



Billing Code: 3510-24

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 302 and 315

[Docket No.: 191218-0119]

RIN 0610-AA80

General Updates and Elimination of Certain TAAF and PWEDA Regulations

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

ACTION: Final rule.

SUMMARY: The Economic Development Administration (“EDA”), U.S. Department of Commerce (“DOC”), is issuing a final rule to update 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 changes to the TAAF program regulations clarify the process for import-impacted U.S. manufacturing firms, oil and natural gas production firms, 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 is also eliminating certain TAAF and PWEDA regulations that

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

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EDA received no comments on the notice of proposed rulemaking (“NPRM”) that preceded this final rule, so there are no comments for EDA to post to the Federal Rulemaking Portal, www.regulations.gov. For convenience, after the final rule becomes effective, EDA plans to update the full text of EDA’s regulations, as amended, and post it on EDA’s website at <https://www.eda.gov/about/regulations.htm>.

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 issuing this final rule to update the agency’s regulations implementing the TAAF program (Part I) and PWEDA (Part II). The changes will ease the burden on firms and grantees by eliminating unnecessary and duplicative regulations and clarifying and reorganizing the regulations to make them easier to understand.

The updates will also incorporate best practices. For example, EDA is adding a requirement that firms must begin implementation of their Adjustment Proposal (“AP”) within six months after the AP is approved by EDA. Firms that do not begin implementation within six months after approval must update and re-submit their AP, and then request re-approval before any Adjustment Assistance may be provided. EDA is also incorporating changes that will enable firms to amend their APs within two years of EDA approval and that will require firms to complete implementation of the APs within five years of approval. These are existing best practices and help to ensure that APs reflect current conditions and are maximally effective.

The updates will align the regulations more closely with statutory requirements. Specifically, EDA refers 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 is clarifying all references to “days” as “calendar days,” to reflect this usage in the Trade Act, a change that will also speed up the time within which EDA is required to make determinations regarding firm eligibility and assistance.

On August 19, 2019, EDA published an NPRM in the Federal Register requesting public comments on the general updates and elimination of certain TAAF and PWEDA regulations contained in this final rule (84 FR 42831). The public comment period closed on September 18, 2019. EDA received no comments in response to the NPRM. For this reason, this final rule contains no changes to the rulemaking that was proposed in the NPRM, apart from two technical corrections. The first technical correction changes several instances of “Adjustment Plan” to “Adjustment Proposal.” “Adjustment Plan” is

not a defined term; “Adjustment Proposal” is the correct term that should be used throughout. The second technical correction, to revised 13 CFR 315.15, eliminates an improper citation to the Tariff Act and is discussed below in Part I.

Lastly, because this rule will 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 (M-17-21).

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 firms, oil and natural gas production firms, 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 firms, oil and natural gas production firms, 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-profit or university-affiliated entities.

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 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.

TAACs work closely with eligible firms' management to identify the firms' strengths and weaknesses and then develop customized business recovery plans, APs, which are designed to stimulate recovery and growth. The TAAF program pays up to 75 percent of the costs of developing APs. EDA reviews firms' APs and determines whether or not to approve them. When an AP has been approved, firm management and TAAC staff jointly identify consultants with the specific expertise to help the firm implement the AP. If the cost exceeds the simplified acquisition threshold, consultants are selected through a competitive procurement process.

Overview of Changes to the TAAF Regulations

The discussion that follows presents an overview of substantive changes by subpart letter and section number.

Subpart A

EDA is transferring §§ 315.4 and 315.5 from subpart A to subpart B. This change will retain all general provisions within subpart A, while consolidating the regulations regarding TAAC selection, operation, role, and coverage within subpart B.

Section 315.1

EDA is replacing this section with a new programmatic description of TAAF's purpose. The revised section more clearly lays 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.

Section 315.2

EDA is making changes to the definitions identified below.

Adjustment Assistance

EDA is making three revisions to the definition of Adjustment Assistance. First, EDA is removing the reference to “or industries.” As explained further in the discussion of the changes to § 315.17, EDA is eliminating 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 APs 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 AP applications to such firms. EDA believes this individualized approach has been effective in facilitating adjustments within both firms and industries. The removal of 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 is revising the definition to clarify that Adjustment Assistance refers to technical assistance provided by TAACs. The current regulation is ambiguous and could be interpreted such that EDA provides the technical assistance directly, which is not the case. Third, EDA is adding to the definition a statement that EDA determines what type of assistance is provided and adding a list of the types of assistance that this may include: preparing a firm's petition for certification of eligibility, developing an AP, and implementing an AP.

Adjustment Proposal

EDA is revising the definition for Adjustment Proposal, clarifying that the AP 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.

Decreased Absolutely

EDA is making 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.

Directly Competitive

EDA is revising the defined term Directly Competitive to add the words "or Like" to the end, such that the term will be Directly Competitive or Like. This change will more closely align this term with the terminology of the Trade Act. EDA is 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 is capitalizing the term, “Unjustifiable Benefits,” as referenced in this definition. This change is the result of EDA adding a definition for Unjustifiable Benefits, as described below. EDA is 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 is qualifying 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 is modifying 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 is more appropriately located in subpart C as a description of one method 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 is changing the definition of Partial Separation by replacing language denoting that this definition is with respect to any employment in a firm with language which 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 is revising the definition of Service Sector Firm to remove the last two sentences of the definition because they are already included in the definition of firm.

Total Separation

EDA is 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 is also 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.

Section 315.3

EDA is not changing this section.

Subpart B

EDA is 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 is revising paragraph (a) of this section to better describe the TAAC selection process.

EDA is revising paragraph (b) of this section to replace the existing language with an explanation 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 TAACs work closely with EDA and import-impacted firms.

Section 315.5

EDA is re-designating paragraph (a)(1) as paragraph (a) and, in that same paragraph, revising the third sentence in order to clarify that information regarding all of the TAACs' service areas, rather than just particular geographic areas, are available at the web sites listed in that section.

EDA is re-designating paragraphs (a)(2) and (3) as paragraphs (b) and (c), respectively. EDA is also streamlining newly re-designated paragraph (c) by renumbering paragraphs (i) and (ii) as (1) and (2), respectively, and by rewording newly re-designated paragraphs (c)(1) and (2) to provide enhanced clarity on the types of Adjustment Assistance a TAAC may provide to a firm.

EDA is removing existing paragraphs (b), (c), and (d) in their entirety. EDA believes these paragraphs are unnecessary, as these provisions and requirements will generally be covered in the Notice of Funding Opportunity used to announce the availability of funding for TAAC awards.

Subpart C

EDA is revising subpart C to consolidate all regulations regarding the certification of firms. The revised subpart C will include §§ 315.6 through 315.10.

Section 315.6

EDA is moving the matching share requirements for APs as set forth in current paragraph (c)(2) to the new § 315.11 (“Adjustment Proposal Process”) in subpart D (“Adjustment Proposals”). EDA is eliminating the remaining requirements in § 315.6, which are duplicative of other regulations in this part and provide no additional guidance or clarity to TAACs or firms. Finally, EDA is re-designating the current § 315.7 as § 315.6.

In addition to these revisions, as noted above in the discussion regarding revisions to the definition of Increase in Imports at § 315.2, EDA is adding a new paragraph (c) to revised § 315.6 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. EDA is 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.

Section 315.7

EDA is re-designating the current § 315.8 as § 315.7.

EDA is 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 is revising the paragraph 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.

EDA is also revising paragraph (b)(6) to make clear the information required regarding a firm's customers. Specifically, EDA is 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 is 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 is 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 is revising paragraphs (g)(1) and (2) of this section. EDA is revising paragraph (g)(1) 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 is revising paragraph (g)(1) to insert the word "calendar" before the word "days."

EDA is also making similar revisions to all references to “days” found throughout part 315. EDA is making these changes to clarify that all references to “days” within part 315 refer to calendar days as the current regulations are not clear on whether these references to “days” are calendar or business days. EDA is revising paragraph (g)(2) 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 is re-designating the current § 315.9 as § 315.8.

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

EDA is revising paragraph (b)(2) 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 is also 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.

Section 315.9

EDA is re-designating the current § 315.10 as § 315.9.

EDA is also 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 benefits. EDA is further revising paragraph (d) to read: “The firm failed to diligently pursue an approved Adjustment Proposal, and five years have elapsed since the date of certification.”

Section 315.10

EDA is re-designating the current § 315.11 as § 315.10.

EDA is revising paragraphs (a) and (b) of this section by inserting the word “calendar” before the word “days” for the reasons mentioned above.

EDA is 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 will reduce potential confusion by placing all requirements regarding the steps EDA takes when it terminates a certification in a single paragraph.

Subpart D

EDA is not changing the designation or heading of this subpart. However, EDA is revising this subpart to include §§ 315.11 and 315.12.

Section 315.11

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

EDA is moving paragraphs (a)(2) and (3) from the current § 315.6 to the revised § 315.11 as paragraphs (a) and (b) within this section in order to consolidate AP procedures within a single section. In order to more clearly reflect the requirements of the Trade Act, EDA is moving the requirement established in the current § 315.16(a), which says APs must be submitted to EDA for approval within two years after the date of Certification, to the new § 315.11(a).

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

EDA is adding a paragraph (c) to this section that discusses how EDA will make a determination regarding an AP no later than 60 calendar days after receipt of the AP, which incorporates the requirement from Section 252(b)(2) of the Trade Act.

EDA is also adding a paragraph (d) to this section. EDA is moving the matching share requirements for Adjustment Assistance from the existing § 315.6(b)(2) to this paragraph. In addition, EDA is 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 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 is adding a paragraph (e) to this section and specifying within this paragraph that firms may request EDA approval to amend their APs within two years from the date of EDA approval of their initial APs. This new language incorporates current practice and

allows firms to update their APs 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 is also adding a paragraph (f) to this section. Paragraph (f) requires firms to complete implementation of their APs within five years of EDA approval of their initial APs. 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 AP in a timely way.

EDA is 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. This new language incorporates current practice and is designed to resolve any confusion about how firms and TAACs should handle this scenario.

Finally, EDA is adding a paragraph (h) to this section. Paragraph (h) will 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 is re-designating the current § 315.16 as § 315.12. As discussed above, EDA is eliminating paragraph (a) of this section after moving the requirement that firms must submit their APs to EDA within two years of the date of certification to § 315.11(a).

EDA is eliminating the current § 315.12 (Recordkeeping). With the proposed revisions to § 315.4(b), which states that 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, the current § 315.12 is no longer needed as recordkeeping requirements are adequately addressed in those materials.

Subpart E

EDA is revising the heading for this subpart to “Protective Provisions.” As revised, subpart E will include §§ 315.13 and 315.14. EDA is moving the requirements regarding persons engaged by firms to expedite petitions and APs as found in the current § 315.14 (Certifications) and the requirements regarding conflicts of interest that are contained in 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 program.

Section 315.13

EDA is 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 is further revising these requirements by clarifying, in paragraph (a), that they apply to both Adjustment Assistance and APs.

EDA is eliminating the current § 315.13 (Audit and examination). With the proposed revisions to § 315.4(b), which states that 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, the current § 315.13 is no longer needed as audit and examination requirements are adequately addressed in those materials.

Section 315.14

EDA is moving the requirements found in the current § 315.15 to § 315.14. EDA is also 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.

Subpart F

EDA is 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 section 202(b) of the Trade Act regarding injury or threat of injury to an industry.

Section 315.15

EDA is re-designating the current § 315.17 as § 315.15 and is revising the heading of this section to “Affirmative Findings.” EDA is also 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 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 APs from firms within industries for which the ITC has determined that increased imports are a substantial cause of serious injury or threat thereof under section 202(b) of the Trade Act. This individualized approach enables EDA to support adjustments at the firm level, while having a cumulative impact at the industry level.

EDA is 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 TAACs and expedited review of petitions and APs 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 ITC under the Trade Act.

This revised section contains one technical correction to the proposed revision in the NPRM published in the Federal Register on August 19, 2019 (84 FR 42831). The

correction is to eliminate an improper citation to the Tariff Act. The proposed revision to this section provided that EDA would notify TAACs and provide expedited review of petitions and APs from Firms within an industry for which the ITC has made an affirmative finding under section 202(b) of the Trade Act or under sections 705 or 735 of the Tariff Act. Determinations made under section 202(b) of the Trade Act concern serious injury or threat thereof to a domestic injury, while determinations made under sections 705 or 735 of the Tariff Act concern lesser material injury or threat thereof to a domestic industry. Pursuant to section 202(g) of the Trade Act, EDA is only required to provide expedited review of petitions submitted by firms in industries for which the ITC has made an affirmative determination under section 202(b) of the Trade Act.

Part II: Updates to PWEDA Regulations

PWEDA Background

PWEDA is EDA's organic authority and 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 Eliminated PWEDA Regulations

EDA is 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 eliminating 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 of these terms and conditions 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 eliminating 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

Regulatory Flexibility Act

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 the TAAF program, 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. Although EDA did choose to publish an NPRM in the Federal Register requesting public comments on the content of this final rule (84 FR 42831), EDA received no comments in response to the NPRM, and thus has received no input from the public bearing on the analytical requirements of the Regulatory Flexibility Act. For these reasons, a regulatory flexibility analysis has not been prepared.

Executive Orders No. 12866, 13563, and 13771

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

This 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 notice of final rule. 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 (M-17-21).

Congressional Review Act

This final 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.” This final 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 section 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 collections of information (and corresponding OMB Control Numbers) set forth in this final rule. These collections of information are necessary for the proper performance and functions of EDA. This final rule does not include a new information collection requirement and will, thus, use previously approved information collections to collect information relevant to a petition for certification of eligibility for trade adjustment assistance or an AP.

Part or section of this final rule	Nature of Request	Form/Title/OMB Control Number
315.7(b)	Firms seeking certification of eligibility to apply for trade adjustment assistance must complete Form ED-840P, which provides EDA with the information needed to determine if a firm is eligible to apply for trade adjustment assistance.	Form ED-840P, Petition by a firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610-0091)
315.12	The information for Adjustment Proposals is collected pursuant to the same OMB control number as Form ED-840P (0610-0091). Firms certified by EDA as eligible to apply for trade adjustment assistance must prepare an Adjustment Proposal and submit it to EDA for approval within two years after the date of certification. This provides EDA with the information needed to determine whether the Adjustment Proposal meets the requirements of the Trade Act and 13 CFR part 315.	Adjustment Proposal (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 is amending 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 and 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. 2341-2356; 42 U.S.C. 3211; Title IV of Pub. L. 114-27, 129 Stat. 373; 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 text and the definitions for “Adjustment Assistance” and “Adjustment Proposal”;
- b. In the definition of “Decreased Absolutely”, revising the introductory text;
- c. Removing the definition of “Directly Competitive” and adding the definition of “Directly Competitive or Like” in its place;
- d. In the definition of “Firm”, revising the introductory text and paragraph (4);
- e. Revising the definition of “Increase in Imports”;
- f. In the definition of “Partial Separation”, revising the introductory text;
- g. Revising the definitions of “Service Sector Firm” and “Total Separation”; and
- h. 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):

* * * * *

(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, 315.5, and 315.6 [Removed]

8. Sections 315.4 through 315.6 are removed.

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

315.6 Certification requirements.

315.7 Processing petitions for certification.

315.8 Hearings.

315.9 Loss of certification benefits.

315.10 Appeals, final determinations, and termination of certification.

Subpart D – Adjustment Proposals

315.11 Adjustment Proposal process.

315.12 Adjustment Proposal requirements.

Subpart E – Protective Provisions

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

315.14 Conflicts of interest.

Subpart F - International Trade Commission Investigations

315.15 Affirmative findings.

Subpart B - TAAC Provisions

§315.4 TAAC selection and operation.

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

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

(b) Entities selected to operate the TAACs are awarded cooperative agreements and work closely with EDA and import-impacted firms. TAAC cooperative agreements are subject to all Federal laws and to Federal, Department, and EDA policies, regulations,

and procedures applicable to Federal financial assistance awards, including 2 CFR part 200.

§315.5 The role and geographic coverage of the TAACs.

(a) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia, and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs and their coverage areas may be obtained from the TAAC 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 five circumstances described in paragraph (b) of this section.

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

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

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

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

(2) *Twelve-month versus twenty-four month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 24-month period:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§315.7 Processing petitions for certification.

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

(b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED-840P or any successor form) with the following information about such Firm:

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

(2) Description of goods or services supplied or sold;

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

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

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

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

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be 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 (a), the determination under §315.7(g) shall be final.

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

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and

promptly publish notice of such termination in the Federal Register. The termination will take effect on the date specified in the published notice. EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart D – Adjustment Proposals

§315.11 Adjustment Proposal process.

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

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

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

(d) Adjustment Assistance is subject to matching share requirements. Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting \$30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than \$30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent

of the cost of that Adjustment Assistance. Certified Firms may request no more than the amount as established by EDA for total Adjustment Assistance over the entire lifetime of the firm.

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

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

(g) If a Certified Firm is transferred, sold, or otherwise acquired by another Firm during the five-year period of Adjustment Assistance, the Firm must notify EDA no later than 30 calendar days following the transfer, sale, or acquisition. EDA will then make a determination as to whether the Firm remains eligible for Adjustment Assistance. EDA will make this determination no later than 60 calendar days following notification by the Firm.

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

§315.12 Adjustment Proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

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

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

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

(b) The Adjustment Proposal must:

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

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

(i) Give a rehiring preference to such workers;

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

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

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

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

Subpart E - Protective Provisions

§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, EDA will notify the TAACs and provide expedited review of petitions and Adjustment Proposals from Firms within the specified industry.

Dated: January 6, 2020.

John Fleming,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2020-00453 Filed: 2/13/2020 8:45 am; Publication Date: 2/14/2020]