate funds pursuant to this section, an administrative notice must be issued to the States describing the methodology used and the amounts to be recaptured from and reallocated to each affected State, not less than 15 business days in advance of the recapture of funds.

(f) The reallocation of funds under this section does not extend the period of availability for the expenditure of those funds, which expenditure period remains 2 fiscal years after the fiscal year in which the funds were initially allocated by the Department to the State from which the funds are recaptured.

PART 90 – [REMOVED AND RESERVED]

5. Remove and reserve 29 CFR part 90.

Signed at Washington, D.C.

John P. Pallasch,

Assistant Secretary for Employment and Training, Labor.

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