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**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Parts 302 and 315**

**[Docket No.: 170830844-9318-01]**

**RIN: 0610-AA80**

**General Updates and Elimination of Certain TAAF and PWEDA Regulations**

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice of proposed rulemaking, request for public comment.

**SUMMARY:** The Economic Development Administration (“EDA”), U.S. Department of Commerce (“DOC”), is publishing this notice of proposed rulemaking (“NPRM”) to request public comment on proposed updates to the agency’s regulations implementing the Trade Adjustment Assistance for Firms (“TAAF”) provisions of the Trade Act of 1974, as amended (“Trade Act”), and the Public Works and Economic Development Act of 1965, as amended (“PWEDA”). The proposed changes to the TAAF program regulations would clarify the process for import-impacted U.S. manufacturing, oil and natural production and service firms to obtain technical assistance – identified in the Trade Act as “adjustment assistance” – through the TAAF program, reorganize the regulations to make them easier to read and understand, incorporate best practices, and bring the regulations into closer alignment with the program’s statutory requirements. The result will be to ease the burden on firms seeking adjustment assistance through the TAAF program and make it easier for Trade Adjustment Assistance Centers (“TAACs”) to work with firms. EDA also proposes the elimination of certain TAAF and PWEDA

regulations that are unnecessary or duplicative because they describe requirements already established in other regulations or award documentation.

**DATES:** Written comments on this NPRM must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. EDA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).
- Email: [regulations@eda.gov](mailto:regulations@eda.gov). Include “Comments on EDA’s regulations” and Docket No. 170830844-9318-01 in the subject line of the message.
- Mail: Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Suite 72023, Washington, DC 20230. Please indicate “Comments on EDA’s regulations” and Docket No. 170830844-9318-01 on the envelope.

**FOR FURTHER INFORMATION, CONTACT:** Ryan Servais, Attorney Advisor, Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1244 Speer Boulevard, Suite 431, Denver, CO, 80204; telephone: (303) 844-4403.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Through strategic grant investments that foster job creation and attract private investment, EDA supports development in economically distressed areas of the United States to prepare these areas for growth and success in the worldwide economy.

EDA is publishing this NPRM to request public comments on proposed updates to the agency's regulations implementing the TAAF program (Part I) and PWEDA (Part II). These changes would ease the burden on firms and grantees by eliminating unnecessary and duplicative regulations and clarify and reorganize the regulations to make them easier to understand.

The proposed updates would also incorporate best practices. For example, EDA is proposing to build into the definition of "subsidiary" language that would recognize independent subsidiaries as eligible to apply for assistance separately from the firm that has acquired them. This change is in response to a growing number of petitions by firms that have been acquired before or after filing a petition for assistance, while continuing to operate independently. In addition, EDA proposes to add a requirement that firms must begin implementation of their Adjustment Proposal within six months after the Proposal is approved by EDA. 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. EDA also proposes to incorporate changes that would enable firms to amend their Adjustment Proposals within two years of EDA approval and that would require firms to complete implementation of the Adjustment Proposals within five years of approval. Furthermore, the regulations would

require firms that are transferred, sold, or otherwise acquired by another firm, during this five-year period, to notify EDA, which will make a determination regarding the continued eligibility of the petitioner firm. These are existing best practices and help to ensure that Adjustment Proposals reflect current conditions and are maximally effective.

These proposed changes would also align the regulations more closely with statutory requirements. Specifically, EDA proposes to refer to imported articles or services that compete with and are substantially equivalent to the petitioning firm's as "directly competitive or like," as written in the Trade Act, rather than simply "directly competitive." In addition, EDA proposes to clarify all references to "days" as "calendar days," to reflect this usage in the Trade Act, a change that would also speed up the time within which EDA is required to make determinations regarding firm eligibility and assistance.

Additionally, because this rule would remove certain regulations and will make it easier for firms and EDA grantees to comply with the requirements for the TAAF and EDA grant programs, it is considered a "deregulatory action" pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771.

## **Part I: Updates to TAAF Program Regulations**

### **Trade Act Background**

Authorized under Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341-2355), the TAAF program assists import-impacted U.S. manufacturing, oil and natural gas production, and service firms with developing and implementing projects to regain global competitiveness, expand markets, strengthen operations, and increase profitability, thereby increasing U.S. jobs.

The TAAF program provides cost-sharing technical assistance to eligible import-impacted U.S. manufacturing, oil and natural gas production, and service firms in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico. Technical assistance is provided through a nationwide network of 11 TAACs, which are non-profits or university-affiliated.

TAACs provide eligible firms with customized assistance from industry experts knowledgeable about the unique needs, challenges, and opportunities facing industries in their respective regions. Firms work with the TAACs to apply for certification of eligibility for TAAF assistance. Firms demonstrate their eligibility by documenting that they have experienced a decline in sales or a decline or impending decline in employment or worker hours, and that an increase of imports of directly competitive goods or services contributed importantly to such declines. EDA then renders a decision regarding the firms' eligibility.

The TAAC works closely with eligible firms' management to identify the firms' strengths and weaknesses and then develop a customized business recovery plan, called an Adjustment Proposal (AP), designed to stimulate recovery and growth. The TAAF program pays up to 75 percent of the costs of developing the AP. EDA reviews firms' APs and determines whether or not to approve them. When the AP has been approved, company management and TAAC staff jointly identify consultants with the specific expertise needed to help the firm implement the AP. For consultant costs that are above the acquisition threshold for sole source contracts, selection is made through a competitive procurement process. The TAACs and firms then enter into a contract with

the private consultants, and the TAACs pay up to 75 percent of the costs of the consultants.

## **Overview of Proposed Changes to the TAAF Regulations**

The discussion that follows presents the proposed changes by subpart letter and section number, with an explanation for each proposal.

### **Subpart A**

EDA proposes no changes to the designation or heading of this subpart. EDA proposes to transfer §§ 315.4 and 315.5 from Subpart A to Subpart B. This proposed change would retain all general provisions (purpose and scope, definitions, and Confidential Business Information) within Subpart A, while consolidating those regulations regarding TAAC selection, operation, role, and coverage within Subpart B.

### **Section 315.1**

EDA proposes replacing this section with a new programmatic description of TAAF's purpose. The revised section will more clearly lay out the process by which EDA executes its responsibilities concerning the TAAF program, as delegated by the Secretary of Commerce, and the process by which firms work with TAACs to request and obtain Adjustment Assistance. EDA also proposes adding a citation to those sections of the Trade Act of 1974 which establish the responsibilities and requirements associated with the TAAF program.

### **Section 315.2**

EDA proposes a minor wording change to the introduction to the definitions, as well as changes to the definitions identified below.

### **Adjustment Assistance**

EDA proposes three revisions to the definition of Adjustment Assistance. First, EDA proposes to remove the reference to “or industries.” As explained further in the discussion of the changes to section 315.17, EDA proposes to eliminate its regulations related to the provision of trade adjustment assistance to industries. EDA has historically not provided separate industry-wide assistance programs because firms within impacted industries have solicited help through TAAF on an individual basis and because there has been no demand for industry-wide assistance. In addition, EDA provides expedited review of petitions and Adjustment Plans from firms within impacted industries. When the U.S. International Trade Commission (ITC) makes an injury determination, in accordance with Chapter 3 of the Trade Act, EDA provides expedited consideration to petitions by firms in the affected industry, as well as expedited assistance in preparing and processing Adjustment Proposal applications to such firms. EDA believes this individualized approach has been effective in facilitating adjustments within both firms and industries. Removing regulations that reference trade adjustment assistance to industries will help prevent potential confusion regarding the availability of a parallel industry program. In the event that EDA does determine it is appropriate to provide trade adjustment assistance for industries, EDA will promulgate new regulations to implement the program.

Second, EDA proposes to revise the definition to clarify that Adjustment Assistance refers to technical assistance provided by the TAACs. The current regulation is ambiguous and could be interpreted that EDA provides the technical assistance directly, which is not the case. Third, EDA proposes adding to the definition a statement that EDA determines what type of assistance is provided and to incorporate a list of the

types of assistance that this may include: preparing a firm's petition for certification of eligibility, developing an Adjustment Proposal, and implementing an Adjustment Proposal.

### **Adjustment Proposal**

EDA proposes revising the definition for Adjustment Proposal, clarifying that the Adjustment Proposal is a firm's plan for improving its competitiveness in the marketplace, consistent with the intent of the TAAF program as established in the Trade Act. The current regulations state that the purpose of an Adjustment Proposal is to improve the firm's economic situation, a less clear goal not linked to the purposes of the Trade Act.

### **Decreased Absolutely**

EDA proposes a minor change to the definition of Decreased Absolutely to add language clarifying that a firm's sales or production must have declined by a minimum of five percent relative to its sales or production during the applicable time period and that the decline is independent of industry or market fluctuations and relative only to the previous performance of the firm unless EDA determines that such limitations would not be consistent with the purposes of the Trade Act. While it is implied in the existing regulations that all three of these factors must be present to constitute an absolute decrease in a firm's sales or production, EDA believes this minor revision will provide clear confirmation of this requirement.

### **Directly Competitive**

EDA proposes revising the defined term Directly Competitive to add the words "or Like" to the end, such that the term would be Directly Competitive or Like. This

change would more closely align this term with the terminology of the Trade Act. EDA proposes further revising this definition by adding language that clarifies the linkage between this definition and the reference to firms that engage in exploring, drilling, or producing oil or natural gas. By adding the phrase “For the purposes of this term,” before the final sentence in this definition, EDA reinforces the requirement in Section 251 of the Trade Act that firms that engage in these types of activities be considered as producing articles that are directly competitive with imported oil and natural gas for the purposes of TAAF eligibility.

### **Firm**

EDA proposes revising the definition of Firm to correct the citation to the section of the Trade Act that defines this term. In addition, EDA proposes capitalizing the term, “Unjustifiable Benefits,” as referenced in this definition. This change is the result of EDA’s proposal to include a definition for Unjustifiable Benefits, as described below. EDA also proposes further revising this definition by adding to the sub-definition of Subsidiary, which is included as a category of firm that may be considered jointly with another firm that is requesting Adjustment Assistance pursuant to TAAF in an effort to prevent Unjustifiable Benefits. EDA proposes to qualify the definition of Subsidiary by adding an explanation that a firm acquired by another firm but which operates independently of the acquiring firm is considered an Independent Subsidiary and may be considered separately from the acquiring firm as eligible for Adjustment Assistance. This change reflects existing practice and addresses a growing trend in petitions requesting Adjustment Assistance for firms that have been acquired by another firm but continue to operate independently after the acquisition, generally retaining the same

management, maintaining control over management decisions, and otherwise continuing operations without significant change.

### **Increase in Imports**

EDA proposes revising the definition of Increase in Imports by making minor wording changes for increased clarity. EDA proposes further modification to this definition by moving the second sentence of this definition to the revised Subpart C (Certification of firms) as a new paragraph (c) in § 315.6 (Certification Requirements). EDA believes this sentence more appropriately belongs in this Subpart C as a description of one way for a firm to demonstrate that it meets the eligibility requirements for Certification to apply for Adjustment Assistance. The sentence provides that a firm may submit certifications from a firm's customers that account for a significant percentage of the firm's decrease in sales or production, that the customers increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country.

### **Partial Separation**

EDA proposes changing the definition of Partial Separation by replacing language denoting that this definition is with respect to any employment in a firm with language that clarifies that a Partial Separation occurs when there has been no increase in overall employment at the firm and either of the conditions currently described in this definition exist: (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. EDA occasionally receives petitions submitted by firms whose overall

employment figures have increased within the periods of time in question and which, nonetheless, assert that there has been a Partial Separation with regards to a certain portion of their workforce's work hours or weekly wages. EDA believes that this revision should resolve the apparent confusion caused by the current wording and clarify that a firm does not meet the eligibility criteria if its overall employment has increased during the relevant time period.

### **Service Sector Firm**

EDA proposes revising the definition of Service Sector Firm to remove the last two sentences of that definition because they are already included in the definition of firm. The first superfluous sentence states that when a Service Sector Firm owns or controls other Service Sector Firms, those firms may be considered a single Service Sector Firm for the purposes of requesting Adjustment Assistance when they furnish Directly Competitive or Like services or are exerting essential economic control over one or more servicing facilities. The second superfluous sentence notes that these firms may be Predecessor, Successor, Affiliate, or Subsidiary Firms as defined in the definition of firm.

### **Total Separation**

EDA proposes streamlining and clarifying the definition of Total Separation by removing the phrase "with respect to any employment in a firm" and adding the words "in a firm" after "the laying off or termination of employment of an employee."

### **Unjustifiable Benefits**

As noted above, EDA also proposes adding a definition for Unjustifiable Benefits. Under this new definition, Unjustifiable Benefits describe 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. EDA believes that this is an important concept that should be fully explained to help firms understand TAAF eligibility requirements, particularly when a firm has a relationship through ownership or control by another firm.

### **Section 315.3**

EDA proposes no revisions to this section.

### **Subpart B**

EDA proposes revising this subpart to consolidate and clarify all regulations regarding TAAC selection, operations, and coverage. The revised Subpart B, entitled “TAAC Provisions,” would be inserted after § 315.3 and would include revised §§ 315.4 and 315.5, which would be transferred to Subpart B from Subpart A.

### **Section 315.4**

EDA proposes revising the heading of § 315.4 from “Eligible applicants” to “TAAC Selection and Operation.” EDA also proposes revising paragraph (a) of this section to better describe the TAAC selection process by replacing the words “The following entities may apply for assistance to operate a TAAC” with “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:”. EDA also proposes replacing “or” with “and” after subparagraph (2) to clarify that all of the types of entities listed in paragraph (a) are

eligible to apply to be selected as a TAAC, including universities or affiliated organizations, States or local governments, and non-profit organizations.

EDA proposes revising paragraph (b) of this section to replace the existing language, which lists the types of 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 the Trade Act, with language explaining that TAACs are awarded cooperative agreements that 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, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and that the TAACs work closely with EDA and import-impacted firms. EDA believes this new language clarifies the basis for the relationship between EDA and the TAACs and clarifies the legal, policy, and procedural criteria that govern this relationship.

### **Section 315.5**

EDA proposes revising the heading of this section from “TAAC scope, selection, evaluation and awards” to “The Role and Geographic Coverage of the TAACs” to more accurately reflect the focus of this section, particularly in the more streamlined version of the regulations being proposed by EDA in this Notice. EDA proposes revising paragraph (a) of this section by removing the introductory language, “TAAC purpose and scope,” as unnecessary. EDA also proposes removing the numbered subparagraphs from paragraph (a) and, in that same paragraph, changing the third sentence, which currently reads, in part, “Information concerning TAACs serving particular areas may be obtained. . .” from various EDA and TAAC web sites. EDA proposes to revise that sentence to

read: “Information concerning TAACs and their coverage areas may be obtained . . .”

EDA anticipates that this change will clarify that information regarding all of the TAACs service areas, rather than just particular geographic areas, are available at these web sites.

EDA proposes renumbering subparagraphs (2) and (3) as paragraphs (b) and (c), respectively. EDA also proposes streamlining newly re-designated paragraph (c) by removing the words “providing assistance to a,” renumbering subparagraphs (i) and (ii) as (1) and (2), respectively, and rewording those two subparagraphs as follows: “(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.” This change should provide enhanced clarity on the types of Adjustment Assistance a TAAC may provide a firm.

EDA also proposes removing existing paragraphs (b), (c), and (d) in their entirety. These paragraphs discuss the application and evaluation process for TAACs to be awarded a cooperative agreement as well as the award requirements for the cooperative agreements. EDA believes these paragraphs are unnecessary, as these provisions and requirements would generally be covered in the Notice of Funding Opportunity used to announce the availability of funding for TAAC awards.

### **Subpart C**

EDA proposes revising Subpart C to consolidate all regulations regarding the certification of firms. The revised Subpart C would be entitled, “Certification of Firms” and would include § 315.6 through § 315.10.

### **Section 315.6**

EDA proposes to revise the heading for § 315.6 from “Firm eligibility for Adjustment Assistance” to “Certification Requirements” and revise paragraph (a) to remove the introductory language. EDA also proposes moving the matching share requirements for Adjustment Proposals as set forth in current paragraph (c)(2) to the new § 315.11 (“Adjustment Proposal Process”) in Subpart D (“Adjustment Proposals”). EDA proposes eliminating the remaining requirements in § 315.6. These remaining requirements are duplicative of other regulations in this Part and provide no additional guidance or clarity to the TAACs or firms. Moreover, EDA proposes adding to § 315.6(a) a reference to the codified version of the relevant section of the Trade Act.

In addition to these revisions, as noted above in the discussion regarding proposed revisions to the definition of Increase in Imports, EDA proposes adding a new paragraph (c) to this section and moving into this paragraph the language formerly located in the definition of Increase in Imports that enabled firms to help demonstrate that they meet the eligibility requirements for Adjustment Assistance by submitting certification from the firm’s customers that account for a significant percentage of the firms’ decrease in sales or production, that the customers increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country. A comma has been added to this sentence after the word “production” to increase clarity. EDA proposes further adding to this new paragraph (c) a sentence specifying that such certification from a firm’s customer must be submitted directly to a TAAC or to EDA. EDA believes this addition will ease some confusion by firms, some of which have requested their customers to provide such certification directly to the firms which subsequently pass on the certifications to EDA through the TAACs. While EDA

recognizes the potential sensitivity and challenges involved with a firm asking one or more of its customers to certify that the customers have increased their purchase of imports relative to their purchase from U.S. suppliers, EDA believes that this information is critical to support claims of import impact. In addition, Section 251(e) of the Trade Act requires these certifications to be made to the Secretary of Commerce, who has delegated this and the other responsibilities associated with the TAAF program to EDA.

### **Section 315.7**

EDA proposes re-designating the current § 315.8 as § 315.7 and revising the section heading to capitalize the words “Petitions” and “Certification” to reflect the use of capitalization in the headings of the other sections within part 315.

Because of the revisions discussed above, EDA also proposes revising the cross-reference in paragraph (b)(4) to cite to § 315.6(b), rather than to § 315.7(b). This cross-reference links to the section describing the data on sales, production, and employment required to demonstrate a firm has met the established certification thresholds.

Furthermore, EDA proposes revising paragraph (b)(5) to clarify the additional requirements for publicly-owned corporations when submitting financial information as part of their petitions for certification. EDA proposes revising the paragraph by adding the words, “in addition” and “also” to clarify that 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 in addition to the other requirements described in this same paragraph.

EDA also proposes revising paragraph (b)(6) to make clear the information required regarding a firm's customers. Specifically, EDA proposes replacing the qualifier that the description relates to the "major" customers of the firm with one that identifies the customers as "accounting for a significant percent of the firm's decline." EDA proposes further revising this paragraph to clarify that firms should submit information regarding those customers' purchases or the firm's unsuccessful bids if there are no customers fitting the description outlined in this paragraph.

EDA also proposes revising paragraph (e) by including a citation to the codified section of the Trade Act set forth in this paragraph and by updating the cross-reference to the section of part 315 that discusses certification requirements.

EDA proposes revising paragraph (f) to clarify that, in order to withdraw a petition for certification, the petitioner must submit a request for withdrawal before EDA makes a determination regarding approval or denial of the certification. EDA proposes further revising this paragraph by updating the cross-reference cited in the second sentence of paragraph (f), which regards submission of a new petition, to reflect the re-designation of the section that discusses certification requirements from § 315.7 to § 315.6.

EDA also proposes revising subparagraphs (1) and (2) in paragraph (g) of this section. EDA proposes revising subparagraph (1) to add the word "requested" before the word "material" in order to make clear that EDA may request additional material from a firm beyond what was submitted with the firm's original petition if necessary to make a determination regarding the firm's eligibility for Adjustment Assistance. In addition, EDA proposes revising subparagraph (1) to insert the word "calendar" before the word

“days.” EDA also proposes making similar revisions to all references to “days” found throughout part 315. EDA proposes these changes to clarify that all references to “days” within part 315 refer to calendar days. The current regulations are not clear on whether these references to “days” are calendar or business days. These revisions will bring the TAAF regulations into alignment with the Trade Act.

EDA proposes revising subparagraph (2) of paragraph (g) by altering the final sentence to clarify that firms may not resubmit a petition within one year from the date of a denial without a waiver from EDA issued for good cause.

### **Section 315.8**

EDA proposes re-designating the current § 315.9 as § 315.8.

For the reasons discussed above, EDA proposes inserting the word “calendar” in front of the word “days” in the introductory paragraph to this section.

EDA proposes revising paragraphs (a) and (c) by replacing the semicolon at the end of each paragraph with a period to reflect that each is a complete sentence.

EDA proposes revising paragraph (b)(2) by deleting the word “its” and inserting the words “the requesting party’s” in lieu thereof to clarify that, when someone other than the petitioner requests a public hearing on an accepted petition, the requester must include a statement describing the nature of the requester’s interest in the proceedings.

EDA also proposes revising paragraph (d) of this section to clarify that EDA will publish a notice of a public hearing in the Federal Register only if EDA has made the determination that the requesting party has a substantial interest in the hearing. EDA

proposes further revising this paragraph by removing the semicolon and the word “and” from the end of the paragraph and adding a period.

### **Section 315.9**

EDA proposes re-designating the current § 315.10 as § 315.9 and revising the section heading to capitalize the words “Certification” and “Benefits” to reflect the use of capitalization in the headings of the other sections within part 315.

EDA also proposes revising paragraphs (a), (b), and (d) to replace the word “Failure” at the beginning of each of those paragraphs with the words “The firm failed” to provide clarity regarding which entity’s omission triggers the loss of certification benefits.

In addition, EDA proposes revising paragraphs (a), (b), and (c) to replace the semicolons at the end of each of those paragraphs with a period to reflect that these are separate and not cumulative requirements. For the same reason, EDA proposes to further revise paragraph (c) by removing the word “or” from the end of that paragraph.

EDA proposes further revising paragraph (d) by adding a comma after the words “Adjustment Proposal” and replacing the word “where” with the word “and”. This paragraph, as revised, reads: “(d) The firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.”

### **Section 315.10**

EDA proposes re-designating the current § 315.11 as § 315.10 and revising the section heading to capitalize the words “Final,” “Determinations,” “Termination,” and “Certification,” to reflect the use of capitalization in the headings of the other sections within part 315.

EDA proposes revising paragraphs (a) and (b) of this section by inserting the word “calendar” before the word “days” for the reasons mentioned above. EDA proposes further revising paragraph (a) by updating the cross-references to the regulations regarding EDA’s process for making determinations regarding petitions for certification. Specifically, EDA proposes changing the two references in this paragraph from § 315.8(g) to § 315.7(g). EDA proposes further revising paragraph (b) by adding a reference to the codified version of the cited section of the Trade Act.

EDA proposes removing the designation of paragraph (d) and adding the sentence that formerly stood alone as paragraph (d) to the end of paragraph (c) in this same section. EDA believes this reorganization would reduce potential confusion by placing all requirements regarding the steps EDA takes when it terminates a certification, including notifying the petitioner and stating the reasons for such termination, in a single paragraph.

#### **Subpart D**

EDA proposes no changes to the designation or heading of this subpart. However, EDA proposes to revise this subpart to include §§ 315.11 and 315.12.

#### **Section 315.11**

Section 315.11 would be revised to combine requirements currently contained in other sections of part 315 and add new language to reflect best practices. The section heading would be revised to be “Adjustment Proposal Process.”

EDA proposes moving paragraphs (a)(2) and (a)(3) from the current § 315.6 to the revised § 315.11 as paragraphs (a) and (b) within this section in order to consolidate Adjustment Proposal procedures within a single section. In addition, within paragraph (a)

of § 315.11, EDA proposes updating the cross-references to those sections within part 315 that refer to certification requirements and processing petitions for certification to reflect the changes discussed above. In line with these changes, the references cited in this paragraph would change from §§ 315.7 and 315.8 to §§ 315.6 and 315.7, respectively. In order to more clearly reflect the requirements of the Trade Act, EDA proposes to move the requirement established in the current § 315.16(a), which says Adjustment Proposals must be submitted to EDA for approval within two years after the date of Certification, to the newly designated § 315.11(a).

In addition to moving the requirements that currently exist in § 315.6(a)(3) to the revised § 315.11(b), EDA proposes adding language to these requirements that would require firms to begin implementation of their approved Adjustment Proposal within six months after approval. EDA also proposes adding a requirement that firms that do not begin implementation within six months after approval must update and re-submit their Adjustment Proposal for re-approval before any Adjustment Assistance may be provided. These additions reflect long-standing practice and would help firms to ensure that their Adjustment Proposals reflect the most up-to-date economic conditions and financial situation and, consequently, that the firms will receive the most effective Adjustment Assistance.

EDA proposes adding a paragraph (c) to this section that discusses how EDA will make a determination regarding the Adjustment Proposal no later than 60 calendar days after receipt of the Adjustment Proposal. This new language incorporates a requirement in Section 252(b)(2) of the Trade Act that the Secretary make a

determination as soon as possible after the date on which an application is filed, but in no event later than 60 days after such date.

EDA also proposes adding a paragraph (d) to this section. EDA proposes moving the matching share requirements for Adjustment Assistance from the existing § 315.6(b)(2) to this paragraph. In addition, EDA proposes adding a sentence stating that certified firms may request no more than the amount established by EDA for total Adjustment Assistance over the entire lifetime of the firm. This proposed addition incorporates current practice, established to ensure that the maximum number of eligible firms are able to receive Adjustment Assistance and to encourage certified firms to appropriately plan and implement their Adjustment Proposals within established funding limits.

EDA proposes adding a paragraph (e) to this section and specifying within this paragraph that firms may request EDA approval to amend their Adjustment Plans within two years from the date of EDA approval of their initial Adjustment Plans. This new language incorporates current practice and allows firms to update their Adjustment Plans as needed within the two-year time frame to address any unexpected changes in their situation, new information, or a need to re-direct resources to areas of greatest need.

EDA also proposes adding a paragraph (f) to this section. The proposed paragraph (f) requires firms to complete implementation of their Adjustment Plans within five years of EDA approval of their initial Adjustment Plan. This added language reflects current practice and EDA's expectation that firms who request Adjustment Assistance are financially and operationally prepared to engage in the TAAF program and will implement their Adjustment Plan in a timely way.

EDA proposes adding a paragraph (g) to this section to address what occurs if a Certified firm is transferred, sold, or otherwise acquired by another firm during the five-year period established in paragraph (f). Paragraph (g) requires a Certified firm that is transferred, sold, or otherwise acquired by another firm during the five-year period of Adjustment Assistance to 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. This new language incorporates current practice and is designed to resolve any confusion about how firms and TAACs should handle this type of scenario.

Finally, EDA proposes adding a paragraph (h) to this section. Paragraph (h) would require firms that receive Adjustment Assistance to provide data regarding the firms' sales, employment, and productivity upon completion of the program and each year for the two-year period following completion. This language incorporates into the regulations reporting requirements established in Section 255A of the Trade Act, which requires EDA to report annually to Congress on data regarding the TAAF program for the preceding fiscal year.

### **Section 315.12**

EDA proposes revising the heading of this section to capitalize the words "Proposal" and "Requirements" to reflect the use of capitalization in the headings of the other sections within part 315.

In addition, as discussed above, EDA proposes eliminating paragraph (a) of this section after moving the requirement that firms must submit their Adjustment Proposals to EDA within two years of the date of certification to § 315.11(a).

As a result of this proposed elimination of paragraph (a), EDA proposes re-designating the remaining paragraphs such that the existing paragraph (b) is re-designated paragraph (a), paragraph (c) becomes paragraph (b), and paragraph (d) becomes paragraph (c).

### **Subpart E**

EDA proposing revising the heading for this subpart to “Protective Provisions.” As revised, Subpart E would include §§ 315.13 and 315.14. EDA proposes moving the requirements regarding persons engaged by firms to expedite petitions and Adjustment Proposals as found in the current § 315.14 (Certifications) and the requirements regarding conflicts of interest that are contained the current § 315.15 (Conflicts of interest), both of which are found in the current Subpart C, to Subpart E. EDA believes this reorganization and new location will make it easier for firms to read and understand the regulations and will help clarify that these provisions apply to firms at all stages of the TAAF process.

### **Section 315.13**

EDA proposes moving the requirements for firms to certify in writing to EDA the names of any attorneys, agents, and other Persons engaged by or on behalf of the firm for the purpose of expediting Petitions for Adjustment Assistance and the fees paid or to be paid to any such Person, as found in the current § 315.14, to § 315.13. EDA proposes further revising these requirements by clarifying, in paragraph (a), that they apply to both Adjustment Assistance and Adjustment Proposals.

## **Section 315.14**

EDA proposes moving the requirements found in the current § 315.15 to § 315.14. EDA also proposes revising these requirements by modifying the list of firm representatives subject to the conflicts of interest requirements to parallel the list of firm representatives identified in the revised § 315.13. With this revision, § 315.14 applies the conflict of interest requirements to the “owners, partners, members, directors or officers” of the firm, replacing the prior language applying these requirements to the “owners, partners, or officers” of the firm.

## **Subpart F**

EDA proposes adding Subpart F, entitled “International Trade Commission Investigations.” Subpart F sets forth, through § 315.15 - what actions EDA takes when the ITC makes an affirmative finding under the Trade Act or under sections 705 or 735 of the Tariff Act regarding injury or threat of injury to an industry.

## **Section 315.15**

EDA proposes revising the heading of this section to “Affirmative Findings.” EDA also proposes removing the designation “(a)” from the first paragraph of this section and eliminating paragraphs (b) and (c) to reflect the fact that EDA, historically, has not provided Adjustment Assistance for the establishment of industry-wide programs for new product development, export development, or other uses consistent with the purposes of the Trade Act because there has been no demand for such programs. As noted above in the discussion regarding proposed changes to the definition of Adjustment Assistance in § 315.2, firms within impacted industries have sought Adjustment Assistance through TAAF on an individual basis rather than through industry-wide

solutions. EDA also provides expedited review of petitions and Adjustment Plans from firms within industries that have received an injury determination by the ITC. This individualized approach enables EDA to support adjustments at the firm level, while having a cumulative impact at the industry level.

EDA proposes further revising this section by correcting the citation, within the first paragraph, to read “section 202(b) of the Trade Act” with a lower case (b) as is used in the Trade Act. EDA also proposes citing to the codified form of the relevant section of the Trade Act, 19 U.S.C. 2252, within that first paragraph and updating the paragraph by including a reference to sections 705 and 735 of the Tariff Act (19 U.S.C. 1671d, 1673d). Furthermore, EDA proposes replacing within this paragraph the language stating that EDA will provide to firms in the identified industry assistance in the preparation and processing of petitions and applications for benefits; EDA instead will include language establishing notification to the TAACs and expedited review of petitions and Adjustment Plans from firms within the specified industry. EDA believes these revisions more clearly describe the assistance EDA provides to industries in response to determinations made by the International Trade Commission under the Trade and Tariff Acts.

## **Part II: Updates to PWEDA Regulations**

### **PWEDA Background**

PWEDA is EDA’s organic authority and is the primary legal authority under which EDA awards grants. Other legal authorities include the Trade Act and the Stevenson-Wydler Technology Innovation Act of 1980. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure

development, capacity building, and business development in order to attract private capital investments and new and better jobs to regions experiencing substantial and persistent economic distress.

### **Overview of PWEDA Regulations Proposed for Elimination**

EDA proposes eliminating certain provisions within part 302 of the PWEDA regulations that are unnecessary or already established in other regulations or award documentation. Specifically, EDA is proposing to eliminate the regulations located at 13 CFR §§ 302.4, 302.5, and 302.14. These regulations describe: the responsibilities of EDA grant recipients to maintain records, how information supplied to EDA may be subject to public release under the Freedom of Information Act or Privacy Act, how government auditors may need access to various records, and that grant recipients are subject to the government-wide relocation assistance and land acquisition policies. These regulations can be removed because notice is already provided to grant recipients through other Department of Commerce-wide or government-wide regulations as well as in specific documentation EDA provides to each grant recipient. Specifically, recipients of EDA financial assistance are already subject to the requirements related to the Freedom of Information Act or Privacy Act currently described in § 302.4 through 15 CFR part 4 and the Standard Terms and Conditions of an EDA award. Similarly, the relocation and land acquisition policies currently found in § 302.5 are already applicable to all EDA financial assistance recipients under government-wide regulations found at 49 CFR part 24. Finally, the record-keeping requirements currently located in § 302.14 duplicate the requirements of Section 608 of PWEDA (42 U.S.C. 3218), 2 CFR §§ 200.333 and 200.336, and the Standard Terms and Conditions of an EDA award.

In addition, EDA is proposing the elimination of 13 CFR 302.11. Beginning with the enactment of the original section 502 of PWEDA (42 U.S.C. 3192) in 1998, Congress has required EDA to maintain an economic development information clearinghouse on matters related to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities. See Pub. L. 105-393. With the EDA Reauthorization Act of 2004 (Pub. L. 108-373 (Oct. 27, 2004)), Congress amended section 502 to require EDA to, among other things, maintain this information clearinghouse online. The current regulation adds nothing of value to the requirements already in place under section 502 and consequently should be eliminated.

### **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)). EDA's programs, including TAAF, are financial assistance programs provided through grants and cooperative agreements. As such, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, and 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.

### **Executive Orders No. 12866, 13563, and 13771**

This proposed rule was drafted in accordance with Executive Orders 12866, 13563, and 13771. The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866 and Executive Order 13563.

This proposed rule is a deregulatory action that has a neutral effect on the costs to firms, organizations, and all other stakeholders to comply with the regulations discussed in this NPRM. It is therefore considered to have a total incremental cost of zero pursuant to the April 5, 2017, OMB guidance memorandum implementing Executive Order 13771.

### **Congressional Review Act**

This proposed rule 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 proposed rule does not contain policies that have federalism implications.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA § 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of 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 PRA unless that collection displays a currently valid OMB Control Number.

The following table provides the only collection of information (and corresponding OMB Control Numbers) set forth in this proposed rule. This collection of information is necessary for the proper performance and functions of EDA. The proposed rule does not include a new information collection requirement and will, thus, use the previously approved ED-840p form to collect information relevant to a petition for certification of eligibility for trade adjustment assistance.

<b>Part or section of this proposed rule</b>	<b>Nature of Request</b>	<b>Form/Title/OMB Control Number</b>
315.7(b)	All firms seeking certification of eligibility to apply for trade adjustment assistance must complete the ED-840p form, which provides EDA with the information needed to determine if a firm is eligible to apply for trade adjustment assistance.	ED-840p, Petition by a firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610-0091)

**List of Subjects**

13 CFR Part 302

Community development, Grant programs-business, Grant programs-housing and community development, Technical assistance.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs-business, Reporting and recordkeeping requirements, Trade adjustment assistance.

For the reasons discussed above, EDA proposes to amend 13 CFR, chapter III as follows:

**PART 302-GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE**

1. The authority citation of part 302 continues to read as follows:

**Authority:** 19 U.S.C. 2341 et seq.; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; 15 U.S.C. 3701; Department of Commerce Delegation Order 10-4.

§§ 302.4, 302.5 [Removed]

2. Remove §§ 302.4 and 302.5.

§ 302.11 [Removed]

3. Remove § 302.11.

§ 302.14 [Removed]

4. Remove § 302.14.

**PART 315-TRADE ADJUSTMENT ASSISTANCE FOR FIRMS**

5. Revise the authority citation of part 315 to read as follows:

**Authority:** 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111-5, 42 U.S.C. 3211; Pub. L. 111-344, 124 Stat. 3611; Pub. L. 112-40, 125 Stat. 401; Pub. L. 113-203; Pub. L. 114-27; Department of Commerce Delegation Order 10-4.

6. Revise § 315.1 to read as follows:

**§ 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.

7. Amend § 315.2 by:

- a. Revising the introductory paragraph;
- b. Revising the definitions for “Adjustment Assistance”, “Adjustment Proposal”, “Decreased Absolutely”, and “Directly Competitive”;
- c. Amending the definition of “Firm” by revising the introductory text and paragraph (4);
- d. Revising the definitions of “Increase in Imports”, “Partial Separation”, “Service Sector Firm”, and “Total Separation”; and
- c. Adding in alphabetical order a definition for “Unjustifiable Benefits”.

The revisions and additions read as follows:

### **§ 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.

\* \* \* \* \*

*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:

\* \* \* \* \*

*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) \* \* \*

(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.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

*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.

§§ 315.4 and 315.5 [Amended]

8 Transfer §§ 315.4 and 315.5 from subpart A to subpart B;

9. Revise subparts B through E and add subpart F to read as follows:

Subpart B - TAAC Provisions

Sec

315.4 TAAC Selection and Operation

315.5 The Role and Geographic Coverage of the TAACs

Subpart C - Certification of Firms

Sec

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

Sec

315.11 Adjustment Proposal Process

315.12 Adjustment Proposal Requirements

Subpart E – Protective Provisions

Sec

315.13 Persons Engaged by Firms to Expedite Petitions and Adjustment Proposals.

315.14 Conflicts of Interest

Subpart F - International Trade Commission Investigations

Sec

315.15 Affirmative Findings.

**§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, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

### **§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 Web site 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**

#### **§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 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 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) 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 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 (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 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.

(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, 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**

##### **§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 of this subpart. 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 the following matching share requirements:

(1) 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 Plans within two years from the date of EDA approval of their initial Adjustment Plan.

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

(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

(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 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 - Protective Provisions**

### **§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 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**

#### **§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 or under sections 705 or 735 of the Tariff Act (19 U.S.C. 1671d, 1673d), EDA will notify the

TAACs and provide expedited review of petitions and Adjustment Plans from Firms within the specified industry.

Dated: August 12, 2019

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John Fleming

Assistant Secretary of Commerce for Economic Development

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