

- d. In paragraph (a)(4), remove the word “nonmovable” and add, in its place, the words “non-movable or non-salable”;
- e. In paragraph (a)(5), introductory text, second sentence, remove the word “shall” and add, in its place, the word “will”;
- f. In paragraph (b)(1) remove the word “shall” both times it appears and add, in its place, the word “must”;
- g. In paragraph (b)(2), remove the word “shall” and add, in its place, the word “will”;
- h. In paragraph (c), second sentence, remove the word “shall” both times it appears and add, in its place, the word “must” and remove the word “borrowers” and add, in its place, the word “borrower’s”
- i. Redesignate paragraph (d) as paragraph (e);
- j. Add new paragraph (d) to read as set forth below, and
- k. In redesignated paragraph (e) remove the word “shall” and add, in its place, the word “will”.

**§ 1436.16 Foreclosure, liquidation, assumptions, sales or conveyance, or bankruptcy.**

\* \* \* \* \*

(d) If any significant changes are made to the legal or operating status of the farming operation with an outstanding Farm Storage Facility Loan, the borrower must do one of the following:

- (1) Find an eligible borrower or entity to assume the loan as specified in paragraph (b) of this section,
- (2) Repay the loan, or
- (3) Undergo new financial analysis, as approved and determined by CCC, to ensure CCC’s interests are protected and that the current borrower is in a position to continue making the scheduled loan payments.

\* \* \* \* \*

**1436.19 [Amended]**

- 18. Amend § 1436.19 as follows:
  - a. In paragraph (a), first sentence, by removing the word “shall” and adding, in its place, the word “will” and by adding the sentence “FSFL borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.” at the end and
  - b. In paragraph (b), by removing the words “national origin, sex, marital status, or” and adding, in their place, the words “national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or” and by adding at the end the sentence “FSFL is subject to the nondiscrimination provisions

applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.”

Signed in Washington, DC, on August 11, 2009.

**Jonathan W. Coppess,**  
*Executive Vice President, Commodity Credit Corporation and Administrator, Farm Service Agency.*

[FR Doc. E9-19652 Filed 8-17-09; 8:45 am]

**BILLING CODE 3410-05-P**

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**13 CFR Parts 313 and 315**

[Docket No. 090429810-91212-02]

RIN 0610-AA65

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

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

**ACTION:** Final rule.

**SUMMARY:** On May 5, 2009, the Economic Development Administration (‘EDA’) published a notice of proposed rulemaking to reflect the amendments made to the Trade Act of 1974, as amended, by the Trade and Globalization Adjustment Assistance Act of 2009 (‘TGAAA’), which was included as subtitle I within the American Recovery and Reinvestment Act of 2009. The notice of proposed rulemaking provided a public comment period from May 5, 2009 through June 4, 2009. The TGAAA provides that the Secretary of Commerce must establish the Community Trade Adjustment Assistance Program by August 1, 2009, under which EDA would provide technical assistance under section 274 of the Trade Act to communities impacted by trade to facilitate the economic adjustment of those communities. The TGAAA amendments to the Trade Act took effect on May 17, 2009, 90 days after enactment. As a result of the enactment of the TGAAA, EDA promulgates this final rule to provide regulations to implement the Community Trade Adjustment Assistance Program and makes specific changes to the Trade Adjustment Assistance for Firms Program regulations.

**DATES:** This rule is effective as of August 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jamie Lipsey, 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:**

**Background**

EDA published a notice of proposed rulemaking (the ‘NPRM’) in the **Federal Register** (74 FR 20647) on May 5, 2009. The NPRM reflects the amendments made to the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the ‘Trade Act’), by the Trade and Globalization Adjustment Assistance Act of 2009 (the ‘TGAAA’), which was included as subtitle I to the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, 123 Stat. 115, at 367). The TGAAA authorized the Trade Adjustment Assistance for Communities (‘Community TAA’) Program and made amendments to certain provisions affecting the Trade Adjustment Assistance for Firms (‘TAAF’) Program, which EDA currently administers through a network of 11 University-affiliated and non-profit Trade Adjustment Assistance Centers (each, a ‘TAAC’) located throughout the nation.

This final rule promulgates the Community TAA Program regulations and makes specific changes to the TAAF Program regulations, both of which implement the amendments to the Trade Act made by the TGAAA. It also reflects EDA’s current practices and policies in administering the TAAF Program that have evolved since the promulgation of EDA’s current regulations. Chapter 3 of title II of the Trade Act authorizes the TAAF Program, under which technical assistance is provided to Firms that have lost domestic sales and employment due to increased imports of similar or competitive goods. Chapter 4 of title II of the Trade Act establishes the Community TAA Program, which is designed to help local economies adjust to changing trade patterns through the coordination of Federal, State, and local resources and the creation and implementation of community-based development strategies to help address trade impacts.

Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in EDA’s regulations set out in 13 CFR chapter III (*see, e.g.*, 13 CFR 300.3, 303.2, 315.2, and 315.15). A complete discussion of the changes made to EDA’s regulations was provided in the NPRM and is not repeated here.

### Response to Comments

A 31-day public comment period, from May 5, 2009 through June 4, 2009, followed the publication of the NPRM. EDA received a small number of public comments on different portions of the NPRM. All comments received, which were from the Directors of three TAACs, related to the TAAF Program. EDA did not receive any comments related to the Community TAA Program. A summary of the comments and EDA's response are provided below.

#### Section 315.2—Definitions

EDA received one comment from the Director of the Rocky Mountain TAAC that stated the following: "The definition of '*Absolutely*' has been determined by EDA to mean five percent. This is an arbitrary number that the TAACs at times have been told is no longer valid. The intended result is to only accept firms that are truly impacted. The actual result is usually several months' delay in assistance for the firm until sales and employment declines enough to satisfy the five percent decline. This delay causes unnecessary hardship to the firm. '*Absolutely*' should not be defined in this document, but be determined on a case-by-case basis, which is customary with other similar definitions like '*significant*,' which is purposely not defined."

The proposed revision to the definition of '*Decreased Absolutely*' does not in any way alter the meaning of the term '*Decreased Absolutely*' or EDA's current administration of the TAAF Program. EDA replaced the word '*irrespective*' in paragraph (1) with the word '*independent*' for increased clarity and ease of understanding. Although the NPRM did not propose a revision to the provision of the definition that the commenter addresses, EDA has reviewed the comment and addresses it here. Requiring a Firm to show at least a five percent decline in sales and employment to be eligible for assistance under the TAAF Program is consistent with the need to marshal limited TAAF Program resources. In EDA's experience, the five percent minimum threshold helps to ensure that import-impacted Firms receive limited program resources.

However, EDA recognizes that Firms' situations differ, and there are instances when an import impact will not manifest as such a quantifiable decline. Accordingly, EDA provided case-by-case flexibility in the interim final regulations published in the **Federal Register** on October 22, 2008 (73 FR 62858). In the October 22, 2008 interim

final rule, EDA revised the definitions of '*Decreased Absolutely*' and '*Significant Number or Proportion of Workers*,' which requires eligible Firms to demonstrate a workforce decline of at least five percent, to include the phrase, "unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act." This added language provides for the threshold five percent, but allows for case-by-case flexibility when the threshold may be unduly restrictive. In practice, the revised definitions have been effective to avoid unjust denials and efficiently use limited program financial and staff resources.

EDA received the following comment from the Director of the Northwest TAAC regarding the proposed definition of '*Increase in Imports*,' which was revised to include a discussion of the type of evidence EDA may consider in determining whether an Increase in Imports has occurred in a particular case. The proposed revision adds the new requirement from section 1863 of the TGAAA to permit EDA to determine that an Increase in Imports exists if customers accounting for a significant percentage of the decline in a Firm's sales or production certify that their purchases of imported '*Like Articles or Services*' have increased absolutely or relative to the acquisition of such Like Articles or Services from suppliers in the United States. The commenter stated: "EDA's use of the word '*certification*' in this paragraph on the definition of Increase in Imports is confusing. If what is meant is some sort of '*writing*' from the customer of the petitioning firm then EDA is misconstruing the intent of Congress. To require such a '*writing*' from a customer will make it almost impossible to use this method to show an increase in imports. Customers are very reluctant to admit they are purchasing imports out of fear there will be some sort of retribution placed upon them. Congress did not intend to make certification of service firms more difficult than manufacturing firms. (See section 288 of the Act '*sense of Congress*.' ) Since there are no HTS statistics for service imports, customer verification will be the primary method. However, to require a '*writing*' in order for a customer to '*certify*' their purchase of imports will not work. Besides, the petitioning firm, the petition preparer and the TAAC director already give their assurance as to the accuracy and completeness of the petition."

EDA believes that the amendment made by section 1863 of the TGAAA requires a written customer certification

in certain circumstances. The revised definition of Increase in Imports implements section 251 of the Trade Act, as amended by section 1863 of the TGAAA, to provide that certification by a Firm's customers of increased imports to the Secretary is a method by which EDA may determine the existence of an Increase in Imports. Previously, the method to determine whether an Increase in Imports had occurred was left to the Secretary's discretion, and EDA used a combination of Harmonized Tariff Schedule ('HTS') data and the TAAC's interviews of the Firm's customers. This dual information gathering helps demonstrate import impacts on two levels: using HTS data helps show overall import trends in a manufacturing Firm's market, while customer interviews provide confirmation of trade impacts at the local level. The HTS comprises a hierarchical structure that classifies goods into specific 'buckets' using criteria such as name, use, and material used in a good's description. Using HTS data works well for manufacturing companies because the goods that are produced allow such Firms to fit within a specific HTS 'bucket,' and the trend data can be readily accessed. To understand the local forces affecting a Firm, the TAAC interviews the Firm's customers.

However, HTS data for a '*Service Sector Firm*' is extremely broad and does not allow for such a snapshot, which makes it infeasible as a method to assess import trends for Service Sector Firms. Other reliable data for assessing how imports affect service sector industries do not yet exist to provide information on import trends within a given Service Sector Firm's market. The TGAAA specifies the customer certification method to address this lack of industry data and provide a reliable method to assess the import impact(s). The plain meaning of '*certify*' is to make a formal acknowledgment, and such certification must be in writing.

The commenter also expressed concern that customers will be "very reluctant to admit they are purchasing imports out of fear there will be some sort of retribution placed on them." As far as EDA is aware, information obtained from a Firm's customers and others has never been and will not be used for any other purpose than to make the required eligibility determinations in order to certify a Firm under the TAAF Program.

The commenter noted that a written certification contravenes the '*Sense of Congress*' expressed in the Trade Act, as amended by the TGAAA. EDA intends

to apply the provisions of chapter 3 of the Trade Act with the utmost regard to Firms, but it also must comply with the directly expressed requirements of the TGAAA, which specify customer certifications to the Secretary. EDA is construing the provision narrowly and making its application minimally burdensome. For example, a customer certification will be required only to certify: (i) A manufacturing Firm when the applicable HTS data does not show an Increase in Imports; and (ii) Service Sector Firms until applicable HTS data become available. Also, EDA will accept customer certifications by email.

Finally, the commenter indicated that requiring customer certification is redundant since the Firm and the TAAC already certify to the accuracy and completeness of a petition. EDA notes that this requirement comes directly from the statute, as section 1863 of the TGAAA specifies that “customers accounting for a significant percentage of the decrease in the sales or production of the firm” must “certify to the Secretary that such customers have increased their imports of such articles or services from a foreign country.”

#### Section 315.6—Firm Eligibility for Adjustment Assistance

EDA received one comment from the Director of the Midwest TAAC requesting clarification on existing Firm matching share requirements as set out in section 315.6(c)(2)(i). The comment states the following: “Does section 315.6(b)(2)(i) remove the \$150,000 cap on total AP requests?”

The NPRM did not propose changes to this provision, however, EDA reviewed and addresses the question here. After a Firm is certified as eligible for assistance under the TAAF Program, the Firm must develop an EDA-approved Adjustment Proposal, which is a strategy document designed to map out a path for the Firm’s recovery. In an effort to marshal limited resources, EDA’s general policy is to limit the amount of Federal assistance provided under the Adjustment Proposal to \$150,000, which consists of \$75,000 in EDA funds and \$75,000 in Firm matching funds. EDA does not contemplate raising the \$150,000 cap at this time.

#### Section 315.7—Certification Requirements

EDA received one comment from the Director of the Rocky Mountain TAAC on the existing interim sales or production decline Firm certification option, which was relocated, but not substantively amended by the NPRM and is set out in section 315.7(4). The

comment stated: “The six month interim decline is useful, but not responsive enough to deal with a firm facing a rapid decline. A three month interim decline would provide for more timely assistance, and minimize unnecessary hardship to the firm.”

The NPRM did not propose a revision to this provision, however, EDA has reviewed and addresses the comment in this final rule. EDA assumes that the commenter is referring to the interim sales or production and employment decline certification options in EDA’s current regulations, which allow a Firm to pursue certification without at least a year of data showing sales or production and employment decline. The interim decline options are a regulatory rule; they are not statute-based. The addition of the interim decline options to the TAAF Program regulations was based on EDA’s interpretation of the Trade Act’s language and intent regarding the *threat* of employment separation and the need to provide proactive assistance. EDA extrapolated that since the Trade Act also focuses on the threat of harm, if a Firm can show a precipitous decline over six months, then it is a reasonable assumption that the pattern may continue.

Although the interim decline options are not statute-derived, Congress has consistently appropriated the TAAF Program with those options in place. EDA does not believe that three months provide enough data to reasonably foresee a sales or production and employment decline, and does not believe cutting the interim decline options in half to three months will provide optimal program results.

#### Section 315.8—Processing Petitions for Certifications

EDA received two similar comments from the Directors of the Rocky Mountain and Northwest TAACs on the proposed revision to section 315.8, which provides that EDA has 40 days instead of 60 days from the date EDA accepts a petition to make a certification determination to implement section 251(d) of the Trade Act, as amended by section 1867 of the TGAAA. The commenters stated: “This section should contain a maximum number of days from receipt of a petition by EDA to ‘accept’ the petition for processing. To allow EDA an unlimited time to ‘accept’ a petition defeats the intent of Congress to only allow 40 days for EDA to make a determination to certify or reject the petition. (see section 288 of Act).”

In practice, many petitions that are submitted to EDA are incomplete or otherwise deficient in some manner.

EDA has allowed and continues to allow the TAACs to informally submit a petition and works with the TAAC to resolve any deficiencies. After all deficiencies have been resolved, EDA accepts the petition, which starts the certification determination clock. EDA believes that automatically accepting all petitions will result in a higher rate of petition denials. Once a petition has been denied, the petitioning Firm must wait for one year from the date of denial before re-applying. Although EDA may waive the one-year limitation for good cause, EDA believes that the flexibility of the current system best serves the interests of Firms. This flexibility allows EDA to more effectively achieve the Congressional intent, which is to assist trade-impacted Firms with a minimum of delay and administrative burden. Firms likely to suffer the greatest trade-induced stress may have difficulty responding expeditiously to requests for clarification or to provide documentation and are most likely to exceed a hard and fast 40-day limit. The new regulations should not impose new response demands on already stressed Firms.

#### Section 315.10—Loss of Certification Benefits

EDA received the following comment from the Director of the Northwest TAAC on proposed section 315.10(d), which was revised to reflect EDA’s current practice that a Certified Firm has five, not two, years from the date upon which EDA approves an Adjustment Proposal to complete work on the Adjustment Proposal: “There should be a subpart ‘(e)’. This subpart (e) should state a firm has five years from the date their AP is approved to complete all parts of the implementation as found within its AP, without approval from EDA for going beyond this five year period to implement all aspects of the approved AP. This would put these regulations in compliance with what is actually occurring at the present time.”

EDA believes that the proposed revision reflects current practice and that another subpart is not necessary.

#### Changes From the NPRM

After publication of the NPRM, EDA discovered that the proposed revisions to the Firms’ 24- or 36-month sales decline certification requirements, set out in section 315.7(b)(2) and (3), do not reflect the ‘average annual’ language as provided in section 251 of the Trade Act, as amended by section 1862 of the TGAAA. Therefore, in this final rule, EDA revises section 315.7 to include the ‘average annual’ language, thereby

succeeding and nullifying the revision proposed in the NPRM.

### 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)). In the alternative, EDA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. EDA is required by the Trade and Globalization Adjustment Assistance Act of 2009, which was included as subtitle I within the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, 123 Stat. 115, at 401), to implement these regulations by August 1, 2009. If this rulemaking was delayed to allow for a 30-day delay in effectiveness, EDA would not be able to meet its statutory requirement. Therefore, in order to make these regulations effective before August 1, 2009, EDA waives the 30-day in effectiveness and makes this rule effective immediately.

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

### Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act ('PRA'). In regard to the Community TAA Program, the Office of Management and Budget ('OMB') has approved the use of Form ED-900 ('Application for Investment Assistance') under Control Number 0610-0094. Form SF-424 ('Application for Federal Assistance') is approved under OMB Control Number 4040-0004. To estimate burden, EDA examined its experience with its public works and economic adjustment assistance programs, which are authorized under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) ('PWEDA'). The potential demand for programs under PWEDA is, of course, much greater because eligibility is based on general economic distress and is not restricted to trade impact. EDA estimates that demand from trade-impacted areas would constitute a small fraction of all areas experiencing economic distress. Nonetheless, to a certain extent, demand will be elastic depending on the amount of appropriations Congress and the President approve for the Community TAA Program. Because the respondent

burden will be similar for applications under the Community TAA Program as it is for applications under EDA's traditional programs, if the Community TAA Program is funded at its authorized level of \$150,000,000, EDA estimates that it may receive about 350 responses for a petition for affirmative determination and 300 responses for an implementation grant. EDA estimates that the total annual paperwork burden for a petition for affirmative determination would be about 550 hours and the total annual paperwork burden for an implementation grant application would be about 6,500 hours. In regard to the TAAF Program, the use of Form ED-840P ('Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance') has been approved by OMB under Control Number 0610-0091. In light of the expansion of the TAAF Program to Service Sector Firms and the expansion of the 'look back' periods, EDA estimates the number of respondents who complete petitions for a certification of eligibility will increase more than 100 percent to about 500 respondents and that the total annual paperwork burden would be about 4,100 hours.

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

### Executive Order No. 12866

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

### 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." It has been determined that this final rule does

not contain policies that have federalism implications.

### List of Subjects

#### 13 CFR Part 313

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

#### 13 CFR Part 315

Administrative practice and procedure, Trade adjustment assistance, Eligible petitioner, Firm selection, Certification requirements, Recordkeeping and audit requirements, Adjustment proposals.

### Regulatory Text

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

■ 1. Add part 313 to read as follows:

## PART 313—COMMUNITY TRADE ADJUSTMENT ASSISTANCE

### Subpart A—General Provisions

Sec.

313.1 Purpose and scope.

313.2 Definitions.

### Subpart B—Participation in the Community Trade Adjustment Assistance Program

313.3 Overview of Community Trade Adjustment Assistance.

313.4 Affirmative determinations.

313.5 Technical assistance.

313.6 Strategic Plans.

313.7 Implementation grants for Impacted Communities.

313.8 Competitive process.

### Subpart C—Administrative Provisions

313.9 Records.

313.10 Conflicts of interest.

313.11 Other requirements.

**Authority:** 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111-5; 42 U.S.C. 3211; Department of Commerce Organizational Order 10-4.

### Subpart A—General Provisions

#### § 313.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 4 of title II of the Trade Act concerning Community Trade Adjustment Assistance ('Community TAA'). The Community TAA Program is designed to assist Communities impacted by trade with economic adjustment through the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the

development and provision of programs that meet the training needs of workers. The statutory authority and responsibilities of the Secretary of Commerce relating to Community TAA are delegated to EDA. EDA certifies Communities as eligible to apply for assistance under the Community TAA Program, provides technical assistance to Impacted Communities, and provides implementation assistance to Impacted Communities in preparing and carrying out Strategic Plans.

### § 313.2 Definitions.

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

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

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

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

*Cognizable Certification* means a certification:

- (1) By the Secretary of Labor that a group of workers in the Community is eligible to apply for assistance under chapter 2, section 223 of the Trade Act;
- (2) By the Secretary of Commerce that a Certified Firm (as defined at § 315.2 of this chapter) located in the Community is eligible to apply for Adjustment Assistance in accordance with chapter 3, sections 251–253 of the Trade Act; or
- (3) By the Secretary of Agriculture that a group of Agricultural Commodity Producers in the Community is eligible to apply for assistance under chapter 6, section 293 of the Trade Act.

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

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

### Subpart B—Participation in the Community Trade Adjustment Assistance Program

#### § 313.3 Overview of Community Trade Adjustment Assistance.

The Community TAA Program is designed to assist Communities impacted by trade to adjust to that

impact. The Community TAA Program will be administered in accordance with the following process:

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

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

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

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

#### § 313.4 Affirmative determinations.

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

- (1) On or after August 1, 2009, one or more Cognizable Certifications are made with respect to the Community; and
- (2) The Community submits the petition at least 180 days after the date of the most recent Cognizable Certification.

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

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

- (i) The 'Application for Federal Assistance' (Form SF-424) that contains such information to allow EDA to determine that the petitioning Community is significantly affected by the threat to, or the loss of, jobs associated with one or more Cognizable Certifications;
  - (ii) The applicable Cognizable Certification(s) upon which the Community bases its petition; and
  - (iii) Such other information as EDA considers material.
- (2) The petition for affirmative determination must contain information

about the impact(s) on the Community from the actual or threatened loss of jobs attributable to trade that led to the applicable Cognizable Certification(s) made by the Secretaries of Labor, Commerce or Agriculture, in order for EDA to determine that the Community is significantly affected. EDA shall measure such impact(s) using the petitioning Community's most recent Civilian Labor Force statistics as reported by the Bureau of Labor Statistics, U.S. Department of Labor, effective at the time of petition for affirmative determination. EDA will obtain the applicable Cognizable Certification from publicly available resources. However, a petitioning Community may also provide copies of the applicable Cognizable Certification to EDA.

(d) *Notification to Community.* Upon making an affirmative determination, EDA shall notify promptly the Community and the Governor of the State in which the Community is located of the means for obtaining assistance under this part and other appropriate economic assistance that may be available to the Community. Such notification will identify the appropriate EDA regional office that will provide technical assistance under § 313.5.

#### § 313.5 Technical assistance.

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

- (1) Diversify and strengthen the economy in the Impacted Community;
- (2) Identify significant impediments to economic development that result from the impact of trade on the Impacted Community; and
- (3) Develop or update a Strategic Plan in accordance with § 313.6 to address economic adjustment and workforce dislocation in the Impacted Community, including unemployment among agricultural commodity producers.

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

- (1) Identifying Federal, State, and local resources that are available to assist the Impacted Community in responding to economic distress; and
- (2) Assisting the Impacted Community in accessing available Federal assistance and ensuring that such assistance is provided in a targeted, integrated manner.

**§ 313.6 Strategic Plans.**

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

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

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

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

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

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

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

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

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

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

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

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

(5) A description of the projects to be undertaken by the Impacted Community under its Strategic Plan and how such

projects will facilitate the Impacted Community's economic adjustment;

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

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

(8) A strategy for continuing the economic adjustment of the Impacted Community after the completion of the projects described in paragraph (c)(5) of this section.

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

**§ 313.7 Implementation grants for Impacted Communities.**

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

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

(2) Market or industry research and analysis;

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

(4) Public services;

(5) Training; and

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

(b) *Application evaluation criteria.* (1) An Impacted Community that seeks to receive an implementation grant under this section shall submit a completed 'Application for Federal Assistance' (Form ED-900 or any successor form) to the applicable regional office (or regional offices in the event the

Community crosses multiple geographic boundaries) serving the geographic area in which the Community is located. A complete application also shall include:

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

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

(2) EDA will evaluate all applications for the feasibility of the budget presented and conformance with statutory and regulatory requirements. EDA also will consider the degree to which an implementation grant in the Impacted Community will satisfy the evaluation criteria set forth in the applicable FFO announcement.

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

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

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

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

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

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

**§ 313.8 Competitive process.**

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

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

(c) *Supplement, not supplant.* The Community TAA Program and any funds appropriated to implement its provisions shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for Communities.

**Subpart C—Administrative Provisions****§ 313.9 Records.**

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

**§ 313.10 Conflicts of interest.**

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

**§ 313.11 Other requirements.**

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

■ 2. Revise part 315 to read as follows:

**PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS****Subpart A—General Provisions**

Sec.

- 315.1 Purpose and scope.
- 315.2 Definitions.
- 315.3 Confidential Business Information.
- 315.4 Eligible applicants.
- 315.5 TAAC scope, selection, evaluation and awards.
- 315.6 Firm eligibility for Adjustment Assistance.

**Subpart B—Certification of Firms**

- 315.7 Certification requirements.
- 315.8 Processing petitions for certification.
- 315.9 Hearings.
- 315.10 Loss of certification benefits.
- 315.11 Appeals, final determinations and termination of certification.

**Subpart C—Protective Provisions**

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

**Subpart D—Adjustment Proposals**

- 315.16 Adjustment proposal requirements.

**Subpart E—Assistance to Industries**

- 315.17 Assistance to Firms in import-impacted industries.

**Authority:** 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111-5; 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

**Subpart A—General Provisions****§ 315.1 Purpose and scope.**

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

**§ 315.2 Definitions.**

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

*Adjustment Assistance* means technical assistance provided to Firms or industries under chapter 3 of title II of the Trade Act.

*Adjustment Proposal* means a Certified Firm's plan for improving its economic situation.

*Certified Firm* means a Firm which has been determined by EDA to be

eligible to apply for Adjustment Assistance.

*Confidential Business Information* means any information submitted to EDA or a TAAC by a Firm that concerns or relates to trade secrets for commercial or financial purposes, which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

*Contributed Importantly*, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be considered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

*Decreased Absolutely* means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period,

(1) Independent of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

*Directly Competitive* means imported articles or services that compete with and are substantially equivalent for commercial purposes (*i.e.*, are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. Any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

*Firm* means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. *See also* the definition of Service Sector Firm. Pursuant to section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits. For purposes of receiving

benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or more production facilities. Accordingly, such other Firms may include a(n):

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a ‘Predecessor’) and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor’s operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm’s operations by producing the same type of products or services, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company.

*Increase in Imports* means an increase of imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by such Firm. EDA may consider as evidence of an Increase in Imports a certification from the Firm’s customers that account for a significant percentage of the Firm’s decrease in sales or production that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States.

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

*Partial Separation* means, with respect to any employment in a Firm, either:

(1) A reduction in an employee’s work hours to 80 percent or less of the employee’s average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee’s weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

*Person* means an individual, organization or group.

*Record* means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

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

*Significant Number or Proportion of Workers* means five percent of a Firm’s work force or 50 workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

*Substantial Interest* means a direct material economic interest in the certification or non-certification of the petitioner.

*TAAC* means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

*Threat of Total or Partial Separation* means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

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

### § 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

### § 315.4 Eligible applicants.

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

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) For purposes of § 315.17 and to the extent funds are appropriated to implement section 265 of the Trade Act, organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 and 251 of the Trade Act, include:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

### § 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.* (1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas may be obtained from the TAAC Web site at <http://www.taacenters.org> or from EDA at <http://www.eda.gov>.

(2) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will normally be made through TAACs.

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

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

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

(b) *TAAC selection.* (1) EDA invites currently funded TAACs to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not ensure funding by EDA.

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

(c) *TAAC evaluation.* (1) EDA generally evaluates currently funded TAACs based on:

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

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

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

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

(iv) Availability of funds.

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

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

#### **§ 315.6 Firm eligibility for Adjustment Assistance.**

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

(1) Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions (at no cost to the Firms);

(2) Firms certified in accordance with the procedures described in §§ 315.7

and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC ('Adjustment Proposal') and submit it to EDA for approval; and

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

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

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

(2) The matching share requirements are as follows:

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

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

#### **Subpart B—Certification of Firms**

##### **§ 315.7 Certification requirements.**

(a) *General.* EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the 5 circumstances described in paragraph (b) of this section.

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

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

(ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service that accounted for not less than 25 percent of the total

production or sales of the Firm during the 12-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

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

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

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

(ii) Either 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.

#### **§ 315.8 Processing petitions for certification.**

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

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

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

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

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

(4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under § 315.7(b);

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

(6) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register**.

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.7.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all material. In no event may the determination period exceed 40 days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In

either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial, provided, EDA may waive the one-year limitation for good cause.

#### **§ 315.9 Hearings.**

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 days after the date of publication of the notice of acceptance in the **Federal Register**, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard;

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(d) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of the hearing; and

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

#### **§ 315.10 Loss of certification benefits.**

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its

Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification; or

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

**§ 315.11 Appeals, final determinations and termination of certification.**

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.8(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph, the determination under § 315.8(g) shall be final.

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

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the published notice.

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

**Subpart C—Protective Provisions**

**§ 315.12 Recordkeeping.**

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

**§ 315.13 Audit and examination.**

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

**§ 315.14 Certifications.**

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors or officers thereof certify to EDA:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

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

**§ 315.15 Conflicts of interest.**

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

**Subpart D—Adjustment Proposals**

**§ 315.16 Adjustment proposal requirements.**

EDA evaluates Adjustment Proposals based on the following:

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

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

(1) An analysis of the Firm's problems, strengths and weaknesses and

an assessment of its prospects for recovery; or

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

(c) The Adjustment Proposal must:

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

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

(i) Give a rehiring preference to such workers;

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

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

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

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

**Subpart E—Assistance to Industries**

**§ 315.17 Assistance to firms in import-impacted industries.**

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

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

Dated: August 13, 2009.

**Dennis Alvord,**

*Acting Deputy Assistant Secretary of  
Commerce for Economic Development.*

[FR Doc. E9-19774 Filed 8-17-09; 8:45 am]

BILLING CODE 3510-24-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0447; Directorate Identifier 2008-NM-172-AD; Amendment 39-15993; AD 2009-17-02]

RIN 2120-AA64

#### **Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. \* \* \*

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective September 22, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 22, 2009.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace

Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 14, 2009 (74 FR 22712). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During refueling, the ground crew detected smoke from the refuel/defuel panel illuminated placard 160VU. The design of the refuel/defuel panel illuminated placard was changed during 1997 from its original specification, to fill the cavity inside the placard with silicone to avoid moisture/fluid ingress. SAAB has reviewed the working procedure and has developed a placard filled with a bi-component silicone-based material to minimize the cavity inside the panels.

For the reasons described above, this EASA AD requires the identification of the manufacturing date of the affected placard, a visual inspection of the placard for heat and/or burn marks and the installation of a new placard in accordance with the instructions of SAAB Service Bulletin (SB) 340-28-027.

This AD has been revised to identify the affected VIBRACHOC (the part manufacturer) placard with Part Number (P/N) C4FL5031C001, instead of the corresponding SAAB P/N 9303719-001, which was (also) quoted inaccurately. In addition, it has been recognised that the original AD did not allow installation of the placards with a manufacturing date before 31/97; that has now been corrected.

The unsafe condition is an electrical malfunction in the illuminated placard of the refuel and defuel panel, which could result in fire. You may obtain further information by examining the MCAI in the AD docket.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

##### **Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

##### **Differences Between this AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use

different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a note within the AD.

##### **Costs of Compliance**

We estimate that this AD will affect 141 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$1,500 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$234,060, or \$1,660 per product.

##### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

##### **Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.