**WorkforceGPS**

**Transcript of Webinar**

**Walkthrough TAA Final Rule**

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GRACE MCCALL: So without further ado, I'd like to turn things over to our moderator today, Tim Theberge. Take it away, Tim.

TIM THEBERGE: Thank you very much, Grace. Good afternoon and/or good morning, depending on where you are joining us from today. I'd like to welcome you to today's session on behalf of Norris Tyler, the administrator of the Office of Trade Adjustment Assistance; and John Pallasch, the assistant secretary for employment and training with the department. Unfortunately, both are unavailable to join us today.

My name is Tim Theberge; I'm the lead program analyst with the Office of Trade Adjustment Assistance. By way of background, I've been with ETA now for about 22 years. Spent most of my career in the Boston regional office as a federal project officer overseeing various parts of the workforce system in most of the states throughout the Northeast and the Caribbean.

I am now with and have been with OTAA now for about six years – five years, sorry. And I have been working on the Trade program for the entirely of my career in ETA.

I strongly encourage you all to submit any questions you have via the welcome chat that's over there in the corner. We will use that chat window to field all of your questions as they come in today. Those will help us make sure we have addressed your concerns.

I will remind you today is one of 11 sessions we have scheduled on the TAA Final Rule. All of those are scheduled to be delivered on the WorkforceGPS platform starting today and approximately every other day, give or take, over the next three to four weeks. So I encourage you to participate in all of those sessions if you can.

If you cannot participate live, they will be recorded and then you can direct questions to us via an email address that we will share with you at the end.

So again, please use the chat with the 700-plus people we have on the call. We won't be doing live questions via the phone lines, but we do want you to have the opportunity to ask those questions. So please do that via the chat. That's the best way for us to help you get those answered. So please continue to use that throughout the session today.

I would also encourage you to download a copy of the Final Rule via the Federal Register, and that's available in the file share pod. And make sure you read the preamble. The preamble is as important as the rule text in understanding the logic that was used for us to get to where we got to on the Final Rule.

So with that, the structure of the Final Rule. So there's nine subparts to the Final Rule; that's A through I. H and I are pre-existing; those were already published as 618. Those are the only two that had any content. We have used this as an opportunity to fill in the rest of those subparts that we reserved back when we originally published 618.

Acronyms are great. Acronyms are fun. Who doesn't love a good acronym? We used to call it the "alphabet soup;" that's what this is. So there's no shortage of these. At every instance in the Final Rule, we did spell them out. We also provided an acronym guide in the preamble documentation. These are the ones we're going to use today. If you're in the workforce system, very few of these should be new to you.

There are two in the Trade world people sometimes get hung up on and those are the CIT and the ITC. The CIT is the U.S. Court of International Trade. That's the judicial body that hears the appeals if we deny a petition. The ITC is the International Trade Commission; that's the body that determines whether or not there's been an injury to an industry. You'll hear about an affirmative determination relative to an industry that's been injured by unfair trade practices; that is the ITC.

So those do come up in the Trade rules. There's two very different organizations, but both of which sometimes even I get confused on because of the similarities of the acronyms. The others are all there. I will try not to use too many of them, as we recognize that some of you may be more familiar with the others that are here.

So where are we? This rule is a long time coming. This rule combines three parts of the Code of Federal Regulations. So it takes 20 CFR 617, 29 CFR 90, and combines them into the existing 618; so that the entire Trade program is managed through a single set of regulations and, again, nine subparts.

The updates are based on the 2015 version of the act. We are doing this to reduce reliance on administrative guidance and to simplify where all of you need to go to find the rules for this program.

We are removing restrictions on the limit on the use of Trade funds to pay for services provided by non-merit staff. That's covered in Subpart H; we'll get to that later in this session. We are better identifying who is included in the petitioning worker group, for better defining those terms so that our investigation process is more transparent to all of you.

And we have added a new procedure for administrative reconsiderations and judicial appeals. Those are efficiency measures that we believe will assist in providing more efficient processing of petitions and appeals.

We're also working on providing some technical assistance tools. One will provide a crosswalk from the Final Rule to the older rules and to older administrative guidance, to help you all understand where all of this came from. If you've had familiarity with the previous rules, this will help you become familiar with the current rule.

We're also preparing an index of terms which will provide citations to the rule as well. We are working on those as we speak.

So in today's session, next to just about every bullet you're going to see a C or an N. The C indicates that that should be – or we believe to be current practice or policy; versus an N, which stands for a new practice or policy. There's some caveats to that as we go through that, but we'll cover those section by section, slide by slide.

So again, please feel free to put your questions into the comment box and we'll try to get those answered as we move through this.

So over the next month we'll be providing more detailed sessions on each subpart. So there'll be a different webinar for each of the subparts. Subpart F is so big and so detailed there's actually a part one and a part two. Again, we encourage you to attend all of the sessions live so you do have the chance to ask those real-time questions. However, the sessions will be recorded to review at a later time. Visit the TAA community on Workforce GPS to register for all of our sessions.

So we're going to start at the beginning. That's always the best. This is Subpart A; this is definitions. What we've done here is give you where those definitions have come from, mostly from the previous rules, some directly from the statute, some come from our policy, and others come from case law.

There is no shortage of newly-defined terms that we have added to the rule in an attempt to clarify any remaining or outstanding positions. Some of these come directly from the statute, some from the older regulations, others from administrative guidance, others from our experience in providing technical assistance to the states where it was clear that we needed to provide some additional clarification. There are also some original definitions that don't appear elsewhere in federal regulation at all.

Subpart A goes into detail on many of these terms. If you do have questions on the terms, again please ask them. A reminder that the Subpart A session is on Wednesday, also at 1:00. We'll have an entire hour-and-a-half dedicated to those definitions as well. So again, please feel free to ask your questions. Keep in mind we will also be covering that in detail on Wednesday.

So, many of these terms are new. They are specific to the petition and investigation process. That will be covered in Subpart B in detail; that's on Friday. But there's three I do want to take a minute to highlight today.

The first is lack of work. This term is not previously defined, which led to some inconsistencies from state to state. Lack of work means that an employer does not have work for the worker to perform, or does not make that work available to the worker.

It includes, is not limited to, circumstances when: work is unavailable because the employer suspends or ceases operations or institutes a lockout; or work is unavailable because the employer downsizes the workforce by means of attrition or layoff.

We believe this definition is consistent with the department's policy position in several UI-related topics. And we wanted to provide some definitive guidance around how lack of work should be defined throughout the Trade program.

The second is successor-in-interest. This is another area where states will need to look at some of their practices and likely adapt to them. The definition – this rule – provides seven conditions, a majority of which must be met for a determination to be made for whether a firm is a successor-in-interest.

This is covered in detail in three different parts of the rule, A, B, and E. There's also other references throughout, but those are the three subparts where this matters. For those of you on the UI side of the house and TRA side of the house, this is going to matter. This will impact how you utilize your wage records in order to determine whether or not an individual is part of a worker group.

Question, "Has the definition of lack of work been updated for all WIOA programs or just TAA?" The answer is just TAA. That's a TAA term and we have defined it for such. Because of the definition of what an adversely-affected worker is, that requires a separation; or an adversely-affected incumbent worker, who requires a threat of separation. So whenever there is a separation, it has to be for lack of work. So it is a TAA-specific term.

Another question about voluntary layoffs. So that is actually one of the very reasons we have now defined this term. I would encourage you to read the preamble that lays out our justification for that term. But in short, yes, that would be any action that the employer is the root cause of, that they are the spark that lights that. That's going to be a lack of work.

So that's – some states, just so you know, already operate in that manner. Other states do not. This tries to make that clear.

The next term is a staffed worker. This is otherwise known as a leased worker or temp workers or staffing agencies, all of that. So we're defining this term to make it clear that staffed workers are part of a worker group, and in the majority of circumstances they will not be separately listed or named on a certification to be eligible to be members of the group.

So we'll cover this in detail in Subpart B. But the way that works right now, many states have asked us to amend a certification to include a specific staffing agency. Our practice going forward will be to no longer do that unless it's necessary. We expect the states to be able to determine – and we are saying that staffed workers and teleworkers are part of a worker group and therefore are included in the petition or in that certification document.

(Pause.) Agreed. There was another question regarding workers previously denied. We're going to hold that. We're going to refer you to the Subpart G and H training because those types of issues will be covered more in depth there.

All right. So moving on. There are also revised terms. Some terms have been revised as a result, again, of our experience with technical assistance and compliance reviews over the years. Others have been changed to match administrative guidance or case law. The most substantive change here is the definition of suitable employment.

So 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 are not less than 80 percent of the worker's average weekly wage. So that part's unchanged. We didn't change that part.

This is the new part. The additional part of the definition is that part-time, temporary, short-term, or threatened employment is not suitable employment. OK. So that will matter going forward as you look to that.

Subpart B. Subpart B covers petitions and investigations. This is largely from 29 CFR 90. For the history buffs in the room, that part of the regulation was last updated in 1977. There have been new fewer than six amendments to the statute since that time. So we are updating that part of the rule through this process to provide some additional definition and some additional clarity to all of you relative to our process for petitioning and investigation.

The one question came in, since we're in Subpart B – again, we'll be discussing all of this and the ins and outs on Friday through its own dedicated session – about whether or not we'll be identifying those agencies in the written determination.

The short answer to that is no. We are saying that all staffed or leased workers who are part of that worker group are included, whether or not they are listed in a determination document; and that the state is able to and should be identifying those individuals. So that's that part. Again, we will be covering that in more detail on Friday in Subpart B's session.

So what did we do? So as I said, we have updated 29 CFR to reflect all of the statute changes that have occurred since 1997 (sic). We are codifying procedures for filing petitions, providing insight and codification of what our investigation process looks like, and providing guidance around how we will issue a determination.

One of the changes here has to do with judicial appeals. We are now requiring administrative reconsideration prior to a judicial appeal to be filed to the CIT. The Trade Act says that all final determinations may be appealed to the CIT. The existing Trade regulations had not defined what a final determination is. We have done that.

So we will require, in nearly all cases – again, I encourage you to read the preamble on this one – for cases to first request an administrative reconsideration prior to actually filing a judicial appeal. We are also establishing the content for a valid petition. The more valid that information is when it comes in, the more likely we are able to process that in a timely manner.

These are the new pieces of Subpart B. Again, I've already stated this, I want to make it clear, we are providing that staffed released workers are included, including teleworkers, by a certification, by default, and may not be specially listed for the individual workers to be covered by that certification.

So the states are going to have to look at that particular dislocation event and be able to identify where those workers work. You'll do this by working with the firm and/or their representatives, or the workers or their representatives, in getting through that.

I have another question on the effective date. The effective date of the rule is 9-21-2020 for all participants.

We are providing that workers employed by a successor-in-interest are members of a worker group, even if they're not listed on the certification. So what we have seen in the past is you have a particular firm. That particular firm, or parts of that particular firm, are then bought, transferred, sold, et cetera, and you now all of a sudden have multiple firms, multiple EINs all in play. But it's very clear that those are still the same workers, at the same location, doing the same exact job.

And so just like the staffed firms or the staffed workers, we are saying that successor-in-interest – those are also eligible and that they need not be listed specifically on the certification document for the states to be able to determine their eligibility.

Lastly is to clarify oil and gas firms maybe may be investigated as both a firm engaged in the exploration and supply of oil and gas. That was one of the amendments added during the '80s and the regulation, because it was not updated after that, left some of that to the great unknown. We now have clarified that.

One of the questions is whether or not the petitions under the new rule have a new petition series associated with it. We were actually just discussing that last week. It will not be a large series jump as it has been in the past. We already did that for the 2015 program. So there will be a minor shift, if that's the right phrase; but it will not be a massive jump in new numbering. That's at least how we're managing that right now.

All right. A couple more questions and then I'll roll on to Subpart C. "What is the successor-in-interest –" I think they mean, "What if the certification interest (sic) is the certified firm? Does this definition apply to the original company?"

So again, we have provided seven conditions in the rule and I would strongly encourage you to look at that. So take a look at those seven conditions. We think that really does explain when or when not another entity should be considered a successor-in-interest. We also provide some pretty good clarification around what the state should do if it cannot make that determination on its own.

These are great questions. Thank you very much. Keep them coming. If we can't get them today – to them today, we will make sure we address them in the subpart that they belong to. So when we get to the end of the session, if we still have time, I will go back through those that we have not yet answered and give you some insight on whether we'll get to those today or during one of the follow-up sessions specifically to that subpart.

So now we're going to get into Subpart C. This covers the employment and case management services under the Trade Act. This was a fairly significant change to the act that occurred several amendments ago. There are various places where this comes from, the most important of which is Section 235 of the Trade Act, along with our existing operating instructions.

We also have heavily borrowed from WIOA in an attempt to create a true one workforce system with integrated services. We relied on trying to best model WIOA wherever possible.

So most of Subpart C codifies existing practice and administrative guidance. There are some new provisions, the most important of which is highlighted on your screen as new.

ETA has long advocated for TAA program participants to be co-enrolled in WIOA – WIA before that and JPTA/EDWAA, for those of you here back then, before that. Many states already have co-enrollment requirements. The Final Rule makes co-enrollment in the WIOA dislocated worker program mandatory. A worker may refuse co-enrollment or, in rare instances, be deemed ineligible. We plan to issue administrative guidance specific to co-enrollment.

Based on data reported by the states between fiscal years 2009 and 2017, TAA participants who are co-enrolled in the dislocated worker program under WIA or WIOA have superior post-program employment results by a consistent margin, in comparison to TAA participants who are not enrolled.

Moreover, these data show no adverse impact on outcomes under the dislocated worker program as a result of co-enrollment. Additionally, TAA program participants co-enrolled in the dislocated worker program have: higher training participation, 75 percent versus 51 percent for those not co-enrolled; higher training completion rates, 78 percent versus 71 percent; and higher credential attainment rates, 73 percent versus 62 percent. All of these outcomes are correlated with higher performance outcomes and are statistically significant.

So we recognize that for many states that will be a change in your operation for how that has determined – or been determined previously. We understand that. However, we also have states for whom this has been the way of doing business for more than 10 years; for many states, almost 20 years. So we will be providing additional webinars on this topic with those states who have been leaders on this topic presenting directly to their peers for how they have made that work and what that looks like in a One-Stop environment.

We are also defining what it is to be – or provide an initial assessment, a comprehensive and specialized assessment, what an individual employment plan consists of; and we are also defining the expectations of knowledge, skills, and abilities of the staff providing those services.

We are codifying the provision of employment and case management services for participants, explicitly and including those enrolled in training. We want to make sure that individuals who are enrolled in training and participating in training are continuing to receive employment and case management services through that training, because we know that the more connected they are to those services, the better their outcomes are.

OK. With that, Subpart D. So again, I want to make clear that I understand that for many of you, especially dealing with the hundreds of locals that we have in some of the states that do not have existing co-enrollment practices, that that will be a change in the manner in which you have been performing your operations. I would encourage you to read our rules on that, and our preamble which provides the justification and the why.

One question, "Can states apply to waive – for a waiver of co-enrollment?" No. So a worker can refuse to be co-enrolled. And there are a few rare instances, usually only involving selective service registration issues, where an individual might not be eligible. But relative to whether or not there will be a state that says, we'd rather not do that, the answer is no. Or a local that could say to a state, we'd rather not do that, the answer is no.

There's been a couple of questions on reportable services and participant-level versus reportable level. We're going to hold those. Those will be addressed in Subpart H. I would also encourage you to send those to those (sic) via the email we're going to provide you in a little bit. Those are a little bit different from the reporting side of things versus the services side of things. So I want to make sure we get to those, but we will likely cover those during Subpart H.

OK. So with that, Subpart D. Subpart D covers job search allowances and relocation allowances. This is currently one of the fewest – or rarest used benefit under the program. Only about 1 percent of participants end up utilizing these programs each year. Nonetheless, we have updated the rules for those. We hope to see more people take advantage, especially the job search allowances. There are more things that you can do under that, but we do want to – and we did provide some additional language around that.

I would like to thank – I think it was Tennessee; I'll give you props on the call – that commented asking us to provide some allowable examples for what job search allowances can cover, other than what we consider to be – or what people might consider to be those traditional services.

So we've consolidated these into a single subpart. They used to be in their own subparts, but they're so similar that they are now the same.

We have updated the statutory – the regulations to match the statutory limits on the benefits available under those programs. Again, we're not raising the benefit; that was done via statute. We're just making sure the regulations match those statutes.

We are updating this particular subpart to also use the definition of suitable employment instead of suitable work. So that is a change. That part of the rule used to look specifically at suitable work and it was the only part of the rule that looked at suitable work. And so we decided to make the use of suitable employment standard throughout the TAA Final Rule and so we have altered the references for job search and relocation eligibility to also match the suitable employment part of the rule.

We are continuing to require the use of the Federal Travel Regulations. Again, this is not new. This has been the requirement for a while; we're just making sure that people understand that these are the rules that participants should be traveling under. So we wanted to make sure that we were explicit about that requirement.

The Federal Travel Regulations are those same regulations used by federal employees. So when I travel for the department – hopefully I will get to come see many of you in the field shortly – we use these regulations. In order to provide that consistency across all of the states, the grantees, the states are required to follow the Federal Travel Regulations for participants under this program as well.

So that's relocation and job search allowances. Again, I would strongly encourage you to look at the list of allowable activities under job search allowances in that subpart. We believe there are activities you may not have been aware of that could be covered here for those workers interested in receiving those services.

All right. So the next is Subpart E. Subpart E covers the Re-employment Trade Adjustment Assistance program, otherwise known as RTAA. RTAA has no previous regulations. It was established originally as the alternative Trade Adjustment Assistance back in 2002.

We have never been able to publish regulations – we tried several times – for that program, so we've constantly operated this through a series of operating instructions via our Training and Employment Guidance Letters – our TEGLs. So this is the first codification of our TAA into federal regulation.

We are codifying our current operating instructions almost exactly as they are operated now. There are some changes that are – appear to be new, although they are technically current. One of those is that the re-employment needs to be legal under federal, state, and local laws.

So some of you have – some of your states may have a little bit lax or more open policies relative to certain plants and certain industries that now allow for their usage. The federal government still does not. Thus, qualifying re-employment in that particular field would be an example where, although that re-employment may be legal under state and local laws, would not be legal under federal laws.

So that is a – that represents an interpretation we've had, but want to make sure we are clear that that's the case.

We have expanded some language in this subpart around that successor-in-interest rule so that you are all familiar with how that plays out for RTAA purposes.

We have explicitly stated – again, this is already the case, but wanted to make sure it made it into the rule – that there is no application required for UI in order to receive RTAA. They are largely unrelated. Although RTAA qualifying re-employment must be UI-covered employment – that is a change – there is no UI eligibility required for an individual to receive RTAA.

So I just want to make sure you all understand that as you develop your application processes, that you all understand when UI does and does not connect to the TAA program.

Largely RTAA remains as you are all familiar with it now. Again, we do have a section and a session explicitly on Subpart E as well that will go into all of the ins and outs under the Final Rule relative to RTAA.

OK. Moving on. So Subpart F. Subpart F is training. About half of all Trade participants enroll in training through our program. Ever since the – truly, going back to 1988 amendments, but even more so the 2002 amendments, Trade has become more and more a training program, as more – or fewer and fewer waivers have been authorized under the statute and granted by the states.

Our intent is to utilize this as a training program where that training is appropriate, to return individuals to employment. So Subpart F comes primarily from the existing rule in 617.22, from our operating instructions, from TEGLs – previous TEGLs on distance learning, and from the Trade Act itself. There are some changes. There are some things that have not changed.

So we are requiring states to utilized assessments and IEPs. That is directly from our operating instructions. Those are not changes. You can't just put somebody in training because they like it. There is an expectation that there be assessments and employment plans developed in order to ensure that individuals are put into the best training possible and then that training is appropriate.

Related to that is the use of labor market information. Again, in addition to the assessment and the employment plan, demand matters, right? And so there has to be a look at labor market information in order to determine whether or not that is a reasonable or appropriate training path for that individual.

Training funds can be used to create supplemental customized group training opportunities, remedial education classes, English language classes, and contextualized learning. So we have seen this many times when it comes to large dislocations in a given community. Most notably when the barrier to re-employment wasn't necessarily skills training but had to do with English language learners.

In many of those instances, the only providers of those ELL classes were local community-based organizations that only met once or twice a week and that were often already at capacity.

What we saw in several states that we are making clear is absolutely, explicitly allowable and encouraged, is the use of Trade funds to increase that capacity, to increase the number of people that can go into those classes, and to increase the intensity of those classes to turn them from part-time, evening type programs to full-time intensive remedial training classes.

This also allows Trade to be able to provide contextualized learning. For those of you familiar with the community college program under the Trade Act – the TAACCCT grants – that was one of the most successful platforms we saw, was adding contextualized learning directly at usually community colleges.

But nonetheless, that type of approach is absolutely allowable and encouraged, especially when you have a group of individuals coming out of the same firm or the same worker group looking to go into a field that has enough demand to absorb them, but for whom there's some retraining that needs to occur.

One of the questions that has been submitted is, "Who does the assessment? WIOA or TAA?" So that's entirely up to you. We are not prescribing who needs to do that, only that it be done, that it be documented, and that the six criteria for training be approved prior to the person enrolling in that training.

But as for whether that's done by the Wagner-Peyser person on intake, a TAA specialized career counselor, a WIOA career counselor, that is entirely up to the states to design a system that reduces burden and provides seamless service.

That's really what we're after here and that's partly why we are now requiring co-enrollment and why we're changing the rules around who you can spend the Trade money on, to remove those two barriers to more fully integrating the Trade program at the American Job Center level.

Just like for RTAA, we are codifying that no UI application is required for the approval of training. UI eligibility or potential eligibility is required for TRA under Trade. That's about it. There's almost no other direct relationship between UI and TAA. And training is one of those areas where there's no application required prior to training being approved or considered.

We have provided some language changes around the area of the six criteria for the approval of training. Those specific criteria have not changed. Those are statutory. We've just tried to provide some additional clarification relative to some – again, interpretation may not be the right word, but some clarity around applying the six criteria.

So interesting. So there's a couple of questions on WIOA. I want to make sure that I answer all of these and as explicitly clear as possible.

WIOA dislocated worker co-enrollment is required for all adversely-affected workers, for most – many, some – adversely-affected incumbent workers. That one is a little bit different. But for adversely-affected workers, they meet the statutory definition of WIOA dislocated workers. They literally meet them all. We are requiring them to be co-enrolled.

So for the – even if they do not meet eligibility question, there's only a couple – say, to be clear, you need to co-enroll them. There's only two conditions where they wouldn't be. That's one, if they refuse; if they say, I'm not really interested, thanks.

And the second is if they're not truly eligible. And one of the only things we can think of in this process where they wouldn't be eligible is if they failed to register for selective service. And even there, there's some policies in place to deal with that too.

So from that standpoint, yeah, we expect near 100 percent co-enrollment of all Trade workers in the WIOA dislocated worker program. This is covered in depth in both Subpart C and H, but specifically C. So I encourage you all to tune into that as well and again to clarify and read the preamble from that.

The next statement had to do with RTAA. It's that, "I thought I heard you say there's no requirement for UI eligibility for RTAA." I did. Those are two completely different benefits. UI is a benefit for individuals who are unemployed. RTAA is a benefit for people who are employed.

So there's some relationship in that we've said that the employment – the qualifying employment that they go into – needs to be UI-covered employment. We did make that effective in this Final Rule. But that's different than saying they needed to file.

Another question is, "If a worker refuses co-enrollment, are they disqualified from receiving TAA (but TRA ?) benefits?" No. No, they are not. They would then be ineligible for things like supportive services, which is what we want to encourage the system to be providing and to be able to ensure a seamless transition from one counselor to another. But the individual will not be disqualified for benefits.

Another question relative to selective service is, "If an individual fails selective service enrollment, are they eligible for TAA?" We address that – (pause). Sorry. That's also addressed in the Subpart C section and we'll cover it under that.

"WIOA enrollment requirement apply to individuals who are in the TAA program and presently enrolled in remedial training?" So I guess I'm not sure I fully understand that question. So if they are TAA participants, the effective date of the rule is September 21st, 2020. And all provisions of the regulations would go into effect at that time. So the short answer I'm going to give you on that one would be yes. Yes, they are.

All right. I'm going to keep moving through Subpart F as they are no shortage of co-enrollment questions coming in. And we will allow the people behind the curtain to organize those so we can try to address them as we get to the end of the session, because there is a little bit more to cover in Subpart F here.

So Subpart F specifically allows training that will lead to self-employment. Not entrepreneurial training, but nonetheless a training that will lead to self-employment.

One of the things that is listed here as "current," but we think and are worried that some states may think is new, is that for on-the-job training to be approved, it can only be approved if it will lead to suitable employment. So unlike other training, which says that there has to be a likelihood of employment at the conclusion of the training, for OJT the requirement is actually suitable employment.

We have codified the allowability of part-time training. That has been allowable now for several versions of the statute but it has not previously existed in the rule.

We are allowing for training program to include multiple types of training with multiple providers. Again, this is not new. This is how the program should be operating now.

We are making that explicit in this regulation so that both workers, states, and providers understand that an individual can have a regular classroom instruction followed by an OJT; that that could be in-person, distance training, there's a – some of it full-time, some of it part-time, that this really can be a customized approach, and should be a customized approach, to that particular individual. And that those services could be from multiple providers.

We are making sure that we codify that a trade-affected worker in part-time training may not be disqualified from unemployment insurance. So in many states, applicable state law has a minimum number of credit hours or minimum days of attendance that would exist for a normal training waiver to be authorized under state UI law.

Under the Trade Act, that particular part of your state UI law does not apply because it's Trade-approved training. And the minute an individual is enrolled in Trade-approved training, certain parts of applicable state law no longer apply. And the regulation does lay out when that is and is not the case.

The last point on this slide is that training may be selected from the eligible training provider list, but it prohibits states from limiting training to the eligible training provider list.

So again, an individual may select from the WIOA list – from the eligible training provider list. What a state cannot do is compel that individual to choose a training provider or a training program from the eligible training provider list. That is a statutory prohibition. That's in the statute. That's not a regulatory issue for us; that is statutory compliance.

We have provided a non-inclusive list of training-related costs to try to provide some clarity around when we say "all costs of training," what we mean by that.

We have also provided some guidelines for states to determine what is a reasonable cost.

We have taken the language that was in the TEGL on distance learning and we have turned that into regulation so that everyone is clear on what that is.

We are also explicitly allowing – and again, this has always been the case, but there has been some questions about it – that training can be approved that leads to an advanced degree.

For those of you with the performance hat on, yes, we do recognize that enrolling someone in a master's or Ph.D. or higher level training program means they will not be counted in the credential measure and that's OK. We understand that. That's perfectly fine by us because for that worker, that may be the most appropriate training to return them to suitable employment.

Subpart F also specifically allows for apprenticeships. Again, this is not necessarily new. They have always been allowed. The statute, however, included a very specific reference to apprenticeship, so we wanted to provide as much guidance as we could around how apprenticeships work under the Trade program.

We have defined apprenticeship for purposes of the TAA program, and we have established criteria for their approval. Here are the two big ones relative to operations for those.

The first is that we are limiting the work-based learning portion of an apprenticeship that can be supported by the Trade Act to 130 weeks. The statute limits on-the-job training to 104. Apprenticeship and on-the-job training is not technically the same under the statute, so we're allowing up to 130 weeks of support for the work-based learning portion of an apprenticeship.

We are also allowing for the related instruction component of an apprenticeship to exceed 130 weeks. The durational limit on training was often tied to receipt of income support. And so for most Trade participants, that would max out at about 130 weeks, which is the same as the total available weeks of TRA. For individuals who are employed, which is an apprenticeship, that doesn't matter anymore. And so we're allowing some additional flexibility for individuals to receive longer terms of support for that.

OK. Great. We have codified the requirements for the approval of customized training. This is another one of those areas where we've seen very little usage. We are actually actively seeking your real-world examples of customized training that we could highlight. We have seen a couple here and there, but never in large numbers. So if your state does have those programs or anything like that, we would like to know.

So there are a couple of questions. I'm not even sure that is a question, "By definition, on-the-job training begins with being hired as an employee." Yes. Yes, that's correct. As does an apprenticeship. So you're already employed. The statute is what limits the weeks of training of an OJT to 104 weeks. And we further limit that by saying it has to be in compliance with what the O\*NET online says is appropriate for that particular occupation.

Another question, "Does TAA cover pre-apprenticeship?" Yes. Yes, it does. Again, I would encourage you to read the preamble of Subpart F; it lays all of that out for how that plays out. But yes, we cover pre-apprenticeship and that.

Another question about length of related instruction, "Could TAA cover four or even five years of related instruction?" Yes. The answer is yes. Do we know how many people will take us up on that? No. No, we do not.

But yes, that's exactly what we are saying, is that we are saying we are committed to supporting apprenticeships; and that if that apprenticeship is for that duration, essentially the work-based learning component would be limited to a total of 130 weeks of support. But that related instruction component of that apprenticeship would essentially be to ensure the completion of that.

In the definition of apprenticeship we are including two different types, one that is registered apprenticeship. The other is a defined – roughly – as a work-based learning opportunity that includes required related or classroom instruction and leads to an industry-recognized credential. That's the definition that we are utilizing under the TAA program for what an apprenticeship is.

So I would encourage you, if you have additional questions on that, to again review our preamble. But yes, there's two different types of apprenticeship under this program that's allowable. The first is registered apprenticeship. The second is a work-based learning program that has a required classroom or related instructional component that leads to an industry-recognized – otherwise known as a postsecondary – credential.

We are also codifying the supplemental assistance. So this is the transportation and subsistence payments that go – when individuals are in training outside – if they're outside their commuting area are subject to the Federal Travel Regulations for payment of transportation and subsistence benefits.

Subpart F goes on to provide that states may establish a "soft cap" on the reasonable cost of training. That cap must have a pathway to be exceeded. We cover this in detail in Subpart F.

We are codifying the rules for approval of training for adversely-affected incumbent workers, as they have not been previously covered by regulations.

We are establishing regulations on the training benchmarks which, again, already exist under administrative guidance, but we are putting those into the rule as well.

We have also provided definitive rules on amending approved training programs, as there has been some confusion on this for that.

All right. Let's see. So that ends Subpart F. I want to take a quick look and see if there are any questions I haven't answered yet that are assigned to me to answer.

"If a person has educational training and then goes on to an apprenticeship, does the TRA maximum week allowance start over when the apprenticeship starts?" So for most people, when they're in an apprenticeship they're going to be employed. They're likely not eligible for TRA anyway. If they're in OJT, they're outright ineligible because the statute says so.

But yeah, when you're in – so if you go into, let's say, a regular non-apprenticeship, some type of classroom-based training first, yeah, your TRA clock is going to start. When you move into apprenticeship, you're likely now going to be ineligible for TRA. Subpart G covers when those weeks count and when they don't.

The short version is that for additional TRA, that automatically starts the week after you exhaust basic TRA and then that clock continues to count, whether or not you receive a week or not. So for individuals that are on an apprenticeship or an OJT, they're likely not going to be receiving TRA anyway. But yes, in many of those cases, that clock would run.

So again, you almost need to look at the duration of all of these and the individual cases to give more specific answers on that. But that's sort of where that stands for that one.

All right. Great. So that's the end of Subpart F. Again, Subpart F is so big that it has a part one and part two. That's a three-hour long webinar. So we've broken it up into two pieces. I would cover – we'll cover all of that in detail during those two sessions and you'll be able to ask any questions we didn't get to today or questions that need additional conversation.

So Subpart G covers trade readjustment allowances, otherwise known as TRA. This includes much of the language that's already in the existing operating instructions. Does change – and all of their changes to determine and clarify eligibility. There's some timing on that that we had previously issued via TEGL that we have now put into the rule.

This Final Rule will cover workers eligible under the 2011 and 2015 programs. Based on the eligibility period for TRA, there's really no one left from the older programs that should continue to be eligible for TRA, with very few exceptions. So again, in general these rules apply, is the overall guidance I want to make sure you have for TRA.

There are three types of TRA that we now operate under. That's basic, additional, and completion. The regulations go into detail on defining each of those. We talk about when TRA is payable; that is the first time that's been in the rule, though it's been in the operating instructions prior to that.

We are codifying the language from TEGL 11-02 Change 3 that talks about how an individual might receive TRA prior to the 26-week enrolment deadline without that waiver for training enrollment. So that is worth reading. Again, that's not a change from the operating instructions, but it is now in the guidelines.

Establishes regulations for the statutory deadline to enroll in training. Again, that deadline – those deadlines are not new, but they have previously existed only in the statute and operating instructions. And so we're putting those here.

We are updating regulations on the waivers from training so that those now match the statute. We have repeatedly changed what those waivers are. We went from seven to six to three. And so – but the regulations never updated, so we are making sure that those now match what is in the statute.

Subpart G has a change from the existing rule. So the existing rule says that partially separated workers are ineligible for TRA. So after reading and re-reading the statute several times, none of us could figure out how we previously came to that conclusion. So it's no longer in there. Whether that means they'll ever actually receive TRA is a different issue. But at least at the outset they're not immediately ineligible because that's not supported by the statute.

So partially separated workers are otherwise eligible for TRA. This is a change from the existing rule, but we don't believe it should have ever been in there. Again, they may never actually receive a payment, depending on earnings and the timing of that partial separation and all of those things. But nonetheless, they are not sort of by default ineligible.

We are codifying the requirements for the TRA election provision that allows individuals to elect to continue to receive TRA instead of unemployment.

We are codifying the regulations for earning – the earnings disregard provision that allows individuals to earn up to their weekly benefit amount without penalty. So again, that's not a change to how we operate, but we are now putting that into the rule.

Good cause and justifiable cause, again, these are in the act. We are simply providing some regulations around how those can and should be implemented by the states.

And again, Subpart G, just like every other subpart, has its own session that'll cover all of the things surrounding TRA in detail.

Subpart H. Subpart H covers administration by the states. This comes from, again, the existing rule from the act itself. Section 239 covers a big part of that. There is a document known as the Governor Secretary Agreement; some of this is from that. Some of this is from our annual funding agreements. Other parts are from WIOA and the Uniform Guidance 2 CFR 200 and 2 CFR 2900.

So there's a question on what the current waivers are. So before I get into G, there are three waivers. In short, one is related to health of the worker. The second is that enrollment is unavailable. So that means training is available but enrollment isn't available right now. And then the other one is that training is just not available, and there's a couple of conditions under which that might be the case.

Again, the session in Subpart G covers all of that. And the preamble and the regulation provide some pretty clear language on when those apply. So I would encourage you to take a look there, but those are the three.

So waivers that are not allowable anymore is "I'm still looking for training;" that one does not exist. That's not existed for some time. There is no marketable skills waiver; that's also not there anymore. So all of those old ones are gone away.

So Subpart H. Subpart H covers just about everything you can think of that a state is required to do. There's a couple of things in here that are not – again, are not new from an operational perspective, but for the first time appear in regulations.

The first is that a state may utilize a subpoena to compel information from a firm on individual members of a worker group. We have held that states have had this authority for some time. Some states have taken us up on that interpretation; others have been unwilling to do so without a specific regulatory authorization. That regulatory authorization is now there.

The second – again, this is not new; this is statutory – requires the provision of Rapid Response services and appropriate career services under WIOA to all groups of workers for whom a petition is filed. That requirement is that those services be provided at or near when the petition is filed, whether or not that petition is ever actually certified. That's not a new requirement. And those Rapid Response services must be provided regardless of the size of that layoff.

So I know in many states there's a tendency to tie Rapid Response to a warn notice or a minimum size of a layoff or whatever. Under the Trade Act, none of that applies. States are required to provide both Rapid Response and appropriate career services to all groups of workers for whom a petition is filed. Again, and that's at the time or near the time of petition, not once the petition is certified.

A question again on Subpart G, "Partial separation is a qualifying separation for establishing TRA eligibility?" Yes. A total separation is no longer required. That is correct. And the preamble does describe that, as does the rule.

The other thing that this regulation does – which again is not a new interpretation of the requirements that states must do, but is explicit – and that is that states must seek out – that is an active step that's required, to seek out groups of workers that are likely to be determined eligible, and to assist with petition filing on their behalf.

Furthermore, this includes filing a petition even over the objection of a firm, the union, workers, or any other entity or individual that tries to suggest the state should not file that petition. The state is obligated, as an agent of the United States, to act on behalf of those workers and file that petition. It is up to the department to certify or deny that petition.

We know that states have found themselves in that position before. We wanted to make clear what their responsibilities were.

Subpart H requires states to maintain sufficient and effective technology solutions for reporting and the provision of those services. This is new. This does not exist in many places that I'm aware of.

We are requiring states to maintain sufficient technology solutions for both reporting and the provision of services, and requiring states to dedicate a certain percentage – we haven't decided or indicated what that percentage is to be – but states are required to dedicate a portion of their allocation for the ongoing maintenance and upgrade of those MIS systems.

We have added this. As you are all intimately aware, many of the unemployment insurance systems in our states at this point are older than me, which used to be funny when I was 22 and started here. It's less funny now.

So we are requiring states to dedicate a portion of their funding to ensure that these systems are maintained and constantly upgraded, and that a portion of their money is reserved for that purpose.

One of the questions that just came in is about – says that, "We don't always know when layoffs happen." So I will put on my other hat as a champion of Rapid Response and say that – two things.

One, you all should be working in direct coordination with your rapid responders; that is a vital part of the linkage of serving these workers. Rapid Response is supposed to have an active outreach component dedicated to layoff aversion on its own side as well.

And then the other thing is we always publish those petitions. When a petition is filed, that gets published to our website. States should be looking at that to make sure that any group for whom a petition has been filed, that you are in contact with your Rapid Response people to ensure that there has been outreach to and services provided to those groups.

So again, this is an ongoing coordination that's required amongst Trade, Rapid Response; local workforce boards are a key part of this, unemployment insurance folks as well.

Several states, outside of where we're at right now, had flags that would trigger when there were a given number of layoffs at the same firm. That would trigger a referral over to the Rapid Response people, who would then be in contact with that firm to see if there were things they could help with.

We are codifying the Trade Adjustment Assistance Data Integrity process, also known as TAADI. That has previously been covered through TEGL. We are putting that into the regulations. This is the process we use to ensure that the data that's reported to us is valid and actionable.

We are codifying again, as we have repeatedly throughout this call, travel under the TAA program follows the Federal Travel Regulations.

And we are regulating the application of equitable tolling and the exceptions related to military service. So equitable tolling was also previously covered by TEGLs – by training and employment guidance letters. We are now putting that language into the rule so that your appeals referees and others – and those issuing determinations – can all have the same language around equitable tolling and military service.

We are codifying the primary indicators of performance. This is not new. This is – the Trade statute more or less mirrors WIOA. You are already reporting this to us via the PIRL. We're not making any changes to those requirements at this time for you to report the participant information, the service information, and for us to be able to generate the outcomes. So you're still reporting that to us the same way you always have.

We have been explicit about record keeping requirements, allow for paper and electronic records and electronic signatures. This is not new. This has been allowable for some time. However, again we recognize that for many states and locals to fully implement that they need something in the rule for that to help them get it done. We're hoping this helps you get that done.

We have updated the agent/liable state responsibilities to try to be consistent about what those are. Again, those are covered in detail in Subpart H.

So here's the other big one. So the other big one that we have implemented is a change to the existing rule at 618.890 relative to merit staffing and staffing flexibilities. We are allowing under this rule for determinations to be rendered by either state or state merit staff. Again, state or state merit staff.

We are allowing any provider of services to charge the TAA program regardless of the merit staff status. So if your local WIOA provider is non-merit state staff, local municipal staff, county staff, community college staff, a 501(c)(3), et cetera on and so forth – there are a couple of for-profits in New York City, if memory serves – any of those organizations that are providing employment and case management services to Trade participants can now be reimbursed for that cost.

And we believe that a combination of that and the WIOA co-enrollment requirement will lead to better services for those workers. There is no change to the merit staffing requirement that all redeterminations and appeals are handled through the UI appeals process. That's also why the determinations have to be rendered by either state or state merit staff.

And so in some of your states, your UI appeals folks will have fairly specific rules in place on who can make those determinations to ensure that TAA participants retain access to the UI appeals process.

Our big change here was to try to free up access to that case management money for the WIOA folks who have been providing those services to be reimbursed for those services. And for states to be able to simplify and streamline services at the AGC level so you didn't have to have a Trade participant be shuffled from one counselor to another just because they happen to be a Trade participant.

Subpart H provides some additional guidance on the content of the Governor Secretary Agreement. That's the agreement that is signed between the governors and the secretaries over how the Trade program will be operated in their state and the ramifications of not having an agreement in place.

We have added some language that tries to explain what will happen should there not be an agreement between the secretary and the governor. Just sort of by way of history, this has only ever happened once in the history of the program. We'd like to avoid that ever happening again. But there are now provisions in place for that.

We are establishing regulations for what the requirements are for states to monitor the TAA program. Again, much of that is not new. We are also providing general, fiscal, and administrative requirements that includes a definition of administrative costs.

We have included this language in your annual financial agreements for some time. So although this is new to the rule, this should not be new to the way you are or have been operating relative to administrative costs. But you now have a regulatory citation to use for that.

There is one difference between our rules – well, two, technically – between our rules and WIOA. One is that admin money is always admin money, even if that ends up at a subgrantee or subrecipient. The second is that – deals with eligibility determinations.

There's two questions. One is, "So contract staff wages can be charged to TAA funds?" Yes. So the short answer to that is yes. So individuals that are providing services to TAA participants – again, I've seen just about every way you can do this. I've seen state merit staff that do this.

The Vermont Department of Labor at one point was all state merit staff. New Hampshire you have two types; you have state merit staff and employees of a 501(c)(3) providing those services. Under these rules, both of those individuals can charge their time. You have some locals in New Jersey where the operators are county employees. You have some in New York City where they're actually employees of a for-profit; again, they are also eligible.

So it follows the services. If they're providing services to Trade participants, we can charge – that time can be charged. Obviously you need to allocate costs based on the different programs that are involved and whether it's an admin cost or a case management cost. But nonetheless, yes, those are there and can be allocated against.

All right. Moving into Subpart I. There's not much change to Subpart I from the existing rule at 618.900. We introduce the term "training and other activities" – TAOA. But again, we've been using that in our annual financial agreements, so it's not really new.

Same thing on "availability of funds." It's not new; we're just making sure the rule is clear that that's the case.

There's some updated language around initial allocations and second distribution and reserve fund requests. But again, operationally not a ton of change there.

There is one piece that's new and this is regulations that cover the recapture and reallocation of expended (sic) funds. For those of you in the WIOA world, this isn't new. There is a recapture provision that exists in WIOA. However, that one has a percentage limit that's established by the statute.

The Trade Act rule – the Trade Act statute that allows for that doesn't provide us what that limit is. We also don't really think we're likely to use this except in some type of truly catastrophic event, where all of the states or many of the states were already at a point where funding was limited. We're not at that point right now.

But to give you an example would be – so as you all know, our program is formula funded. And so for a couple of years a given state might have a larger number of certifications and then that number trails off. But because the formula is looking backwards, they may still get a sizable allocation.

A state next-door or a state somewhere across the country may all of a sudden have an upswing in cases and need additional money. Depending on the timing throughout the year or where we are nationally relative to the availability of funds, the department might not have funding available and may need to look at one of those states that has a sizable amount of money available, take some of that money from that other state, and make it available to the other state that is in need of funding.

So I want to make clear that that's what that means. Again, we really don't see that coming into play. But if it does, there are provisions in place to that.

There's a question that says, "Please provide again what part of the regulations covers reimbursement to WIOA programs for rendered services." I don't know if that's the right word I would use.

So 618.890 allows for charging of time for services rendered. So how you all figure that out on the back end and on the accounting side, but I want to make sure you all understand that essentially what we're saying is that it should be as seamless as possible for that staff to simply be able to charge that portion of their time to the TAA program.

How you all need to operationalize that behind the scenes we're not prescribing because we understand that all of those situations are a little bit different and vary from local to local and state to state.

So with that, we are almost up against time. I want to thank you for your plethora of questions. That is how we can ensure we have been as clear as we can in the preamble and to clarify some things in the upcoming trainings where it's clear that we maybe need to add a little bit more.

In looking at the questions you've submitted, I think we have actually covered nearly all of these in the preamble. So again, I would encourage you to read both the preamble of the NPRM and of the Final Rule. Sorry, that's the proposed rule and the Final Rule, as we lay out our justification for that. So I would encourage you to take a look at that to see if we have addressed your answers to those questions.

These are some resources for you. The first is the TAA community here on GPS. Please register; become a member if you are not. That is where all of our resources, both provided by the department and provided by your peers, are posted. That's where we post our blogs. We have scheduled chats which we will resume after this training completes.

The TAA program website, which is where all of the petition information is recorded and available to you. The actual Federal Register notice, we have a link here. And the statute to – the link to the statute as well in U.S. Code format.

Here are all of the trainings coming up. There are 10 of them left after today. Every subpart gets its own session. Subpart F is so big that it gets its own.

With that, if you have a question, please send it to regulations.taa@dol.gov. We have a team of staff standing by to take your question and try to answer them.

One that came in, it says, "I understand that we can allow for non-merit staff to charge TAA funds, but it is not required to implement, correct?" That is absolutely correct. We are simply making that opportunity available to the states. Whether the states choose to take us up on that offer is entirely up to the states.

So again, the example I would give you, for years when I was in region one, Vermont DOL ran everything in that state – WIOA – WIA back then – Wagner-Peyser, UI, Trade Act. It was all the same people in the same unit. So we're not mandating that Vermont now competitively procure and put that out or that they have to utilize non-merit staff.

We are instead allowing states – again, I'll use my familiarity with a state like New York, where they have an integrated One-Stop environment – to allow Trade to pay for those services. That's what that rule is intending to do.

So with that, thank you. We will – we have four minutes left. So if you do have questions, please submit them. I will continue to answer them until then.

The question was, "What is that email address again?" I will back up to that slide. It is regulations.taa@dol.gov. There are a group of us that have access to that email address so we won't miss them.

The a question that asks – that says, "This training series seems to be related to adults and dislocated workers. Do any of these trainings apply or relate to WIOA youth programs?" To whoever asked that, Julie's going to send you a quick answer via chat. But I will here as well, and that is to say that although we are mandating co-enrollment in the dislocated worker program, we are not limiting any other co-enrollments.

So it may be appropriate to co-enroll an individual in the various other grant programs or partner programs that are out there. VETS comes to mind. Voc rehab comes to mind. In theory, you could have somebody better served under the adult program, depending on their barriers. So there's no shortage of things around that.

In general, the Trade population is older. I think our median age is now up to 51 or 52. So we are usually serving an older population. That's not to say that there aren't younger individuals in our programs, but in general we're talking about older workers who are eligible and receiving services under the Trade program.

So no, none of these subparts directly relate to youth, although there are sessions that will touch upon sort of One-Stop operations and such.

All right. Any other questions before we call it a day? You have about a minute to get those in. (Pause.)

"Does co-enrollment include WIOA adult?" So again, that's optional. What's mandatory is dislocated worker. So you have to enroll them in DW. If you choose to enroll them in WIOA adult for some reason, that's up to you.

Oh, right. So regarding part – there's one question. So question six. There was a question – somebody had a question regarding part-time work, "Since it's not suitable, can one leave their job to attend training?" Again, I will encourage you to look at both Subpart F and Subpart G; that's covered in both of those. And Subpart H under "applicable state law."

I would encourage that person who submitted the part-time work question to write it up specifically and send it to our regulations.taa@dol.gov.

Somebody asked about when co-enrollment training is scheduled? That's on next Wednesday – sorry, next Monday. I forgot what today was. (Chuckles.) So that's next Monday. That's the Subpart C training when we'll go into details on that.

All right. One last question and then we have to be done. It says, "Our TAA determinations are to be done – are to be issued by merit staff. But if an individual providing TAA services can charge as merit staff –" so I'm not really sure I fundamentally answer all of those questions.

So determinations can actually be rendered by state or state merit staff under our rule. Again, in your state you may not choose to implement that. You may choose to keep it, in most cases, as it currently is, by being state merit staff.

And then the other question is, "An individual providing TAA services can charge as merit staff." Again, so we have completely changed the merit staffing requirements, so there's no reason to charge as merit staff. If they're merit staff, you can charge them. If they're not merit staff, you can charge them now.

So you don't – I think I've covered that one. But maybe there's a nuance there I'm not missing. But I would strongly encourage you to review 618.890 and the preamble. And if it's still not clear, A, make sure you show up for the Subpart H section; and B, send that email into us at regulations.taa.gov. Sorry. regulations.taa@dol.gov. We don't actually have our own website.

So with that being said, I'm going to say thank you to all for your questions. I'm going to hand it back over to Grace.

(END)