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Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 313 and 315

[Docket No.: 090429810–9808–01]

RIN 0610–AA65

Revisions to the Trade Adjustment Assistance for Firms Program Regulations and Implementation Regulations for Community Trade Adjustment Assistance Program

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (Pub.L. No. 111–5, 123 STAT. 115). Included in that omnibus measure was the Trade and Globalization Adjustment Assistance Act of 2009 (“TGAAA”), which contains specific amendments to chapters 3 and 4 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (“Trade Act”). See Subtitle I (letter “I”) of Title I of Division B of Public Law No. 111–5, 123 Stat. 367, at 396–436. Chapter 3 of the Trade Act authorizes the Trade Adjustment Assistance for Firms (“TAAF”) Program, under which a national network of eleven Trade Adjustment Assistance Centers provide technical assistance to firms that have lost domestic sales and employment due to increased imports of similar or competitive goods. Chapter 4 of the Trade Act establishes the Community Trade Adjustment Assistance (“Community TAA”) Program, which is designed to help local economies adjust to changing trade patterns through the coordination of federal, State, and local resources and the creation and implementation of community-based development strategies to help address trade impacts. As a result of the enactment of the TGAAA, EDA is publishing this notice of proposed rulemaking (“NPRM”) to request comments on the promulgation of the Community TAA Program regulations and specific proposed changes to the

TAAF Program regulations, both of which implement the amendments to the Trade Act made by the TGAAA. In large part, the revisions to the existing TAAF Program regulations propose to make service sector firms potentially eligible for assistance and include longer “look back” time periods for which Firms may present data for certification purposes.

DATES: Comments on this NPRM must be received by EDA’s Office of Chief Counsel no later than 5 p.m. Eastern Time on June 4, 2009.

ADDRESSES: Comments on this NPRM may be submitted through any of the following:

- *Federal eRulemaking Portal:* <http://www.Regulations.gov>.
- *Mail:* Economic Development Administration, Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Commenters are advised that U.S. Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Commenters may wish to use the facsimile or e-mail options.

- *Facsimile:* (202) 482–5671, *Attention:* Office of Chief Counsel. Please indicate “Comments on the NPRM” on the cover page.

- *E-mail:* edaregs@eda.doc.gov. Please state “Comments on the NPRM” in the subject line.

FOR FURTHER INFORMATION CONTACT: Jamie Lipsey, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background

EDA’s mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In implementing this mission, EDA administers the TAAF Program under the Trade Act, which was enacted in part to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition and assist industries, firms, workers, and communities in adjusting to changes in international trade flows. The responsibility for administering both the TAAF and Community TAA Programs is delegated from the Secretary of Commerce to EDA.

EDA is publishing proposed revisions to its TAAF Program regulations to reflect the TGAAA amendments made

to chapter 3 of the Trade Act. Under the TAAF Program, EDA funds a national network of eleven non-profit or university-affiliated organizations, each known as a Trade Adjustment Assistance Center (“TAAC”). The TAACs provide technical assistance to Firms that have lost domestic sales and employment due to increased imports of similar or competitive goods.

In addition, the TGAAA amended chapter 4 of the Trade Act to establish the Community TAA Program. The purpose of this program is to assist communities impacted by trade with economic adjustment through the coordination of federal, State and local resources and the creation of community-based development strategies. EDA sets out in detail below proposed Community TAA Program regulations.

Proposed Community TAA Program Regulations

Set out below are EDA’s proposed regulations for the Community TAA Program, which would be codified at 13 CFR part 313. In addition to implementing the amendments to the Trade Act made by TGAAA, the proposed regulations reflect EDA’s practices and policies in administering the Community TAA Program similar to its administration of programs under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*). The discussion below presents the proposed regulations by section number and explains each proposed regulatory provision.

Part 313—Community Trade Adjustment Assistance

Authority Section

The authority for the Community TAA Program regulations derives from the Trade Act, inclusive of the amendments made by TGAAA.

Section 313.1—Purpose and Scope

This section introduces the Community TAA Program to the reader, including a reference to the TGAAA. It also provides the purpose of the program and a brief overview for its administration, including EDA’s certification of Communities, provision of technical assistance, and assistance in the creation and implementation of Strategic Plans.

Section 313.2—Definitions

This section proposes definitions for key terms to be used in part 313. It includes terms provided in the TGAAA as well as new terms to increase clarity and to assist with the efficient

administration of the Community TAA Program.

The following discussion traces the definition of “Agricultural Commodity Producer” as provided in the TGAAA. The TGAAA states that “‘Agricultural Commodity Producer’ has the meaning given that term in section 291.” Section 291 of the Trade Act states that “[t]he term ‘agricultural commodity producer’ has the same meaning prescribed by regulations promulgated under section 1308(e) of Title 7 (before the amendment made by section 1703(a) of the Food, Conservation, and Energy Act of 2008).” Before it was amended by section 1703(e) of the Food Conservation, and Energy Act of 2008, section 1308(e) of Title 7 provided that the Secretary of Agriculture would issue regulations defining the term “person” and required that for the purposes of the regulations “the term ‘person’ means— (i) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary); (ii) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and (iii) a State, political subdivision, or agency thereof.” The Trade Adjustment Assistance for Farmers regulations promulgated under section 1308(e) of Title 7 state: “*Person* means an individual, partnership, joint stock owner, corporation, association, trust, estate, or any other legal entity as defined in 7 CFR 1400.3.”

The term *Community* is defined in accordance with the TGAAA. The definition of *Impacted Community* combines and replaces the terms *Community Impacted By Trade* and *Eligible Community* as defined in the TGAAA. These terms were combined because they are essentially identical and merging them helps clarify the regulations and is consistent with the intent of the TGAAA.

In addition, this section includes a definition for a *Cognizable Certification*. In accordance with the TGAAA, a Cognizable Certification may be a certification from the (i) Secretary of Labor that a group of workers in the Community is eligible for TAA for Workers benefits; (ii) Secretary of

Commerce that a Firm in the Community is eligible for TAA for Firms benefits; or (iii) Secretary of Agriculture that a group of Agricultural Commodity Producers is eligible for TAA for Farmers and Fishermen benefits. Further, *Strategic Plan* is defined, and the concept of a Strategic Plan is fully described in proposed section 313.6.

Section 313.3—Overview of Community Trade Adjustment Assistance

This section provides a more detailed roadmap for the administration of and participation in the Community TAA Program. First, a Community must petition for assistance and EDA must make an affirmative determination that the Community is impacted by trade; second, once an affirmative determination has been made, EDA will provide technical assistance to the Impacted Community to address that impact; third, EDA may provide an impacted Community with assistance in developing a Strategic Plan to the trade impacts; and fourth, EDA may provide assistance to implement certain projects described in the EDA-approved Strategic Plan.

Section 313.4—Affirmative Determinations

This section would implement section 273 of chapter 4 of the Trade Act, as amended by the TGAAA, which relates to the process and requirements for a Community’s petition for EDA’s affirmative determination that it is trade-impacted under the Community TAA Program. A Community’s completed petition for an affirmative determination is the first step toward receiving assistance in the form of an implementation grant under proposed part 313. Sections 313.4(a) and (b) explain which Communities may petition for assistance. Section 313.4(c) details what type of information a Community must provide to EDA in a petition and provides the criteria that EDA will use to make an affirmative determination that a Community is import-impacted. For EDA to make an affirmative determination about a Community, a Cognizable Certification must have been made with respect to the Community. As specified at Section 313.4(c), EDA will obtain applicable Cognizable Certifications from publicly available sources. However, to expedite a petition, a Community may choose to provide EDA with a copy of any applicable Cognizable Certification. In addition, the petitioning Community must provide information about the impact(s) on the Community from the actual or threatened loss of jobs

attributable to the effects of competition by imports that led to the applicable Cognizable Certification(s) made by the Secretaries of Labor, Commerce or Agriculture, in order to allow EDA to determine that the Community is significantly affected. EDA will measure such impacts against the petitioning Community’s most recent Civilian Labor Force statistics as reported by the Bureau of Labor Statistics, U.S. Department of Labor, effective at the time of petition for affirmative determination.

Upon receiving appropriations for the Community TAA Program, EDA will publish guidance regarding the determination of the significance of the impact when it posts the announcement of federal funding opportunity online at eda.doc.gov. EDA anticipates that it will establish a threshold level for an impact to be considered “significant” based on unemployment and the size of the Community.

Once EDA makes an affirmative determination that a Community is trade-impacted, the Community becomes an Impacted Community, as defined in Section 313.2. Section 313.4(d) implements section 273(c) of the Trade Act as amended by TGAAA, which provides that EDA will promptly notify the Impacted Community and the Governor of the State in which the Impacted Community is located upon making an affirmative determination.

Section 313.5—Technical Assistance

This section would implement subsections 274(a) and (b) of chapter 4 of the Trade Act, as amended by the TGAAA, which provides the types of technical assistance an Impacted Community may receive. Upon an affirmative determination that a Community is an Impacted Community and subject to the availability of funding, EDA will provide technical assistance to the Impacted Community. Section 313.5(a) provides that an Impacted Community will receive technical assistance for certain purposes, which are to improve the Impacted Community’s economy, identify impact-related economic challenges within the Impacted Community, and develop or update a Strategic Plan to address import impacts. Section 313.5(b) provides that EDA will coordinate the provision of technical assistance with other federal, State, and local resources to ensure the effective delivery of services and better leverage assistance.

Section 313.6—Strategic Plans

Section 313.6 would implement section 276 of chapter 4 of the Trade

Act, as amended by the TGAAA, which relates to the development of a Strategic Plan to assist an Impacted Community. Under the TGAAA, the development of an EDA-approved Strategic Plan to address trade impacts is one type of technical assistance that an Impacted Community may receive under the Community TAA Program. An EDA-approved Strategic Plan is required before a Community may receive an implementation grant, as provided in Section 313.6(a). Section 313.6(b) provides that the Strategic Plan should be developed to the extent possible with participation from local, county, and State governments; local Firms (as defined under title II, chapter 3, section 259 of the Trade Act, as amended (*see also* the definition of Firm at 13 CFR 315.2)); local workforce investment boards; labor organizations; and educational institutions. Section 313.6(c) sets out the technical requirements of a Strategic Plan by which EDA will evaluate and approve the Strategic Plan. These requirements include an analysis of the economic development challenges facing the Impacted Community and the Community's capacity to achieve economic adjustment to these challenges; an assessment of the Community's long-term commitment to the Strategic Plan (including how it will be integrated with any existing Comprehensive Economic Development Strategy (CEDS) developed under EDA's economic development assistance programs as provided under Section 303.7) and the participation of Community members; a description of educational opportunities and future employment needs in the Community; an assessment of the funding required to implement the Strategic Plan, including a timeline and methods of financing; and a strategy for continuing the Impacted Community's economic adjustment after the projects in the Strategic Plans have been completed. Section 313.6(d) provides that EDA's cost share of a Strategic Plan will not exceed 75 percent. To ensure that as many merit-worthy projects as possible are funded, EDA may base the Community's required cost share of developing a Strategic Plan on the Impacted Community's Civilian Labor Force statistics.

Section 313.7—Implementation Grants for Impacted Communities

Section 313.7 would implement section 275 of chapter 4 of the Trade Act, as amended by the TGAAA, which relates to grants for implementing projects and programs included in an EDA-approved Strategic Plan. Section

313.7(a) provides that EDA may assist an Impacted Community in implementing a Strategic Plan project or program. Paragraphs (1)–(6) under Section 313.7(a) are a list of examples of projects that may be undertaken, including infrastructure projects; market or industry research and analysis; technical assistance; public services; training; and other activities justified in the Strategic Plan. Section 313.7(b) provides information on the application for an implementation grant and how an Impacted Community's application for assistance will be evaluated. Section 313.7(c) provides for maximum coordination of implementation grants among the Impacted Community's existing grant programs. Section 313.7(d) explains the cost-sharing requirements applicable to implementation grants. The federal share may not exceed 95 percent and, as mentioned earlier, to ensure that as many merit-worthy projects as possible are funded, EDA may base the Community's required share of implementing a Strategic Plan on the Impacted Community's Civilian Labor Force statistics. Section 313.7(e) specifies the statutory funding limitation that an Impacted Community may not receive more than \$5,000,000 in implementation grant funding under the Community TAA Program.

Section 313.8—Competitive Process

In accordance with EDA's economic development assistance programs and to ensure effective expenditure of federal funds, this section proposes that EDA will review all applications for the development of a Strategic Plan and for an implementation grant under the Community TAA Program in accord with a competitive process, as set out in an applicable Federal Funding Opportunity ("FFO") announcement, provided monies are appropriated for the program. Paragraph (b) implements section 275(e) of chapter 4 of the Trade Act, as amended by the TGAAA, which provides for priority for the implementation grant applications received from small- and medium-sized Communities. Paragraph (c) implements section 277(c)(3) of chapter 4 of the Trade Act, as amended by the TGAAA, which provides that the Community TAA Program shall supplement and not supplant other federal, State, and local assistance to Communities.

Section 313.9—Records

This section provides that a Community that receives assistance under the Community TAA Program is subject to the records requirements set out at 13 CFR 302.14.

Section 313.10—Conflicts of Interest

This section clarifies that a Community that receives assistance under the Community TAA Program is subject to the conflicts-of-interest provisions set out at 13 CFR 302.17.

Section 313.11—Other Requirements

This section clarifies that a Community that receives assistance under the proposed part 313 is subject to certain other award requirements set out in EDA's regulations at 13 CFR part 302, including terms and conditions relating to environmental, post-disaster assistance, public information, relocation assistance and land acquisitions, federal policies and procedures, amendments and changes, pre-approval costs, intergovernmental project review, attorneys' and consultants' fees and the employment of expeditors, the economic development information clearinghouse, project administration, operation and maintenance, post-approval requirements, indemnification, civil rights and property management. The section provides the citations for all of these requirements.

Discussion of Changes to the TAAF Program Regulations

EDA proposes revisions to 13 CFR part 315 to implement provisions of the TGAAA that expand the scope of the TAAF Program to include service sector firms, modify the requirements for certification, and make conforming changes to other related provisions in the regulations.

EDA provides below a discussion of all substantive revisions according to section number. Where substantive and non-substantive changes are made in one part, they are discussed together. Non-substantive edits may include grammatical changes and are intended to clarify or make a specific provision easier to understand. Additional non-substantive changes also update the regulations in light of developments since EDA's publication of an interim final rule on October 22, 2008 (73 FR 62858). Capitalized terms used but not otherwise defined in the discussion below have the meanings ascribed to them in 13 CFR 315.2. For convenience and ease of reading, EDA sets forth the revised regulatory text for the program in its entirety.

Part 315—Trade Adjustment Assistance for Firms

Authority Section

The authority from which the TAAF Program regulations derive is the Trade Act, as amended by the TGAAA.

Section 315.2—Definitions

In the definition of *Decreased Absolutely*, EDA proposes to replace the word “irrespective” in paragraph (1) with the word “independent”, for increased clarity and ease of understanding. This change does not in any way alter the definition of the term *Decreased Absolutely* or EDA’s current administration of the TAAF Program.

EDA proposes to revise the definition of *Directly Competitive* to include services to take into account the TGAAA’s inclusion of “service sector firms” as eligible for trade adjustment assistance. In addition, EDA revised the definition with respect to Firms engaged in exploring, drilling, or producing oil or natural gas to ensure that the definition hues closely to the statutory treatment set out in section 251(c)(2)(B) of the Trade Act.

A significant change to this section involves the TGAAA’s expansion of the definition of *Firm* to include a “service sector firm.” Accordingly, the first sentence of the definition is revised to include service sector entities. A statement is included following this sentence to direct the reader to the new definition of *Service Sector Firm* found later in this section. Similarly, the definition of *Like Articles* is expanded to include services.

The definition of *Increase in Imports* is revised to include a discussion of the type of evidence EDA may consider in determining whether an increase in imports has occurred in a particular situation. The proposed revision adds the new requirement from section 1863 of the TGAAA to permit EDA to determine that an Increase in Imports exists if customers accounting for a significant percentage of the decline in a Firm’s sales or production certify that their purchases of imported Like Articles or Services have increased absolutely or relative to the acquisition of such Like Articles or Services from suppliers in the United States.

EDA proposes to include a new term in this section to define “*Service Sector Firm*” as a Firm engaged in the business of supplying services. The definition also includes language similar to that contained in the definition of *Firm* to make clear that for purposes of receiving benefits under 13 CFR part 315, when a Service Sector Firm owns or controls other Service Sector Firms, the Service Sector Firm and such other Service Sector Firms may be considered a single Service Sector Firm when they furnish like or Directly Competitive services or are exerting essential economic control over one or more servicing facilities.

Section 315.5—TAAC Scope, Selection, Evaluation and Awards

For increased clarity, EDA deletes the last sentence in paragraph (a) because an FFO announcement typically is not published in connection with administering the TAAF Program. Also for increased clarity and consistency, EDA replaces the words “and/or” with “or” in paragraph (b)(1). In Section 315(b)(2), EDA replaces the words “TAAC proposals” with “applications,” and deletes the second sentence because EDA no longer has a two-step application process. An application would be submitted on EDA’s Form ED-900. In Section 315.5(c)(2)(iv), the word “funding” is replaced with “funds” for consistency with the phrase “availability of funds” in Section 315.5(c)(1)(iii). Finally, in Section 315.5(d)(1), EDA clarifies that it funds a TAAC for a three-year project period that consists of three 12-month “funding periods.” This revision is made to bring the regulation in line with current administration of the TAAF Program.

Section 315.7—Certification Requirements

This section would be revised to reflect changes made by the TGAAA to the time periods that Firms may use to demonstrate injury due to an Increase in Imports. As set out in the certification thresholds at Section 315.7(b) and defined at Section 315.2, for certification under the TAAF Program, a Firm must present data to demonstrate three basic items: that its sales or production have Declined Absolutely, a Significant Number of Workers became or are threatened to be totally or partially separated, and increased imports Contributed Importantly to the decline in sales or production and workforce. Before the enactment of the TGAAA, a Firm was permitted to present data for certification from the 12 months immediately preceding the most recent 12-month period for which data are available, to demonstrate that imports adversely impacted its business under one of the thresholds. The amendments to the Trade Act expand this “look back” period so that a Firm may use the average of one, two, or three years of sales or production data, or both, preceding the most recent 12-month period for which data are available to demonstrate that the Firm’s sales or production have Decreased Absolutely or that the Firm’s sales, production, or both of an article or service that accounts for at least 25 percent of its total production or sales has Decreased Absolutely as a result of increased imports. Therefore, EDA

proposes to revise paragraph (b) to include the new 24-, and 36-month “look back” or comparison time periods to the existing 12-month, interim sales or production decline, and interim employment decline thresholds. For clarity and ease of reading, EDA has set out each certification threshold separately, and the inclusion of the 24- and 36-month comparison periods increases the number of certification thresholds from three to five. EDA, however, is not proposing to change the certification requirement beyond expanding the allowable comparison periods. EDA will continue to accept petitions that are able to demonstrate six months of sales or production data or six months of employment data for an interim sales or production decline or employment decline in accordance with Sections 315.7(b)(4) and (5). For each of the five certification thresholds listed in paragraph (b), the required Increase in Imports is revised to make clear that any such Increase in Imports must have 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 as required by section 251 of the Trade Act.

Section 315.8—Processing Petitions for Certification

EDA revises Section 315.8 to implement the expansion of the TAAF Program to include “service section firms” pursuant to the TGAAA. Paragraphs (b)(2) and (b)(3), which discuss the scope of information required in Form ED-840P, would be revised to include information on services. In addition, paragraph (b)(4) would be revised to include 24-, 36-, and 48-month periods in line with the additional “look back” time periods proposed in Section 315.7(b). In accordance with the amendments to the Trade Act made by the TGAAA, EDA would amend paragraph (g)(1) to reduce the maximum time period in which EDA is allowed to make its determination from 60 days to 40 days.

Section 315.10—Loss of Certification Benefits

In paragraph (d) of this section, EDA proposes to change the length of the time period that a Firm has to diligently pursue an approved Adjustment Proposal after the date of certification from two years to five years. This revision would make this provision consistent with EDA’s current practice that allows Certified Firms to have five, not two, years from the date of EDA’s approval of an Adjustment Proposal to

complete work on that Adjustment Proposal. It has been EDA's experience that it generally takes Certified Firms longer than two years to diligently implement an Adjustment Proposal. This may occur for a variety of reasons, generally time needed to gather the capacity and resources to implement the goals of the Adjustment Proposal and some projects may have extended time horizons. This change would therefore implement current practice.

Section 315.14—Certifications

In order to track the Trade Act more accurately in this section, EDA proposes to amend this section to clarify that the certification must be provided to EDA.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This NPRM contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED-900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610-0094. To estimate burden, EDA examined its experience with its public works and economic adjustment assistance programs. The potential demand for those programs is of course much greater because eligibility is based on general economic distress and is not restricted to trade impact. EDA estimates that demand from trade impacted areas would constitute a small fraction of all areas experiencing economic distress. Nonetheless, to a certain extent that demand will be elastic depending on the amount of appropriations Congress and the President approve for the program. Because the *respondent* burden will be similar for applications under trade program as it is for applications under EDA's traditional programs, if the Community TAA Program is funded at its authorized level of \$150,000,000, EDA estimates that it may receive about 350 responses for a petition for affirmative determination and 300 responses for an implementation grant. EDA estimates

that the total annual paperwork burden for a petition for affirmative determination would be about 550 hours and the total annual paperwork burden for an implementation grant application would be about 6,500 hours. The use of Form ED-840P (*Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance*) has been approved by OMB under the Control Number 0610-0091. In light of the expansion of the TAAF Program to service firms and the expansion of the "look back" period, EDA estimates responses related to certifications of eligibility will increase more than 100 percent to about 500 responses and that the total annual paperwork burden would be about 4,100 hours.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order No. 12866

It has been determined that this NPRM is significant for purposes of Executive Order 12866.

Congressional Review Act

This NPRM is not "major" under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in Executive Order 13132 to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." It has been determined that this NPRM does not contain policies that have federalism implications.

List of Subjects

13 CFR Part 313

Impacted community, Implementation grant, Petition and affirmative determination requirements, Strategic plan, Trade adjustment assistance for communities.

13 CFR Part 315

Adjustment proposals, Administrative practice and procedure, Certification

requirements, Eligible petitioner, Firm selection, Recordkeeping and audit requirements, Trade adjustment assistance.

Regulatory Text

For reasons stated in the preamble, EDA amends chapter III of title 13 of the *Code of Federal Regulations* to add new part 313, and to amend part 315 as follows:

1. Add new part 313 to read as follows:

PART 313—COMMUNITY TRADE ADJUSTMENT ASSISTANCE

Subpart A—General Provisions

Sec.

313.1 Purpose and Scope.

313.2 Definitions.

Subpart B—Participation in the Community Trade Adjustment Assistance Program

313.3 Overview of Community Trade Adjustment Assistance.

313.4 Affirmative Determinations.

313.5 Technical Assistance.

313.6 Strategic Plans.

313.7 Implementation Grants for Impacted Communities.

313.8 Competitive Process.

Subpart C—Administrative Provisions

313.9 Records.

313.10 Conflicts of Interest.

313.11 Other Requirements.

Authority: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. No. 111-5; 42 U.S.C. 3211; Department of Commerce Organizational Order 10-4.

Subpart A—General Provisions

§ 313.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 4 of title II of the Trade Act concerning Community Trade Adjustment Assistance ("Community TAA"). The Community TAA Program is designed to assist communities impacted by trade with economic adjustment through the coordination of federal, State, and local resources, the creation of community-based development strategies, and the development and provision of programs that meet the training needs of workers. The statutory authority and responsibilities of the Secretary of Commerce relating to Community TAA are delegated to EDA. EDA certifies Communities as eligible to apply for assistance under the Community TAA Program, provides technical assistance to Impacted Communities, and provides implementation assistance to Impacted Communities in preparing and carrying out Strategic Plans.

§ 313.2 Definitions.

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

Agricultural Commodity Producer has the same meaning given to that term in title II, chapter 6, section 291 of the Trade Act.

Cognizable Certification means a certification:

(1) By the Secretary of Labor that a group of workers in the Community is eligible to apply for assistance under chapter 2, section 223 of the Trade Act;

(2) By the Secretary of Commerce that a Certified Firm (as defined at § 315.2 of this chapter) located in the Community is eligible to apply for Adjustment Assistance in accordance with chapter 3, sections 251–253 of the Trade Act; or

(3) By the Secretary of Agriculture that a group of agricultural commodity producers in the Community is eligible to apply for assistance under chapter 6, section 293 of the Trade Act.

Community means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

Community Adjustment Assistance means technical and implementation assistance provided to a Community under chapter 4 of title II of the Trade Act.

Impacted Community means a Community that is affected by trade to such a degree that the Secretary has made an affirmative determination that it is eligible to apply for assistance under this part.

Strategic Plan means an Impacted Community's plan for improving its economic situation developed in accordance with § 313.6.

Subpart B—Participation in the Community Trade Adjustment Assistance Program**§ 313.3 Overview of Community Trade Adjustment Assistance.**

The Community TAA Program is designed to assist Communities impacted by trade to adjust to that impact. The Community TAA Program will be administered in accordance with the following process:

(a) *Determination of eligibility.* First, EDA must make an affirmative determination that the Community is impacted by trade in accordance with § 313.4.

(b) *Provision of technical assistance.* After an affirmative determination is made, EDA will provide the Impacted Community with technical assistance in accordance with § 313.5.

(c) *Strategic Plan development.* An Impacted Community that intends to apply for an implementation grant in accordance with § 313.7 must develop, in accordance with § 313.6, an EDA-approved Strategic Plan.

(d) *Implementation grant.* In accordance with § 313.7, EDA may award an implementation grant to assist an Impacted Community in carrying out a project or program included in a Strategic Plan.

§ 313.4 Affirmative Determinations.

(a) *General.* Subject to the availability of funds, a Community may apply for an affirmative determination if:

(1) On or after August 1, 2009, one or more Cognizable Certifications are made with respect to the Community; and

(2) The Community submits the petition at least 180 days after the date of the most recent Cognizable Certification.

(b) *Grandfathered Communities.* If one or more Cognizable Certifications were made with respect to a Community on or after January 1, 2007, and before August 1, 2009, the Community may submit a petition to EDA for an affirmative determination under this section not later than February 1, 2010.

(c) *Affirmative determination petition requirements.* (1) The Community must submit a complete petition to the applicable regional office (or regional offices in the event the Community crosses multiple geographic boundaries) serving the geographic area in which the Community is located. A complete petition for an affirmative determination shall contain the following:

(i) The *Application for Federal Assistance* (Form SF-424) and sections A1–A10 of the *Application for Investment Assistance* (Form ED-900 or any successor form);

(ii) The applicable Cognizable Certification(s) upon which the Community bases its petition; and

(iii) Such other information as EDA considers material.

(2) The petition for affirmative determination must contain information about the impact(s) on the Community from the actual or threatened loss of jobs attributable to the effects of competition by imports that led to the applicable Cognizable Certification(s) made by the Secretaries of Labor, Commerce or Agriculture, in order for EDA to determine that the Community is significantly affected. EDA shall measure such impact(s) using the petitioning Community's most recent Civilian Labor Force statistics as reported by the Bureau of Labor Statistics, U.S. Department of Labor, effective at the time of petition for

affirmative determination. EDA will obtain the applicable Cognizable Certification from publicly available resources. However, a petitioning Community may also provide copies of the applicable Cognizable Certification to EDA.

(d) *Notification to Community.* Upon making an affirmative determination, EDA shall notify promptly the Community and the Governor of the State in which the Community is located of the means for obtaining assistance under this part and other appropriate economic assistance that may be available to the Community. Such notification will identify the appropriate EDA regional office that will provide technical assistance under § 313.6.

§ 313.5 Technical Assistance.

(a) *General.* Once EDA has made an affirmative determination that a Community is an Impacted Community and subject to the availability of funds, EDA shall provide comprehensive technical assistance to:

(1) Diversify and strengthen the economy in the Impacted Community;

(2) Identify significant impediments to economic development that result from the impact of trade on the Impacted Community; and

(3) Develop or update a Strategic Plan in accordance with § 313.6 to address economic adjustment and workforce dislocation in the Impacted Community, including unemployment among agricultural commodity producers.

(b) *Coordination of federal response.* EDA will coordinate the federal response to an Impacted Community by:

(1) Identifying federal, State, and local resources that are available to assist the Impacted Community in responding to economic distress; and

(2) Assisting the Impacted Community in accessing available federal assistance and ensuring that such assistance is provided in a targeted, integrated manner.

§ 313.6 Strategic Plans.

(a) *General.* An Impacted Community that intends to apply for a grant for implementation assistance under § 313.7 shall develop and submit a Strategic Plan to EDA for evaluation and approval. EDA shall evaluate the Strategic Plan based on the technical requirements set forth in paragraph (c) of this section.

(b) *Involvement of private and public entities.* To the extent practicable, an Impacted Community shall consult with the following entities in developing a Strategic Plan:

(1) Federal, local, county, or State government agencies serving the Impacted Community;

(2) Firms, as defined in § 315.2 of this chapter, including small- and medium-sized Firms, within the Impacted Community;

(3) Local workforce investment boards established under section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832);

(4) Labor organizations, including State labor federations and labor-management initiatives, representing workers in the Impacted Community; and

(5) Educational institutions, local educational agencies, or other training providers serving the Impacted Community.

(c) *Technical requirements.* EDA shall evaluate the Strategic Plan based on the following minimum requirements:

(1) An analysis of the capacity of the Impacted Community to achieve economic adjustment to the impact(s) of trade;

(2) An analysis of the economic development challenges and opportunities facing the Impacted Community as well as the strengths, weaknesses, opportunities, and threats facing the Impacted Community;

(3) An assessment of the commitment of the Impacted Community to the Strategic Plan over the long term and the participation and input of members of the Community affected by economic dislocation, including how the Strategic Plan will be integrated effectively with one or more applicable Comprehensive Economic Development Strategies (CEDs) that have been developed in connection with EDA's economic development assistance programs as set out at § 303.7 of this chapter;

(4) A description of the role and the participation of the entities described in paragraph (b) of this section in developing the Strategic Plan;

(5) A description of the projects to be undertaken by the Impacted Community under its Strategic Plan and how such projects will facilitate the Impacted Community's economic adjustment;

(6) A description of the educational and training programs available to workers in the Impacted Community and the future employment needs of the Community;

(7) An assessment of the cost of implementing the Strategic Plan, including the timing of funding required by the Impacted Community to implement the Strategic Plan and the method of financing to be used to implement the Strategic Plan; and

(8) A strategy for continuing the economic adjustment of the Impacted

Community after the completion of the projects described in paragraph (c)(5) of this section.

(d) *Cost sharing limitation.* Assistance awarded to an Impacted Community to develop a Strategic Plan under this section shall not exceed 75 percent of the cost of developing the Strategic Plan. In order to provide funding to as many merit-worthy Impacted Communities as feasible, EDA may base the amount of the Community's required share on the relative distress caused by the actual or threatened decline in the most recent Civilian Labor Force statistics effective on the date EDA receives an application to develop a Strategic Plan.

§ 313.7 Implementation Grants for Impacted Communities.

(a) *General.* EDA may provide assistance in the form of a grant under this section to an Impacted Community to help the Community carry out a project or program that is included in a Strategic Plan developed in accordance with § 313.6. Such assistance may include:

(1) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Market or industry research and analysis;

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

(4) Public services;

(5) Training; and

(6) Other activities justified by the Strategic Plan that satisfy applicable statutory and regulatory requirements.

(b) *Application evaluation criteria.* (1) An Impacted Community that seeks to receive an implementation grant under this section shall submit a completed *Application for Investment Assistance* (Form ED-900 or any successor form) to the applicable regional office (or regional offices in the event the Community crosses multiple geographic boundaries) serving the geographic area in which the Community is located. A complete application also shall include:

(i) The EDA-approved Strategic Plan that meets the requirements of § 313.6; and

(ii) A description of the project or program included in the Strategic Plan with respect to which the Impacted Community seeks assistance.

(2) EDA will evaluate all applications for the feasibility of the budget presented and conformance with statutory and regulatory requirements. EDA also will consider the degree to

which an implementation grant in the Impacted Community will satisfy the evaluation criteria set forth in the applicable Federal Funding Opportunity ("FFO") announcement.

(c) *Coordination among grant programs.* If an entity in an Impacted Community seeks or plans to seek a Community College and Career Training Grant under section 278 of the Trade Act or a Sector Partnership Grant under section 279A of the Trade Act while the Impacted Community seeks assistance under this section, the Impacted Community shall include in the application for assistance a description of how the Impacted Community will integrate any projects or programs carried out using assistance provided under this section with any projects or programs that may be implemented with other federal assistance.

(d) *Cost sharing requirement.* (1) If an Impacted Community is awarded an implementation grant under this section, the following requirements shall apply:

(i) *Federal share.* The federal share of a project or program for which a grant is awarded may not exceed 95 percent of the cost of implementing the project or program; and

(ii) *Community's share.* The Impacted Community must contribute at least five percent of the amount of the implementation grant towards the cost of implementing the project or program for which the grant is awarded.

(2) In order to provide funding to as many merit-worthy Impacted Communities as feasible, EDA may base the amount of the Community's required share on the relative distress caused by the actual or threatened decline in the most recent Civilian Labor Force statistics effective on the date EDA receives an application for an implementation grant.

(e) *Limitation.* An Impacted Community may not be awarded more than \$5,000,000 in implementation grant assistance under this section.

§ 313.8 Competitive Process.

(a) Applications for assistance to develop a Strategic Plan or for an implementation grant shall be reviewed by EDA in accord with a competitive process as set forth in the applicable FFO, to ensure that EDA awards funds to the most merit-worthy projects.

(b) *Priority for grants to small- and medium-sized Communities.* EDA shall give priority to an application submitted under this part by an Impacted Community that is a small- or medium-sized Community.

(c) *Supplement, not supplant.* The Community TAA Program and any

funds appropriated to implement its provisions shall be used to supplement and not supplant other federal, State, and local public funds expended to provide economic development assistance for Communities.

Subpart C—Administrative Provisions

§ 313.9 Records.

Communities that receive assistance under this part are subject to the records requirements set out in § 302.14 of this chapter.

§ 313.10 Conflicts of interest.

Communities that receive assistance under this part are subject to the conflicts of interest provisions as set out in § 302.17 of this chapter.

§ 313.11 Other requirements.

Communities that receive assistance under this part are subject to the general terms and conditions for Investment Assistance set out in part 302 of this chapter relating to requirements involving the environment (§ 302.1); post-disaster assistance (§ 302.2); public information (§ 302.4); relocation assistance and land acquisition (§ 302.5); federal policies and procedures (§ 302.6); amendments and changes to awards (§ 302.7); pre-approval costs (§ 302.8); intergovernmental project reviews (§ 302.9); attorneys' and consultants' fees or the employment of expeditors (§ 302.10); EDA's economic development information clearinghouse (§ 302.11); project administration, operation, and maintenance (§ 302.12); post-approval requirements (§ 302.18); indemnification (§ 302.19); and civil rights (§ 302.20). In addition, any Property (defined in § 314.1) acquired in connection with Investment Assistance is subject to the property management regulations set out in part 314 of this chapter.

2. Revise part 315 to read as follows:

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.
- 315.4 Eligible applicants.
- 315.5 TAAC scope, selection, evaluation and awards.
- 315.6 Firm eligibility for Adjustment Assistance.

Subpart B—Certification of Firms

- 315.7 Certification requirements.
- 315.8 Processing petitions for certification.
- 315.9 Hearings.
- 315.10 Loss of certification benefits.

- 315.11 Appeals, final determinations and termination of certification.

Subpart C—Protective Provisions

- 315.12 Recordkeeping.
- 315.13 Audit and examination.
- 315.14 Certifications.
- 315.15 Conflicts of interest.

Subpart D—Adjustment Proposals

- 315.16 Adjustment Proposal Requirements.

Subpart E—Assistance to Industries

- 315.17 Assistance to Firms in import-impacted industries.

Authority: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. No. 111–5; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 3 of title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

§ 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 following meanings:

Adjustment Assistance means 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 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,

(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 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. 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 261 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 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.

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

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

Partial Separation means, with respect to any employment in a Firm, 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 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. For purposes of receiving benefits under this part, when a Service Sector Firm owns or controls other Service Sector Firms, the Service Sector Firm and such other Service Sector Firms may be considered a single Service Sector Firm when they furnish like or Directly Competitive services or are exerting essential economic control over one or more servicing facilities. Such other Service Sector Firm may be a Predecessor, Successor, Affiliate or Subsidiary, each as defined in the definition of Firm.

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, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

§ 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 designate as confidential any Confidential Business Information.

§ 315.4 Eligible applicants.

(a) The following entities may apply for assistance to operate a TAAC:

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) For purposes of § 315.17 and to the extent funds are appropriated to

implement section 265 of the Trade Act, 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 and 251 of the Trade Act, include:

(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 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.*

(1) 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 serving particular areas may be obtained from the TAAC Web site at <http://www.taacenters.org> or from EDA at <http://www.eda.gov>.

(2) 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 normally be made through TAACs.

(3) A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.

(b) *TAAC selection.*

(1) EDA invites currently funded TAACs to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous 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 ensure funding by EDA.

(2) EDA may invite new applications through a Federal Funding Opportunity ("FFO") announcement. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not ensure funding by EDA.

(c) *TAAC evaluation.*

(1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

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

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

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

(iv) Availability of funds.

(d) *TAAC award requirements.*

(1) EDA generally funds a TAAC for a three-year project period consisting of three separate funding periods of 12 months each.

(2) There are no matching share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

§ 315.6 Firm eligibility for Adjustment Assistance.

(a) Firms participate in the Trade Adjustment Assistance for Firms program in accordance with the following:

(1) 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);

(2) Firms certified in accordance with the procedures described in §§ 315.7 and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC ("Adjustment Proposal") and submit it to EDA for approval; and

(3) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part. A Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal.

(b) For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) (1) Certified Firms generally receive Adjustment Assistance over a two-year period.

(2) The matching share requirements are as follows:

(i) 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.

(ii) Organizations representing trade-injured industries must pay at least 50 percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

Subpart B—Certification of Firms

§ 315.7 Certification requirements.

(a) *General.* EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act 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 5 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 twelve-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 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 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 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 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.

§ 315.8 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 § 315.7(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; publicly-owned corporations

should 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 its major customers and their purchases (or its bids, if there are no major customers); 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 resubmitted 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 and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it 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 § 315.7.

(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 material. In no event may the determination period exceed 40 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, provided, EDA may waive the one-year limitation for good cause.

§ 315.9 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 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 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 its 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) 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; and

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

§ 315.10 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) Failure 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) Failure 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;

(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; or

(d) Failure to diligently pursue an approved Adjustment Proposal where five years have elapsed since the date of certification.

§ 315.11 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 days from the date of notice of denial under § 315.8(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, the determination under § 315.8(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 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.

(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.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart C—Protective Provisions

§ 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance for Firms program funds so as to facilitate an effective audit.

§ 315.13 Audit and examination.

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

§ 315.14 Certifications.

EDA will provide no Adjustment Assistance to any Firm unless the

owners, partners, members, directors or officers thereof certify 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 applications for such Adjustment Assistance; and

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

§ 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers 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 D—Adjustment Proposals

§ 315.16 Adjustment Proposal Requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) EDA must receive the Adjustment Proposal within two years after the date of the certification of the Firm;

(b) 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;

(c) 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

(d) 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 this purpose, 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—Assistance to Industries

§ 315.17 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 Adjustment 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 the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to \$10,000,000 annually per industry, subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.

Dated: April 30, 2009.

Barry Bird,

Chief Counsel, Economic Development Administration.

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