

Pt. 315

or foresees the use of Real Property or tangible Personal Property for explicitly religious activities following the release of the Federal Interest to compensate EDA for the Federal Share of such Property. If such compensation is made, no covenant with respect to explicitly religious activities will be required as a condition of the release. EDA recommends that any Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for explicitly religious activities to contact EDA well in advance of requesting a release pursuant to this section.

(3) Notwithstanding any release of the Federal Interest under this section, including a release upon a Recipient's compensation for the Federal Share, a Recipient must ensure that Project Property is not used in violation of nondiscrimination requirements set forth in §302.20 of this chapter. Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for any purpose that would violate the nondiscrimination requirements set forth in §302.20 of this chapter.

(i) With respect to Real Property, the Recipient must record a covenant under this subsection in the jurisdiction where the Real Property is located in accordance with §314.8.

(ii) With respect to items of tangible Personal Property, the Recipient must perfect and record a covenant under this subsection in accordance with applicable law, with continuances re-filed as appropriate, in accordance with §314.9.

[79 FR 76139, Dec. 19, 2014, as amended at 82 FR 57062, Dec. 1, 2017]

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential Business Information.

13 CFR Ch. III (1–1–24 Edition)

Subpart B—TAAC Provisions

- 315.4 TAAC selection and operation.
- 315.5 The role and geographic coverage of the TAACs.

Subpart C—Certification of Firms

- 315.6 Certification requirements.
- 315.7 Processing petitions for certification.
- 315.8 Hearings.
- 315.9 Loss of certification benefits.
- 315.10 Appeals, final determinations, and termination of certification.

Subpart D—Adjustment Proposals

- 315.11 Adjustment Proposal process.
- 315.12 Adjustment Proposal requirements.

Subpart E—Protective Provisions

- 315.13 Persons engaged by Firms to expedite petitions and Adjustment Proposals.
- 315.14 Conflicts of interest.

Subpart F—International Trade Commission Investigations

- 315.15 Affirmative findings.

AUTHORITY: 19 U.S.C. 2341–2356; 42 U.S.C. 3211; Title IV of Pub. L. 114–27, 129 Stat. 373; Department of Commerce Delegation Order 10–4.

SOURCE: 74 FR 41598, Aug. 18, 2009, unless otherwise noted.

Subpart A—General Provisions

§315.1 Purpose and scope.

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341–2355) establishes the responsibilities of the Secretary of Commerce concerning the Trade Adjustment Assistance for Firms (TAAF) program. The regulations in this part lay out those responsibilities as delegated to EDA by the Secretary. EDA executes these responsibilities through cooperative agreements that support a network of Trade Adjustment Assistance Centers (TAACs). The TAACs assist Firms in petitioning EDA for certification of eligibility to receive Adjustment Assistance. EDA certifies the eligibility of Firms. The TAACs then provide Adjustment Assistance to Firms through the development and implementation of Adjustment Proposals.

[85 FR 8379, Feb. 14, 2020]

§ 315.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the meanings set forth below:

Adjustment Assistance means technical assistance provided to Firms by TAACs under chapter 3 of title II of the Trade Act. The type of assistance provided is determined by EDA and may include one or more of the following:

- (1) Assistance in preparing a Firm's petition for certification of eligibility;
- (2) Assistance to a Certified Firm in developing an Adjustment Proposal for the Firm; and
- (3) Assistance to a Certified Firm in implementing an Adjustment Proposal.

Adjustment Proposal means a Certified Firm's plan for improving the Firm's competitiveness in the marketplace.

Certified Firm means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

Confidential Business Information means any information submitted to EDA or a TAAC by a Firm 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. 552b(c)(4) and 15 CFR part 4.

Contributed Importantly, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. 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.

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period, and this decline is:

- (1) Independent of industry or market fluctuations; and
- (2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

Directly Competitive or Like means imported articles or services that compete with and are substantially equivalent for commercial purposes (*i.e.*, are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. For the purposes of this term, any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. *See also* the definition of Service Sector Firm. Pursuant to section 259 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent Unjustifiable Benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a 'Predecessor') and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit

§ 315.3

13 CFR Ch. III (1–1–24 Edition)

and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products or services, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company. A Firm that has been acquired by another Firm but which maintains operations independent of the acquiring Firm is considered an *Independent Subsidiary* and may be considered separately from the acquiring Firm as eligible for TAAF assistance.

Increase in Imports means an increase in imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by a Firm.

Like Articles or Services means any articles or services, as applicable, which are substantially identical in their intrinsic characteristics.

Partial Separation occurs when there has been no increase in overall employment at the Firm and either of the following applies:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means an individual, organization or group.

Record means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

Service Sector Firm means a Firm engaged in the business of supplying services.

Significant Number or Proportion of Workers means five percent of a Firm's work force or 50 workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

Substantial Interest means a direct material economic interest in the certification or non-certification of the petitioner.

TAAC means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

Threat of Total or Partial Separation means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

Total Separation means the laying off or termination of employment of an employee in a Firm for lack of work.

Unjustifiable Benefits means Adjustment Assistance inappropriately accruing to the benefit of:

(1) Other Firms that would not otherwise be eligible when provided to a Firm; or

(2) Any predecessor or successor Firm, or any affiliated Firm controlled or substantially beneficially owned by substantially the same person, rather than treating these entities as a single Firm.

[74 FR 41598, Aug. 18, 2009, as amended at 85 FR 8379, Feb. 14, 2020]

§ 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and

Economic Development Administration, Commerce

§ 315.6

designate as confidential any Confidential Business Information.

Subpart B—TAAC Provisions

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§ 315.4 TAAC selection and operation.

(a) EDA solicits applications from organizations interested in operating a TAAC through Notice of Funding Opportunity announcements laying out selection and award criteria. The following entities are eligible to apply:

- (1) Universities or affiliated organizations;
- (2) States or local governments; or
- (3) Non-profit organizations.

(b) Entities selected to operate the TAACs are awarded cooperative agreements and work closely with EDA and import-impacted firms. TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 2 CFR part 200.

§ 315.5 The role and geographic coverage of the TAACs.

(a) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia, and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs and their coverage areas may be obtained from the TAAC website at <http://www.taacenters.org> or from EDA at <http://www.eda.gov>.

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

(c) A TAAC generally provides Adjustment Assistance by:

(1) Helping a Firm to prepare its petition for eligibility certification; and

(2) Assisting Certified Firms with diagnosing their strengths and weaknesses, and with developing and implementing an Adjustment Proposal.

Subpart C—Certification of Firms

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§ 315.6 Certification requirements.

(a) *General.* Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions at no cost to the Firms. EDA evaluates Firms' petitions based on the requirements set forth in § 315.7. EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act (19 U.S.C. 2341) if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the five circumstances described in paragraph (b) of this section.

(b) *Minimum certification thresholds—*
(1) *Twelve-month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 12-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service 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

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(2) *Twelve-month versus twenty-four month decline.* Based upon a comparison

of the most recent 12-month period for which data are available and the immediately preceding 24-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 24-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(3) *Twelve-month versus thirty-six month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 36-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 36-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(4) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the

same six-month period during the immediately preceding 12-month period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(5) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(c) *Evidence of an increase in imports.* EDA may consider as evidence of an Increase in Imports a certification from the Firm's customers that account for a significant percentage of the Firm's decrease in sales or production, that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States. Such certification from a Firm's customer must be submitted directly to a TAAC or to EDA.

§ 315.7 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED-840P or any successor form) 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 or services supplied or sold;

(3) Description of imported Directly Competitive or Like Articles or Services with those produced or supplied;

(4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under § 315.6(b);

(5) One copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition. In addition, publicly-owned corporations should also submit copies of the most recent Form 10-K annual reports (or Form 10-Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;

(6) Information concerning customers accounting for a significant percent of the Firm's decline and the customers' purchases (or the Firm's unsuccessful bids, if there are no customers fitting this description); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resub-

mitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the FEDERAL REGISTER.

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act (19 U.S.C. 2341) and § 315.6.

(f) A petition for certification may be withdrawn if EDA receives a request for withdrawal submitted by the petitioner before EDA makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.6.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all requested material. In no event may the determination period exceed 40 calendar days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial unless EDA waives the one-year limitation for good cause.

§ 315.8 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 calendar days after the date of publication of the notice of acceptance in the FEDERAL REGISTER, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard.

(b) A request for public hearing must be delivered by hand or by registered

§315.9

mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) 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 the requesting party's interest in the proceedings.

(c) 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.

(d) If EDA determines that the requesting party does have a Substantial Interest in the proceedings, 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 the hearing.

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§315.9 Loss of certification benefits.

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

(a) The Firm failed to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration.

(b) The Firm failed to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is 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.

13 CFR Ch. III (1-1-24 Edition)

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification.

(d) The Firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.

§315.10 Appeals, final determinations, and termination of certification.

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 calendar days from the date of notice of denial under §315.7(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph (a), the determination under §315.7(g) shall be final.

(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 calendar 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) 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 published notice. EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart D—Adjustment Proposals

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§ 315.11 Adjustment Proposal process.

(a) Firms certified in accordance with the procedures described in §§ 315.6 and 315.7 must prepare an Adjustment Proposal and submit it to EDA for approval within two years after the date of certification.

(b) EDA determines whether to approve the Adjustment Assistance requested in the Adjustment Proposal based upon the evaluation criteria set forth in § 315.12. Upon approval, a Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal. Firms must begin implementation within six months after approval. Firms that do not begin implementation within six months after approval must update, re-submit their Adjustment Proposal, and request re-approval before any Adjustment Assistance may be provided.

(c) EDA will make a determination regarding the Adjustment Proposal no later than 60 calendar days upon receipt of the Adjustment Proposal.

(d) Adjustment Assistance is subject to matching share requirements. Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting \$30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than \$30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent of the cost of that Adjustment Assistance. Certified Firms may request no more than the amount as established by EDA for total Adjustment Assistance over the entire lifetime of the firm.

(e) Firms may request EDA approval to amend their Adjustment Proposals within two years from the date of EDA approval of their initial Adjustment Proposal.

(f) Firms must complete implementation of their Adjustment Proposals within five years of EDA approval of their initial Adjustment Proposal.

(g) If a Certified Firm is transferred, sold, or otherwise acquired by another Firm during the five-year period of Adjustment Assistance, the Firm must

notify EDA no later than 30 calendar days following the transfer, sale, or acquisition. EDA will then make a determination as to whether the Firm remains eligible for Adjustment Assistance. EDA will make this determination no later than 60 calendar days following notification by the Firm.

(h) In accordance with Section 255A of chapter 3 of title II of the Trade Act (19 U.S.C. 2345a), Firms that receive Adjustment Assistance must provide data regarding the Firms' sales, employment, and productivity upon completion of the program and each year for the two-year period following completion.

§ 315.12 Adjustment Proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

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

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

(2) If EDA so determines, other available information;

(b) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.*, that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

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

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and

§ 315.13

(c) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For purposes of this paragraph (c), Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

Subpart E—Protective Provisions

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§ 315.13 Persons engaged by Firms to expedite petitions and Adjustment Proposals.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors, or officers thereof certify in writing to EDA:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting petitions for such Adjustment Assistance or Adjustment Proposals; and

(b) The fees paid or to be paid to any such Person.

§ 315.14 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part

13 CFR Ch. III (1–1–24 Edition)

unless the owners, partners, members, directors, or officers thereof execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart F—International Trade Commission Investigations

SOURCE: 85 FR 8380, Feb. 14, 2020, unless otherwise noted.

§ 315.15 Affirmative findings.

Whenever the International Trade Commission makes an affirmative finding under section 202(b) of the Trade Act (19 U.S.C. 2252) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA will notify the TAACs and provide expedited review of petitions and Adjustment Proposals from Firms within the specified industry.

PARTS 316–399 [RESERVED]