

DEPARTMENT OF COMMERCE**Economic Development Administration****13 CFR Chapter III**

[Docket No. 950525142-5142-01]

RIN 0610-AA47

Simplification and Streamlining of Regulations of the Economic Development Administration

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this interim-final rule is to revise all of the regulations of the Economic Development Administration (EDA) so that they are easy to read and use, and accurately reflect program requirements, evaluation criteria and selection processes in implementing programs under the Public Works and Economic Development Act of 1965, as amended, (PWEDA or the Act) the Trade Act of 1974, as amended (the Trade Act) and other statutes to be noted herein. This streamlining effort includes the removal of numerous unnecessary, redundant and outdated parts, sections and portions thereof.

DATES: This rule is effective on October 1, 1995. Submit comments by November 27, 1995.

ADDRESSES: Send comments to Awilda R. Marquez, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Room 7001A, Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Awilda R. Marquez, 202-482-4687, fax number: 202-482-5671.

SUPPLEMENTARY INFORMATION:

Background

• In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This final rule represents one of the first steps in EDA's response to this new directive.

• EDA's regulations have been criticized by Congress, applicants, recipients, and others as being too long, burdensome, complex and difficult to understand. This interim final rule addresses these problems as described in the Changes section.

• Public comments were solicited and received during three representative regional meetings of applicants and recipients of EDA financial assistance held in Philadelphia, Pennsylvania, in February 1995, in Chicago, Illinois, in March 1995, and in Monterey, California, in April 1995. Comments from these groups were about the complexity and length of time and repetitive nature of grant processing. These streamlined regulations address these concerns because they are less complex and set forth program descriptions, evaluation criteria and processing procedures in an easy to read and straightforward manner.

• All employees of EDA were invited to participate in this process, and many did.

Description of Major Changes

This interim-final rule removes, streamlines, and redesignates parts, sections and portions thereof. Significant changes are described below.

Removals

• Certain removals are made because the programs to which these regulations apply are no longer in existence, such as Part 313—Job Opportunities Program; Part 314—Property Management—Subpart C—Excess Property; Part 316—Local Public Works Capital Development and Investment Program; and Part 317—Round II of the Local Public Works Capital Development and Investment Program.

• Other removals are made because policy rules not required by PWEDA have become unnecessarily constraining or outdated, such as Part 305—Public Works and Development Facilities Program in Subpart C—Specific types of projects: § 305.43(a) (2), (3), (4) and (b) (2), (3), (5) Industrial parks and sites, § 305.44 Tourism and recreation, § 305.45 Skill training center facilities; and in Subpart D—Limitations: § 305.54 Employment of local labor and § 305.59 Energy conservation and other requirements.

• Removals were also made because provisions repeated requirements in PWEDA, Pub. L. 89-136; 42 U.S.C. 3121 et seq., the Trade Act, Pub. L. 93-618, 19 U.S.C. 2101 et seq., or other statutes, or regulations, GAO opinions, Executive Orders or OMB Circulars which apply to EDA's programs. In these instances, of course, the statutory and other legal

requirements are still in effect. Unless otherwise stated, PWEDA is the basic underlying statutory authority incorporated into and relied upon in 13 CFR Chapter III.

Streamlining

• In Part 304, streamlined selection processing procedures and uniform general evaluation criteria for EDA projects funded under PWEDA are set forth.

This part condenses and clarifies policies and criteria previously published in annual funding notices which are being codified in this interim-final rule.

• Section 316.3 on excess capacity has been changed to describe three categories under section 702 of PWEDA (702 studies/reports) determinations: studies, reports or exemptions. The exemptions have been expanded. Market studies from applicants are to be submitted to EDA early in application processing to be used if possible as the basis for 702 studies or reports. This will save time in making the 702 studies/reports.

• The nonrelocation prohibition in § 316.4 will only apply before a grant is awarded, and categorical exclusions from the nonrelocation requirements have been expanded. This removes a post-approval burden on recipients.

• In § 316.5 on electric and gas energy, requirements have been combined to the extent that exceptions to the statutory prohibition are identical, and additional exceptions have been added for electrical energy.

• In part 305, sections describing particular types of projects are removed and in their place are generalized programmatic requirements which are applicable to all Title I projects. The project specific requirements were policy driven and overly burdensome. The new requirements are easier to understand and to apply.

• Part 307 on Technical Assistance, Research and Planning has been changed to reflect program requirements, evaluation criteria and selection procedures for the five programs implemented by EDA under Title III of the Act: Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation, State and Urban Planning and District Planning, to replace confusing and often burdensome regulations.

• Part 308 on Requirements for Grants under the Title IX Economic Adjustment Program has been modified to incorporate program requirements and procedures described in EDA's annual Notice of Funding Availability

and now more accurately describes the types of projects typically funded under the broad authority of Title IX. For Presidentially-declared disasters, area eligibility criteria findings would be waived.

• Part 314 on Property Management Standards has been changed as follows:

• To specify the nature of a grantee's trustee interest in project property and EDA's retained reversionary interest.

• To cover personal property, including revolving loan funds, as well as real property.

• To cover the form and evidence of title required for real property under a project.

• To clarify the determination of the Federal share of property for which the Federal Government is to be compensated in case of misuse or disposition of project property during a project's estimated useful life.

• To clarify and simplify the procedure for allowing encumbrances of project property.

• To specify that EDA may approve a substitution of the grantee under a grant award.

• To remove unnecessary provisions and ambiguities in the current regulations.

• Part 315 on Certification and Adjustment Assistance for Firms has been substantially modified to reflect that this program has been scaled back since communities are no longer funded and loans are no longer made. Trade Adjustment Assistance Centers (TAACs) are described, including the role they play in the certification and adjustment assistance process.

• Part 317—Sections providing for the enforcement of Title VI have been modified to remove the mandatory submission of the Affirmative Action

Plan, thereby reducing the paperwork burden on the applicant. The modification does not remove the authority to enforce Title VI.

Table of Changes

The following distribution table lists all the changes to the regulations, including those discussed above.

• In the left column, the table lists the old sections in 13 CFR Chapter III.

• In the middle column, the table lists new parts or sections that track the number and/or provisions of the regulations in the left column.

• In the right column, the table explains the changes from the old section in the left column to the new section in the middle column.

Old section	New section	Description of change
Part 301—Establishment and Organization.	Part 300—General Information	Renamed and redesignated.
Subpart A—Introduction .....	.....	Removed as unnecessary.
§ 301.1	§ 300.1	The new rule adds statement that unless otherwise so stated, all parts describe requirements which are based upon and subject to PWEDA.
§ 301.2	§ 300.2	The new rule contains definitions of terms, used throughout the rule, unless otherwise provided.
Subpart B—Description of Program Areas.	.....	Removed as unnecessary since repeated elsewhere in the rule.
Subpart C—Description of Organization.	.....	Removed as unnecessary.
§ 301.30, § 301.31	§ 300.4	The new rule refers to EDA's annual FY NOFA for addresses and phone numbers of EDA's Washington, D.C., Regional and EDR offices.
§§ 301.34–301.36 .....	.....	Removed as unnecessary.
Subpart D—Disclosure of Information to the Public.	.....	Removed as unnecessary.
§ 301.50	§ 316.8	The new rule redesignates this section.
Subpart E—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers.	.....	Removed as unnecessary.
§ 301.70	§ 300.3	The new rule redesignates this section and updates for accuracy.
Part 302—Designation of Areas	Part 301—Designation of Areas ...	Redesignated.
Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act.	Subpart A—Standards for Designation of Redevelopment Areas Under Section 401(a) of the Act.	Redesignated.
§§ 302.1–302.3	§§ 301.1–301.3	The new rule redesignates this section and refers to PWEDA for area designations on the basis of unemployment, loss of population, and median family income.
§§ 302.4–302.5	§§ 301.4–301.5	The new rule redesignates this section. Refers on EDA, not Assistant Secretary for area designations on the basis of American Indian lands and sudden rise in unemployment.
§ 302.6 .....	.....	Removed since no longer in effect.
§ 302.7	§ 301.6	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.8	§ 301.7	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.9	§ 301.8	The new rule redesignates, updates and removes unnecessary references.
§ 302.10	§ 301.9	The new rule redesignates this section.
§ 302.11	§ 301.10	The new rule redesignates this section and refers to EDA, not Assistant Secretary.
§ 302.12	§ 301.11	The new rule redesignates this section which no longer repeats statutory language.

Old section	New section	Description of change
§ 302.13	§ 301.12	The new rule redesignates this section and refers to EDA, not Assistant Secretary. No longer cites to old § 302.6. Redesignated.
Subpart B—Limitations on Designation of Areas.	Subpart B—Limitations on Designation of Areas.	
§ 302.20	§ 301.13	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 302.21	§ 301.14	The new rule redesignates this section. Refers to EDA, not Assistant Secretary. Redesignated and renamed.
Subpart C—Annual Review, Modification, and Termination of Designated Areas.	Subpart C—Modification of Designated Areas.	
§ 302.40	§ 301.15	The new rule redesignates and streamlines this section. Refers to EDA, not Assistant Secretary. Removed as no longer in effect.
§ 302.41 .....	.....
Subpart D—Notice	Subpart D—Notice	Redesignated.
§ 302.50	§ 301.16	The new rule redesignates and streamlines this section.
§ 302.51 .....	.....	Removed as repetitive.
Subpart E—Information .....	.....	Removed as unnecessary.
Part 303—Economic Development Districts.	Part 302—Economic Development Districts.	Redesignated.
Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts.	Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts.	Redesignated.
§ § 303.1–303.3	§ § 302.1–302.3	The new rule redesignates and streamlines these sections and makes them easier to read. Refers to EDA, not Assistant Secretary.
§ 303.4–1	§ 302.4	The new rule redesignates this section and deletes references to waiver and to Civil Rights Guidelines.
§ 303.4–2 .....	.....	Removed because it is no longer necessary as a matter of policy.
§ 303.4–3	§ 302.5	The new rule redesignates this section and deletes references to EDA components, certain civil rights requirements and outdated requirements.
§ 303.5	§ 302.6	The new rule redesignates this section and no longer repeats statutory language.
§ 303.6	§ 302.7	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 303.7	§ 302.8	The new rule redesignates and streamlines this section. Refers to EDA, not Assistant Secretary and deletes unnecessary references.
§ 303.8	§ 302.9	The new rule redesignates this section and removes references to other parts of the regulations as unnecessary. Redesignated.
Subpart B—Standards for Designation Modification, and Termination of Economic Development Centers.	Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers.	Redesignated.
§ § 303.10–303.14	§ § 302.10–302.14	The new rule redesignates these sections. Refer to EDA, not Assistant Secretary. Redesignated.
Subpart C—Financial and Other Assistance to Economic Development Centers and Districts.	Subpart C—Financial and Other Assistance to Economic Development Centers and Districts.	Redesignated.
§ § 303.20–303.25	§ § 302.15–302.19	The new rule redesignates these sections. Refer to EDA, not Assistant Secretary and cite to new redesignated regulations. Redesignated.
Part 304—Overall Economic Development Program.	Part 303—Overall Economic Development Program.	Redesignated.
§ 304.1	§ 301.1	The new rule redesignates and streamlines this section to remove cites to other regulations as unnecessary.
§ 304.2	§ 303.2	The new rule redesignates this section. It has been shortened and made easier to read.
§ 304.3	§ 303.3	The new rule redesignates and shortens this section. References to Civil Rights Guidelines have been removed.
§ 304.4	§ 303.4	The new rule redesignates this section and makes it easier to read and use.
§ § 304.5–304.6	§ 303.5	The new rule redesignates this section. It combines two sections and removes unnecessary requirements.
§ § 304.7 and 304.9	§ 303.6	The new rule redesignates this section. It combines two sections into a streamlined and easier to read section.
§ 304.8 .....	.....	Removed.
Part 305—Public Works and Development Facilities Program.	Part 304—General Selection Process and Evaluation Criteria. Part 305—Public Works and Development Facilities Program.	The new rule adds part 304 which sets forth uniform selection procedures and general evaluation criteria for projects funded under PWEDA. The new rule streamlines and clarifies this part.

Old section	New section	Description of change
Subpart A—Direct and Supplementary Grants for Public Works and Development Facilities.	Subpart A—General	Renamed.
§ 305.1	§ 305.1	The new rule expands the purpose section to include the scope of public works projects in creating and retaining private sector jobs to alleviate unemployment and underemployment.
§ 305.2	§ 305.2	The new rule is updated to include the Republic and Palau as an eligible applicant and states that private or public non-profits must represent a redevelopment area or part thereof and the project must be located within an eligible EDA area represented by such non-profit.
§§ 305.3–305.4	§ 305.3	The new rule describes eligibility requirements.
	§§ 305.4 and 305.6	The new rule separates out statutory requirements for regular public works and for public works impact program projects and places them in § 305.4 as project requirements. New § 305.6 contains evaluation criteria previously found in annual fiscal year NOFAs and has been modified to encompass all types of projects under this program.
	§ 305.5	The new rule sets forth the selection process.
	Subpart B—Supplementary and Overrun Grants.	The new rule adds this subpart.
§ 305.5	§ 305.8	The new rule redesignates and streamlines this section to delete unnecessary narrative.
§ 305.6	§ 305.9	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 305.7		Removed since program is no longer in effect.
	§ 305.7	The new rule adds this section on award requirements which have appeared in EDA's NOFA which indicates the length of time for a grant award under this program and matching local share requirements.
§ 305.8	§ 305.10	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
Subpart B—Public Works Development Facilities Loans.		Removed since program is no longer in effect.
Subpart C—Specific Types of Projects.		Removed since contained burdensome policy requirements.
Subpart D—Limitations		Removed because some sections repeated requirements found elsewhere and others were based on restrictive policies.
Subpart E—Project Costs		Removed because requirements were unnecessary and repetitive.
Subpart F—Disbursement of Funds for Grant and Loan Projects.		Removed as unnecessary.
§§ 305.81–305.85		Removed since program no longer is in effect.
§§ 305.86–305.87	§ 305.11	The new rule combines portions of these sections to provide greater flexibility and to update terminology for financial assistance award and references to EDA, not Assistant Secretary.
§ 305.88		Removed as unnecessary.
§ 305.89	§ 305.12	The new rule redesignates this section.
Subpart G—Servicing of Grant and Loan Projects.		Removed as unnecessary.
§§ 305.91–305.95		Removed as unnecessarily repetitive.
§ 305.96	§ 305.15	The new rule redesignates and retitles this section as "Contract and Subcontract Clauses." The new rule refers to the Common Rule at 15 CFR Part 24 and OMB Circular A-110 for required clauses.
§ 305.97		Removed and merged into new § 314.7.
§ 305.98	§§ 305.13–305.14	The new rule reformulates portions of the old rule and states that any changes made without prior approval by EDA are made at grantee's own risk of suspension or termination of the project (§ 315.13); and a section on final inspection has been set out (§ 305.14).
§ 305.99		Removed as unnecessarily repetitive.
§ 305.100		Removed and merged into new § 316.7.
Part 306—Business Development Program.		Removed since program is no longer in existence.
Subpart A—Financial Assistance & Commercial Purposes.		Removed.
Subpart B—Project Closing and Servicing.		Removed.
§§ 306.31–306.33	§ 316.7	The new rule redesignates, combines and renames these sections as "Project Servicing" to assure retention of EDA's monitoring and servicing of business development loans and guarantees. Refers to EDA, not Assistant Secretary.

Old section	New section	Description of change
Part 307—Technical Assistance, Research, and Information.	Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning.	Renamed.
Subpart A—Technical Assistance	Subpart A—Local Technical Assistance; Subpart B—University Center Program; Subpart C—National Technical Assistance.	Renamed.
§§ 307.1–307.2	§§ 307.1, 307.6 and 307.11	The new rule is divided into 3 subparts for technical assistance (TA) with the purpose and scope of the local TA program stated in § 307.1; the purpose and scope of the university center program stated in § 307.6 and the purpose and scope of the national TA program stated in § 307.11.
§§ 307.3, 307.4 and 307.6	§§ 307.4, 307.9 and 307.14	The new rule has a separate evaluation criteria section for each of the three kinds of TA projects describing factors considered in choosing projects to be funded. Subpart A describes local TA programs, Subpart B describes university center programs, and Subpart C describes national TA programs.
§ 307.5	§§ 307.2, 307.7 and 307.12	The new rule in Subparts A–C described above lists eligible applicants under each of the three TA programs.
§§ 307.7–307.9	§§ 307.3, 307.8 and 307.13	The new rule in Subparts A–C described above explains the selection process under each of the three TA programs.
§ 307.10	§§ 307.5, 307.10 and 307.15	Removed because program is no longer in existence.
§§ 307.11–307.17	§§ 307.5, 307.10 and 307.15	The new rule redesignates and renames these sections as “Award Requirements” and streamlines requirements on local share, duration, etc.
Subpart B—Planning Grants and Economic Growth Study Grants.	Subpart E—Economic Development Districts, American Indian Tribes and Redevelopment Areas, Economic Development Planning Grants.	Removed because repeats other authorities. Redesignated and renamed.
§§ 307.21–307.22	§ 307.22	The new rule describes the purpose and scope of planning grants for administrative expenses. References to economic growth study grants have been removed.
§ 307.23	§ 307.23	Removed because program is no longer in existence.
§ 307.24	§ 307.24	The new rule adds a definition section describing the two categories of planning grants for purposes of the EDA grant rate.
§ 307.25	§§ 307.27–307.28	The new rule describes eligible applicants as economic development districts, redevelopment areas or parts thereof, American Indian tribes, organizations representing tribes, the Republics of Palau, Marshall Islands, the Commonwealths of Puerto Rico, and Northern Marianna Islands, the Federated States of Micronesia, U.S. Virgin Islands, American Samoa and Guam.
§§ 307.26–307.27	§§ 307.27–307.28	The new rule sets forth award requirements and limitations.
§ 307.28	§ 307.25	Removed because repeated other authorities and referred to program no longer in existence.
§ 307.29	§ 307.26	The new rule describes the selection process including those having to do with an overall economic development program (OEDP).
Subpart C—Study, Training, and Research Program.	Subpart D—Research and Evaluation.	The new rule sets forth EDA's evaluation criteria using some elements in old rule.
§§ 307.41–307.42	Subpart D—Research and Evaluation.	Removed as unnecessary. Redesignated and renamed.
§§ 307.43–307.44	§ 307.16	The new rule describes the purpose and scope of research and evaluation grants and cooperative agreements.
Subpart D—State and Local Economic Planning Grants.	§ 307.17	The new rule describes eligible applicants.
§§ 307.50–307.51	§ 307.18	The new rule describes the selection process.
§§ 307.53 and 307.55	§ 307.19	The new rule describes the evaluation criteria.
§ 307.52	§ 307.20	The new rule describes research topics and structure.
Subpart D—State and Local Economic Planning Grants.	§ 307.21	The new rule describes award requirements.
§§ 307.50–307.51	Subpart F—State and Urban Economic Development Planning Grants.	Removed because repeated portions of the Act. Redesignated and renamed.
§§ 307.53 and 307.55	§ 307.29	The new rule describes the purpose and scope of state and urban economic planning grants.
§ 307.52	§ 307.32	The new rule sets forth evaluation criteria for these planning grants using some elements in the old rule.
§ 307.52	§ 307.30	The new rule describes eligible applicants as governors of states, chief executive officers of cities or designated entities and counties, and sub-state planning and development organizations.

Old section	New section	Description of change
§ 307.54	§ 307.31	The new rule sets forth EDA's selection process for this planning program, modifying the old rule.
§ 307.56	§ 307.33	The new rule describes award requirements for planning grants including the duration of grants and local share match requirements.
§§ 307.57–307.59 .....	.....	Removed as unnecessary.
Part 308—Special Economic Development and Adjustment Assistance Grants.	Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program.	The new rule renames, streamlines, and clarifies this part.
Subpart A—Requirements for Adjustment Grants Under Title IX.	.....	Removed.
§ 308.1	§ 308.1	The new rule is more detailed in describing various components of the purpose and scope of economic adjustment programs, most of which was in EDA's annual NOFA.
§§ 308.2–308.3	§ 308.3	The new rule describes eligible applicants under the economic adjustment program.
§ 308.4	§ 308.4	The new rule is revised to describe eligibility criteria for areas wishing to receive economic adjustment grants. The new rule is more concise and easier to read and use.
§ 308.5 and Subpart B—Specific Uses of Grants to Carry out Economic Adjustment.	§ 308.2	The new rule redesignates this section and subpart and describes how funds under this program can be used.
.....	§ 305.5	The new rule sets forth the selection process for economic adjustment grants.
§ 308.6 .....	.....	Removed as unnecessary.
.....	§ 308.6	The new rule sets forth evaluation factors used by EDA in selecting projects for economic adjustment funding. Such factors have been published in EDA's annual fiscal year NOFAs.
Subpart C—Reports .....	.....	Removed as unnecessary.
.....	§ 308.7	The new rule sets forth award requirements for adjustment assistance grants, including matching share and reporting requirements.
Part 309—General Requirements	Part 316—General Requirements .	Redesignated.
§ 309.0 .....	.....	Removed as unnecessary.
§ 309.1	§ 316.2	The new rule redesignates this section. The new rule updates procedures for certification from EPA as to waste treatment, since many states have been delegated authority by EPA to make such certifications. EDA can in those instances rely on such state certifications.
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§ 309.2	§ 316.3	The new rule redesignates this section and renames it as "Excess Capacity". It streamlines and clarifies to describe a more efficient method for making Section 702 findings under the Act and includes additional categories of exemptions from doing reports and studies based upon the nature of the goods and services to be produced, the nature of the EDA assistance, and market conditions.
.....
§ 309.3	§ 316.4	The new rule redesignates this section. It greatly simplifies EDA's nonrelocation requirement and applies only to firms relocating before the EDA grant award.
§ 309.4	§ 316.5	The new rule redesignates this section. Exemptions have been added concerning electric and gas energy.
§§ 309.5–309.14 .....	.....	Removed as unnecessarily repetitive.
§§ 309.15, 309.18 and 315.3(c)	§ 316.1	The new rule redesignates this section and lists major environmental requirements noting that the list will be supplemented and modified as applicable in EDA's annual fiscal year NOFAs.
.....	.....	Removed as unnecessary.
§§ 309.16–309.17 .....	.....	.....
§ 309.19	§ 316.9	The new rule redesignates this section. It does not make any substantive changes.
.....
§§ 309.20	Part 317—Civil Rights	The new rule redesignates and streamlines this section, clarifying EDA's civil rights requirements.
.....	.....	Removed since no longer in effect.
§§ 309.21–309.24 .....	.....	The new rule redesignates this section. Refers to EDA, not Assistant Secretary.
§ 309.25	§ 316.6	Removed as unnecessarily repetitive.
.....	.....	Removed as unnecessarily repetitive.
§§ 309.26–309.29 .....	.....	.....
Part 310—Relocation Assistance and Land Acquisition Policies.	.....	.....
Part 311—Civil Rights Requirements on EDA Assisted Projects and 315.5(b).	Part 317—Civil Rights	The new rule redesignates this part, streamlining and clarifying EDA's civil rights requirements.
Part 312—Supplemental and Basic Assistance Under Section 304 of the Act.	Part 312—Supplemental and Basic Assistance Under Section 304 of the Act.	The new rule streamlines and clarifies this part.
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§§ 312.1–312.2	Removed as unnecessary and outdated.
§ 312.3	§§ 312.1 and 312.4	The new rule states the purpose and scope of supplemental and basic assistance under Section 302 of PWEDA (§312.1) and award requirements, including local share match (§312.4).

Old section	New section	Description of change
§§ 312.4–312.5	§§ 312.2–312.3	The new rules remove references to business loan programs under Title II of the Act, since such programs have not been appropriated funds over the past several years, and they refer to EDA, not the Assistant Secretary.
§ 312.6	§ 312.5	The new rule redesignates this section. The new rule on construction management deletes references to Title II of the Act.
§ 312.7	§ 312.6	The new rule redesignates this section. The new rule on conditions for disbursements has been updated to delete references to Title II of the Act (see above) and to refer to EDA, not Assistant Secretary.
Part 313—Job Opportunities Program.	.....	Removed as no longer in effect.
Part 314—Property Management Standards.	Part 314—Property Management Standards.	The new rule streamlines and clarifies this part.
Subpart A—Real Property .....	.....	Removed.
§ 314.1	§ 314.1	The new rule begins the property management standards part by setting forth the Federal interest and applicability of this part to only grants and cooperative agreements.
§ 314.2	§ 314.2	The new rule contains definitions not found in the current rule, and removes some that are no longer applicable. For example, personal property and estimated useful life are included and defined.
§ 314.3	§ 314.3	The new rule covers real and personal property and is streamlined to read clearly in setting forth authorized use requirements.
§ 314.4	§§ 314.4 and 314.5	The new rule on unauthorized use of real and personal property has been streamlined and simplified and includes reference to EDA, not the Assistant Secretary (§ 314.4); and the rule on valuation has been expanded to a separate section on the Federal share which covers leasehold situations, transfer of property and the end of EDA's interests in the ownership, use or disposition of the property.
§ 314.5	§ 314.6	The new rule redesignates this section and renames it as “Encumbrances”. The new rule has been clarified and streamlined in describing situations involving encumbrances, including waivers.
§ 314.6	§ 314.7	The new rule sets forth title requirements.
	§§ 314.8 and 314.9	The new rule is divided into separate subparts for real and personal property. § 314.8 sets forth requirements for recording statements for projects involving acquisition construction or improvement of a building; and § 314.9 does the same for the acquisition or improvement of significant items of tangible items of personal property.
	§ 314.10	The new rule sets forth specific requirements for revolving loan funds (RLFs).
Subpart B—(Reserved) .....	.....	Removed as unnecessary.
Subpart C—Excess Property § 314.50.	.....	Removed as no longer in effect.
Part 315—Certification and Adjustment Assistance for Firms and Communities.	Part 315—Certification and Adjustment Assistance for Firms and Communities.	The new rule streamlines and clarifies this part and subpart.
Subpart A—General Provisions	Subpart A—General Provisions.	
§ 315.1	§ 315.1	The new rule describes the updated purpose and scope of EDA's role in the certification and adjustment assistance for firms under Chapter 3 of Title II of the Trade Act of 1974, as amended.
§§ 315.2, 315.29, 315.53	§ 315.2	The new rule's definitions section for Trade Act certifications and adjustment assistance cooperative agreements, has been expanded to include significant words or phrases in this part.
§ 315.3(a) .....	.....	Removed as not applicable.
Subpart B—Certification of Eligibility of Firms to Apply for Adjustment Assistance.	Subpart B—Trade Adjustment Assistance Centers.	Renamed.
§§ 315.20–315.23(a)(b) .....	.....	Removed as no longer in effect.
§ 315.23(c)	§ 315.3	The new rule streamlines and clarifies requirements concerning submission of information which a firm seeks to designate as confidential business information.
	§ 315.4	The new rule describes eligible applicants under EDA's Trade Act Program.
	§ 315.5	The new rule describes EDA's selection process, much of which was published in EDA's annual FY NOFA.
§§ 315.23 (d)–(f)–315.24, 315.30	§ 315.10	The new rule sets forth requirements for processing petitions for certification, including acceptance, withdrawal and investigations.
§§ 315.25–315.27, 315.31	§ 315.11	The new rule sets forth requirements for appeals and final determinations.
§ 315.28	§ 315.9	The new rule redesignates and renames this section as “Certification Requirements”. It has been streamlined and made easier to read and understand.

Old section	New section	Description of change
Subpart C—Adjustment Assistance for Firms.	Subpart C—Certification of Firms .	Renamed.
§§ 315.51–315.52	§ 315.6	The new rule describes evaluation criteria for TAACs, firms and organizations representing trade-injured industries.
§ 315.54(d)	§ 315.7	The new rule sets forth award requirements which include duration of awards and matching share requirements.
§§ 315.54 (b)(1) and (c)	§ 315.8	The new rule describes the purpose and scope of TAACs.
§ 315.32	§ 315.12	The new rule redesignates and renames this section as "Termination of Certification and Procedure." It is streamlined and refers to EDA, not Deputy Assistant Secretary for Planning.
§ 315.54 (a), (b)(2) .....	.....	Removed as no longer in effect.
§§ 315.55–315.66 .....	.....	Removed as no longer in effect.
Subpart D—Study of Firms in an Industry Which is the Subject of an Investigation of Injury or Threat of Injury by the International Trade Commission.	Subpart D—Assistance to Industries.	Renamed.
§ 315.80 .....	.....	Removed as no longer in effect.
§ 315.81	§ 315.13	The new rule describes loss of certification benefits.
.....	§ 315.14	The new rule redesignates and renames this section as "Assistance to Firms in Import-impacted Industries." It has been updated to refer to section 202(B) of the Trade Act and to clearly describe industry assistance limitations.
Subpart E—Certification of Eligibility of Communities to Apply for Adjustment Assistance and Subpart F—Adjustment Assistance for Communities.	.....	Removed as no longer in effect.
Part 316—Local Public Works Capital Development and Investment Program.	.....	Removed as no longer in effect.
.....	§ 316.7	The new rule sets forth loan and loan guarantee servicing procedures.
.....	§ 316.10	The new rule sets forth additional requirements, policies and procedures applicable to EDA programs.
Part 317—Round II of the Local Public Works Capital Development and Investment Program.	.....	Removed as no longer in effect.
Part 318—Community Emergency Drought Relief Program §§ 318.1–318.23 and 318.25.	.....	Removed as no longer in effect.
§ 318.24 .....	.....	Removed and merged with new § 316.7.

Savings Clause

The rights, duties, and obligations of all parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect.

Executive Order 12866

This interim-final rule has been determined to be significant for purposes of E.O. 12866.

Notice and Comment

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from

those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above.

Comments received by November 27, 1995 will be considered in promulgating a final rule.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule contains new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501

et seq.) pending approval of the Office of Management and Budget.

E.O. 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects

13 CFR Part 300

Reporting and recordkeeping requirements.

13 CFR Part 301

Community development.

13 CFR Part 302

Community development; Grant programs-community development; Loan programs-business; Loan programs-community development; Technical assistance.

13 CFR Part 303

Community development; Reporting and recordkeeping requirements.

13 CFR Part 304

Selection and evaluation.

13 CFR Part 305

Community development; Community facilities; Grant programs—community development; American Indians.

13 CFR Part 307

Business and industry; Community development; Grant programs—business; Grant programs—community development; American Indians; Research; Technical assistance.

13 CFR Part 308

Business and industry; Community development; Community facilities; Grant programs—business; Grant programs—community development; American Indians; Manpower training programs; Mortgages; Relocation assistance; Rent subsidies; Reporting and recordkeeping requirements; Research; Technical assistance; Unemployment compensation.

13 CFR Part 312

Community development; Grant programs—community development.

13 CFR Part 314

Community development; Grant programs—community development.

13 CFR Part 315

Administrative practice and procedure; Community development; Grant programs—business; Technical assistance; Trade adjustment assistance.

13 CFR Part 316

Community development; grant programs—community development; Freedom of information; Uniform Relocation Act.

13 CFR Part 317

Civil rights; sex discrimination.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

Part

- 300 General Information
- 301 Designation of Areas
- 302 Economic Development Districts
- 303 Overall Economic Development Program
- 304 General Selection Process and Evaluation Criteria

- 305 Public Works and Development Facilities Program
- 306 [Reserved]
- 307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning
- 308 Requirements for Grants Under the Title IX Economic Adjustment Program
- 309 [Reserved]
- 310 [Reserved]
- 311 [Reserved]
- 312 Supplemental and Basic Under Section 304 of the Act
- 313 [Reserved]
- 314 Property Management Standards
- 315 Certification and Adjustment Assistance for Firms
- 316 General Requirements for Financial Assistance
- 317 Civil Rights
- 318 [Reserved]

PART 300—GENERAL INFORMATION

Sec.

- 300.1 Purpose.
- 300.2 Definitions.
- 300.3 OMB control numbers.
- 300.4 Economic Development Administration—Washington, D.C., Regional Offices and Economic Development Representatives.
Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 300.1 Purpose.

The purpose of the Public Works and Economic Development Act of 1965, as amended, (PWEDA) as administered by the Economic Development Administration (EDA), is to provide assistance in economically distressed areas, regions and communities in order to alleviate conditions of substantial and persistent unemployment and underemployment and to establish stable and diversified economies subject to PWEDA. Unless otherwise stated in this Chapter, all parts describe requirements which are based upon and subject to PWEDA.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this chapter, the terms listed below are defined as follows:

Act and PWEDA are used interchangeably to mean the Public Works and Economic Development Act of 1965, as amended. (Pub. L. 89-136, 42 U.S.C. 121 et seq.)

Alaskan Native Village means:

- (1) A town or village site occupied and used by natives of Alaska-American Indians, Eskimos, and Aleuts under the Native Townsite Act of 1926;
- (2) Native villages under the Alaska Native Claims Settlement Act and any contiguous corporate boundary

adjustments under the state laws of Alaska; and

(3) Such additional lands as are authorized to be included under the Pub. L. 92-203, sec 2, Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. 1601.

Community Development Corporation means an entity as defined in the Community Economic Development Act of 1981, 42 U.S.C. 9802; i.e., Community Development Corporations receiving financial assistance under authority of the Community Assistance Block Grant Act, as amended, 42 U.S.C. 9815.

Cooperative agreement, grant, financial assistance award, financial assistance grant, offer of grant and grant award all refer to the non-procurement award of EDA funds to an eligible entity under PWEDA or the Trade Act, as applicable.

District, Economic Development District or EDD means a geographic area consisting of one or more redevelopment areas as defined under PWEDA and designated in accordance with part 302 of this chapter.

EDA means the Economic Development Administration when a place or agency is intended; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended.

Growth Center means either an Economic Development Center (EDC), which is a geographic area located outside an EDA designated area, containing a population of 250,000 or less and identified in an OEDP as having growth potential and the ability to alleviate distress within the EDD; or a Redevelopment Center, which is a geographic area located within a designated redevelopment area identified in an OEDP as having growth potential and the ability to alleviate distress within the EDD.

American Indian Tribe means the governing body of a tribe, non-profit American Indian corporation (restricted to American Indians); American Indian authority or other tribal organization or entity or Alaskan Native Village.

Local share, matching share or local share match are used interchangeably to mean non-Federal funds or goods and services from recipients or third parties, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

OEDP means an Overall Economic Development Program, (or plan of action) pertaining to an area or district.

Project means the activity or activities whose purpose fulfills EDA program requirements and which is funded in whole or in part by EDA.

Proposed District means a geographic entity composed of one or more

designated redevelopment areas represented by an entity seeking designation as an EDD.

Public Works and Development Facility means a project funded under Title I of the Act.

Recipient, grantee, and awardee are used interchangeably to mean an entity accepting funds from EDA under PWEDA or the Trade Act, as applicable and includes any EDA approved successor to such recipient. Similarly, *subawardee, subgrantee and subrecipient* are also used interchangeably.

The *Trade Act* means Chapter 3, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.).

§ 300.3 OMB control numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
Part 305	0610-0011 0610-0092
Part 308	0610-0058 0610-0092
Part 315	0610-0091
Sec. 316.4	0610-0082
Sec. 312.5	0610-0011

§ 300.4 Economic Development Administration—Washington, D.C., Regional Offices and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., its Regional and Field Offices and Economic Development Representatives, refer to EDA's annual FY NOFA.

PART 301—DESIGNATION OF AREAS

Subpart A—Standards for Designation of Redevelopment Areas Under and Subject to Section 401(a) of the Act

- Sec.
- 301.1 Designation on the basis of unemployment.
- 301.2 Designation on the basis of loss of population.
- 301.3 Designation on the basis of median family income.

- 301.4 Designation on the basis of American Indian lands.
- 301.5 Designation on the basis of sudden rise in unemployment.
- 301.6 Designation of public works impact program areas.
- 301.7 Designation of special impact areas.
- 301.8 Recognition of redevelopment areas designated under the Community Economic Redevelopment Act of 1981, as amended.
- 301.9 Designation on the basis of per capita employment.
- 301.10 Designation on the basis of substantial unemployment and the national average rate of unemployment.
- 301.11 Designation on the basis of long-term economic deterioration.
- 301.12 Exception to criteria for qualification.

Subpart B—Limitations on Designation of Areas

- 301.13 Limitations with respect to the size and boundaries of redevelopment areas.
- 301.14 Receipt of an acceptable OEDP.

Subpart C—Modification of Designated Areas

- 301.15 Adjustment of boundaries.

Subpart D—Notice

- 301.16 Notification of public officials.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—Standards for Designation of Redevelopment Areas Under and Subject to Section 401(a) of the Act

§ 301.1 Designation on the basis of unemployment.

On the basis of labor force data on unemployment supplied by the Secretary of Labor, EDA shall designate such redevelopment areas in accordance with section 401(a) of the Act.

§ 301.2 Designation on the basis of loss of population.

Such designation shall be made in accordance with section 401(a) of the Act, 42 U.S.C. 3161.

§ 301.3 Designation on the basis of median family income.

Such designation shall be made in accordance with section 401(a) of the Act.

§ 301.4 Designation on the basis of American Indian lands.

(a) EDA shall designate as Redevelopment Areas those American Indian reservations, American Indian trust land areas, and restricted American Indian-owned land areas, including Alaskan Native Villages, which manifest the greatest degree of economic distress.

(1) American Indian reservations shall consist of land areas which by official

Federal or State action or recognition have been reserved for the use and benefit of a specific American Indian tribe or tribes, and shall include those lands to which the Federal or State Government retains title and may include tribally-owned lands, lands allotted to individual tribal members, and interspersed land belonging to non-American Indians.

(2) American Indian trust land areas shall consist of land areas held in trust by or under the authority of Federal or State Government for use and occupancy by American Indians.

(3) Restricted American Indian-owned land areas shall consist of land areas owned by American Indian tribes, but subject to restrictions on alienation or use imposed by Federal or State Governments.

(b) EDA shall make such designations of Redevelopment Areas upon consultation with the Secretary of Interior or an appropriate State agency and on the basis of unemployment and income statistics and other appropriate evidence of economic underdevelopment.

(c) EDA, upon consultation with the Secretary of Interior or an appropriate State agency, may designate uninhabited Federal or State American Indian reservations or trust or restricted American Indian-owned land areas where such designation would permit assistance to American Indian tribes, with a direct beneficial effect on the economic well-being of American Indians.

(d) When the determination of economic distress pertains to land areas that are not contiguous, it must be shown that there is a clear economic connection between the noncontiguous land areas that will contribute to a more effective economic development program for the area.

§ 301.5 Designation on the basis of sudden rise in unemployment.

Such designation can be made under the Act when the following conditions are met:

(a) Where the loss, removal, curtailment, or closing of the major source of employment has occurred provided that:

(1) The major source of employment shall be construed as a single firm or industry; or

(2) Job losses in more than a single firm or in more than in a single industry may be considered in the aggregate where:

(i) There is a clear demonstrable economic connection between or among the firms or industries; or

(ii) More than one firm or industry has been affected by a common disaster.

(3) A major source of employment is when its loss, removal, curtailment, or closing has caused or can reasonably be expected to cause:

(i) An increase of 500 or more of unemployed persons in the area; or
 (ii) An increase of 2 percentage points or more in the area's unemployment rate, based on the relationship of actual or expected additional unemployed to the number of persons in the area's labor force.

(b) Where there is an actual or threatened closing of a major source of employment within 3 years after the date of the area's request provided that:

(1) The rise in unemployment must be shown to be unusual or unique for the area, the industry, and the time of year; and

(2) Such rise must have occurred or be reasonably expected to occur during a 1-year period within the qualifying span of 3 years before to 3 years after the date of the request for designation.

(c) The area's unemployment rate can reasonably be expected to exceed the national average by 50 percent or more, except for those job-loss situations in which it is public knowledge that the jobs lost were or will be of a type in such great demand that the persons laid off were or will be readily reemployable.
 (d) Areas designated under this section are allowed a reasonable time after designation to submit an acceptable OEDP to EDA. An area designated under this section which does not have an approved OEDP is not eligible for financial assistance under Title I of the Act.

§ 301.6 Designation of public works impact program areas.

(a) EDA shall designate communities or neighborhoods defined without regard to political or other subdivisions or boundaries as a public works impact program (PWIP) area, when it determines one of the following conditions have been met by the defined area in its entirety.

(1) A large concentration of low income persons. This includes:

(i) An area selected for assistance under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815), Title VI, Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); or

(ii) An area in which the majority of the families are living in poverty, as defined by the U.S. Department of Health and Human Services guidelines, as published each year in the Federal Register.

(2) Rural areas having substantial outmigration. This includes an area which has experienced a minimum outmigration rate of at least 25 percent during the period from the beginning to the end of the most recent 10-year census period for which data is available.

(3) Substantial unemployment as established by an annual average unemployment rate of 8.5 percent or more during the most recent quarter for which such data is available.

(4) An actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. The area must meet the qualifications as set forth in paragraphs (a)-(d) of § 301.5. Although no boundary constraints, as set forth in § 301.13, shall apply, the area for which designation is sought must be one for which EDA can obtain data establishing its eligibility for designation.

(b) No PWIP area designated under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

§ 301.7 Designation of special impact areas.

EDA shall designate special impact areas where:

(a) One of the following criteria have been met:

(1) There are large concentration of low-income persons. This includes:

(i) An area presently selected for assistance by the Department of Health and Human Services under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815), (Title VI, Chapter 8, Subchapter A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); or

(ii) An area in which a majority of the families are living in poverty as defined by the Department of Health and Human Services guidelines as published each year in the Federal Register.

(2) Rural Areas having substantial outmigration. This includes any area which has experienced a minimum outmigration rate of at least 25 percent during the most recent 10-year period as established by the Bureau of the Census.

(3) An area of substantial unemployment, meaning one which:

(i) Experienced an average unemployment rate at least 50 percent higher than the U.S. average unemployment rate for the most recent 12-month period for which data are available; or

(ii) Is currently experiencing an unemployment rate at least 100 percent higher than the U.S. average unemployment rate.

(4) An area which has or is threatened with an abrupt rise in unemployment

due to the closing or curtailment of a major source of employment, and which has or can reasonably be expected to have an unemployment rate 100 percent or more above the national average.

(b) Written requests have been submitted by State or local governments, agencies or instrumentalities thereof, or with the concurrence of the appropriate governmental authority of the political subdivision of which the area is a part, by any public or private non-profit organization or association representing the area for which designation is sought. Requests should contain the following material:

(1) A description of the proposed boundary and facility characteristics of the proposed special impact area including a map showing the relation to the larger area to which it is a part. Such description should show consistency with area wide zoning ordinances and appropriate land use plans;

(2) A description of the socioeconomic characteristics of the proposed special impact area;

(3) An OEDP; and

(4) Written evidence of support from members of the community at large.

(c) No special impact area designated under this section shall be eligible to be considered a redevelopment area for the purposes of district designation.

§ 301.8 Recognition of redevelopment areas designated under the Community Economic Redevelopment Act of 1981, as amended.

Areas selected for assistance under the Community Economic Development Act of 1981, as amended (42 U.S.C. 9815) will be deemed redevelopment areas within the meaning of section 401 of the Act.

§ 301.9 Designation on the basis of per capita employment.

EDA shall designate as redevelopment areas those areas which have suffered a significant decline in per capita employment of more than 1.2 percentage points from the beginning to the end of the most recent 10-year census period for which data is available and has had net outmigration during the same period, as determined by the most currently available census data.

§ 301.10 Designation on the basis of substantial unemployment and the national average rate of unemployment.

(a) EDA shall designate as a redevelopment area any area for which the Secretary of Labor has provided labor force data showing that:

(1) The area has experienced a substantial average unemployment rate over a 24-month period; and

(2) The area has experienced an average 24-month unemployment rate for the most recent 24-month period for which data are available which was above the national 24-month average unemployment rate for the same period.

(b) The Secretary of Labor shall provide the unemployment data for use by EDA in designating redevelopment areas pursuant to the criteria of section 401(a)(8) of the Act, as implemented by paragraphs (a)(1) and (a)(2) of this section.

(c) For the purpose of this section, *substantial unemployment* is defined as an unemployment rate of 6 percent or more.

(d) EDA may determine for the purpose of this section that 24 month unemployment data is not available so that data for the most recent 12-month or 4-month period may be used instead.

§ 301.11 Designation on the basis of long-term economic deterioration.

Such designation shall be made in accordance with section 401(a) of the Act.

§ 301.12 Exception to criteria for qualification.

(a) EDA shall designate in a State which has no redevelopment area that area which most nearly qualifies under this subpart.

(b) Designation made under paragraph (a) of this section shall be terminated in accordance with section 402 of the Act if any other area within the same State subsequently becomes qualified or designated under any other section of this subpart.

(1) Designation under paragraph (a) of this section will not be terminated under paragraph (b) of this section if the area becoming qualified or designated becomes qualified under § 301.6 or § 301.7.

(2) Termination under this subsection will become effective at the time of the annual review.

Subpart B—Limitations on Designation of Areas

§ 301.13 Limitations with respect to the size and boundaries of redevelopment areas.

(a) The size and boundaries of redevelopment areas will be determined by EDA subject to requirements under the Act for at least 1500 in population, unless designated under § 301.4 or §§ 301.6, 301.7, 301.8, and other requirements in section 401(b) of the Act.

(b) Except for areas designated under §§ 301.4, 301.5, 301.6, 301.7 and 301.8, no area may be designated which is smaller than a labor area (as defined by the Secretary of Labor), a county, or a municipality with a population of over 25,000 persons whichever EDA deems appropriate.

(c) All parts of the area seeking designation under § 301.5 must be contiguous.

(d) Delineation of the area designated under § 301.5 must be based on a reasonable grouping of census tracts or similar geographical units, or the area must be defined by specific boundaries incorporating commercial or industrial sites and enterprises which can offer employment opportunities for the work force of the area.

(e) Nothing in this section shall prevent any municipality designated or eligible to be designated as a redevelopment area from combining with any other community having mutual economic interests and transportation and marketing patterns for the purpose of such designation.

(f) Areas qualified in accordance with § 301.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as the Assistant Secretary may grant for good cause.

(g) Any area, other than those areas eligible for designation pursuant to §§ 301.5 and 301.6, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for good cause.

§ 301.14 Receipt of an acceptable OEDP.

(a) No area shall be designated until it has an approved OEDP, as described in section 403 of the Act, except those areas eligible for designation under §§ 301.5 and 301.6.

(b) Areas qualified in accordance with § 301.5 may be designated subject to the receipt of an acceptable OEDP within 6 months following such conditional designation, or within such additional period as EDA may grant for good cause.

(c) Any area, other than those areas eligible for designation pursuant to §§ 301.5 and 301.6, which does not submit an acceptable OEDP within 6 months after notification of its qualification for designation, shall not thereafter be designated prior to the next annual review of eligibility; however, such period may be extended for up to 6 months if EDA determines there is good cause.

Subpart C—Modification of Designated Areas

§ 301.15 Adjustment of boundaries.

(a) EDA may make minor modifications in the boundaries of redevelopment areas designated under Subpart A of this part if:

(1) Such modification will contribute to a more effective program for economic development within such area; and

(2) There is a request in writing which:

(i) Outlines the exact extent of the boundary adjustment;

(ii) States how the absence of the boundary adjustment would impede the implementation of the approved OEDP;

(iii) States why a specifically proposed project cannot be located within the existing boundaries of the designated redevelopment area; or

(iv) States other reasons why a boundary adjustment is needed.

(3) The interested State official or agency is informed and given opportunity to submit comments on and endorse or not endorse the request.

(b) Additional areas will be included within the redevelopment area only if such inclusion is necessary to meet program requirements for a project.

Subpart D—Notice

§ 301.16 Notification of public officials.

(a) EDA shall notify local, State, and national officials when an area:

(1) Qualifies for designation under criteria set forth in subpart A of this part;

(2) Is designated; and/or

(3) Has its designation modified or terminated.

(b) [Reserved]

PART 302—ECONOMIC DEVELOPMENT DISTRICTS

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts

Sec.

302.1 Authorization of economic development districts.

302.2 Designation of economic development districts.

302.3 Designation of nonfunded districts.

302.4 District organizations.

302.5 District organization functions and responsibilities.

302.6 Coordination with state and local organizations.

302.7 Modification of district boundaries.

302.8 Termination and suspension of district designation.

302.9 Benefits.

Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers

- 302.10 General standards for designation of economic development centers.
- 302.11 Number of economic development centers per district.
- 302.12 Boundaries of economic development centers and boundary modifications.
- 302.13 Termination and suspension of economic development centers.
- 302.14 Redevelopment centers.

Subpart C—Financial and Other Assistance to Economic Development Centers and Districts

- 302.15 Financial assistance to economic development centers.
- 302.16 Economic development center project characteristics.
- 302.17 Grant rate for economic development center projects.
- 302.18 Financial assistance to redevelopment centers.
- 302.19 Assistance to economic development districts.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—Standards for Designation, Modification and Termination of Economic Development Districts**§ 302.1 Authorization of economic development districts.**

(a) EDA may authorize, at the request of the Governor(s) of the State or States, the delineation of proposed district boundaries as a prerequisite to designation as an economic development district and as a prerequisite to the provision of planning grants under part 307 of this chapter.

(b) Authorization of delineation may be made:

(1) Where the State or States, after analyzing economic and social relationships among the various redevelopment area counties, propose a boundary delineation for the proposed district;

(2) Where the proposed district meets the general standards for designation set forth in § 302.2;

(3) Where a consideration of the following factors has been made:

(i) The percentage of the population living in redevelopment areas;

(ii) Per capita income in the proposed district;

(iii) The percentage of families with annual income below the poverty threshold;

(iv) Unemployment rates and labor force participation rates of the proposed district;

(v) Economic characteristics of growth centers; and

(vi) The proposed district's readiness to hire a professional staff and begin work.

(4) Where the boundaries conform to an officially delineated sub-State district or where the Governor has provided EDA with an explanation of and support for any variation of the officially delineated sub-State district.

§ 302.2 Designation of economic development districts.

EDA is authorized to designate proposed districts as economic development districts (EDDs) with the concurrence of the States in which the EDDs will be wholly or partially located when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single redevelopment area;

(b) It contains at least one redevelopment area;

(c) It contains one or more redevelopment areas or economic development centers identified in an approved district overall economic development program (hereinafter OEDP) as having sufficient size and potential to foster the economic growth activities necessary to alleviate the distress of the redevelopment areas within the district;

(d) It has an OEDP which identifies one or more proposed growth centers, includes adequate land use and transportation planning, contains a specific program for district cooperation and public investment and is approved by the State or States affected and by EDA;

(e) When at least three-fourths of the counties within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(f) A district organization has been established by the proposed district which meets the requirements of § 302.4; and

(g) The proposed district organization requests such designation.

§ 302.3 Designation of nonfunded districts.

Designation is not limited to districts receiving EDA planning grants. However, the continuing designation of any nonfunded EDD is subject to the same criteria and organization requirements applicable to funded districts.

§ 302.4 District organizations.

(a) The district organization is a prerequisite to initial designation of

proposed districts and EDDs and to the provision of planning grants under part 307 of this chapter and shall be organized in one of the following manners:

(1) As non-profit organizations incorporated under the laws of the States in which they are located;

(2) As public organizations through intergovernmental agreements for the joint exercise of local government powers; or

(3) As public organizations established under State enabling legislation for the creation of multijurisdictional area wide planning organizations.

(b) Each proposed district or EDD organization must meet EDA requirements concerning its membership composition as set forth in § 302.4(c), its authorities and responsibilities for carrying out economic development functions as set forth in § 302.5, and the maintenance of adequate staff support to perform its economic development functions as set forth in § 302.4(d). Such requirements must be met by the board of directors (or other governing body of the organization) as a whole.

(c) The proposed district or EDD organization shall demonstrate that it meets all of the following requirements:

(1) It is broadly representative of the following interests:

(i) The principal economic interests of the proposed district or EDD, including business, industry, finance, transportation, utilities, the professions, labor, agriculture, Federal and State recognized American Indian tribes and education. In meeting this requirement, the representatives of the principal economic interests may be private citizens, part-time elected officials, or minority representatives also selected under paragraph (c)(1)(ii) of this section;

(ii) Minority and low-income populations whose representatives may be private citizens, elected officials, or government employees; and

(iii) Representatives of the unemployed and underemployed who may also be minority representatives selected under paragraph (c)(1)(ii) of this section.

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

(i) Where appointment of local government members is not otherwise provided for by the district organization charter or by-laws, each county and major unit of local government which joins the proposed district or EDD shall

name an elected official or an employee to represent it.

(ii) Where appropriate to their nongovernmental occupations, part-time elected officials may also represent the principal economic interests.

(3) There is at least one-fifth of its membership who are private citizens who are neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(i) The district organization shall demonstrate that persons fulfilling this requirement represent the interests of groups listed in paragraphs (c)(1)(i) or (iii) of this section. Minority and low-income representatives who meet these criteria may be counted toward the fulfillment of the private citizen requirement.

(ii) Except where these private citizens are also selected as minority/low-income representatives under paragraph (c)(1)(ii) of this section, these representatives shall be appointed by the governing bodies of the counties actively participating in the district organization or as otherwise provided in the district organizational charter and by-laws.

(d) Staff support is provided as follows:

(1) The district organization shall be assisted by a professional staff drawn from qualified persons in planning, economics, business administration, engineering and related disciplines.

(2) EDA may provide planning grants to economic development districts to employ professional staff in accordance with part 307 of this chapter.

(e) District organizations shall provide access for persons who are not members of the district organization to make their views known concerning ongoing and proposed district activities of the proposed district or EDD in accord with the following requirements:

(1) The district organization shall conduct meetings open to the public at least once a year and shall also publish the date and agenda of the meeting at least four weeks in advance to allow the public a reasonable time to prepare to participate effectively in the meetings.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the proposed district or EDD.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should

seek to relate technical data and other material to the public so that they may understand the impact of public programs, available options and alternative decisions.

§ 302.5 District organization functions and responsibilities.

(a) District organizations must arrange to carry out two classes of functions and responsibilities: Those which every EDD must carry out (paragraph (b) of this section), and those which EDDs receiving grants must carry out (paragraph (c)).

(b) Subject to the requirements of § 302.4, district organizations are responsible for seeing that the following functions are provided for on a continuing basis:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.4 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district OEDP, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the OEDP;

(ii) Identifying growth centers, i.e., economic development centers and redevelopment centers, and any later boundary modifications;

(iii) Adopting the OEDP by formal action of the EDD governing board;

(iv) Submitting the OEDP, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(v) Submitting to EDA an approvable OEDP.

(3) Preparation of proposals that EDA take actions which:

(i) Establish or change the designation status of the district or its growth centers; or

(ii) Affect economic development projects available to the EDD.

(4) Coordination and implementation of economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary and helpful to the coordination with other local, State, Federal, and private organizations, and as are necessary and helpful to the development and implementation of the OEDP;

(iii) Coordinating the development and implementation of the OEDP with other local, State, Federal and private organizations (including minority organizations); and

(iv) Carrying out the annual OEDP plan for implementation.

§ 302.6 Coordination with state and local organizations.

EDA shall cooperate with state and local organizations in accordance with § 403 of PWEDA.

§ 302.7 Modification of district boundaries.

EDA (with concurrence of the State or States affected, unless such concurrence is waived by EDA) may modify the boundaries of a district consistent with standards for authorizing new districts set forth in § 302.1, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.8 Termination and suspension of district designation.

EDA may, upon 30 days prior notice, terminate the designation status of an economic development district:

(a) When the district no longer meets the standards for designation as set forth in § 302.2(a), (b), (c), (d), (f), or (g); or § 302.2(e), except that district designation status may be continued if those counties which would maintain their commitment to support economic development activities are determined by EDA to meet the other standards of § 302.2 and the standards of § 302.1;

(b) When a district has not maintained a currently approved OEDP in accordance with part 303 of this chapter;

(c) When a district has requested termination (with the approval of the State or States affected, unless such approval is waived by EDA); or

(d) Where a funded district fails to comply with terms and conditions of an EDA planning grant agreement.

§ 302.9 Benefits.

(a) Designation of an economic development district within which the economic development center (EDC) is located is a prerequisite to EDA providing financial assistance to an EDC.

(b) Projects in redevelopment areas which are located within designated economic development districts and which actively participate in the economic development district's OEDP planning process are eligible for 10 percent bonus grants, if the project is consistent with a currently approved district OEDP.

Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers**§ 302.10 General standards for designation of economic development centers.**

EDA may designate an economic development center if such proposed center:

- (a) Has been identified and included in an approved district OEDP;
- (b) Is recommended by the State or States affected. Written concurrence from the State must be received by EDA;
- (c) Is geographically and economically so related to the economic development district that the economic development center's economic growth may be expected to contribute significantly to the alleviation of distress in the redevelopment areas of the district;
- (d) Does not have a population in excess of 250,000 according to the last preceding Federal census;
- (e) May reasonably be expected to accelerate or maintain existing rates of growth in terms of population, employment, and income;
- (f) Has the prospect of developing a diversified economy providing a wide range of health, educational, recreational, and cultural facilities; a relatively large local market; a relatively large well-trained labor force; and other similar qualities which encourage the continuing growth of economic activities; and
- (g) Is an active participant in the district economic development program.

§ 302.11 Number of economic development centers per district.

EDA will designate the single leading growth point in an EDD as the economic development center. However, additional centers may be designated where unusual conditions exist in the district, such as for example:

- (a) Where the district contains a relatively large number of redevelopment area residents who do

not have reasonable commuting access to any one economic development center; and

- (b) Where the district contains several smaller growth points rather than one leading economic development center.

§ 302.12 Boundaries of economic development centers and boundary modifications.

(a) An economic development center is administratively defined as a city or grouping of contiguous incorporated places. However, where justified, boundaries may be extended to include adjoining minor civil divisions or corridors of growth between centers.

(b) EDA may modify either the boundaries of an economic development center or the number of economic development centers in a district after giving notice and opportunity for comment to the State or States affected, if such modification will contribute to a more effective program.

§ 302.13 Termination and suspension of economic development centers.

EDA may, upon 30 days prior notice to the interested State and local agencies, terminate the designated status of an economic development center when:

- (a) The economic development center is no longer identified or recommended for designation in an approved district OEDP;
- (b) The economic development center no longer meets the standards for designation, § 302.11;
- (c) It fails to actively pursue its role as an economic development center in a manner that makes a significant impact on the performance of the economic development district within which it is located; or
- (d) The economic development center is no longer part of a designated economic development district.

The termination of the designation of an economic development district and termination of the designation of an economic development center may be done concurrently.

§ 302.14 Redevelopment centers.

EDA may recognize a redevelopment center which meets the criteria for economic development centers, but which falls in a designated redevelopment area. There is no limit on the size of the population of a redevelopment center.

Subpart C—Financial and Other Assistance to Economic Development Centers and Districts**§ 302.15 Financial assistance to economic development centers.**

EDA may provide financial assistance in accordance with the criteria contained in part 305 of this chapter for projects in economic development centers (EDCs) when:

- (a) The project will further enhance the objectives of the OEDP of the district in which the EDC is located;
- (b) The project will enhance the relationship between the EDC and the EDD, particularly the redevelopment areas; and
- (c) The project will achieve one or more of the following:
 - (1) Encourage economic growth;
 - (2) Discourage out-migration from the district; and
 - (3) Have a beneficial impact on the district's redevelopment areas.

§ 302.16 Economic development center project characteristics.

Projects in EDCs shall have one or more of the following characteristics:

- (a) High job producing capability;
- (b) Remove barriers of access to jobs for the target population;
- (c) Ability to trigger further project activity;
- (d) Ability to trigger further economic impact; or
- (e) Provision of facilities and services deemed essential to stimulate further growth, at a level above that normally required for simple maintenance of a substantial community.

§ 302.17 Grant rate for economic development center projects.

The grant rate for projects under Title I of the Act in EDCs shall not exceed 50 percent of the project costs.

§ 302.18 Financial assistance to redevelopment centers.

The eligibility of redevelopment centers for EDA financial assistance, including the 10 percent bonus as provided for in this § 302.18 is the same as for any designated redevelopment area within the district. The grant rate for the redevelopment center shall be determined by the rate applicable to the redevelopment area within which it is located.

§ 302.19 Assistance to economic development districts.

Pursuant to Title III of the Act, EDA may provide other assistance to the district including:

- (a) Technical assistance;
- (b) Planning grants under part 307 of this chapter to assist the district

organization in engaging a professional staff and carrying out its planning activities; and

(c) Research assistance.

PART 303—OVERALL ECONOMIC DEVELOPMENT PROGRAM

Sec.

303.1 Purpose and scope.

303.2 Redevelopment area—District OEDPs.

303.3 Redevelopment area OEDP committee.

303.4 Initial OEDP.

303.5 Approval process for initial OEDPs.

303.6 The continuing program.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 303.1 Purpose and scope.

(a) Approval of an OEDP is generally a prerequisite for designation of a redevelopment area or economic development district; and

(b) A redevelopment area or economic development district, where appropriate, is required to maintain a currently approved OEDP to retain its previous designation for eligibility to receive EDA funds.

§ 303.2 Redevelopment area—District OEDP's.

Those qualified areas within existing economic development districts may use the district's accepted OEDP in lieu of a separate area OEDP when the following conditions have been met:

(a) The area actively participates in and supports the district OEDP planning process.

(b) The area submits a letter or resolution to EDA signed by the area's chief elected official, governing body, or the local OEDP committee stating that the area will use the district OEDP.

§ 303.3 Redevelopment area OEDP committee.

(a) The primary purpose of this committee is to develop an ongoing development program and to prepare the Area OEDP.

(1) OEDP committees are required only in areas not located in districts. (District organization requirements are set forth at part 302 of this chapter and are recommended whenever practicable for other areas.)

(b) OEDP committees shall be representative of the community so that all viewpoints are considered in discussion and decisionmaking and all available local skills are engaged in program formulation. To the extent practicable, representation on these committees shall include those from local government, business, industry, finance, agriculture, the professions,

organized labor, utilities, education, minorities, and the unemployed or underemployed.

§ 303.4 Initial OEDP.

(a) The initial OEDP should contain the following information:

(1) Background on the area or district's economic development situation, including for example a discussion of the district or area's:

- (i) Geography;
- (ii) Population;
- (iii) Labor force, including minority and female;
- (iv) Natural and manmade resources;
- (v) Economic and social activities; and
- (vi) Environmental considerations.

(2) An examination of economic and community development, opportunities and problems, including for example, identification of current major activities of other organizations involved in economic and community development and improvement; and

(3) A realistic action plan that will:

- (i) Promote the district or area's economic progress;
- (ii) Improve community facilities and services; and
- (iii) Serve as a basis for a continuing planning and development program.

(b) In addition to requirements in paragraph (a) of this section, OEDPs for districts must contain the following:

(1) Proposed designation or recognition of at least one growth center; and

(2) Description of the role of the proposed center in implementing the district wide development program, particularly as it relates to redevelopment areas.

§ 303.5 Approval process for initial OEDPs.

(a) The completed initial OEDP must be reviewed and commented upon by appropriate:

- (1) Governmental bodies;
- (2) Interest groups; and
- (3) EDA Regional Office.

(b) If the OEDP is approved, copies must be made available to interested parties by the designated area or district.

(c) If the initial OEDP is inadequate, the EDA Regional Office will contact the chairman of the OEDP committee by letter stating deficiencies and allowing additional time for corrections to be made and reviewed by EDA.

§ 303.6 The continuing program.

(a) After designation by EDA the area or district shall implement the development program as updated and made known to EDA through annual reports or revised OEDPs.

(b) No financial assistance for a designated area or district will be awarded if it:

(1) Has not submitted a timely annual report;

(2) Has submitted a deficient annual report; or

(3) Has not corrected noted deficiencies.

(c) Revised OEDPs.

(1) A revised OEDP will be required if EDA determines that the initial OEDP of the area or district is inadequate, or outdated.

(2) The area or district may choose to revise its initial OEDP if the OEDP committee determines that a complete reassessment of the local situation or a complete reassessment of the economic development program is desirable.

(3) A revised OEDP may be submitted in lieu of the annual OEDP progress report.

(4) Before any revised OEDP for a district is approved by EDA, it shall be reviewed by appropriate:

- (i) Governmental bodies;
- (ii) Interest groups; and
- (iii) EDA Regional Office.

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 General selection process and evaluation criteria for programs under PWEDA.

304.2 Demonstration project assistance under Section 301(f) of PWEDA.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 304.1 General selection process and evaluation criteria for programs under PWEDA.

EDA has established a streamlined and uniform selection process based upon a short proposal and standardized application form with attachments as applicable to each particular program. Additional information if any, is set forth in program specific parts/sections. EDA applies uniform evaluation criteria to all programs, as well as evaluation criteria which are set forth in parts 305, 307 and 308 of this chapter.

(a) The selection process is described as follows:

(1) For projects to be funded under parts 305, 307 and 308 of this chapter proponents will submit forms to EDA during the selection process as follows:

(i) There will be a brief proposal consisting of the face sheet (SF-424) and two additional pages, including for example, budget, scope of work and capability statements.

(ii) There will be a standard application for all programs which will include an additional attachment for each program as appropriate.

(2) For projects to be funded under part 307—Subparts A, B, E and F and parts 305 and 308 of this chapter, requirements are as follows:

(i) Initial contact with EDA will generally be through contact with the appropriate Economic Development Representative (EDR) (see § 300.4 of this chapter) who will provide assistance as needed in filling out the proposal as described in paragraph (a)(1) of this section.

(ii) Generally, an EDR will evaluate proposals under § 304.1(b) before submitting them to the EDA Regional Office for review by a project review committee (of at least three EDA officials).

(iii) If the proposal is acceptable under § 304.1(b), EDA may invite the submission of an application.

(iv) An invitation to submit an application does not assure EDA funding.

(v) Applications are generally to be submitted within 30 days after receipt of an invitation letter.

(3) For projects to be funded under part 307—Subparts C and D of this chapter, requirements are as follows:

(i) Initial contact by proponents for information and assistance concerning proposals will generally be with Washington, DC, at locations noted in §§ 307.13 and 307.18 of this chapter.

(ii) Generally, proposals will be reviewed for relevance and quality by three or more technically knowledgeable EDA officials.

(iii) If the proposal is acceptable under § 304.1(b), EDA may invite proponents to submit applications.

(iv) An invitation to submit an application does not assure EDA funding.

(v) Applications are generally to be submitted within 30 days after receipts of an invitation letter.

(b) General evaluation criteria for projects to be funded under parts 305, 307 and 308 of this chapter in addition to criteria noted in such parts, are as follows: All proposals/applications will be screened for conformance to statutory and regulatory requirements, the relative severity of the economic problem of the area, the quality of the scope of work proposed to address the problem, the merits of the activity(ies) for which funding is requested, and the ability of the prospective applicant to carry out the proposed activity(ies) successfully.

§ 304.2 Demonstration project assistance under Section 301(f) of PWEDA.

In addition to the selection of projects under the general selection process as set forth in § 304.1 above, EDA may also select demonstration projects, as authorized under section 301(f) of PWEDA. Demonstration projects involve the provision of funds, through grants, loans or otherwise, to carry out the purpose of PWEDA. There are no set forms or procedure for project selection, and proposals may be submitted to EDA at any time. Demonstration projects must be within redevelopment areas.

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

Subpart A—General

Sec.

- 305.1 Purpose and scope.
- 305.2 Applicants.
- 305.3 Eligibility requirements.
- 305.4 Project requirements.
- 305.5 Selection process.
- 305.6 Evaluation criteria.
- 305.7 Award requirements.

Subpart B—Supplementary and Overrun Grants

- 305.8 Supplementary grants.
- 305.9 10 percent bonus supplemental grants.
- 305.10 Grants for construction cost increases.
- 305.11 Disbursements of funds for grants.
- 305.12 Variance in cost of grant projects.
- 305.13 Amendments and changes.
- 305.14 Final inspection.
- 305.15 Contract and subcontract clauses.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of primarily private sector jobs and alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies and by improving local living conditions and the economic development of the area. Alleviation of unemployment and underemployment among residents of the project area is a primary focus of this program.

§ 305.2 Applicants.

Eligible applicants under this program include:

(a) States, or political subdivisions thereof;

(b) American Indian tribes;

(c) The Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands; and

(d) A private or public non-profit organization or association representing any redevelopment area or part thereof, provided the EDA project is located within an eligible EDA area represented by such non-profit organization or association.

(e) When the applicant is not a State, American Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

§ 305.3 Eligibility requirements.

(a) Other than those areas designated under PWIP, applicant areas, including Special Impact Areas (SIAs) must have a current EDA approved Overall Economic Development Program (OEDP).

(b) Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization.

(c) Non-profit organizations or associations must meet the following requirements:

(1) Such non-profit organizations or associations must represent a redevelopment area or part thereof, if EDA determines that such applicant is potentially capable of furthering the objectives of the economic development program of the area in which it is located;

(2) To the extent possible, non-profit applicants are urged to seek the cooperation and support of units of local government; and

(3) When deemed appropriate by EDA, have the local government as co-applicant for EDA assistance. This ensures the financial stability and continuity of the project in the event that the non-profit entity finds itself in a position of not having the financial resources to administer, operate, and maintain the EDA assisted facility in a proper and efficient manner consistent

with the provisions of part 314 of this chapter.

§ 305.4 Project requirements.

(a) Public works projects other than PWIP projects must meet the following requirements:

(1) Be consistent with the EDA approved OEDP for the area in which it is or will be located, and have broad community support;

(2) Improve opportunities for the successful establishment or expansion of industrial or commercial facilities in the area where such project will be located;

(3) The project will not result in the increase of goods or services beyond the demand for such goods or services existing or to be created in the market area;

(4) The project fulfills a pressing need of the area or part thereof, in which it is located;

(5) There is adequate local matching share; and

(6) The project benefits the long-term unemployed and members of low-income families who are residents of the area to be served.

(b) PWIP projects must create immediate useful work for the unemployed and underemployed residents in the project area.

§ 305.5 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 305.6 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter of this chapter and to the extent practicable, evaluations are made on the basis of whether the proposed project:

(a) Assists in creating or retaining private sector jobs (primarily in the near term) and assists in the creation of additional long-term employment opportunities (provided the jobs have not been transferred from another commuting area of the United States) and will result in low costs-per-job in relation to total EDA costs, evidenced for example by:

(1) Commitments to create such jobs;
(2) Marketing; and
(3) Financial capabilities of the applicant.

(b) Is supported by significant private sector investment.

(c) Maximizes the amount of local, state or other Federal funding that is available.

(d) Is likely to be started and completed in a timely fashion.

(e) If located in an EDC with a stable economy and little distress, an employment plan is required that explains how new employment opportunities for residents of nearby highly distressed redevelopment areas will be provided.

(f) To the extent possible, factors that will be considered in the evaluation of PWIP projects include whether the proposed project:

(1) Improves the economic or community environment in areas of severe economic distress;

(2) Includes an acceptable plan for hiring the unemployed and underemployed from the project area to work on construction of the project;

(3) Assists in providing long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

(4) Primarily benefits low-income families by providing essential community services, or satisfying a pressing public need;

(5) Involves construction which can be started (normally within 120 days after affirmation of the award), and completed quickly (normally within one year) preferably without early construction start; or

(6) Has significant labor intensity (i.e., the proportion of labor costs to the total project costs).

§ 305.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. Normally, the maximum period for any financial assistance that is provided shall be not more than 5 years from the fiscal year of the award.

(b) Matching Requirements are as follows:

(1) EDA may provide direct grants not to exceed 50 percent of the estimated cost of the project;

(2) Under certain circumstances supplementary grants to augment the direct grant may be provided up to a maximum of 80 percent of the eligible project costs, though waivers may be permitted in accordance with Section 101(c) of the Act. Supplementary grant assistance to finance over 50 percent of the project costs will be approved by EDA only for projects in areas of high distress. Decisions on such supplementary grant assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate, and the relative needs of the area;

(3) Applicants are required to provide the local share from acceptable sources;

(4) The local share need not be in hand at the time of application; however, the applicant must assure EDA that such share is committed and will be available at the time the award is accepted; and

(5) The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant.

Subpart B—Supplementary and Overrun Grants

§ 305.8 Supplementary grants.

(a) In the case of projects for which EDA supplements direct grants of other Federal agencies, the total Federal funding may be up to 80 percent of the project's costs (except as allowed by paragraph (b) (1), (2) or (3) of this section).

(b) Based upon the kind of project, the severity of distressed factors and revenue above and beyond the amount needed to amortize the local share, supplemental grants in excess of 50% may be awarded by EDA in accordance with the following Table:

Projects	Maximum grant rates (percent)
(1) Projects of American Indian Tribes which are concerned with general economic development will be given special consideration, and the Assistant Secretary may reduce or waive the non-Federal share for such projects	100
(2) Projects located in redevelopment areas designated under section 401(a)(6) of the act, applied for by States or political subdivision thereof which have demonstrated they have exhausted their effective taxing and borrowing capacity	100
(3) Projects located in redevelopment areas designated under section 401(a)(6) of the Act applied for by community development corporations (as defined in 13 CFR 300.2) which have demonstrated they have exhausted their effective borrowing capacity	100
(4) Projects located in redevelopment areas designated under section 401(a)(6) of the Act as special impact areas and which were not designated under section 401(a)(6) as a result of the October 12, 1976 amendment of section 401(a)(8) of the Act, but which cannot meet the requirement of paragraph (b)(2) of this section	80

Projects	Maximum grant rates (percent)
(5) Projects located in areas designated under Title IV of the Act which have been declared disaster areas by the President of the United States under the Disaster Relief and Emergency Assistance Act (Pub. L. 100-707) as amended provided: .....	.....
(i) Such areas retain their EDA designations, and	
(ii) No more than one year has elapsed since the date of such area's disaster area designation	80
(6) Projects located in areas designated under Title IV of the Act in which the median annual family income is \$7,412 or below, or the average unemployment rate for the preceding 24 months is 12 percent or higher	80
(7) Projects located in areas designated under Title IV of the act in which the median annual family income is \$7,413 to \$8,261, or the average unemployment rate for the preceding 24 months is 10 percent to 11.9 percent	70
(8) Projects located in areas designated under Title IV of the Act in which the median annual family income is \$8,262 to \$9,110, or the average unemployment rate for the preceding 24 months is 8 percent to 9.9 percent	60
(9) Projects located in areas designated under section 401(a)(6) of the Act solely on the basis of the October 12, 1976 amendment of section 401(a)(8) of the Act by Pub. L. 94-487	50
(10) Projects in all other areas	50

(c) The applicable maximum grant eligibility rate for projects located in EDDs pursuant to section 403(j) of the Act shall be the same as the grant rates for the redevelopment areas for which such projects are determined to be a direct and substantial benefit.

(d) Notwithstanding paragraph (c) of this section, an applicant shall be eligible for the highest applicable maximum grant rate in effect between the time EDA invites the application and the time the project is approved.

(e) Where municipalities of over 25,000 population qualify for designation under Title IV of the Act and part 302 of this chapter, but are located in areas already designated thereunder, such municipalities are eligible for the maximum grant under paragraph (b) of this section as if they were designated independent of the existing redevelopment area. In determining the maximum grant rate for such municipalities, EDA will use the appropriate statistical information for the municipality involved, provided that consideration of such information will work to the municipality's advantage.

§ 305.9 Ten percent bonus supplemental grants.

(a) Subject to the limitation that the maximum Federal share for any project may not exceed 80 percent of the aggregate project cost or 100 percent for projects listed in § 305.8(b)(1)-(3), EDA may increase the amount of grant assistance for projects within redevelopment areas by an amount not to exceed 10 percent of the aggregate cost of any such project if:

(1) The redevelopment area is situated within a designated economic development district (EDD) and is actively participating in the economic development activities of the district; and

(2) The project is consistent with a currently approved district OEDP.

(b) Projects assisted in districts outside redevelopment areas pursuant to section 403(j) of the Act shall not be eligible for 10 percent bonus grants under this section.

§ 305.10 Grants for construction cost increases.

(a) For the purposes of this section, *construction cost increases* means those costs which the applicant incurs or will incur in completing the project according to the original designs and specifications beyond the project costs set forth in the grant agreement.

(b) EDA may increase the amount of any grant made under the authority of Title I of the Act when the following conditions are met:

(1) The project is being or will be constructed in accordance with the original designs and specifications or in accord with final plans and specifications which reflect the original intent and purpose;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications (or based on final plans and specifications reflecting the original intent and purpose); and

(3) The project has incurred construction cost increases after the grant was made but prior to completion of the project.

(c) Limitations on amount of grants are as follows:

(1) The amount of a grant made under paragraph (b) of this section may be equal to an amount based on the percentage increase in the costs referred to in paragraph (b)(2) of this section, as determined by EDA; and

(2) A grant for construction cost increases may not be in an amount which would cause the Federal share of the project's costs to exceed the percentage originally provided for in the grant agreement.

§ 305.11 Disbursements of funds for grants.

(a) Though disbursements of funds for grants are generally made upon application for reimbursement, advances of funds are allowable at the discretion of EDA. Disbursements will be made when the following conditions have been met:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) For the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds is on deposit;

(5) After a determination by EDA that all applicable conditions of the grant have been met; and

(6) After meeting such other requirements as EDA shall establish.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

§ 305.12 Variance in cost of grant projects.

(a) If the total eligible costs are equal to or exceed the amount stated in the financial assistance award, disbursements will be the amount identified in the financial assistance award.

(b) If the total eligible project costs are less than the amount stated in the financial assistance award, the disbursements will be determined by multiplying the total eligible project costs by the grant rate percentage.

(c) The grant rate percentage is determined by dividing the total

estimated project costs stated in the financial assistance award into the amount of EDA funding provided in the grant. For example, if the financial assistance award states that EDA will provide \$50,000 for a project estimated to cost \$100,000, the grant rate is 50% (\$50,000 divided by \$100,000). If the actual eligible project costs were \$100,000, EDA would provide \$50,000. If the actual eligible project costs were \$120,000, EDA would still provide \$50,000. If the actual eligible project costs were only \$80,000, EDA would provide \$40,000 (50% x \$80,000).

§ 305.13 Amendments and changes.

(a) Requests by grantees for amendments to a grant shall be submitted in writing to the EDA Regional Office for processing, and shall contain such information and documentation necessary to justify the request.

(b) All change orders are subject to EDA approval. Any changes made without prior approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope will not be approved by EDA.

§ 305.14 Final inspection.

A final inspection will be scheduled by the grantee, with EDA concurrence and/or participation, when the project has been completed and is functional and when all deficiencies have been corrected.

§ 305.15 Contract and subcontract clauses.

Grantees must see that grantees' and subgrantees' contracts contain all required clauses in accordance with 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Non-profit Organizations, whichever is applicable.

PART 306—[RESERVED]

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, RESEARCH AND EVALUATION AND PLANNING

Subpart A—Local Technical Assistance

- Sec.
- 307.1 Purpose and scope.
 - 307.2 Applicants.
 - 307.3 Selection process.
 - 307.4 Evaluation criteria.
 - 307.5 Award requirements.

Subpart B—University Center Program

- 307.6 Purpose and scope.
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Subpart C—National Technical Assistance

- 307.11 Purpose and scope.
- 307.12 Applicants.
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- 307.14 Evaluation criteria.
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- 307.16 Purpose and scope.
- 307.17 Eligible applicants.
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Subpart E—Economic Development Districts, American Indian Tribes and Redevelopment Areas Economic Development Planning Grants

- 307.22 Purpose and scope.
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Subpart F—State and Urban Economic Development Planning Grants

- 307.29 Purpose and scope.
- 307.30 Applicants.
- 307.31 Selection process.
- 307.32 Evaluation criteria.
- 307.33 Award requirements.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Funds are awarded to eligible applicants to support the initiation and implementation of area, state, and regional development efforts designed to alleviate economic distress. This program is designed to help economically distressed areas to address local economic development problems through specific project efforts.

§ 307.2 Applicants.

Eligible applicants for Local Technical Assistance grants or cooperative agreements include:

- (a) Public or private non-profit organizations;
 - (1) National, state, area, district, or local organizations; and/or
 - (2) Accredited educational institutions or non profit entities representing them.
- (b) Public sector organizations;
 - (1) American Indian tribes;
 - (2) Local governments; and

(3) State agencies.

(c) Other applicants such as private individuals, partnerships, firms, and corporations may be considered if the general public will benefit from the project. Technical assistance grant funds may not be used to start or expand a private business.

§ 307.3 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 307.4 Evaluation criteria.

In addition to and/or as an elaboration of evaluation criteria set forth in part 304 of this chapter and to the extent practicable, evaluation criteria should include whether the project:

- (a) Strengthens the capability of state and local organizations and institutions, including non-profit development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;
 - (b) Benefits distressed areas;
 - (c) Diversifies distressed economies;
 - (d) Demonstrates innovative approaches to stimulating economic development in depressed areas;
 - (e) Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the project is located; and
 - (f) Presents a reasonable, itemized budget.

§ 307.5 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance, or for other good causes.

(c) Quarterly financial reports, semi-annual progress reports and project products will be specified in the Special Award Conditions of the grant.

Subpart B—University Center Program

§ 307.6 Purpose and scope.

Funds under the University Center Technical Assistance Program help institutions of higher education in using their own and other resources to address the economic development problems and opportunities of their service area. The University Center Technical Assistance Program is designed to help

in improving the economies of distressed areas.

§ 307.7 Applicants.

Eligible applicants for University Center Technical Assistance grants or cooperative agreements include public and private accredited educational institutions and non-profit entities representing them. In certain circumstances, other applicants proposing projects that benefit the University Center Technical Assistance Program may be considered.

§ 307.8 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) The concurrence of EDA in Washington, DC, is required for the selection of all new University Centers.

§ 307.9 Evaluation criteria.

In addition to and/or as an elaboration of evaluation criteria set forth in part 304 of this chapter and to the extent practicable, evaluation criteria include whether the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate nonfederal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Adds to the geographic distribution of University Centers across the country.

§ 307.10 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

(c) Indirect costs are limited to 20 percent of the Federal and nonfederal shares. EDA encourages applicants to absorb all indirect costs for this program.

(d) Quarterly financial reports, semi-annual progress reports and project

products will be specified in the Special Award Conditions of the grant.

Subpart C—National Technical Assistance

§ 307.11 Purpose and scope.

Funds under the National Technical Assistance Program are awarded to assure the successful initiation and implementation of development efforts designed to alleviate economic distress. This program is designed to help alleviate or prevent conditions of excessive unemployment or underemployment and problems of economically distressed areas.

§ 307.12 Applicants.

Eligible applicants for National Technical Assistance grants or cooperative agreements include:

(a) Public or private non-profit organizations, including:

(1) Non-profit national, state, area, district, or local organizations; and

(2) Accredited educational institutions or non-profit entities representing them;

(b) Public sector organizations and Native American organizations, including:

(1) American Indian tribes;

(2) Local governments; and

(3) State agencies.

(c) Other applicants such as private individuals, partnerships, firms, and corporations may be considered if the general public will benefit from the project. Technical assistance grant funds may not be used to start or expand a private business.

§ 307.13 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) EDA may, during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration. See part 300 of this chapter.

§ 307.14 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria described in part 304 of this chapter and to the extent practicable, evaluation criteria include whether the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of state and local organizations and institutions, including non-profit development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas including both rural and urban counties and communities;

(d) Diversifies distressed economies;

(e) Demonstrates innovative approaches to stimulating economic development in depressed areas; and

§ 307.15 Award requirements.

(a) Assistance will be for the period of time required to complete the scope of the work. This typically does not exceed twelve months.

(b) EDA will provide grants and cooperative agreements not to exceed 75 percent of the proposed project costs. Applicants are expected to provide the remaining share. EDA may waive all or part of the 25 percent share of technical assistance grants if it determines that the nonfederal share is not reasonably available because of the critical nature of the situation requiring technical assistance or for other good cause.

(c) Quarterly financial reports, semi-annual progress reports and project products will be specified in the Special Award Conditions of the grant.

Subpart D—Research and Evaluation

§ 307.16 Purpose and scope.

The purposes of research and evaluation of projects are as follows:

(a) To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation;

(b) To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions; and

(c) To evaluate the effectiveness of programs, projects, and techniques used to alleviate economic distress and promote economic development.

§ 307.17 Eligible applicants.

Eligible applicants for Research and Evaluation grants or cooperative agreements include:

(a) Private individuals;

(b) Partnerships;

(c) Corporations;

(d) Associations;

(e) Colleges and universities; and

(f) Other suitable organizations with expertise relevant to economic

development research. Research funds may not be used to start or expand a private business.

§ 307.18 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) EDA may use solicitations of applications as follows: EDA may identify particular projects, including program evaluations it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience. See § 300.4 of this chapter.

§ 307.19 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will use the following criteria to evaluate research and evaluation proposals:

- (a) Suitability of the subject;
- (b) Potential usefulness of the research to state and local economic development officials and specialists;
- (c) General quality and clarity of the proposal;
- (d) Soundness and completeness of the research methodology; and
- (e) Total cost and value of proposed product in relation to cost.

§ 307.20 Research topics and structure.

(a) EDA is interested in receiving proposals dealing with:

- (1) Employment and unemployment;
- (2) Income and poverty;
- (3) Rural and nonmetropolitan economic development;
- (4) Urban economic development; or
- (5) Regional and local growth and competitiveness.

(b) Requests should be for specific, well-defined, one-time research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.), or for nonresearch activities.

(c) EDA normally prefers research of broad geographic scope covering the whole country or a large multistate region, as opposed to research covering in declining order of preference:

- (1) A small multistate region;
 - (2) A state;
 - (3) A multicounty area; or
 - (4) A single city or county.
- (d) Preference will normally be given to practical cause-and-effect research (including hypothesis testing models) and descriptive analyses, as opposed to theoretical studies, forecasting models, and "how to" guides.

(e) The NOFA may announce additional areas of special research interest for that year.

§ 307.21 Award requirements.

(a) Assistance under this program will normally be for a period not exceeding 15 months.

(b) EDA will provide grants and cooperative agreements covering up to 100 percent of project costs.

Subpart E—Economic Development Districts, American Indian Tribes and Redevelopment Areas Economic Development Planning Grants

§ 307.22 Purpose and scope.

The primary objective of planning assistance for administrative expenses is to support the formulation and implementation of economic development planning programs designed to create or retain permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas. Planning activities supported by these administrative funds must be part of a permanent and continuous process involving significant leadership by public officials and private citizens.

§ 307.23 Definition.

- (a) Category A grants means those made to Economic Development Districts and Redevelopment Areas; and
- (b) Category B grants means those made to American Indian Tribes.

§ 307.24 Applicants.

Eligible applicants are economic development district organizations, redevelopment areas, organizations representing redevelopment areas (or parts of such areas), American Indian tribes, organizations representing multiple American Indian tribes, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 307.25 Selection process.

EDA invites currently funded grantees to apply if they are in compliance with their current financial assistance awards. EDA will select projects in accordance with § 304.1 of this chapter.

§ 307.26 Evaluation criteria.

(a) In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will evaluate applicants on the following:

- (1) Quality of the proposed work program;
- (2) Management and staff capacity and qualifications;
- (3) Involvement of the local leadership in the applicant's economic development activities; and
- (b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will be evaluated on the basis of the quality of their past performance.

§ 307.27 Award requirements.

- (a) Assistance will normally be for a 12-month period.
- (b) Grant assistance may be provided for up to 75 percent of project costs for Category A grants with the applicant required to provide the remaining share from non-federal sources. Category B grant assistance may be provided for up to 100 percent of project costs.
- (c) EDA will make annual determinations of satisfactory performance, and periodically conduct on-site performance appraisals.

§ 307.28 Limitations.

- (a) Except as set forth in paragraph (b) of this section, no planning grants to economic development district organizations will be extended unless at least three-fourths of the counties within the district boundaries indicate, by resolution or other appropriate document, their commitment to support the activities of the district.
- (b) Where a sufficient number of counties have withdrawn from the district to make compliance with this three-fourths requirement impossible or unreasonable, EDA may fund the continuing committed counties in the name of the original district organization if EDA determines that the remaining counties can meet the requirements for authorizing and designating economic development districts, as set forth at part 302 of this chapter.

Subpart F—State and Urban Economic Development Planning Grants

§ 307.29 Purpose and scope.

Planning assistance is to strengthen significant economic development planning capability and initiatives of eligible applicants to ensure a more productive use of available resources in reducing the effects of economic problems by formulation and implementation of an economic development program. Assistance must be part of a continuous process involving significant local leadership from public officials and private citizens and should include efforts to reduce

unemployment and increase incomes. These efforts should be systematic and coordinated when applicable, with other planning organizations in the area, and should strengthen the planning capabilities of applicants.

§ 307.30 Applicants.

Eligible applicants under this program are as follows:

- (a) Governors or agencies so designated by Governors of States;
- (b) Chief executive officers of cities or counties, or their designated agencies or organizations; and
- (c) Sub-state planning and development organizations (including redevelopment areas and economic development districts).

§ 307.31 Selection process.

Projects will be selected in accordance with § 304.1 of this chapter.

§ 307.32 Evaluation criteria.

In addition to and/or as an elaboration of the evaluation criteria set forth in part 304 of this chapter and to the extent practicable, EDA will evaluate projects on the following:

- (a) Overall quality of the proposal;
- (b) Extent to which the proposed planning activities are expected to:
 - (1) Impact upon the service area's economic development needs; and
 - (2) Address the problems of the unemployed and underemployed of the area, including minorities, workers displaced by plant closings, etc.;
- (c) The proximity of the performing office to the chief executive (i.e., likelihood that the activities will have a significant influence on the policy and decision making process);
- (d) Past performance of currently or formerly funded grantees, when applicable;
- (e) The amount of local participation provided as matching share to the Federal funds; and
- (f) Other characteristics, such as involvement of the private sector businesses and professional groups in the proposed activities, and particularly for states, the innovativeness of the proposed approach and replicability of the model process or results.

§ 307.33 Award requirements.

(a) Assistance will be for the period of time required to complete the work. This period is normally 12 to 18 months.

(b) Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share, preferably in cash.

PART 308—REQUIREMENTS FOR GRANTS UNDER THE TITLE IX ECONOMIC ADJUSTMENT PROGRAM

Sec.

- 308.1 Purpose and scope.
- 308.2 Use of economic adjustment grants.
- 308.3 Eligible applicants.
- 308.4 Eligible areas.
- 308.5 Selection process.
- 308.6 Evaluation factors.
- 308.7 Award requirements.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 308.1 Purpose and scope.

(a) The Economic Adjustment Program addresses the particular needs of areas experiencing changes in their economic situation which are causing, or threaten to cause, serious structural damage to the underlying economic base. Such changes may occur suddenly or over time, for example, as a result of industrial or corporate restructuring in response to technological advancements or changes in the marketplace, new Federal laws or requirements, reductions in defense expenditures, or depletion of natural resources or natural disasters.

(b) Economic Adjustment grants are awarded for the purpose of enabling communities in such areas to meet the challenge of economic change more effectively through the development and implementation of strategies for inducing capital investment in production of the types of goods and/or services for which the community may have or be able to develop a comparative economic advantage, and which will lead to economic recovery and saving and/or creating permanent jobs.

(c) Overall funding objectives of this program are to:

(1) Provide impacted communities with the skills and knowledge needed to organize and carry out a strategic planning process focusing on increasing the productivity and competitiveness of a community's assets, such as for example, existing industries and business acumen, natural resources, or labor force skills;

(2) Expand the capacity of public officials and development organizations to work more effectively with their business community to identify and address unmet needs of the types of firms identified in area strategies. Such needs include, for example, management assistance and information to help with modernization, financing, market research, and new product development;

(3) Assist communities to overcome critical impediments to implementing their adjustment strategy. Such impediments include, for example, a lack of available financing for the businesses or weaknesses in economic infrastructure;

(4) Enable communities to plan and coordinate:

(i) The use of Federal, and/or other resources available to support economic recovery from Federal actions adversely affecting a major industrial sector;

(ii) The economy of a discrete geographic region; or

(iii) Recovery from natural disasters.

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

§ 308.2 Use of economic adjustment grants.

(a) Grants shall be used to develop or implement economic adjustment strategies. Strategy grants provide the resources for organizing and conducting a strategic planning process. Implementation grants support one or more activities identified in an adjustment strategy approved by EDA. Such activities include the following, which may be undertaken singly or in combination:

(1) Infrastructure improvements, such as for example, acquisition, site preparation, construction, rehabilitation and/or equipping of eligible facilities;

(2) Provision of business financing through establishment of locally administered revolving loan funds (RLFs);

(3) Planning, including strategy development, updating or refinement;

(4) Market or industry research and analysis;

(5) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or for feasibility studies;

(6) Public Services;

(7) Training; and

(8) Other activities as justified by the economic adjustment strategy which meet statutory and regulatory requirements.

(b) Adjustment grants may be disbursed by the grantee through direct expenditures or through redistribution by them to public and private entities.

(1) Redistribution in the form of grants may only be to units of government or to public or private non-profit organizations.

(2) Redistribution in the form of loans, loan guarantees or other appropriate assistance may be to public or private entities.

§ 308.3 Eligible applicants.

Eligible applicants within areas meeting the EDA eligibility criteria described below include:

- (a) A redevelopment area or economic development district established under Title IV of the Act;
- (b) An American Indian tribe;
- (c) A State;
- (d) A city or other political subdivision of a state;
- (e) A consortium of such political subdivisions;
- (f) A Community Development Corporation;
- (g) A non-profit organization determined by EDA to represent the interests of a redevelopment area(s) or economic development districts with respect to the objectives of the Economic Adjustment program; and
- (h) The Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 308.4 Eligible areas.

(a) *General.* The area(s) to be assisted by the applicant must be eligible on the basis of the criteria described below for establishing that it is experiencing either Long-Term Economic Deterioration (LTED) or a Sudden and Severe Economic Dislocation (SSED) or a Special Need.

(b) *LTED.* The area must be experiencing at least one of three economic problems:

- (1) Very high unemployment;
- (2) Low per capita income; or
- (3) Chronic distress (i.e., failure to keep pace with national economic growth trends over the last 5 years). Priority consideration will be given to those areas with two or more of these indicators. Eligibility is generally determined statistically. Further information is available from EDA's regional offices and EDRs (see § 300.4 of this chapter).

(c) *SSED.* The area must show actual or threatened permanent job losses that exceed the following threshold criteria:

- (1) For areas not in Metropolitan Statistical Areas:
 - (i) If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of 2 percent of the employed population, or 500 direct jobs; and
 - (ii) If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of 4 percent of the employed population, or 1,000 direct jobs.

(2) For areas within Metropolitan Statistical Areas:

(i) If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of 0.5 percent of the employed population, or 4,000 direct jobs; and

(ii) If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of 1 percent of the employed population or 8,000 direct jobs.

(3) In addition, 50 percent of the job loss threshold must result from the action of a single employer, or 80 percent of the job loss threshold must occur in a single standard industry classification (i.e., two digit SIC code).

(4) Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within 2 years of the date EDA is contacted.

(5) In the case of a Presidentially declared disaster, the area eligibility criteria findings are waived.

(d) *Special need.* An area must be determined by EDA to require assistance for another kind of economic adjustment problem or problems.

§ 308.5 Selection process.

(a) Projects will be selected in accordance with § 304.1 of this chapter.

(b) Applicants for funding of a Revolving Loan Fund (RLF) are generally required to submit a RLF Plan in addition to the adjustment strategy for the area. Guidelines on RLFs are available from the Regional Offices. (See part 300 of this chapter).

§ 308.6 Evaluation factors.

(a) *General.* EDA will use the evaluation criteria set forth in part 304 of this chapter. To the extent practicable, EDA will use the evaluation factors set out in this section in the selection process:

(b) *Strategy grants.* EDA will review strategy grant applications to determine whether:

(1) The applicant organization has the necessary authority, mandate and capacity to lead and manage the planning process and implementation of the resulting strategy;

(2) The planning process provides for the representation of public and private sector entities with a contribution to make to the development of the strategy and/or on which accomplishment of the strategic objectives will depend. These entities include public program and service providers, trade and business associations, educational and research institutions, and community development corporations, etc.; and

(3) The proposed scope of work focuses on the specific economic problems to be addressed and provides for undertaking the appropriate research and analysis needed to formulate a realistic, market-based, adjustment strategy.

(c) *Implementation grants.* EDA will review implementation grant applications to determine whether:

(1) Strategies have been completed; provided however, that EDA may in some instances, consider funding a project prior to completion of the strategy/plan, if:

- (i) An appropriate community planning process is underway;
- (ii) Sufficient analysis has been done to show that the proposed project is economically viable and potentially consistent with the evolving strategy; and
- (iii) The proposed project has the support of the community.

(2) Activities or projects proposed for funding are generally identifiable as integral and priority elements within an adjustment strategy for the eligible area(s) prepared or updated within the preceding 2 years;

(3) The strategy addresses the following:

- (i) An appropriately designed and conducted planning process;
- (ii) An understanding of the economic problems being addressed;
- (iii) An analysis of the industry sectors and the firms within them that comprise the area's economic base, and of the particular strengths and weaknesses of the area that contribute to, or detract from, its current and potential economic competitiveness;
- (iv) Strategic objectives that flow from the economic analysis and conclusions and focus on stimulating investment in new and/or expanding economic activities that offer the best prospects for revitalization and growth;

(v) Appropriate and necessary resources in the area and elsewhere which have been identified and are/will be coordinated to support implementation of the strategy; and

(vi) The performance measures which the applicant will use to assess progress toward accomplishing its strategic objectives.

(4) All individual activities or projects proposed for funding are consistent with one or more of the Economic Adjustment Program objectives stated in § 308.1.

(d) *Revolving Loan Fund grants.* For implementation grants proposing to capitalize or recapitalize a Revolving Loan Fund (RLF), EDA will also review how the application discusses:

- (1) The need for a new or expanded public financing tool to complement

other business assistance programs and services available to firms and/or would-be entrepreneurs in industry sectors and/or locations targeted by the adjustment strategy;

(2) The types of financing activities anticipated; and

(3) The prospective capacity of the RLF's organization to work effectively with the business community and other financing providers, to function as an integral part of the overall economic adjustment effort and to manage the lending function.

§ 308.7 Award requirements.

(a) Projects are expected to be completed in a timely manner consistent with the nature of the project. However, the maximum period for which assistance will be available shall not be more than 5 years from the fiscal year of award.

(b) Title IX funds are awarded through grants generally not to exceed 75 percent of the project cost. EDA may waive all or part of the 25 percent nonfederal share of economic adjustment assistance grants, because of the critical nature of the situation requiring economic adjustment assistance, or for other good cause. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for grants to establish or recapitalize a RLF must be in cash, and while the local share for grants for other activities may be cash or in-kind, priority consideration will be given to proposals with a cash local share.

(c) Direct recipients of grant assistance shall submit a report to EDA each year that the assistance continues in accordance with the Act. The report shall include:

(1) Whether planned activities are completed or their anticipated completion time;

(2) The degree to which activities have achieved their planned goals as described in the plan; and

(d) RLF grantees must submit semi-annual reports until graduated to annual report status.

PART 309—[RESERVED]

PART 310—[RESERVED]

PART 311—[RESERVED]

PART 312—SUPPLEMENTAL AND BASIC ASSISTANCE UNDER SECTION 304 OF THE ACT

Sec.

312.1 Purpose and scope.

312.2 Selection and qualification of projects for supplementary assistance.

312.3 Selection and qualification of projects for basic grant assistance.

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312.5 Construction management and disbursement.

312.6 Conditions for disbursement of funds.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 312.1 Purpose and scope.

The purpose of this part is to set forth requirements governing the extension of assistance under section 304 of the Act (42 U.S.C. 3153). Funds obligated to a State shall be available for supplementing or making grants authorized under Titles I, III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act for projects within such States. The Assistant Secretary has notified the State of amounts available under section 304, if any, for basic and supplemental assistance under this part.

§ 312.2 Selection and qualification of projects for supplementary assistance.

The selection of projects to be assisted by the use of funds in supplementing grants made by EDA under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act shall be made by the States and communicated to EDA on forms prescribed by EDA. Eligibility of a project for assistance shall be determined by EDA incident to the evaluation of the application for the underlying basic grant assistance for such project.

§ 312.3 Selection and qualification of projects for basic grant assistance.

(a) In those cases where the States propose to use funds for basic grant assistance for projects meeting requirements for assistance under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act, and for which funds have been determined to be unavailable by EDA under Titles I, III, IV, and IX, the States shall communicate the proposed use of the funds to EDA on forms prescribed by EDA. A proposal shall contain or be accompanied by the documentation or certification evidencing compliance with the requirements, conditions, and limitations as would be applicable to such project if it were being considered for funding under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act. Eligibility and compliance of a project for assistance shall be determined by EDA in the same manner as applicable to projects receiving only

supplementary assistance under section 304 of the Act.

(b) A proposal by a State for the use of funds for a basic grant shall be accompanied by evidence that the principal governing authorities for the area in which a project is to be located have approved the project.

(c) Funds may not be used by a State as a grant to a private profitmaking entity.

§ 312.4 Award requirements.

States must make a contribution which is equal to at least 25 percent of the funds being made available to a particular project from funds appropriated under section 304 of the Act. Participation in or contributions to a project by local subdivisions of a State or private individuals or organizations shall not be deemed contributions by the State as required by this section.

§ 312.5 Construction management and disbursement.

Projects assisted through the use of funds in supplementing EDA grants under Titles I and III (other than planning grants authorized under sections 301(b) and 302), IV, and IX of the Act or in providing basic grants shall be subject to the same procedures and requirements relating to post-approval compliances, construction management, and disbursement as applicable to projects funded under Titles I, III, IV, and IX of the Act.

§ 312.6 Conditions for disbursement of funds.

(a) As a condition for the disbursement of funds, a State shall conform to the requirements of the Act and provide acceptable evidence of compliance with requirements conditions and limitations applicable to projects assisted under Titles I, III (other than planning grants authorized under section 301(b) and 302), IV, and IX of the Act. States will be promptly notified of proposals which do not meet requirements.

(b) It shall also be a condition for the disbursement of funds for any project that the State must make a showing:

(1) That such funds will be used in a manner consistent with the State planning process assisted under part 307 of this chapter if such a planning process has been established;

(2) That such State is not receiving planning assistance under part 307 but has an economic development planning process meeting the standards required for assistance under part 307 of this chapter and that the proposed use of funds is consistent with such planning process; or

(3) That the project is clearly of such nature that EDA may conclude that its implementation would not impair the benefits intended to be derived from an orderly economic development planning process.

PART 313—[RESERVED]

PART 314—PROPERTY MANAGEMENT STANDARDS

Subpart A—In General

Sec.

- 314.1 Federal interest, applicability.
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- 314.3 Use of property.
- 314.4 Unauthorized use.
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Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended (19 U.S.C. 2341-2355); Title I, Pub. L. 94-369, as amended, 90 Stat. 999 (42 U.S.C. 6701); Pub. L. 95-31; 91 Stat. 169 (42 U.S.C. 184); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) All property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the project purposes under which the property was acquired or improved.

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

(c) EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

(d) The requirements contained in this part apply solely to grant and cooperative agreement award projects.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years from the time of award,

determined by EDA as the expected lifespan of the project.

Grantee includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965, or under Title II, Chapter 3 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient, subrecipient, awardee or subawardee.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

Personal Property means all property other than real property. Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), "project" includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

§ 314.3 Use of property.

(a) The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose

of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and nonrelocation.

(d) When acquiring replacement personal property of equal or greater value, the grantee may trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

§ 314.4 Unauthorized use.

(a) Except as provided in § 314.3 (b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR part 24 and OMB Circular A-110 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

§ 314.5 Federal share.

(a) For purposes of this part 314, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

(b) Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

(c) If property is transferred from the grantee to another eligible entity, as provided in § 314.1(c), the Federal government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee,

provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

(b) Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facilities or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, "water system and all accessions or additions or improvements thereto") which extend the terms of the pre-existing encumbrance to the property which is acquired and/or improved by the EDA grant.

Subpart B—Real Property

§ 314.7 Title.

(a) The grantee must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the grantee, and that such easements, rights-of-way, state permits, or long-term leases as are required for the project have been or will be obtained by the grantee within an acceptable time. EDA may determine that, in lieu of title, a long-term leasehold interest for a period not less than the estimated useful life of the project will be acceptable, but only if fee title is not obtainable and the lease provisions adequately safeguard EDA's interest in the project.

(b) The grantee must disclose to EDA any liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the grantee's interest in the property. No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

§ 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the grantee shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including

but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, EDA will require the grantee to execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, grantees holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio in either case to generate money to be used for additional loans as part of the RLF project;

(b) When a grantee determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the Federal Government shall be compensated the Federal share of the value of the RLF property. The Federal share shall apply proportionate to the percentage of the capitalization of the RLF contributed by EDA to all RLF property including the present value of all outstanding loans; provided that the grantee may use for other economic development purposes with EDA's approval that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the grantee for administrative or other allowable expenses.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES

Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential business information.
- 315.4 Eligible applicants.
- 315.5 Selection process.
- 315.6 Evaluation criteria.
- 315.7 Award requirements.

Subpart B—Trade Adjustment Assistance Centers

- 315.8 Purpose and scope.

Subpart C—Certification of Firms

- 315.9 Certification requirements.
- 315.10 Processing petitions for certification.
- 315.11 Hearings, appeals and final determinations.
- 315.12 Termination of certification and procedure.
- 315.13 Loss of certification benefits.

Subpart D—Assistance to Industries

315.14 Assistance to firms in import-impacted industries.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (19 U.S.C. 2341-2355); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Subpart A—General Provisions**§ 315.1 Purpose and scope.**

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et. seq.) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552 b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

- (1) Irrespective of industry or market fluctuations; and
- (2) Relative only to the previous performance of the firm;

Directly competitive means:

- (1) Articles which are substantially equivalent for commercial purpose, i.e., are adapted to the same function or use and are essentially interchangeable; and
- (2) Oil or natural gas (exploration, drilling or otherwise produced);

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation),

business trust, cooperative, trustee in bankruptcy or receiver under court decree and includes agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

- (1) Predecessor;
- (2) Successor;
- (3) Affiliate; or
- (4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent;

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

- (1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year preceding such reduction; or
- (2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year preceding such reduction.

Person means individual, organization or group.

The record means:

- (1) A petition for certification of eligibility to qualify for adjustment assistance;
- (2) Any supporting information submitted by the petitioner;
- (3) Report of the EDA investigation in regard to the petition; and
- (4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. Partially separated workers shall be taken into account in proportion to their percentage of separation, and for agricultural operations that are sole proprietorships, an individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or

industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR 4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

- (1) A university affiliate;
- (2) State or local government affiliate;
- (3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

- (1) Existing agencies;
- (2) Private individuals;
- (3) Firms;
- (4) Universities;
- (5) Institutions;
- (6) Associations;
- (7) Unions; or
- (8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually submitted to EDA which is prepared with technical assistance from a party independent of the firm, usually the TAAC;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(1) Give a rehiring preference to such workers;

(2) Make efforts to find new work for a number of such workers; and

(3) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firm or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contribution, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA (See part 300 of this chapter).

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610-0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the 3 most recent years;

(5) Copies of its audited financial statements or if not available unaudited financial statements and Federal income tax returns for the 3 most recent years;

(6) Copies of unemployment insurance reports for the 3 most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any

time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the Federal Register.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered or certified mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final

determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date the publication of the Notice of Acceptance in the Federal Register if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the Federal Register, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the Federal Register, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, DC, or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the Federal Register. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to \$10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

- 316.1 Environment.
- 316.2 Certification as to waste treatment.
- 316.3 Excess capacity.
- 316.4 Nonrelocation.
- 316.5 Electric and gas facilities.
- 316.6 Procedures in disaster areas.
- 316.7 Project servicing for loans and loan guarantees.
- 316.8 Public information.
- 316.9 Relocation assistance and land acquisition policies.
- 316.10 Additional requirements; Federal policies and procedures.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (42 U.S.C. 2341-2355); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, as amended, 42 U.S.C. 4321 et seq. as implemented under 40 CFR parts 1500 et seq.;

(2) Clean Air Act, Pub. L. 88-206 as amended, 42 U.S.C. 7401 et seq.;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 et seq.;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96-510, as amended, 42 U.S.C. 9601 et seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 as amended, 42 U.S.C. 9601 et seq.;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86-523, as amended, 16 U.S.C. 469a-1 et seq.;

(9) National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 16 U.S.C. 470 et seq.;

(10) Endangered Species Act of 1973, Pub. L. 93-205, as amended, 16 U.S.C. 1531 et seq.;

(11) Coastal Zone Management Act of 1972, Pub. L. 92-583, as amended, 16 U.S.C. 1451 et seq.;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, 42 U.S.C. 4002 et seq.;

(13) Safe Drinking Water Act of 1974, Pub. L. 92-523, as amended, 42 U.S.C. 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 16 U.S.C. 1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97-98, as amended, 7 U.S.C. 4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Certification as to waste treatment.

Whenever the Environmental Protection Agency (EPA) has established a permitting and enforcement system for the regulation and monitoring of the design and operation of wastewater treatment plants which is delegated to the states for certification, EDA under PWEDA will accept such state certifications in lieu of certification by EPA.

§ 316.3 Excess capacity.

(a) All projects funded by EDA under PWEDA are subject to section 702 of PWEDA and EDA shall determine section 702 compliance based on the following:

- (1) A Section 702 study;
- (2) A Section 702 report; or
- (3) A Section 702 exemption.

(b) Definitions: For purposes of § 316.3 only:

Capacity means the maximum amount of goods or services that can be produced or supplied by existing competitive enterprises using existing facilities.

Demand means the amount of goods or services consumers in the market area are willing to buy at current prices.

Efficient Capacity means that part of capacity produced or supplied through the use of contemporary structures,

machinery and equipment, designs and technologies.

Existing Competitive Enterprise means an established facility which either produces the same product or supplies the same service to all or a substantial part of the market area.

Market Area means the geographic area within which products and/or services compete for purchase by customers.

Primary Beneficiary means one or more firms within the same industry which may reasonably be expected to use 50 percent or more of the capacity of an EDA-financed facility(ies) in order to expand the supply of goods or services sold in competition with other producers or suppliers of such goods or services.

(c) For certain types of EDA projects, a section 702 study of competitive impact will be used as a basis for a decision by EDA that such project would not violate section 702 of PWEDA. A section 702 study is required when either of the following situations exists:

(1) Where a primary beneficiary is present; or

(2) When EDA so determines.

(d) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 702 study:

(1) The primary beneficiary shall submit as part of the project selection process the following information with regard to each product or service affected by the project:

(i) A detailed description;

(ii) Current and projected amount and value of annual sales;

(iii) Distribution channel(s) and geographic marketing area; and

(iv) Name of other suppliers and amount presently available in the market area.

(2) If the primary beneficiary has conducted or commissioned a market study supporting the proposed project, such market study shall be made available to EDA early in the project selection process for verification and possible use by EDA as a basis for the 702 study or report.

(e) A section 702 report (a summary of supply/demand factors) will form an acceptable basis on which to make a section 702 compliance finding when the characteristics described in paragraph (c) (1) or (2) of this section are present and in addition, it is readily apparent that the resulting increase in output alleviates a shortage of goods or services in the market area.

(f) EDA will make a blanket finding of compliance with section 702 of PWEDA

for those projects which have one or more of the following characteristics:

(1) The project has no primary beneficiary;

(2) The beneficiary's projected new or additional annual output is less than 1 percent of the last recorded annual output in the market area;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster;

(4) The project will assure the retention of the physical capacity and/or employment;

(5) The project will replace, rebuild or modernize, within the same labor market area, facilities displaced by official governmental action;

(6) The project assures completion of a project previously assisted by EDA where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(7) When the purpose of research or evaluation grants or cooperative agreements is to determine the causes of or to assist in the formulation of programs to address, or to provide personnel needed to conduct programs concerning unemployment, underemployment, underdevelopment, or chronic depression;

(8) When the purpose of planning grants to state or local governments, or regional or area organizations is to fund administrative expenses of a planning process or for the preparation of economic development plans or programs;

(9) When a technical assistance grant is not designed to assist a specific firm or group of firms or lead directly to expanded productive capacity or output of specific goods or services for sale in a designated market area; and

(10) PWIP projects.

§ 316.4 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided

by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing the economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.5 Electric and gas facilities.

(a) General requirements for funding under PWEDA are as follows:

(1) Except for those types of facilities listed in paragraph (a)(2), (b) and (c) of this section, no financial assistance authorized under PWEDA will be used to finance:

(i) The cost of facilities for the generation, transmission, or distribution of electrical energy; or

(ii) For the production or transmission of natural, manufactured or mixed gas.

(2) Electric or gas facilities are eligible to receive EDA funding under PWEDA if they meet the following requirements:

(i) Those specifically authorized by Congress; or

(ii) If not funded, jobs will be lost or reduced or new jobs will not be created, provided the following findings are made:

(A) EDA determines that project financing is not available from private lenders or other Federal agencies on terms which, in the opinion of EDA, would permit completion and operation of the project; and

(B) The Federal or state agency regulating such facility makes one of the following determinations:

(1) There would not be any competition with existing public utilities under their jurisdiction in public rate charges; and

(2) There would be such competition as described in paragraph (a)(2)(ii) (B)(1) of this section, but existing public utilities are unable or unwilling to meet the increase in demand for such energy.

(b) Electrical facilities may also be funded if such funds would be used for:

(1) An internal electrical system (system) on the consumer side of the distribution metering station, including for example, conductors, conduits, structures, switchgear, transformers and other appurtenances; provided such system meets the following requirements:

(i) It is owned by the owner of all or a portion of the facility served by such system; and

(ii) Electricity carried on such system will not be resold.

(2) Standby electrical generating equipment, provided that such equipment is:

(i) Incapable of and not intended to provide service on a regular and continuous basis; and

(ii) Needed to prevent significant damage or harm resulting from a power failure.

(3) Facilities for replacement or expansion of existing public utilities when the area served will remain unchanged;

(4) Otherwise eligible components of projects which generate electricity but which also have other purposes, such as heating; or

(5) Electrical generation facilities which use waste as an alternative to conventional fuels.

(c) Gas facilities, including those needed for local storage, regulation and consumer metering, may also be funded if for the distribution of gas from the plant and metering station to consumers within a particular area.

§ 316.6 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for financial assistance award cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.7 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of

their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661 c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.8 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§ 316.9 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (states and political subdivisions of states and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.10 Additional requirements; Federal policies and procedures.

Grantees as defined under § 314.2 of this chapter are subject to all Federal laws and to Federal, Department of Commerce and EDA policies, regulations, and procedures applicable to Federal financial assistance awards.

PART 317—CIVIL RIGHTS

Sec.

317.1 Civil rights.

Authority: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d et seq. (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders as applicable.

(b)(1) Definitions:

(1) *Other Parties* means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data (form ED-612);

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects

which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—[RESERVED]

Dated: September 18, 1995.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

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