**WorkforceGPS**

**Transcript of Webinar**

**Subpart A: Purpose, Scope, and Definitions**

**Wednesday, August 26, 2020**

*Transcript by*

*Noble Transcription Services*

*Menifee, CA*

GRACE MCCALL: And welcome to "Subpart A: Purpose, Scope, and Definitions." So without further ado, I'd like to turn things over to our speaker for today, Julie Baker, supervisor OTAA and ETA. Take it away, Julie.

JULIE BAKER: Thank you, Grace. Good morning and good afternoon to our national attendees. I'm Julie Baker with the Program Development Division of the Office of Trade Adjustment Assistance, Employment and Training Administration.

I'm going to ask someone to advance my slide for the time being as my presenter screen is not functioning. But I did want to start with today's objectives in this presentation.

Today's objectives are purpose and scope, definitions, new terms, revised terms, key highlights, definitions with outside interest, and severability.

Moving on to purpose and scope. This is the first part of Subpart A. It sets forth the purpose and scope of the TAA program and defines relevant terms used throughout the rule. Subpart A modified and simplified several definitions for greater clarity, eliminated definitions in response to statutory changes to the act, and added definitions of new terms based on statutory changes. The definitions used in this Final Rule are intended to reflect the modernized TAA program, which has evolved since TAARA 2002 – which is our 2002 program – and to ensure maximum alignment with WIOA.

OK. There will be a few on-screen questions that I will answer throughout this presentation. And if you are looking for the response, it's contained in the speaker notes in the PowerPoint, which you can download in the file share pod on the screen.

I'm going to start with this first question. Will eligible trade-affected workers who are members of a worker group certified under previous amendments – versions – of the act be provided the benefits and services described in the rule, or will administrative guidance still apply?

So the TAA program regulations were last updated in 1994, with only minor changes made in 2006, 2007, and 2010. Since that time, multiple TAA program reauthorizations and amendments have required various changes to the TAA program, which the department has addressed through administrative guidance.

The department concluded that some administrative guidance must remain active in order to serve continuing or new workers enrolling under the 2002 and the 2009 versions of the TAA program. The department will rescind administrative guidance that is either obsolete or superseded. Please see the announcement TEN number 2-20; that provides a list of the guidance that will be rescinded.

In short, this Final Rule will apply except where it does not apply to older versions of the TAA program because of a statutory conflict.

OK. Moving on to new terms. This presentation does not go through every individual definition, but now is your chance to ask questions on any of them. If we can answer your question, we will. If we cannot answer your question, please send your question to your regional Trade coordinator or to regulations.taa@dol.gov email address and we will reply. We will be posting that email address at the end of this presentation.

And in the interim, please be sure to ask your question in the chat window.

OK. Moving on to our list of new terms. I'm going to give you a minute to look at this list. Some of these terms are from the statute without addition, such as "adversely affected worker." So we haven't changed it from how it reads in the statute. Some are from our 20 CFR 617 or 29 CFR 90 regulations. Some are from administrative guidance. And some are from our experience in providing technical assistance.

A few are original definitions that do not appear elsewhere in federal regulation, such as "article" and "service." Others are TAA program specific to help with program language, such as the term "trade-affected worker." (Pause.)

OK. More new terms. I think what I'm going to do is going to pass this over to a colleague for now. I'm going to try to reconnect. So Tim, I'm going to let you take over starting with more new terms, and let you know when I'm right back on. OK? So Tim?

TIM THEBERGE: All right. So thanks, Julie. So this is Tim Theberge. I work for Julie in the Office of Trade Adjustment Assistance and I will take over from here until Julie's back on.

So, many of these new terms are specific to the petition and investigation process. The session on Subpart B, which is Friday, will provide even more insight into those terms.

We'll discuss several definitions in detail later in this presentation. We have defined "group of workers" and "worker group" in an attempt to ensure our system is using the correct term to refer to the correct group at the right time.

So a group of workers are those individuals covered by a pending petition. A worker group are those individuals of the group of workers included in a determination document issued by one of our certifying officers. So these specific definitions will help to make clear to the states what services are required for which group.

The Trade Act is unique in that it requires services under WIOA to be provided to groups of workers when a petition is filed. So that's Rapid Response and appropriate career services. Trade funds cannot be expended until the workers are actually under a certification, are members of a certified worker group.

So there are also some revised terms. So these are definitions that are in the regulations and maybe were before, that we have since altered. So some terms have been revised as a result of our experience providing technical assistance to the states; and compliance reviews as well, areas where we identified definitions that could be improved upon. Others were changed to match the statute, where there were statutory changes, administrative guidance, or where we need to adapt to case law.

So "suitable employment" is an example where we've updated that term based on actual issues that have arisen. We'll discuss that in a bit. "Enrolled in training" is another one where it was previously only contained in the portion of the rules that talked about TRA and UI disqualifications.

So there are some of those examples where we have moved those definitions here to Subpart A in order to make them stand out more than having them be buried later on in the rule.

Another example of a clarified definition or a revised term is around a "qualifying separation." We have updated this to correct an error in 617 that concluded that a partial separation was not a qualifying separation for that.

So there is a question that came in with regard to who's covered under what? So it says, "Are the applicable rules in the table on slide 6 for petitions 80,000 to 88,099 (sic) reversed?" So it says, "Should participants served under 2002 act be covered under TEGL 11-02?" Yes. (Chuckles.) Yes, good catch. So they are reversed.

Yes. So the 2002 folks are covered under 11-02 and changes. 2011 is going to be covered either under 11-02 and changes or 6-18; remember, they had the choice back then. Some of the participants had the option of which program they wanted to stay under. So that'll matter.

Now, the good news is that there are fewer and fewer of those people coming in under those programs to be served. The 90-something percent of the people we serve are now under the 2011 or 2015 act, so we're – that's getting easier to deal with. But yes, in theory, those two are in fact reversed on that slide. Thank you for pointing that one out.

All right. So with that we're going to move into key highlights, definitions that we want to make sure that we highlight during this presentation in case there are specific questions that come up, as these are significant definitions that you'll use.

One of these is "lack of work." So this is a new definition. This is based on administrative guidance related to strikes and lockouts and their effect on the eligibility for TAA program benefits and services, really going back to 1987. That was one of the first times the department issued any type of guidance around strikes and lockouts from the world of unemployment insurance.

So specifically, a lack of work separation occurs when the employer initiates the unavailability of work. So the employer either does not have work available to the worker to perform or does not make that work available to the worker. OK?

The question was asked on Monday so I also want to make it clear, so if the employer offers an early out, if you will, or some type of buy-out package for a worker, and that worker elects to take that package, that is also a lack of work separation, as it was the employer that initiated that separation event. We'll cover that – we'll make sure that everyone understands how that will play out eligibility-wise.

The second one we want to cover is layoff. The Final Rule modified the definition of this term by adding the words "of time" to the definition that was in 20 CFR 617. It was "expected to be for a definite or indefinite period." So we've added "of time."

In addition, the language that required that the layoff be expected to last for "not more than seven consecutive days" and "no less than seven consecutive calendar days," those were not included. That restriction was not supported in the act.

So what we're talking about here is a suspension or separation from employment for a definite or indefinite period of time, with no minimum number of days; and their pay status is not relevant, whether they're on severance or not. There was a layoff; it's a much simpler definition of that term, we believe.

So can a worker who is "laid off" for one day and then starts employment with the same employer at a different facility qualify for relocation allowance, or would that be treated as a "transfer"?

And the second is, are there specific instances in which a state must consider the length of the layoff to determine a worker's eligibility for some TAA program benefits?

So the language removal affirmed that, consistent with a commenter's example, an adversely-affected worker can be laid off from a trade-affected employment for one day and begin employment for the same employer at another facility that is not the same subdivision or firm of the certified worker group.

Also, if all other eligibility requirements are met, that worker may eligible for a relocation allowance. The department has determined that, generally, states may consider the length of a layoff to help determine if a qualifying separation is either a first separation or a most recent separation.

The next – and this is a big one – this is suitable employment. So the Final Rule modified the definition of "suitable employment." Suitable employment now excludes part-time, temporary, or threatened employment. So those are not considered suitable employment anymore.

We had the 80 percent requirement in there previously. The skills were already there. We are now saying that if it's – if that employment is part-time, temporary, or threatened, that is not to be considered suitable employment under the Trade Act.

So here's another question. Does temporary employment mean work lasting six months or less? Does threatened employment mean, "unlikely to lead to a long-term employment opportunity?"

The department was concerned that part-time, temporary, or threatened employment could trap workers in a cycle of needing continuous TAA program benefits, or result in their losing eligibility for retraining and, therefore, having to assume the training costs themselves. That's why we added those restrictions, so that they cannot be considered suitable employment.

For this reason, the definition of suitable employment in 618.110 includes language of part-time, temporary, short-term, or threatened employment is not suitable. The definition of this term will reduce confusion by explicitly providing additional guidance to states and trade-affected workers for when employment is not suitable for purpose of the Trade program.

MS. BAKER: All right. Thanks, Tim. I'm going to take it back over from this point, but I really appreciate that save.

So we have another question. And this is in definition of the term "suitable employment." How do states interpret the phrase "substantially equal or higher skill level"?

So the phrase "substantially equal or higher skill level" is contained in the statute. In operational terms, states assess the trade-affected worker's preexisting skill levels, abilities, and education, and compare them with the requirements of available employment in the current and projected labor market to determine suitability.

The Occupational Information Network – or O\*NET – provides skill level information for hundreds of occupations. For example, work scheduled for a registered nurse may only be three or four days a week, but the job is unlikely to be considered part-time under state law based on the hours worked.

The determination of the availability of suitable employment is used for the approval of benefits, not for projecting employment following the completion of training.

And I have another question on our screen. And I'm going to answer this question and then I'm going to get to some participant questions that we have.

So can you clarify the definition of "suitable employment," and its relationship to the definition of "wages"? So in 20 CFR 618.100(a), which is the first part of Subpart A, it established that the purpose of the TAA program is to return trade-affected workers to suitable employment as quickly as possible, which is unchanged from our previous regulations.

In this context, suitable employment means that after the trade-affected worker receives services under the TAA program, the worker is re-employed at an equal or higher skill level and earns at least 80 percent of his or her former wages. This goal of attaining suitable employment has not changed.

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

Offering appropriate training, especially in a stagnant labor market, may significantly increase a trade-affected worker's prospects of obtaining suitable employment. Trade-affected workers must have access to training and services that will allow them the best possible outcomes and ability to compete for work at the highest skill levels and highest wages achievable, as quickly as possible.

This must be accomplished with prudence, careful management of limited TAA program funds, and a practical understand of labor market realities, given the trade-affected worker's pre-existing skill levels, abilities, and education, and the current and projected needs of employers. States must ensure they administer their programs equitably and reasonably.

OK. So we do have some participant questions that have come in. I think – Tim, did you want to address some of these on the phone?

MR. THEBERGE: Sure. Will do. So one of the question was, "Is there language to allow for someone who may have been 'overpaid' for the area, therefore making the 80 percent almost impossible to obtain?" So the short answer to that is no.

The definition in the rule is based on what they were paid. And it's based on, in addition to that, the skills used in that previous job. So if they happen to be at a firm that was paying over market rates, that's not taken into account. But keep in mind that that suitable employment is largely used for determination of training eligibility. So if they were overpaid, it's potentially easier for them to make eligibility for training, if I understand what you mean by "overpaid."

So the next question has to do with, "If an employee is re-employed full-time, but wages are significantly less, can we consider the less wages for good cause?" So no. So good cause doesn't apply to wages. That's not how that definition or that is going to be applied through this rule.

So full-time – so even if they're employed full-time, again what you're looking at is both the wages and the skills of that potential or actual re-employment. So not just wages. So wages and skill level have to come into play. And that's an "and" statement, so they have to meet both.

Another question is, "Though buyouts are qualifying separations for the TAA program, following current practices it's still up to state law or administrative law judges to determine if the separation qualifies the person for UI and therefore TRA?" Yes. So we have added that.

And if you read our strike and lockouts guidance under unemployment insurance, you'll see that we have mirrored that. So in some states, individuals will be determined eligible for UI and therefore TRA in these scenarios. In other states, they will be deemed ineligible for UI and therefore TRA. In any state, that layoff would be considered making them TAA-eligible for work – sorry, for services. So that – right. If I made that clear.

So eligible for employment case management, for training benefits, for those types of services; not for the TRA component because they have to have that UI eligibility.

OK. Julie?

MS. BAKER: Great. OK. So we'll be at the next slide, titled "Wages" at the top. I thought this was a good time to move on to wages. I think we do have a couple of questions that may be answered later on in the presentation, so I'm going to continue forward.

So wages. Remuneration as defined by state law. And for purposes of calculating a re-employment wage when determining the availability of suitable employment, the stated salary and, to the extent known, the value of any compensation package that would be defined as remuneration under state law, as provided by an employer in a job posting or job offer.

So the Trade Act does not provide a definition of wages, so the department retained this definition from existing regulations, with just a few modifications.

Moving on to the next slide, another question. How will staff calculate non-cash compensation? Does the definition of wages complicate calculations needed under the RTAA benefit?

So the final rule yields to applicable state laws and contains a new reference to a state's definition of remuneration under state UI law. There is no practical or operational change with this revision, including no change for calculating TRA or for determining whether reemployment is suitable employment.

Before a state can approve a training program, the state must ensure that there is not suitable employment available to the adversely-affected worker. While calculating the wage component of suitable employment is statutory, it is 80 percent of the average weekly wage as defined by the act.

When exploring the local labor market, the worker and the state will be limited to the information contained in job postings in calculating the re-employment wage. These postings will likely contain an hourly wage rate, annual salary amount, or range. Although the posting may contain reference to other benefits, commissions, or bonuses, these are not usually listed with a known value and are often not guaranteed.

Where there is no known value of these benefits, bonuses, or commissions, the state would simply use the wage rate or annual salary amount in the posting to determine whether the wage portion of the definition of suitable employment has been met.

Where there are definite benefits, commissions, or bonuses, the state would include those amounts if it would be included in determining remuneration under state UI law. Based on oversight and technical assistance provided on this issue, the department is confident that this reflects what is currently being done in most states.

And we will discuss this further in Subpart E, our RTAA training.

OK. Let's take a quick look to see – I don't see any questions that have come in. I think we have one pending; I think we'll talk about it later in the presentation. So moving on to the slide that says "component part."

Component part is 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. The definition here 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.

OK. Moving on to next slide, "contributed importantly," which is a cause that is important but not necessarily more important than any other cause. So this definition adopts the statutory definition in Section 222(c) of the act, and it is used in the petition investigation process described in Subpart B. We will talk more about this at the Subpart B training on Friday.

Next slide, "group of workers," at least two workers employed or formerly employed by the same firm, or an appropriate subdivision.

This is a new definition. This term relates to the workers who file a petition or for whom a petition is filed. It means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision.

The 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.

The act does not define "group of workers" and does not otherwise indicate how many workers must be in a group. According to a plain and ordinary meaning of the term "group," the word means more than one. Thus, the department has reduced the number of workers required from three to two, allowing for the broadest interpretation of "group."

The department acknowledges that this change may result in a higher volume of petitions; nevertheless, we conclude that this definition is consistent with the statutory framework.

Moving on to the next slide, "worker group," two or more workers of the same firm, or appropriate subdivision thereof, named in a certification rendered under Subpart B as eligible to apply for TAA program benefits and services, inclusive of teleworkers and staffed workers.

So worker group defines who may comprise a group of workers certified under Subpart B as eligible to apply for TAA program benefits and services. The definition includes teleworkers and staffed workers. The definition is derived from Section 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 from the term "group of workers" that we just saw in our last slide. Both these terms are defined in Subpart A. And "group of workers" that we just covered, as you know, refers to workers who file the petition for certification; whereas "worker group" are the workers who are part of – or who are covered by that certification.

OK. Staffed worker, next slide. 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.

So the final rule adds this term and defines it for the first time under the authority of Section 223(e) of the act, which allows the department to establish standards for investigations of petitions filed under Section 221 of the act, and to develop criteria for making determinations under Section 223(a) of the act.

Previously referred to as "leased workers," staffed workers will be more fully addressed in the Subpart B training we are offering this Friday.

All right. So I have one question and then I'm going to get to some of the questions that have come in.

The next slide question says, will the department define the term "teleworker"? So the department has not included a definition of the term "teleworker" in this Final Rule because there is no singular, agreed-upon definition for the term "teleworker" across federal programs.

In general, teleworkers are workers who are members of a worker group who work remotely, but take direction from and report to the location listed for a firm on a certification. The remote location can vary, and may include the worker's own residence, a shared office space, a public location, et cetera.

Teleworkers may need to provide information or documentation showing their connection to the worker group if they are not already listed on the worker list provided to the state by the firm.

OK. So let me look at this first question coming in. I think we're going to take care of that in the chat. Oh, no, I'm going to go ahead and answer it.

So we have a question that's come in that says, "So a petition can be filed if only staffed workers are let go from a firm?" So first of all, I just want to say a petition can be filed any time that the circumstances are right to file a petition. The circumstances are the same for any of these workers, a teleworker or staffed worker or worker in a worker group.

So if there is a threat of separation, if there is a separation, all of the same circumstances that you would file a petition for groups of workers would be contained.

The big difference here is that once there is already a certification, if there are staffed workers that are then later identified or maybe you find out because they have been let go – but if you get notification that, hey, there are staffed workers involved in this worker group as part of this certification and their jobs are threatened, you can go ahead and serve them as adversely-affected incumbent workers.

Once they're separated, you can serve them as adversely-affected workers. You do not need to file a new petition because they are already inclusive as part of that worker group. OK?

All right. I'm going to move on to the next slide, which is "full-time training." Full-time training is, one, 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 two, in the last semester of training, if the remaining courses to complete the training approved under Subpart F 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.

So this is a new definition. This definition, however, was derived from 20 CFR 617.22(f)(4) and defined full-time training as attendance in training in accordance with the training provider's established full-time hours in a day and days in a week.

The department also added an interpretation originally published in the 2011 program administrative guidance, that provided 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, then the state must consider the adversely-affected worker to be in full-time training, and otherwise eligible to apply for TRA benefits.

Moving to the next slide, "successor-in-interest." We do have a number of successor-in-interest topics we'll be covering over the next few slides.

So successor-in-interest – this final rule added this term and defined it for the first time to provide clarity to states when there are mergers and acquisitions, name changes, bankruptcy proceedings, and other actions that may change the name of the firm under which a trade-affected worker's wages are reported to the state, or by whom a termination notice or threatened status letter is issued.

In determining whether or not there is a successor-in-interest, the state must determine whether most or all of the conditions are met. And you can see on the slide the seven factors.

OK. Going to move on to the next slide, "successor-in-interest, operational impact." The EIN does not need to match in state UI systems. Firm names do not need to match. And states make this determination.

And just so you know, EIN is employer identification number and it's also known as a federal tax identification number. Next slide.

OK. So we have a question and we're going to get more into successor-in-interest. So we have actually two questions here. So how do states determine whether a successor-in-interest exists? And what documentation would a state would need to reach such a determination about the inclusion of wages paid to a worker by a successor-in-interest for purposes of TRA?

So under the TAA program, the department certifies a worker group, not a firm. Members of the worker group consist of those employed by the firm named in the certification, those employed by a staffing agency, those who telework at remote locations, and those employed by a successor-in-interest.

In many circumstances, not all of these categories of trade-affected workers will be specifically referenced in the certification, but the workers will nevertheless be included in the worker group. States can more easily use the factors found in the definition – those seven factors on the previous slide – to determine whether a successor firm is a successor-in-interest.

And we are going to discuss this further in Subpart B, D, and H. Those are contained in Section 618.225(k), 618.505(b), and 618.820(h).

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

In regards to RTAA, as stated in Section 618.505(b), if the state determines that the adversely-affected 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.

This requirement is a protection against firms purposefully separating workers and then rehiring them under a successor-in-interest at lower wages, and shifting those costs to the taxpayer via the RTAA benefit. Applying the certification to the successor-in-interest reflects that the firm may continue to be affected by a trade impact.

So if the State determines that the reemployment is with a successor-in-interest, the state must also seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA program. That's listed in Section 618.816(e).

Now, the department recognizes this may be a shift in how some states have administered the TAA program. Specifically, TRA staff will need to work closely with TAA staff and can no longer rely on employing firms' names being listed in the certification.

This reliance on the certification as the sole source for employer information creates delays in serving trade-affected workers. The Department regularly receives petitions requesting to amend a certification solely to add the name of a successor-in-interest whose workers have already been identified to the state in a worker list as part of identifying the worker group.

These requests arise simply because the TRA staff may believe that the firm must be listed in the determination in order for the trade-affected worker to be eligible to apply for the TAA program benefits and services. The

delays caused by waiting for a subsequent petition investigation to conclude prior to serving these workers creates longer periods of unemployment for workers in need of training or other re-employment services.

OK. I am going – oh, right. I do have one question that has come in. I'm going to answer that.

The question is, "How do you apply full-time training definition to distance learning or online training?" So the way that I'm taking this question is how do you – so there's two ways I could interpret this. Is distance learning or online training full-time? And that's a question only you can answer; I wouldn't know.

You can definitely – that's part of the training approval process, whether or not the remote training or online training is full-time training. If it is not, and it is part-time training, then that's a part-time training and not a full-time training. But if it meets the criteria – and I think maybe this is where we're getting to the question, what does the training institution constitute as full-time? And that really depends on the training institution and what they say about that learning.

If you're asking specifically about the final semester, we have said in the definitions that for TRA purposes if the final semester is less than full-time, that's OK. And that would also apply to online learning or distance learning.

OK. Great. Moving on to the next slide, "qualifying separation." OK. Qualifying separation, any total or partial separation of an adversely-affected worker from adversely-affected employment within the certification period for the purposes of determining their eligibility to receive basic TRA.

So the Final Rule modifies the definition of this term from 20 CFR 617.3(t)(2). The department amended 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 a 1988, amendment to Section 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.

The department has reviewed the act and concluded that under a plain reading of the act, partially separated workers are otherwise eligible for TRA benefits if the eligibility requirements in Section 231 of the act are met.

The definition covers qualifying separation for the purposes of assisting states in determining an adversely-affected worker'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.

We are going to discuss this further in Subpart G TRA and we will be covering it in that TRA training.

All right. Next slide, please, "trade-affected worker." This is a new term which includes both adversely-affected workers and adversely-affected incumbent workers.

So this simplifies the reference when the Final Rule applies to both categories of workers, adversely affected workers and adversely affected incumbent workers. OTAA will be using the term trade-affected worker in the same way going forward, in guidance and in technical assistance materials.

So we really wanted to make sure that you had a definition there because we will be using this a lot. You'll see it on the website; you'll see in guidance documents. But also know that we are very, very deliberate throughout the rule when we use the term "adversely-affected worker" or "adversely-affected incumbent worker." And when you see the term "trade-affected worker," that means it applies to both.

OK. I'm going to answer one more question and then we can move on to the next – the next slide is "definitions with outside interest." So we can hold that title slide there and let me get back to a question here.

OK. I'm going to actually not do that. I've taken a look at the question that we have coming in and I'm going to hold that till the end.

OK. Moving on to definitions with outside interest. So there are – we have some definitions that we think will be of wide-ranging interest to multiple parties; hence, we call it "outside interest." We're going to start with the next slide, which is "article."

I'm going to let you go ahead and read this slide, "article." The term "article" appears in Sections 222 and 224 of the act. And the definition that you're reading here is based on case law and current practice.

An article may be tangible, which includes 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 – a paperback novel and a paper ticket, respectively – or intangible – an 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.

Next slide, please, "service." So the Final Rule adds the term "service" and defines it for the first time, to explain how this term is used in Section 222 of the act as part of group eligibility requirements. This 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, a ticket, certificate, permit, model, drawing, or prototype.

For example, a travel agent provides travel-planning services, but may send customers a ticket or a 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.

All right. Next slide, "severability." So the department has decided to include a severability provision as part of the Final Rule. To the extent that any provision of the Final Rule is declared invalid by a court of competent jurisdiction, the department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

So this is Section 618.120, the last portion of Subpart A. And it's a "just in case" provision.

So I'm going to move on to the next slide, which is wrapping up. And this is the time in which if you have any additional questions about the definitions that we've just gone over, the definitions that cover the entire Final Rule, you can ask those questions in the chat window now.

I am going to reply to a comment that – a question that had come in that regards summer sessions. And I think this is a question – it's, "Summer sessions are usually five to six weeks long, two sessions available for summer. A student cannot feasibly complete 12 credit hours full-time of study in that short period of time."

So I can't really address this. This is one of those where we need to have some specifics. So what I would suggest you do is you can ask your regional coordinator about that specific question. You can send it to regulations.taa@dol.gov.

But I think really what we're getting at here is this may be a really good topic to talk about within your states and your local areas and just talk about how you can best work with your educational institutions within your communities to design meaningful training courses, especially during what we consider to be the typical breaks in training, which are over summer.

As you all know, we are not in a typical environment right now with the pandemic. So I really wouldn't want to venture a general response to that question. So I'm going to ask to send the specifics on forward.

OK. Any other questions? Does anyone have other questions? (Pause.)

All right. If not, I'm going to move to the next slide and we're going to talk about some resources.

Please see the links that we have here in this slide for the TAA community on Workforce GPS. We also have links to our Final Rule; this is the Federal Register link. We have links to our TAA program website, as well as the Trade Act of 1974, as amended by our current law, which is the 2015 program.

Next slide, please. Save the dates. We have some upcoming trainings. This is only Subpart A. We still B through I to get through over the next few weeks. The next one coming up will be this Friday at the same time, time channel. Make sure that you register via the TAA.workforcegps.org.

I'm going to move to the next slide so we can see even more upcoming training. We have Subpart F, which is the one that is so long we've had to divide it into two parts. But you can see that our training will continue through September 18th. We are trying to get all of this training in to you before the Final Rule becomes effective.

Moving on to the next slide, any questions, as I mentioned before, if you have questions about the Final Rule, please send the question to your regional Trade coordinator or to regulations.taa@dol.gov. We have a team standing by to respond to your questions.

And finally, next slide is just a thank you very much for attending. And with that, I will turn it back over to Grace.

(END)