

DEPARTMENT OF COMMERCE**Economic Development
Administration****13 CFR Part 316**

[Docket No. 950525142-6220-04]

RIN 0610-AA47

**Simplification and Streamlining of
Regulations; General Requirements for
Financial Assistance—Excess
Capacity; Correction****AGENCY:** Economic Development
Administration (EDA), Department of
Commerce (DoC).**ACTION:** Correcting amendment.**SUMMARY:** This document contains
corrections to EDA's regulations at 13
CFR Chapter III; EDA's final rule which
adopted the interim-final rule (60 FR
49702), September 26, 1995, as modified
by the changes noted in the final rule
(61 FR 7979), published and effective on
March 1, 1996, as corrected, and the
correction (61 FR 15371), April 8, 1996.
This correction is to the regulation on
general requirements for financial
assistance—excess capacity.**EFFECTIVE DATE:** August 29, 1996.**FOR FURTHER INFORMATION CONTACT:**
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number: (202) 482-5671.**SUPPLEMENTARY INFORMATION:****Background**

EDA recently amended its entire body of regulations to make them easier to read and to understand, by removing numerous unnecessary, redundant, and outdated parts, sections and portions thereof, and by clarifying and simplifying those remaining. The final rule includes program requirements, evaluation criteria, and the selection process 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 applicable statutes.

Need for Correction

As published, the final rule contains an error which may prove to be misleading and is in need of clarification. Currently, § 316.3 on excess capacity as codified in the *Code of Federal Regulations* (13 CFR, revised as of March 1, 1996) at Chapter III does not contain two crucial definitions—"market area" and "primary beneficiary". These two definitions were inadvertently deleted when the final version of EDA's rule was codified in the CFR. Since these terms must be defined in order to determine when a report or study (or exemption) is needed, to meet the excess capacity requirement under the Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. 3121 *et seq.*), these definitions must be reinserted in the definitions paragraph of this section of the rule.

List of Subjects in 13 CFR Part 316

Community development, grant programs—community development, Freedom of Information, Uniform Relocation Act.

Accordingly, 13 CFR Part 316 is corrected by making the following correcting amendment:

**PART 316—GENERAL
REQUIREMENTS FOR FINANCIAL
ASSISTANCE**

1. The authority citation for Part 316 continues to read as follows:

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).

2. Section 316.3 is amended by revising paragraph (b) to read as follows:

§ 316.3 Excess Capacity.

* * * * *

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Demand means the actual quantity of a product or service that users are willing to purchase for use in the market area served by the intended commercial or industrial beneficiary.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs and technologies.

Existing competitive enterprise means an established operation which either produces the same product or delivers 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.

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Dated: August 21, 1996.

Wilbur F. Hawkins,

Deputy Assistant Secretary for Economic Development.

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