

business record equivalent of any supporting documentation for a period of five years from the date of submission.

(d) *Nondisclosure.* (1) A regulated entity or entity-affiliated party may not disclose to any person that it has submitted a report to the Director pursuant to this section, unless it has first obtained the prior written approval of the Director.

(2) The restriction in paragraph (d)(1) of this section does not prohibit a regulated entity from—

(i) Disclosing or reporting such fraud or possible fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(ii) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the fraud or possible fraud.

(e) *No waiver of privilege.* A regulated entity does not waive any privilege it may possess under any applicable law as a consequence of reporting fraud or possible fraud under this part.

#### § 1233.4 Internal controls, policies, procedures, and training.

(a) *In general.* Each regulated entity shall establish and maintain adequate and efficient internal controls, policies, procedures, and an operational training program to discover and report fraud or possible fraud in connection with the purchase or sale of any loan or financial instrument.

(b) *Examination.* The examination by FHFA of fraud reporting programs of each regulated entity includes an evaluation of the effectiveness of the internal controls, policies, procedures, and operational training program in place to minimize risks from fraud and to report fraud or possible fraud to FHFA in accordance with this regulation.

#### § 1233.5 Protection from liability for reports.

As provided by section 1379E of the Safety and Soundness Act (12 U.S.C. 4642(b)), a regulated entity that, in good faith, submits a report pursuant to this part, and any entity-affiliated party, that, in good faith, submits or requires a person to submit a report pursuant to this part, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report, or for any failure to provide notice of such report

to the person who is the subject of such report, or any other persons identified in the report.

#### § 1233.6 Supervisory action.

Failure by a regulated entity to comply with this part may subject the regulated entity or the board members, officers, or employees thereof to supervisory action by FHFA, including but not limited to, cease-and-desist proceedings and civil money penalties.

### CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### PART 1731—[REMOVED]

##### ■ 2. Remove part 1731.

Dated: January 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010-1641 Filed 1-26-10; 8:45 am]

BILLING CODE P

### DEPARTMENT OF COMMERCE

#### Economic Development Administration

#### 13 CFR Parts 301, 302, 305, 307, 308, 313 and 315

[Docket No. 080213181-91417-02]

RIN 0610-AA64

#### Revisions to the EDA Regulations

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

**ACTION:** Final rule.

**SUMMARY:** On October 22, 2008, the Economic Development Administration (“EDA”) published an interim final rule to synchronize its Revolving Loan Fund (“RLF”) regulations with significant improvements in the management and oversight of its RLF program, including the issuance of written guidance that provides EDA staff with steps to help better ensure grantee compliance with RLF requirements. Additionally, the interim final rule made changes to certain definitions in the Trade Adjustment Assistance for Firms program regulations provided notice of other substantive and non-substantive revisions made to EDA’s regulations. EDA received a total of two comments on the October 22, 2008 interim final rule. This final rule responds to all substantive comments received during the public comment period and finalizes this rulemaking proceeding.

**DATES:** This final rule is effective as of January 27, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Hina Shaikh, 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 an interim final rule in the *Federal Register* (73 FR 62858) on October 22, 2008, to amend some of EDA’s regulations, namely the Trade Adjustment Assistance for Firms program (“TAA Program”) regulations and the RLF program regulations. The technical revisions to a few of the TAA definitions were made to help better align EDA’s responsibilities in implementing the TAA Program under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*). We made a number of changes to the RLF regulations in line with our commitment to implement the Office of Inspector General’s (“OIG”) audit recommendations and to improve the administration and effectiveness of the RLF program. The revisions to the RLF regulations correspond to the policy determinations that EDA made in response to the OIG’s audit report titled *Aggressive EDA Leadership and Oversight Needed To Correct Persistent Problems in the RLF Program* (March 2007). EDA staff highlighted these proposed changes at training sessions for all EDA RLF Recipients. Among the major changes discussed and concluded were the switch to a Web-based semi-annual reporting form that will eliminate redundant and calculable fields; the requirement that RLF grantees submit updated RLF Plans at least once every five years; the pegging of the minimum interest rate to commercial interest rates in order to ensure RLF grantees can lend when commercial interest rates are low; and simplification of record retention requirements. EDA also took into consideration the feedback received at these training sessions, and as a result, eliminated the requirement that sequestered funds be kept in a separate bank account, as many Recipients indicated that there was substantial red tape involved in opening a separate account. Other changes were non-substantive in nature and were made for increased clarity.

*Comments Received on October 22, 2008 Interim Final Rule*

The October 22, 2008 interim final rule provided a deadline of December

22, 2008 for all public comments. On December 16, 2008, EDA published a notice (73 FR 76194) that extended the deadline for comments to January 22, 2009. EDA received a total of two comments on the October 22, 2008 interim final rule, as set out below:

1. "I noticed that in [section] 301.10 for formal application requirements, 'proposals' are referenced. Now that we're going to use a single application format, should this be changed, if there is going to be an update of the revisions?"

2. "The intent of the new regulations need to be clarified—it is my understanding that EDA does not require the RLF Grantee to send copies of the RLF loan minutes (approval or otherwise) or the bank turn-down letters to EDA, despite the fact that the October 22, 2008 regulations state that EDA does require such a submission."

EDA is publishing this final rule to respond to all comments received during the public comment period on all aspects of the interim final rule, and to make additional revisions to EDA's regulations to facilitate effective administration of its programs. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in EDA's regulations (*see, e.g.*, 13 CFR 300.3, 303.2, 307.8 and 314.1). Specifically, this final rule makes the following revisions to the October 22, 2008 interim final rule and to EDA's regulations codified at 13 CFR chapter III:

#### Part 301—Eligibility, Investment Rate and Application Requirements

Part 301 of the regulations sets forth eligibility, maximum allowable Investment Rate levels, and application requirements common to all Public Works and Economic Development Act ("PWEDA")-enumerated programs (excluding the Community Trade Adjustment Assistance Program ("Community TAA Program") and TAA Program regulations at parts 313 and 315, respectively). In general, subpart A presents an overview of eligibility requirements, subpart B addresses applicant eligibility, subpart C addresses Regional economic distress level requirements, subpart D sets forth the maximum allowable Investment Rates and corresponding Matching Share requirements for various Projects, and subpart E addresses the application requirements, as well as the evaluation criteria used by EDA in selecting Projects.

The October 22, 2008 interim final rule revised § 301.4(b)(4) to be more parallel in structure and content to

section 207 of PWEDA; however, the statutory reference cited in the regulation was inadvertently incorrect. The correct statutory reference is section 204(c)(3) of PWEDA. This final rule makes this revision.

EDA received the following comment on § 301.10: "I noticed that in 301.10 for formal application requirements, 'proposals' are referenced. Now that we're going to use a single application format, should this be changed, if there is going to be an update of the revisions?" On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its new *Application for Investment Assistance* (Form ED-900). Previously, applicants were required to complete and submit a *Pre-Application for Investment Assistance* (Form ED-900P), followed by an *Application for Investment Assistance* (Form ED-900A), if EDA deemed that the proposed project merited further consideration. The Form ED-900 consolidates all EDA-specific requirements into a single application form. The notice provided a one-month period to completely phase-in the use of the new Form ED-900. Accordingly, effective November 1, 2008, EDA accepts only the Form ED-900, along with specific forms and attachments from the Standard Form ("SF") 424 family.

In line with the October 1, 2008 publication, this final rule removes all references to the Form ED-900P in EDA's regulations. Accordingly, the words "Proposal and" are removed in the title of part 301 and subpart E of part 301. The title of § 301.7 is revised from "Investment Assistance proposal" to "Investment Assistance application." Paragraph (a) in § 301.7 is revised to remove all references to the words "proposal," "Pre-application," "proponent" and "Form ED-900," and subparagraph (1) is removed because it is no longer applicable. Section 301.7(b) also is made inapplicable with the introduction of Form ED-900 and is replaced with the following: "PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance." This provision reflects long-standing EDA policy. The policy is being placed in the regulations because EDA received an inquiry from an applicant regarding our appeals process upon denial of an application; this provision serves to clarify our administrative policy regarding denial of Investment Assistance.

This final rule revises the title of § 301.8 to change it from "Proposal evaluation criteria" to "Application evaluation criteria." The words

"proposals" and "proponent" are replaced with "applications" and "applicant." In paragraph (a), the phrase "such as EDA's Balanced Scorecard or other performance matrix" is deleted because EDA does not believe it is necessary to specify a particular type of performance metric at this time. Similar to the changes made in § 301.8, the title of § 301.9 is changed from "Proposal selection criteria" to "Application selection criteria," and all references to "proposal" and "proponent" are changed to "application" and "applicant."

In § 301.10, this final rule removes paragraph (a) in its entirety because it is no longer applicable with the introduction of the single application on Form ED-900. Accordingly, the sub-heading "Formal application" of paragraph (b) is removed and paragraphs (1)–(3) thereunder are renumbered as (a), (b) and (c), for stylistic consistency with the rest of the regulations. Paragraphs (i) and (ii) under paragraph (3) are renumbered as (1) and (2), respectively.

#### Part 302—General Terms and Conditions for Investment Assistance

Part 302 sets forth the general terms and conditions for EDA Investment Assistance. This part applies to all Investments under PWEDA (certain provisions, such as § 302.5, also apply to the TAA Program under the Trade Act (*see* part 315)), and covers a variety of EDA requirements for Investment Assistance, including environmental reviews of Projects, relocation assistance and land acquisition requirements, inter-governmental review of Projects, and Recipients' reporting, record-keeping, post-approval and civil rights requirements. For consistency with the change made in § 301.8, this final rule removes the phrase "such as the EDA Balanced Scorecard or other system" from § 302.16(b).

In § 302.20(a)(2), we discovered that the reference to "15 CFR 8.7 through 8.15" as the Department's implementing regulations for proscribing discrimination on the basis of sex in education programs or activities receiving federal financial assistance is incorrect. This final rule changes "15 CFR 8.7 through 8.15" to the correct citation which is "15 CFR part 8a."

#### Part 305—Public Works and Economic Development Investments

Part 305 describes general information about the scope of EDA's Public Works program, award and application requirements, and provisions for EDA's and Recipients' duties. This final rule makes one edit in this part for consistency with the revisions made in

part 301 and elsewhere in 13 CFR chapter III for the change from “proposal” to “application” due to the single application on Form ED–900. Accordingly, in § 305.3(a)(4), the word “proposal” is replaced with “application.”

#### Part 307—Economic Adjustment Assistance Investments

EDA re-examined part 307 of its regulations after publication of the October 22, 2008 interim final rule to allow for consideration of matters pertaining to the effective implementation of the interim final rule. This final rule makes specific revisions to help better manage and administer the RLF program in accordance with the OIG’s recommendations. The changes are described below.

In § 307.4(b), the word “proposals” is changed to “applications.” Similarly, in § 307.4(c)(1) and (2), the word “proposals” is replaced with “applications.” In the definition of *RLF Third Party* in § 307.8, the word “proposals” is replaced with “applications” and “and/or” is replaced with “or.” This final rule also revises the definition of “*RLF Capital*” for clarity and better understanding. The definition is revised to refer to EDA grant funds plus Matching Share plus RLF Income, less any amount used for reasonable administrative expenses and any amount of loan principal written off.

This final rule adds an additional requirement for the Recipient’s RLF Plan in § 307.9(a)(2), to ensure that the Plan is consistent with EDA’s conflicts-of-interest rules set out in § 302.17. This revision is consistent with the change EDA has made to its RLF Standard Terms and Conditions, which are included in every RLF Grant.

EDA program staff discovered that paragraph (a)(1) of § 307.11 does not actually explain the evidence EDA will need to see in order to determine whether the RLF Recipient has adequate fidelity bond coverage. In order to clarify what adequate fidelity bond coverage is, EDA determined the amount of cash at risk for which fidelity insurance should be obtained is the amount of cash readily available to the RLF Recipient, which is generally the greater of 25 percent of the RLF Capital base, or the maximum loan amount identified in the Recipient’s EDA-approved RLF Plan. Accordingly, this final rule adds the following sentence immediately after the first sentence in § 307.11(a)(1): “At a minimum, the amount of coverage shall be the greater of (i) the maximum loan amount allowed for in the EDA-approved RLF

Plan, or (ii) 25 percent of the RLF Capital base.”

This final rule also revises paragraph (d) of § 307.11 for clarity to read as follows: “*Interest-bearing Account*. All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account (an “EDA funds account”) by the Recipient until an RLF loan is made to a borrower.” This revision does not change current practice and is made for increased clarity only.

In § 307.14(a), this final rule removes the phrase “(Form ED–209 or any successor form)” in order to help accommodate the launch and operation of EDA’s new automated reporting system some time this year.

The October 22, 2008 interim final rule moved the reference to a signed bank turn-down letter from § 307.17(c) to the loan documentation requirements listed in § 307.15(b)(2). We received a comment in connection with § 307.15(b)(2)(viii), which states, “*EDA will accept alternate documentation* [to a signed bank turn-down letter] only if such documentation is allowed in the RLF Recipient’s EDA-approved RLF Plan.” [*Emphasis added.*] This wording is incorrect in that EDA would not accept the signed bank turn-down letter, board of directors’ meeting minutes approving an RLF loan, or any such alternate documentation. Rather, the *RLF Recipient* would accept it for review and consideration and keep it in its loan files where EDA or an auditor can review such documentation if desired [*emphasis added*]. Accordingly, the second sentence in § 307.15(b)(2)(viii) is revised to insert the phrase “permit the RLF Recipient to” immediately after the word “will”.

In § 307.15(d)(1), this final rule removes the words “prior to” in the third sentence to clarify that RLF operators may count as private leveraging any funds invested from private sources within 12 months before or after the RLF loan is made, rather than just 12 months before the loan is made. Private leveraging is included for a 12-month period both prior to and after the RLF loan closing because a borrower submits applications to financial institutions as well as to the RLF Recipient for financing assistance as the needs of the business are identified. The conventional lender may close the loan either before or after the RLF loan is closed, but every loan approved during the 12-month period is clearly part of the total financial needs of the borrower. The Generally Accepted Accounting Principles (“GAAP”) define “current” as

a 12-month period. Therefore, the 12-month period prior and after the RLF loan closing reflects the total current financing leveraged by the borrower.

For consistency throughout part 307 and with the title of § 307.16(c), this final rule changes all references to “capital utilization percentage” or “applicable capital utilization percentage” to “capital utilization standard.” The phrases “capital utilization percentage” and “applicable capital utilization percentage” appear in paragraphs (c)(1)(i), (c)(2), (c)(2)(i) and (c)(2)(ii) of § 307.16. All such phrases are replaced with “capital utilization standard.”

To facilitate better monitoring of RLF Capital and to ensure that RLF Capital is used for making RLF loans that are consistent with the RLF Plan or such other purposes approved by EDA, the October 22, 2008 interim final rule added a new paragraph (c) to § 307.17 to allow EDA to task an independent third party with conducting a compliance and loan quality review of the RLF Grant every three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF’s operations, provided the requirements set out in § 307.12 regarding RLF Income are satisfied. The wording of the first sentence in § 307.17(c) inadvertently used the word “shall” in the phrase “EDA shall require an independent third party to conduct a compliance and loan quality review for the RLF Grant every (3) three years,” when the intention was to give EDA the ability to require a compliance and loan quality review. This final rule changes the word “shall” to “may” and revises the phrase “(3) three years” to “three (3) years” so that the Arabic numeral appears after the word “three.”

Section 307.21 sets out the process for termination of RLF awards. In an effort to ensure strong recipient compliance with RLF reporting and efficient capital utilization, the October 22, 2008 interim final rule revised § 307.21(a) to include additional grounds for which EDA may suspend or terminate an RLF Grant for cause. One of these grounds, set out in § 307.21(a)(1)(viii), is the RLF Recipient’s failure to comply with the audit requirements set out in OMB Circular A–133 and the related *Compliance Supplement*. This final rule adds an important reference to the *Schedule of Expenditure of Federal Awards*, which auditors are required to complete in accordance with OMB Circular A–133. Accordingly, the phrase, “including reference to the correctly valued EDA RLF federal expenditures in the *Schedule of*

*Expenditures of Federal Awards* (“SEFA”), is placed immediately after “*Supplement*,” in § 307.21(a)(1)(viii).

In the third sentence of § 307.21(b), to ensure that the text is clearer and more concise, this final rule replaces the phrase, “a portion of RLF property that EDA determines is attributable to RLF Income” with “the RLF Recipient’s share of RLF Income (or program income) generated by the RLF.”

For consistency with the changes made in part 301 to remove all references to the word “proposal,” in paragraph (b)(4) of § 308.2, this final rule changes “proposal” to “application.” In addition, with respect to the Community TAA Program, we amend § 313.4(a)(2) to correct the erroneous wording of “The Community submits the petition at least 180 days after the date of the most recent Cognizable Certification.” Section 313.4(a)(2) shall read as “The Community submits the petition *no later than* 180 days after the date of the most recent Cognizable Certification”, to track section 273 of chapter 4 of the Trade Act, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (emphasis added). See Subtitle I (letter ‘I’) of Title I of Division B of Pub. L. No. 111–5, 123 Stat. 367, at 396–436.

In § 315.7(b)(5)(iii), this final rule corrects the inadvertent italicization of the phrase “production or supply of services”.

#### 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 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.

#### Paperwork Reduction Act

This final rule contains collections-of-information subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). The OMB is required to clear all federally-sponsored data collections pursuant to the PRA. 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.

#### List of Subjects

##### 13 CFR Part 301

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

##### 13 CFR Part 302

Environmental review, Federal policy and procedures, Inter-governmental review, Fees, Pre-approval requirements, Project administration, Reporting and audit requirements, Conflicts-of-interest, Post-approval requirements, Civil rights.

##### 13 CFR Part 305

Public works, Economic development, Award and application requirements, Requirements for approved projects.

##### 13 CFR Part 307

Economic adjustment assistance, Award and application requirements, Revolving loan fund, Pre-loan requirements, Merger, Income, Record and reporting requirements, Sales and securitizations, Liquidation, Termination.

##### 13 CFR Part 308

Performance awards, Planning performance awards.

##### 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, this final rule amends title 13, chapter III of the *Code of Federal Regulations* as follows:

#### PART 301—ELIGIBILITY, INVESTMENT RATE 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. Revise the heading to part 301 to read as set forth above.

■ 3. Revise paragraph (b)(4) of § 301.4 to read as follows:

##### § 301.4 Investment rates.

\* \* \* \* \*

(b) \* \* \*

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

\* \* \* \* \*

#### Subpart E—Application Requirements; Evaluation Criteria

■ 4. Revise § 301.7 to read as follows:

##### § 301.7 Investment Assistance application.

(a) The EDA Investment Assistance process begins with the submission of an Investment Assistance application. The *Application for Investment Assistance* (Form ED–900 or any

successor form) may be obtained from EDA's Internet Web site at <http://www.eda.gov> or from the appropriate regional office. EDA generally accepts applications on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all applications using the criteria set forth in § 301.8 and will:

(1) Return the application to the applicant for specified deficiencies and suggest resubmission upon corrections; or

(2) Deny the application for specifically stated reasons and notify the applicant.

(b) PWEDA does not require nor does EDA provide an appeals process for denial of applications or EDA Investment Assistance.

■ 5. Revise § 301.8 to read as follows:

**§ 301.8 Application evaluation criteria.**

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the applicant to implement the proposed Project. EDA also will consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) *Is market-based and results driven.* An Investment will capitalize on a Region's competitive strengths and will positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) *Has strong organizational leadership.* An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) *Advances productivity, innovation and entrepreneurship.* An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local universities to the private sector to

create the conditions for greater productivity, innovation, and job creation.

(d) *Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy.* An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) *Demonstrates a high degree of local commitment.* An Investment will exhibit:

(1) High levels of local government or non-profit Matching Share and private sector leverage;

(2) Clear and unified leadership and support by local elected officials; and

(3) Strong cooperation among the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

■ 6. Revise § 301.9 to read as follows:

**§ 301.9 Application selection criteria.**

(a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable federal statutes and regulations. From those applications that meet EDA's technical and legal requirements, EDA will select applications for further consideration based on the:

(1) Availability of funds;

(2) Competitiveness of the applications based on the criteria set forth in § 301.8; and

(3) Funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify applicants regarding whether their applications are selected as soon as practicable.

■ 7. Revise § 301.10 to read as follows:

**§ 301.10 Formal application requirements.**

Each formal application for EDA Investment Assistance must:

(a) Include evidence of applicant eligibility (as set forth in § 301.2) and of economic distress (as set forth in § 301.3);

(b) Identify the sources of funds, both eligible federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (see the Matching Share requirements under § 301.5); and

(c) For construction Projects under parts 305 or 307 of this chapter, include

a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:

(1) Strategy Grants, as defined in § 307.3 of this chapter; and

(2) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

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

■ 8. The authority citation for part 302 continues to read as follows:

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

■ 9. Revise paragraph (b) of § 302.16 to read as follows:

**§ 302.16 Reports by Recipients.**

\* \* \* \* \*

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system.

\* \* \* \* \*

■ 10. Revise paragraph (a)(2) of § 302.20 to read as follows:

**§ 302.20 Civil rights.**

(a) \* \* \*

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 CFR part 8a;

\* \* \* \* \*

**PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS**

■ 11. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10-4.

■ 12. Revise paragraph (a)(4) of § 305.3 to read as follows:

**§ 305.3 Application requirements.**

(a) \* \* \*  
(4) Demonstrate how the proposed Project meets the application evaluation criteria set forth in § 301.8 of this chapter.

\* \* \* \* \*

**PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS**

■ 13. The authority citation for part 307 continues to read as follows:

**Authority:** 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10-4.

■ 14. Revise paragraphs (b), (c)(1) and (c)(2) of § 307.4 to read as follows:

**§ 307.4 Award requirements.**

\* \* \* \* \*

(b) *Strategy Grants.* EDA will review Strategy Grant applications to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter.

(c) \* \* \*

(1) EDA will review Implementation Grant applications for the extent to which the:

(i) Applicable CEDS meets the requirements in § 303.7 of this chapter; and

(ii) Proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) *Revolving Loan Fund Grants.* For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review applications for the:

(i) Need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS;

(ii) Types of financing activities anticipated; and

(iii) Capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

\* \* \* \* \*

■ 15. In § 307.8, revise the definitions of *RLF Capital* and *RLF Third Party* to read as follows:

**§ 307.8 Definitions.**

\* \* \* \* \*

*RLF Capital* means Grant funds plus Local Share plus RLF Income, less any amount used for eligible and reasonable costs necessary to administer the RLF and any amount of loan principal written off.

\* \* \* \* \*

*RLF Third Party*, for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for applications or Cooperative Agreement to facilitate or manage the intended liquidation of an RLF.

\* \* \* \* \*

■ 16. Revise paragraph (a)(2) of § 307.9 to read as follows:

**§ 307.9 Revolving Loan Fund Plan.**

\* \* \* \* \*

(a) \* \* \*

(2) Part II of the Plan titled “Operational Procedures” must serve as the RLF Recipient’s internal operating manual and set out administrative procedures for operating the RLF consistent with “Prudent Lending Practices,” as defined in § 307.8, and EDA’s conflicts of interest rules set out in § 302.17 of this chapter.

\* \* \* \* \*

■ 17. Revise paragraphs (a)(1) and (d) of § 307.11 to read as follows:

**§ 307.11 Disbursement of funds to Revolving Loan Funds.**

(a) \* \* \*

(1) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed for in the EDA-approved RLF Plan, or 25 percent of the RLF Capital base. Such insurance coverage must exist at all times during the duration of the RLF’s operation; and

\* \* \* \* \*

(d) *Interest-bearing Account.* All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account (an “EDA funds account”) by the Recipient until an RLF loan is made to a borrower.

\* \* \* \* \*

■ 18. Revise paragraph (a) of § 307.14 to read as follows:

**§ 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.**

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must complete and submit a semi-annual report in electronic format, unless EDA approves a paper submission.

\* \* \* \* \*

■ 19. Revise paragraphs (b)(2)(viii) and (d)(1) of § 307.15 to read as follows:

**§ 307.15 Prudent management of Revolving Loan Funds.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient’s EDA-approved RLF Plan.

(d) \* \* \*

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF’s operation. To be classified as leveraged, private investment must be made within twelve (12) months of approval of an RLF loan, as part of the same business development project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

(iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration’s 7(A) loans and 504 debenture loans.

\* \* \* \* \*

■ 20. Revise paragraph (c) of § 307.16 to read as follows:

**§ 307.16 Effective utilization of Revolving Loan Funds.**

\* \* \* \* \*

(c) *Capital utilization standard.* (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital

utilization standard greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the capital utilization standard is referred to as "excess funds."

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the capital utilization standard for two (2) consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in § 314.5 of this chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the capital utilization standard. However, if an RLF Recipient fails to achieve the capital utilization standard after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

\* \* \* \* \*

■ 21. Revise paragraph (c) of § 307.17 to read as follows:

**§ 307.17 Uses of capital.**

\* \* \* \* \*

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three (3) years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations provided the requirements set forth in § 307.12 are satisfied.

\* \* \* \* \*

■ 22. Revise paragraphs (a)(1)(viii) and (b) of § 307.21 to read as follows:

**§ 307.21 Termination of Revolving Loan Funds.**

(a)(1) \* \* \*

(viii) Comply with the audit requirements set forth in OMB Circular

A-133 and the related Compliance Supplement, including reference to the correctly valued EDA RLF federal expenditures in the Schedule of Expenditures of Federal Awards ("SEFA"), timely submission of audit reports to the Federal Audit Clearinghouse and the correct designation of the RLF as a "major program" (as that term is defined in OMB Circular A-133);

\* \* \* \* \*

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may retain and use for other economic development activities the RLF Recipient's share of RLF Income (or program income) generated by the RLF.

\* \* \* \* \*

**PART 308—PERFORMANCE INCENTIVES**

■ 23. 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.

■ 24. Revise paragraph (b)(4) of § 308.2 to read as follows:

**§ 308.2 Performance awards.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

**PART 313—COMMUNITY TRADE ADJUSTMENT ASSISTANCE**

■ 25. The authority citation for part 313 continues to read as follows:

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

■ 26. Revise paragraph (a)(2) of § 313.4 to read as follows:

**§ 313.4 Affirmative determinations.**

(a) \* \* \*

(2) The Community submits the petition no later than 180 days after the date of the most recent Cognizable Certification.

\* \* \* \* \*

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

■ 27. The authority citation for part 315 continues to read as follows:

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

■ 28. Revise paragraph (b)(5)(iii) of § 315.7 to read as follows:

**§ 315.7 Certification requirements.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(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.

Dated: January 15, 2010.

**Brian P. McGowan,**

*Deputy Assistant Secretary of Commerce for Economic Development.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2009-1148; Directorate Identifier 2009-SW-36-AD; Amendment 39-16185; AD 2010-03-02]

RIN 2120-AA64

**Airworthiness Directives; Lifesavings Systems Corp., D-Lok Hook Assembly**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the Lifesavings Systems Corp., D-Lok Hook assembly installed on certain rescue hoist assemblies. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that rescue hoist operators have reported surface irregularities and discontinuities on certain D-Lok Hooks because of an unapproved change in the hook design and manufacturing process from forged material to cast material that have different physical properties. The