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## DEPARTMENT OF COMMERCE

### Economic Development Administration

#### 13 CFR Parts 300, 301, 304 and 308

[Docket No.: 050729210-5325-04]

RIN 0610-AA63

#### Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

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

**ACTION:** Interim final rule; amendments.

**SUMMARY:** The Economic Development Administration (“EDA”) published an interim final rule in the **Federal Register** on August 11, 2005. EDA is publishing this interim final rule to effect those changes to the August 11, 2005 interim final rule specified in the conference report, accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act. Capitalized terms used but not otherwise defined in this interim final rule have the meanings ascribed to them in the August 11, 2005 interim final rule.

**DATES:** This rule is effective as of December 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Hina Shaikh, Esq., Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4687.

#### SUPPLEMENTARY INFORMATION:

##### Preamble

EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA’s authorizing statute, the Public Works

and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.) (“PWEDA”), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA’s current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA’s former regulations. The interim final rule provided for a public comment period from August 11, 2005 through October 11, 2005. Additionally, on September 1, 2005, EDA held a public hearing on the August 11, 2005 interim final rule.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date, from October 1, 2005 until November 14, 2005, of (i) Section 304.2(c)(2) of the interim final rule, pertaining to membership of a District Organization’s governing body; and (ii) Section 301.4 of the interim final rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other provisions of the interim final rule became effective on October 1, 2005. On November 14, 2005, EDA published another final rule in the **Federal Register** (70 FR 69053) delaying the effective date, from November 14, 2005 until January 31, 2006, of those provisions of the interim final rule for which the effective date was previously delayed by the final rule published on September 30, 2005.

The conference report (H.R. Conf. Rep. No. 109-272; the “Conference Report”) accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act (Pub. L. 109-108) expresses Congressional intent as to specific changes to EDA’s interim final rule. EDA is publishing this interim final rule to effect only those changes to the August 11, 2005 interim final rule specified in the Conference Report.

EDA will consider and respond to all comments received during the public comment period on all aspects of this rulemaking, and will make additional revisions to the August 11, 2005 interim

final rule in publishing a final rule during 2006. All section citations used herein refer to those same sections of the August 11, 2005 interim final rule.

#### Section 300.3—Definitions

In Section 300.3, the definition of “*Private Sector Representative*” is expanded from the definition set forth in the August 11, 2005 interim final rule and now includes a designee of any senior management official or executive holding a key decision-making position in any for-profit enterprise.

#### Section 301.4—Investment Rates

The August 11, 2005 interim final rule provided maximum allowable Investment Rate categories of 30% and 40% for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress. As discussed in the Conference Report, Table 1 in Section 301.4 is revised to show that projects located in Regions demonstrating (i) a 24-month unemployment rate at least 1% greater than the national average or (ii) per capita income not more than 80% of the national average will be eligible to receive a maximum allowable Investment Rate of 50%. This revision eliminates the 30% and 40% maximum allowable Investment Rate categories. The higher threshold levels of economic distress for the 60%, 70% and 80% maximum allowable Investment Rate categories remain the same as provided in the August 11, 2005 interim final rule.

Subsection 301.4(b) of the August 11, 2005 interim final rule never became effective to the extent that it pertains to Investment Rates for EDA Planning Investments (see the October 1, 2005 and November 14, 2005 final rules delaying the effective date for this provision). Accordingly, subsection 306.3(b)(2) and (3) of EDA’s former regulations continued to apply. This interim final rule replaces section 306.3(b)(2) and (3) of EDA’s former regulations and revises section 301.4(b) of the August 11, 2005 interim final rule to the extent that it applies to Planning Investments.

Specifically, this interim final rule includes a new subsection titled *Projects Under Part 303*, which includes the following provisions for determining the Investment Rates for Planning Investments: (i) All Planning

Investments will receive a minimum Investment Rate of 50%; (ii) except as otherwise provided in Section 204(c) of PWEDA, the maximum allowable Investment Rate for Planning Investments will be the maximum allowable Investment Rate set forth in Table 1 of Section 301.4 for the most economically distressed county or other equivalent political unit (e.g., parish) within the Region; (iii) the maximum allowable Investment Rate will not exceed 80%; and (iv) in compelling circumstances, the Assistant Secretary may waive the requirement in paragraph (ii) above. The Assistant Secretary cannot delegate the authority to grant this waiver.

*Section 304.2—District Organizations: Formation, Organizational Requirements and Operations*

Subsection 304.2(c)(2) of the August 11, 2005 interim final rule requires that a District Organization's governing body must include a majority of Private Sector Representatives. This provision, however, never became effective as the October 1, 2005 and November 14, 2005 final rules delayed its effective date until January 31, 2006. Accordingly, Section 302.3(c) of EDA's former regulations continued to apply. This interim final rule replaces Section 302.3(c) of EDA's former regulations and revises Section 304.2(c) of the August 11, 2005 interim final rule as follows: (i) A District Organization's governing body must include at least one (1) Private Sector Representative, together with one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups, or labor groups, all of which must comprise in the aggregate a minimum of 35% of the District Organization's governing body; and (ii) if the District Organization demonstrates an inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence (acceptable to EDA), the Assistant Secretary may waive the Private Sector Representative requirement. This interim final rule also adds a provision stating that the District Organization's governing body will also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

Subsection 304.2(d) of the August 11, 2005 interim final rule provided that District Organizations may contract for services to accomplish approved scopes of work for Planning Investments. This

subsection is revised in this interim final rule to specify that the District Organization will engage in the full range of economic development activities listed in its EDA-approved CEDS, which may include (i) coordinating and implementing economic development activities in the District; (ii) carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and (iii) coordinating the development and implementation of the CEDS with other local, State, federal and private organizations. This subsection continues to give District Organizations the discretion to contract for services as necessary.

*Section 304.3—District Modification and Termination*

Subsection 304.3(b)(2) of the August 11, 2005 interim final rule provides that EDA may terminate a Region's designation as an Economic Development District when EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth in the CEDS. This interim final rule adds a new subsection (c) to Section 304.3 to clarify that prior to terminating a District's designation under subsection 304.3(b)(2), EDA will (a) consult with the District Organization and (b) consider all facts and circumstances surrounding the District Organization's operations. New subsection (c) also provides that EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

*Section 308.2—Performance Awards*

EDA revises Section 308.2 of the August 11, 2005 interim final rule to better adhere to Section 215 of PWEDA. In subsection 308.2(b) of this interim final rule, consistent with the "meet or exceeds" threshold in Section 215 of PWEDA, EDA eliminates the requirement that project performance be "exceptional." Additionally, this interim final rule revises and redesignates subsection 308.2(d) (new subsection 308.2(e)) to clarify that EDA will set forth in an annual FFO the requirements, qualifications, guidelines and procedures for performance awards, with all performance awards being subject to the availability of funds.

**Classification**

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

**Executive Order No. 12866**

It has been determined that this interim final rule is significant for purposes of Executive Order 12866.

**Congressional Review Act**

This interim 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." It has been determined that this interim final rule does not contain policies that have federalism implications.

**List of Subjects**

*13 CFR Part 300*

Grant administration, Grant programs, Financial assistance, Private sector representative.

*13 CFR Part 301*

Grant administration, Grant programs, Eligibility requirements, Applicant and application requirements, Economic distress levels, Investment rates, Proposal selection.

*13 CFR Part 304*

Grant administration, Grant programs, Economic development district, Organizational requirements, District modification and Termination, performance evaluations.

*13 CFR Part 308*

Grant administration, Grant programs, Performance awards, Planning performance awards.

**Regulatory Text**

■ For reasons stated in the preamble, Chapter III of Title 13 of the CFR is amended as follows:

**PART 300—GENERAL INFORMATION**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Amend § 300.3 by revising the definition of “*Private Sector Representative*” to read as follows:

**§ 300.3 Definitions.**

\* \* \* \* \*

*Private Sector Representative* means, with respect to any for-profit enterprise,

any senior management official or executive holding a key decision-making position, or that person’s designee.

\* \* \* \* \*

**PART 301—ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS**

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 2. Amend § 301.4 by revising paragraph (b)(1)(ii); by redesignating paragraphs (b)(3) and (b)(4) as

paragraphs (b)(4) and (b)(5), respectively; and by adding new paragraph (b)(3) to read as follows:

**§ 301.4 Investment Rates.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (i.e., where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region’s levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or .....	80
(B) The per capita income is not more than 50% of the national average .....	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or .....	70
(D) The per capita income is not more than 60% of the national average .....	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or .....	60
(F) The per capita income is not more than 65% of the national average .....	60
(G) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or .....	50
(H) The per capita income is not more than 80% of the national average .....	50

\* \* \* \* \*

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this Chapter shall be fifty (50) percent.

(ii) Except as otherwise provided in paragraph (iii) of this section or in paragraph (b)(5), the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (e.g., parish) within the Region. The maximum allowable Investment Rate shall not exceed eighty (80) percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (ii) of this section. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

\* \* \* \* \*

**PART 304—ECONOMIC DEVELOPMENT DISTRICTS**

■ 1. The authority citation for part 304 continues to read as follows:

**Authority:** 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

■ 2. Amend § 304.2 by revising paragraphs (c)(2) and (d) to read as follows:

**§ 304.2 District Organizations: Formation, organizational requirements and operations.**

\* \* \* \* \*

(c) \* \* \*

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, and, unless otherwise prohibited by applicable State or local law, must include at least one (1) Private Sector Representative and one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups or labor groups, all of which must comprise in the aggregate a minimum of thirty-five (35) percent of the District Organization’s governing body. The governing body shall also have at least a simple majority of its membership who are elected officials

and/or employees of a general purpose unit of State, local or Indian tribal government who have been appointed to represent the government. Upon the District Organization’s showing of its inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence, the Assistant Secretary may waive the Private Sector Representative requirement. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

\* \* \* \* \*

(d) *Operations.*

(1) The District Organization shall engage in the full range of economic development activities listed in its EDA-approved CEDS. These activities may include:

(i) Coordinating and implementing economic development activities in the District;

(ii) Carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and

(iii) Coordinating the development and implementation of the CEDS with other local, State, federal and private organizations.

(2) The District Organization may at its option contract for services to accomplish the activities listed above.

■ 3. Amend § 304.3 by redesignating paragraph (c) as paragraph (d); and by adding new paragraph (c) to read as follows:

**§ 304.3 District modification and termination.**

\* \* \* \* \*

(c) Prior to terminating a District Organization under paragraph (b)(2) of this section, EDA will consult with the District Organization and consider all facts and circumstances regarding the District Organization's operations. EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

\* \* \* \* \*

**PART 308—PERFORMANCE MEASURES**

■ 1. The authority citation for part 308 continues to read as follows:

**Authority:** 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10-4.

■ 2. Amend § 308.2 by revising it to read as follows:

**§ 308.2 Performance awards.**

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of Section 215 of PWEDA in an amount not to exceed ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the proposal evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A Recipient may receive a performance award no later than three

(3) years following the Project's closeout.

(d) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-federal funds.

(e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during the applicable fiscal year, with all performance awards being subject to the availability of funds.

Dated: December 7, 2005.

**Benjamin Erulkar,**

*Chief Counsel, Economic Development Administration.*

[FR Doc. 05-23927 Filed 12-14-05; 8:45 am]

**BILLING CODE 3510-24-P**

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Parts 301 and 304**

**[Docket No.: 050729210-5331-05]**

**RIN 0610-AA63**

**Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision**

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

**ACTION:** Final rule; change of effective date.

**SUMMARY:** On November 14, 2005, the Economic Development Administration ("EDA") published a final rule in the **Federal Register** delaying the effective date, from November 14, 2005 until January 31, 2006, of certain provisions of EDA's interim final rule originally published in the **Federal Register** on August 11, 2005. EDA is publishing this final rule to revoke the November 14, 2005 final rule.

The conference report accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act expresses Congressional intent as to specific changes to EDA's August 11, 2005 interim final rule. The changes specified in the conference report include changes to those provisions of the August 11, 2005 interim final for which the effective date was delayed by the final rule published on November 14, 2005. Concurrent with the publication

of this final rule, EDA is publishing in the **Federal Register** an interim final rule to effect those changes to the August 11, 2005 interim final rule specified in the conference report. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the August 11, 2005 interim final rule.

**DATES:** The delayed effective date of January 31, 2006 for the following provisions of the August 11, 2005 interim final rule is changed to December 15, 2005: (i) Section 304.2(c)(2), pertaining to membership of a District Organization's governing body; and (ii) Section 301.4, as the provisions of this section relate to Investment Rates for EDA Planning Investments.

**FOR FURTHER INFORMATION CONTACT:**

Hina Shaikh, Esq., Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4687.

**SUPPLEMENTARY INFORMATION:** EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) ("PWEDA"), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations. The interim final rule provided for a public comment period from August 11, 2005 through October 11, 2005. Additionally, on September 1, 2005, EDA held a public hearing on the August 11, 2005 interim final rule.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date, from October 1, 2005 until November 14, 2005, of (i) Section 304.2(c)(2) of the interim final rule, pertaining to membership of a District Organization's governing body; and (ii) Section 301.4 of the interim final rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other