**WorkforceGPS**

**Transcript of Webinar**

**Subpart B: Petitions & Investigations**

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*Transcript by*

*Noble Transcription Services*

*Menifee, CA*

GRACE MCCALL: And welcome to "Subpart B: Petitions and Investigations." So without further ado I'm going to turn things over to our moderator for today, Tim Theberge. Please take it away, Tim.

TIM THEBERGE: All right. So good afternoon, everybody. This is presentation number three of our 11-part series on the TAA Final Rule. This is Subpart B; we're going to cover all things related to the petitions and investigations process under the Final Rule, which is 20 CFR 618.

You can download the Federal Register version of the Final Rule via the file share pod at the bottom of your window. Be advised, that is a 129-page document if you do choose to print that. So make sure you've got toner if you're going to push the print button on that one.

Today's speakers, we have two. We have Amy Chen, she is one of our certifying officers with OTAA; and Thor Hong who is an investigator and a technical expert with our investigations unit as well with OTAA. So they will be your speakers today.

We have some other folks, including myself, behind the scenes who will try to answer and direct the questions that you may have during this presentation. I encourage you, since we have the phone lines muted, to please use the chat to submit those questions. We will then either answer those over the air or via chat. Or if it is a more specific question that we can't answer during today's session, we will provide you with the email address to send those to later on in the session.

With that, I also want to ask you to prohibit – or to restrict yourselves from asking questions about specific petitions that may be pending before the department. We are not going to address issues related specifically to those cases. We are instead focusing simply on the content of the Final Rule today.

If you have questions on the particular petitions, there are already ways for those questions to come in to us. Please see our website for more on that.

So here's what we're going to cover today. These are our objectives. Essentially we're going to walk you right through all of Subpart B. I'm going to give you an overview of the major updates to Subpart B. We're going to provide some discussion of key definitions that are used in Subpart B. For all of the definitions, please see Subpart A; there's more there.

We are going to cover the actual petition process, the investigation process, how reconsiderations and appeals work. We will discuss how one seeks an amendment to a petition, and then the judicial appeals process as well.

All right. So with that I am going to hand this over to Amy Chen. Take it away, Amy.

AMY CHEN: Thank you, Tim. Good afternoon or morning to those of you who have joined us. There are a few major updates in this set of final rules. The purpose of Subpart B is to set forth regulations required by Section 248 of the act, which direct the department to prescribe regulations to implement the provisions for rendering group determinations on adjustment assistance for trade-affected workers.

This subpart provides for the prompt and effective investigation of petitions for certification of eligibility to apply for adjustment assistance.

The major updates are, as I just stated, we're updating regulations to reflect statutory changes. We're codifying procedures for: filing petitions, conducting investigations, and issuing determinations.

This regulation also requires administrative reconsideration prior to judicial appeal of denials. It also establishes the content for a valid petition.

So Subpart B addresses Sections 221, 222, 223, and 224 of the act and codifies and relocates 29 CFR Part 90 by incorporating it into part 618.

The subpart makes several changes to update those regulations to reflect statutory changes; current procedures for filing petitions, conducting investigations, and issuing determinations of TAA program eligibility; and requires exhaustion of administrative remedies, specifically use of the reconsideration process, prior to judicial review. The department relocated most of the definitions, as Tim said, into Subpart A of Part 618. OK?

So again, major updates include: who may file petitions, it's a group of two rather than group of three; it codifies actions of the department when the ITC issues an affirmative determination; it codifies conditions for termination of an investigation; updates certification criteria to match statutory requirements and congressional intent; and codifies the process and conditions to amend a certification.

Another major update is that it provides that staffed – formerly known as leased – workers and teleworkers are included in a certification by default and need not be specially listed for the individual workers to be covered by the certification.

It also provides that workers employed by a successor-in-interest are members of a worker group, even if not specifically listed on the certification. And it provides that a firm engaged in oil and gas services may be investigated as both a firm supplying a service and a firm producing an article.

As Tim mentioned, the key definitions are in Subpart A. However, for purposes for 20 CFR 618.110, we have a couple of key definitions, which are component part, contributed importantly, and successor-in-interest.

So component part – the definition of "component part" 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 a service. Consequently, the department determines that there is no component part of a service.

A component part is a tangible or intangible article that is directly incorporated into the production of another 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.

Another key definition is "contributed importantly." This definition adopts the statutory definition in Section 222(c) of the act and is used in the petition investigation process described in Subpart B.

"Contributed importantly" means a cause that is important but not necessarily more important than any other cause.

Successor-in-interest. Section 618.225 paragraph (k) is new and provides that workers employed by a firm that is a successor-in-interest are members of a worker group, even if they are not specifically mentioned within the determination document.

The department recognizes states have challenges in determining individual eligibility for TRA benefits and reviewing wage records to determine if an adversely-affected worker has worked long enough at a location to qualify for TAA program benefits. Additionally, challenges also can arise with regard to staffed workers and those who are perceived to be staffed workers.

Scenarios often arise where a firm that employs or employed a certified worker group outsources its payroll and benefits functions to a third party. Trade-affected workers named by the company as being part of the eligible worker group may have their wages paid by the third party and not the company named by the certified petition.

For example, Company A has been named in a certification. Trade-affected workers named as part of the worker list associated with the certification have their wages paid to them by Company B, a third party that Company A has outsourced its payroll and benefits functions to, and their wage records do not align with being employed by Company A.

The outsourcing of those wages – those workers' payroll and benefits processing by Company A to Company B does not render those workers ineligible to individually apply for TAA program benefits and services.

Often, states have filed a petition to request an amendment to a certification to offer clarification. Even though it may appear that the workers named are being paid by a third party, an amendment to add the payroll company before serving these workers is unnecessary.

It may also be helpful to states, as part initial requests to a firm for its worker list, to inquire whether the firm contracts its payroll out to a different company, and to ask pertinent information about that payroll company.

MS. MCCALL: Hi. This is Grace. Sorry to interrupt again, Amy. A few people have been asking in the chat if you could just speak up a little bit more. They're having a little trouble hearing.

MS. CHEN: Oh, I'm sorry.

MS. MCCALL: No worries. If you're on speaker, maybe try switching over to just hand-held, just to make it a little clearer. Sorry to interrupt.

MS. CHEN: OK. So the successor-in-interest. So do I need to just repeat successor-in-interest?

MR. THEBERGE: I would go from where you were.

MS. CHEN: OK. So successor-in-interest means a firm – hopefully this is better – means a firm, whether or not named on a certification issued under Subpart B of 20 CFR 618, from which trade-affected workers are separated, or threatened with separation, and where most or all of seven factors are present, relative to a firm named in determination issued under Subpart B.

So the seven factors are: there is continuity in business operations; there is continuity in location; there is continuity in the workforce; here is continuity in supervisory personnel; the same jobs exist under similar conditions; there is continuity in machinery, equipment, and process; and there is continuity in product/service.

OK. So with successor-in-interest, it should be noted that the EIN do not need to match the state UI systems, firm names do not need to match, and that states make this determination.

However, if the state's investigation finds a successor-in-interest relationship exists and that could result in denial of any TAA benefits except RTAA, the state should file a new petition requesting an amendment to a certification.

THOR HONG: Thanks, Amy. All right. On to petitions. So this – wait, let me move the slides back here.

Ok. Who can file? So this portion is largely unchanged. As Amy mentioned, the main difference to be aware of is that now a group of two workers may file a petition, as opposed to it needing to be a group of three workers. The reason for this is that the act doesn't specify a minimum group of – or excuse me, a minimum number of workers that make up a group of workers.

Therefore, the department interprets this to require that a group of workers be a minimum of two workers. And now that the Final Rule has been published in the Federal Register, we'll implement modifications to petition forms and investigation processes accordingly to allow a group of two workers to file a petition.

OK. Who must file? This is actually detailed in Subpart H, but it's worth mentioning here while we're on the subject of petition filing. Essentially there's a requirement under the act that cooperating state agencies – or CSAs – seek out groups of workers that may be likely to meet TAA criteria, and then make sure that petitions are ultimately filed on behalf of those groups of workers. So in other words, it's kind of a mandate for states to take a proactive role in petition filing.

How to file. There are several possible methods, as you can see here. Filing online is strongly encouraged and that's what we prefer. That can be the most expedient, timewise.

Regarding petition content, Section 618.205 paragraph (b) addresses the required form and content of petitions in detail. So you want to be very familiar with that for any filing, to make sure that your petition is not considered invalid when we receive it.

When to file. The answer – short answer to that is as soon as the layoff occurs or is threatened, and no later than one year after separation. For a definition of what we mean by "threatened," you can find that in the definitions section of Subpart A. But basically, it's whenever it's known that separations are intended or anticipated.

Simultaneous filing with the department and the appropriate state is required.

And lastly, if you filed a petition and you don't see it posted on the department's website within 10 days, just go ahead and follow up with us to make sure that we received it properly and that there isn't any issue with its validity.

Rapid Response and career services. This is also pulled from Subpart H and it's pretty straightforward. States must ensure that Rapid Response assistance and appropriate career services are made available to members of any group of workers for whom a petition has been filed.

This must occur when the petition is filed, regardless of whether the petition eventually results in a TAA certification, regardless of the size of the layoff, and regardless of whether there's been a WARN filing for that group or not.

Ingredients of quality petitions. This is my favorite slide of all. Very important. Those of you that may have been in my sessions out in regions four and five know that this can be kind of a whole discussion all by itself. There's going to be a more in-depth session on this topic at a later date, so you've got that to look forward to, which is nice.

For now, the thing to take away is that closely following these tips is the best way that states can put investigators in position to quickly get right into our information gathering process and not need to spend additional time getting clarifications from your end and sorting through ambiguities about what exactly you want us to investigate.

MS. CHEN: (Pause.) Sorry. I was on mute. So this is Amy again.

So investigations are in 20 CFR 618.210. So this is now to illustrate some of the early steps in an investigation which is undertaken by the investigators.

Section 618.210 of the Final Rule describes the investigation process and reflects current procedures and practices in the areas of timing, period of investigation, investigative processes, protection of confidential business information, termination of an investigation, the investigative record, and site visits.

Paragraph (a), timing, discusses that the department will initiate an investigation once it has been determined that the petition valid in accordance with the Final Rule.

Section (b), period of investigation, is the period of investigation it takes to investigate each of the criteria that are part of the department's determination. The period of investigation varies for some eligibility criteria. For example, the period of investigation for (interest imports ?) differs from the period of investigation for (IT duplication ?).

Paragraph (c) explains the steps the investigator may take in order to render a determination regarding whether to certify a petition. It also identifies commonly used sources of information, providing added detail, structure, and transparency to stakeholders about the investigation process.

And paragraph (d) discusses the availability of information and protection of confidential business information received during the investigation process. This provision reiterates that the department will not disclose confidential business information without the consent of the submitting firm or a court order.

And paragraph (e) describes the conditions under which the department may terminate an investigation. If an investigation is terminated, the department will inform the petitioner and publish in the Federal Register the notice of the termination of the investigation. It will also be published on the Department's website.

It also provides that the department may retain the original impact date for terminated petitions if the petition is later reinstated or a valid petition is filed for the same group of workers. A terminated investigation is subject to reconsideration and judicial review.

And paragraphs (f) covers the investigative record and paragraph (g) discusses site visits.

Use of subpoenas.

MR. HONG: Thank you, Amy. Apologies for the siren in the background. Right here in downtown DC.

So the use of subpoena. This section explains the use of subpoena authority available to the OTAA administrator to get information necessary for us to make our determination. States, it should be noted, are also provided subpoena authority, which is going to be covered later in Subpart H.

In terms of this section, paragraph (b) is new and it provides for the issuance of subpoena specifically if the requested information isn't provided within 20 days, unless that is if the department is satisfied that the information we're waiting for will be provided within a reasonable time.

It also describes the factors that the department will consider when determining whether to issue a subpoena or not.

The remainder of this section provides additional technical information and it also describes how the department proceeds in the event of refusal to comply with the subpoena's requirements.

MS. CHEN: Certification criteria. All right. So our favorite portion of the slides was tips on filing a good petition. And so for me personally, certification criteria is one of my favorites.

And Section 618.225 is a good one to follow along with in the copy of the Final Rule. But for purposes of today, we're showing you the highlights of it, all right?

So section 618.22 (sic) describes the criteria the department uses to certify a group of workers. It also identifies factors under consideration in determining whether a criterion is met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used.

The new provisions reflect congressional intent, existing departmental practices and, in some instances, thresholds for select criteria.

Paragraph (a) covers increased imports and provides the criteria for certification of a group of workers. Paragraph (a)(1) describes five possible bases for an increased imports certification. Paragraph (a)(2) describes the four criteria that must be met in order to issue a certification under increased imports.

Paragraph (b) covers shift in production of articles and supply of services by the group of workers' firm to another country. Paragraph (b)(1) describes the two possible bases of a shift in production certification. Production (sic) (b)(2) describes the three criteria that must be met in order to issue a certification under a shift.

Paragraph (c) covers foreign acquisition and also provides the criteria for certification. The introductory text to paragraph (c) describes the two possible bases for a foreign acquisition certification. And paragraphs (c)(1) through (3) describe the three criteria that must be met in order to issue a certification under foreign acquisition.

So certification criteria for a supplier. Paragraph (d) covers the certification of a group of workers as a supplier or supplier of component parts or services. OK? Paragraphs (d)(1) through (5) describe the five criteria that must be met in order to issue a certification for a supplier.

Paragraph (e) covers the certification of a group as a downstream producer. Paragraphs (e)(1) through (e)(5) describe the five criteria that must be met in order to issue a certification as a downstream producer.

Paragraph (f), regarding ITC determinations, implements Section 222(e) of the act related to a group of workers in a firm or firms named as a member of a domestic industry for an affirmative determination issued by the ITC. Paragraphs (f)(1) through (f)(3) describe the three criteria that must be met in order to issue a certification for an ITC.

Paragraph (g), sales or production decline criteria, is new and describes the department's longstanding interpretation of the one-year period prior to the petition date for production and sales declines.

Paragraph (h), oil and gas, is also new. The department is making explicit an eligibility requirement contained in Section 222(c)(2) of the act, which states that firms, or appropriate subdivisions thereof, that engage in exploration or drilling for oil and natural gas must be considered to be engaged in the production of oil or natural gas.

However, the department will not interpret this provision to prevent workers from meeting criteria set forth in other portions of the act. A petition covering a group of workers providing oil and gas services may be investigated as both a firm engaged in production, as well as a firm engaged in supply of services.

This means the department may conduct a parallel investigation to determine whether the petitioning group of workers meets any criteria for certification.

Paragraph (i), staffed workers – formerly known as leased workers – is new. It states that staffed workers – formerly known as leased workers – staffed workers are staffed workers who are onsite or offsite. And those staff workers are classified as part of the worker group of the firm.

The department will specify in the determination document that all members of the affected worker group, include teleworkers and staffed workers, but will not list specific leasing agencies or temporary staffing entities.

The department will continue to collect information from the subject firm in order to establish the leasing or temporary staffing entity or entities over which the workers' firm has operational control. The department will provide contact information to the states for the aforementioned leasing or temporary staffing agencies to assist the states in notifying workers.

States that discover additional leasing or temporary staffing entities employing staffed workers who are members of a certified worker group may serve those workers without delay or need to file a new petition or need to request an amendment. This change in procedure will enhance service delivery to workers.

Although every case is determined on its own merits, paragraphs (i)(1) through (9) list the control questions used to evaluate operational control and have been added to ensure uniformity in the department's decisions.

Paragraph (j) are teleworkers. Teleworkers are also known as remote or home-based workers. This portion of the Final Rule codifies administrative guidance issued as part of the 2011 program operating instructions.

This section explains that teleworkers may be part of a certified worker group without being specifically referenced in a certification document, insofar as their position is affected by the same trade effects as other workers in the worker group. Teleworkers should not be excluded simply because they are teleworkers. Rather, they should be considered part of the worker group.

All right. Questions. OK. How will the Department handle workers of a staffing entity that no longer contracts with a certified worker group firm?

When a firm is queried about the staffed workers, it will be asked to provide information on all staffing firms utilized during the certification period, even if the contract is no longer in place at the time of the investigation.

In accordance with the provisions of 618.225(i), the department will provide states with the names of staffing entities – if they were provided during the investigation process – at the time the certification is announced, to assist states in notifying members of the worker group.

States that discover additional leasing or temporary staffing entities employing staffed workers who are members of a certified worker group may serve those trade-affected workers without the delay of filing a new petition requesting an amendment.

The list of staffing entities provided to the states by the department should not be seen as limiting. There may be workers employed by other staffing entities not listed that are also members of the worker group. States should make clear to the firm that, when requesting the worker list, that the list should include all onsite and offsite workers, as well as staffing agencies and successor-in-interest information, if known.

Next question. Are teleworkers based in other countries considered part of a worker group?

A teleworker living abroad would not be eligible for services or benefits under the act while abroad. Upon the teleworker's return to the United States, he or she would be eligible to apply for benefits and services and a determination would be made at that time.

MR. HONG: Thank you, Amy. And just a quick reminder as we go, if any questions come to mind on any of the points that we're mentioning or any of these topics at all, please do enter it in the chat and we'll get that addressed. We've got a crack team standing by to answer all questions.

And to evidence now. This section of the new regulations is very short. Basically it says that the department will verify information obtained during an investigation before considering such – excuse me, before considering such information in support of a petition. And it provides a description of the various types of evidence that we gather and that are used to evaluate the criteria for certification during the investigation process.

MS CHEN: Determinations, 20 CFR 618.235. Section 618.235 clarifies the process the certifying officer will use for issuing a determination based on the findings of the investigation, as set forth in Section 618.230. This is similar to 29 CFR 90.16, but it reorders it. It condenses the description of types of determinations into four categories, and adds a discussion of the oil and gas provision at Section 222(c)(2) of the act.

All right. So 20 CFR 618.235 paragraph (a) describes the affirmative determination or certification category of the determinations. Paragraph (b) covers a negative determination or denial. Paragraph (c) covers issuing and noticing determinations.

Paragraph (d) covers amended determinations and codifies the practice of amending a certification to limit or expand a worker group or other elements of a certification, which aligns with longstanding practice and administrative guidance.

Paragraph (d) also states the department's position that it reserves the right to begin reconsideration proceedings of a denial without a request for reconsideration being filed. Section 618.250 of Subpart B also discusses this issue. In addition, this paragraph states that a termination will not take effect until the period in which the request reconsideration has elapsed.

And paragraph (e) asserts that the department has a preexisting, intrinsic authority to modify its determinations.

As the slide states, the certifying officer with – (inaudible) – a determination document. Determination data is entered into our database. There is a quality control check to verify information. There is an e-notification transmittal and the department will publish this notification in the Federal Register as well as our website.

So termination of certifications covered under 20 CFR 618.240. So this section of the Final Rule updates the regulations to reflect current practice and procedures.

Paragraphs (a)(1) and (a)(2) have been added to make clear that the expiration date of a certification serves the same purpose as a notice of termination. The expiration date cannot be extended, however; so if it is known that further separations or threat of separations will continue to exist after that date, a new petition must be filed.

Paragraph (b) includes language related to notices and includes to whom the notices will be made. It also requires the state to notify the trade-affected workers in the worker group of the initiation of the investigation to terminate a certification.

OK. Highlights of this particular section. The certifications under 20 CFR 618.235 will automatically terminate two years from the date of certification. Certifications under ITC will automatically terminate one year from the date of the Federal Register publication date.

OK. Questions. How will the department treat workers it determines are ineligible after a state has already begun providing services to workers?

If a trade-affected worker is determined ineligible after a state has already begun providing services to the worker, he or she should be treated the same way as the State treats any other worker in similar circumstances. If necessary, the state would issue a benefit denial determination and afford the worker the opportunity to appeal the determination.

Additionally, since trade-affected workers, if eligible, are mandated to be co-enrolled with the WIOA dislocated worker program, the worker may continue to be served by that program or other partner programs.

Question. How would a termination affect program participants?

If a certification is terminated, no additional trade-affected workers would be eligible to enroll in the TAA program as of the effective date of the termination. Adversely-affected workers already receiving TAA program benefits and services would be allowed to continue in the TAA program.

Question. How must states notify a worker group of a terminated certification?

The notification should clearly state that workers fully or partially separated prior to the termination date remain eligible for benefits.

Paragraph (e) provides details on the process of issuing a notice of termination or notice of partial termination, as well as detailing to whom the notices will be issued. It requires states to notify the worker group of the termination or partial termination. It also states that a termination will not take effect until the period in which a party may request reconsideration has elapsed

Question. How would this impact workers who receive services prior to a termination date?

The department clarifies that there would be no change in benefits to adversely-affected workers who have been separated or partially separated prior to the termination. Adversely-affected incumbent workers who are receiving benefits would be impacted by a termination or partial termination of a certification, as they would not have been separated or partially separated.

Paragraph (f) provides detail on the process of issuing a notice of continuation of certification, as well as detailing to whom the notice will be issued. It requires states to notify the worker group of the continuation of certification.

The department will provide training and technical assistance on how states can provide notice to impacted trade-affected workers should a termination occur. But states should plan to contact workers using available contact information and to notify eligible workers who are nonparticipants in a similar manner in which states first notified the impacted workers of their eligibility to apply for benefits and services.

Question. What is an example of why a certification would be terminated? Oh – (inaudible) – question? What is an example of why a certification would be terminated?

One example would be if the department receives notice from a company official that the firm just received a new contract and canceled the imminent layoffs of the certified worker group. Another example is where the company has canceled the outsourcing of its manufacturing line to a foreign country.

In these cases, the Department would investigate and determine whether separations are still attributable to the reasons stated in the worker group certification. The department points this provision is also in 29 CFR 90.17.

Paragraph (g) allows for reconsideration of a determination of termination or partial termination of a certification.

Certification, also known as an affirmative determination, is in 20 CFR 618.235(a). Once a certification is issued, if necessary the state may subpoena for the worker list, under 20 CFR 618.812.

States (sic) will be notified by the state of eligibility; that's in 20 CFR 618.820. Members of the worker group apply for individual eligibility determinations. Workers seek services and/or benefits through their local American Job Center. And certifications cannot be appealed or reconsidered.

OK. So reconsiderations; that's 20 CFR 618.245. Section 618.245 contains the process for reconsideration of determinations on petitions. There are several changes from 29 CFR 90.18 and provides additional clarifications to – and also enhances the efficiency of investigations.

OK. So paragraph (a) of Section 618.24 (sic) states – identifies the application for reconsideration content. It clarifies that the reconsideration process allows for a party to apply to the Department of Labor for reconsideration of the termination of an investigation, a denial, or a negative determination; a termination or a partial termination certification

Paragraph (b), time for filing, maintains the requirement that all applications must be in writing and must be filed no later than 30 calendar days after the notice of the termination of the investigation, the negative determination, or termination or partial termination of the certification has been published in the Federal Register.

Paragraph (c), return of incomplete applications for reconsideration, is new. Paragraph (c) addresses the process for reviewing and returning an incomplete application for reconsideration. The refiling of the complete application must occur within the 30-day period identified in paragraph (b), or within 5 days of receipt if the application is returned less than 5 days prior to the end of that period.

OK. So 20 CFR 618.25 (sic), any party eligible to file a petition – can be filed by any party that's eligible to file a petition. The appropriate form is ETA-9185. The application must contain reasons for believing the denial is not correct. Information supporting certification should be provided. It must be filed within 30 calendar days of Federal Register notice publication. And certifications are not subject to reconsideration. We have eliminated the intermediate acceptance or refusal process of the application. As I noted earlier, that last part is new. OK?

The department eliminated 29 CFR 90.18(c), which required the department receive an application for reconsideration prior to conducting an investigation. The department concluded that eliminating that step – the step requiring a certifying officer to make and issue a determination on the application – would decrease the time and burden and simplify the process. The department will initiate an investigation on all complete reconsideration applications.

Paragraph (d), notice of an application for reconsideration, states that after receipt of a complete and timely application for reconsideration, the department will notify the applicant and publish in the Federal Register and on the department's website the notice of the application and the initiation of an investigation on reconsideration.

Paragraph (e), opportunity for comment and submission of data on reconsideration, states that within 10 calendar days after publication of a notice in the Federal Register, a party may make written submissions to show why the determination under reconsideration should or should not be modified.

Paragraph (f), investigation on reconsideration, is new and describes the procedures for investigation on reconsideration. It also provides that the period of investigation will remain the same as the period of investigation for the original certification.

Paragraph (g), determinations on reconsideration, provides that the department will issue a final determination within 60 days after the date of receiving a complete and valid application for reconsideration. The department will notify the applicant, the petitioner of the original petition, firm officials, and the state, and publish in the Federal Register of the determination on reconsideration.

The states will continues to be responsible for notifying trade-affected workers in a certified worker group of their eligibility to apply for TAA. However, if 60 days pass without a determination on reconsideration, the department will contact the applicant to determine whether the applicant wishes the department to continue the reconsideration investigation and issue a determination, or wishes the department to terminate the reconsideration investigation, which renders the initial determination as the department's final determination. So that last part is definitely new.

Questions. Will the department notify states when it is reconsidering a termination? Yes, the department will provide notification of any intent to reconsider.

MR. HONG: All right. Amendments to certifications. So this does happen sometimes. Technically, this is a new section in the new regulations; though in practice, the department has been issuing amendments for many years.

Generally, the department's interpretation of the act is that if we get additional or more complete or new information about a certified worker group after the determination's already been rendered, we can then later on issue an amended certification under the same case number to reflect those findings or that new information.

Now, common reasons for an amendment generally involve clarifying in some way who is covered by an active certification, correcting technical errors, or reflecting an ownership change that is affecting the applicable firm.

Amendments must be requested through the regular petition filing process. Meanwhile, the department also has the authority to amend a certification on our own without a request, if we deem that to be appropriate.

This section also provides for the department and affected states to issue notifications about amendments the same way that they would with initial certifications.

MS. CHEN: Judicial review, 20 CFR 618.255. So this portion – this is a significant update. Section 285 of the act allows for judicial review of only final determinations.

Under existing regulation 29 CFR 90, all determinations rendered by the department are final determinations. However, under 20 CFR 618, this is now different.

The department is now defining only determinations on reconsiderations issued under 618.240(g) and 618.245 as final determinations. And therefore, only those determinations are subject to judiciary review.

Paragraphs (f) – individual benefit denials – and (g) – manner of filing – provide clarity on the determinations subject to judicial review under Section 284 of the act, and specify that the CIT – U.S. Court of International Trade – rules apply to filings with the CIT.

MR. HONG: All right. Study of domestic industry. This is a section that has to do with what the department does after the International Trade Commission – or ITC – issues certain affirmative determinations. This isn't commonly used; it's only been used a handful of times in the history of the Trade Act. But we do need to have it covered here in our regulations.

So with this domestic industry study, after these certain ITC affirmative determinations, we – so again, these are ITC determinations of a specific type. The department must immediately begin a study of how many workers may be likely to be certified for TAA in the relevant industry, among other things. And then we produce a report of our findings on that.

Availability of information to the public. Now, much of our work is publicly available. We post all determinations and redacted versions of all petitions to our website, as you know. There's also additional information that can be provided upon request, under – (inaudible) – for example. And some of you may be familiar with that process.

Information that is not publicly available includes CBI, of course, and certain PII as well. And that pretty much wraps that section up, so we'll go ahead and go back to Tim now to wrap up the session.

MR. THEBERGE: All right. So thank you, Thor. Thank you, Amy. Thank you to the folks behind the scenes answering all of the questions from the 500 or so folks logged into today's session.

If you do have additional questions, please enter them into the chat. We are done ahead of schedule, so we will hang around for a bit in case you do have additional questions.

I want to remind you of some resources that are available for all things Trade. The first is our TAA community; that's here on the WorkforceGPS platform. That is a great opportunity for peer-to-peer exchange between states and providers.

The second is the official website of the TAA program that you'll see here. The brand-new, hot off the press Federal Register notice of the Trade Act Final Rule is available here as well. That is the official version to use until the electronic Code of Federal Regulations is updated.

However, I want to encourage you all to retain both a copy of the notice of proposed rulemaking and the Final Rule so that you can reference our preamble. Many times, many of the questions you have or many of the – much of the clarification you seek is actually dealt with in the preamble to either the proposed rule or the Final Rule, and helps explain the logic behind the decisions we made in some of the policy changes we have made.

There is also the official U.S. Code version of the 2015 version of the act available. We do have an informal version – an unofficial version – available on our website as well.

These are the next sessions that are coming up. Subpart C will be Monday; Subpart D is Wednesday; Subpart E is next Friday. Subpart F is so much content to get through that it has a part one and a part two, so don't miss both of those. And then again, G, H, and I all have their own sessions as well.

Our plan is to have all of these done several days before the effective date of the Final Rule. And I want to make sure I make that clear. So although we have now published the rule, the rule does not go into full effect until September 21st, 2020. That is the effective date. That is when all of the changes in the rule fully apply that are not already in place.

So as we've indicated, much of the stuff that's in the Final Rule – about 90 percent – is already in place now and you're already – the states are already subject to that now. It's the 10 percent of stuff that is new that will not be effective until 9/21; that would include the new forms and such like that used in the investigation process.

If you do have a question that we did not answer today, as those come up please send them to regulations.taa@dol.gov. We have a team of our experts that have access to that mailbox and we try to respond within one business day. If it's a more complicated question, it will take us maybe a day or two, but we will let you know that we are working on it.

We do have one more question that came in. We have it here. "Are there any specific timeframes for investigations of a petition in the Final Rule? If not, are the length of investigation periods and reported on?" Sure. So I'm going to yield this one over to Julie Baker.

JULIE BAKER: Hi. Thanks, everybody. This is Julie Baker with the Office of Trade Adjustment Assistance.

So the specific timeframes for investigation of the petition in the Final Rule reflect our statutory requirement of 40 days. We do everything we can to meet that 40-day criteria. There are a number of factors if we don't hit it. But know we are doing everything we can to meet that timeframe.

The other thing – the length of investigation periods are measured and reported on. We have a wonderful new dashboard on our website, our RTAA website. And I'm going to go back I think a few slides here. We have our program website listed right here, www.dol.gov/agencies/eta/tradeact. So look for – under petitioners and data – petition data; there's a number of places you can find.

But we have a wonderful dashboard and it will show you what our median timeframe is for investigations. Thanks.

MR. THEBERGE: All right. So thank you, Julie. So that represents the totality of what we have to share with you today. I will leave this slide up so that you do have that email address available. So if you do have any additional questions, you can send them in to our general inbox on all things regs.

Again, the effective date of these regulations is September 21st. And as indicated, we do have a series of webinars covering every subpart in the rule. Today is B and then obviously next week will be C, D, and E. Again, Subpart F is in two parts.

So with that, I'm going to turn it back over to Grace.

(END)