

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

[60 FR 49678, Sept. 26, 1995, as amended at 61 FR 7984, Mar. 1, 1996]

§ 316.2 Certification as to waste treatment.

Whenever the Environmental Protection Agency (EPA) has established a permitting and enforcement system for the regulation and monitoring of the design and operation of wastewater treatment plants which is delegated to the states for certification, EDA under PWEDA will accept such state certifications in lieu of certification by EPA.

§ 316.3 Excess capacity.

(a) All projects funded by EDA under PWEDA are subject to section 702 of PWEDA and EDA shall determine section 702 compliance based on the following:

- (1) A section 702 study;
- (2) A section 702 report; or
- (3) A section 702 exemption.

(b) *Definitions.* For purposes of this section only:

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Demand means the actual quantity of a product or service that users are willing to purchase for use in the market area served by the intended commercial or industrial beneficiary.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs and technologies.

Existing competitive enterprise means an established operation which either produces the same product or delivers the same service to all or a substantial part of the market area.

Market Area means the geographic area within which products and/or services compete for purchase by customers.

Primary Beneficiary means one or more firms within the same industry which may reasonably be expected to use 50 percent or more of the capacity of an EDA-financed facility(ies) in

order to expand the supply of goods or services sold in competition with other producers or suppliers of such goods or services.

(c) For certain types of EDA projects, a section 702 study of competitive impact will be used as a basis for a decision by EDA that such project would not violate section 702 of PWEDA. A section 702 study is required when either of the following situations exists:

- (1) Where a primary beneficiary is present; or
- (2) When EDA so determines.

(d) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 702 study:

(1) The primary beneficiary shall submit as part of the project selection process the following information with regard to each product or service affected by the project:

- (i) A detailed description;
- (ii) Current and projected amount and value of annual sales;
- (iii) Distribution channel(s) and geographic marketing area; and
- (iv) Name of other suppliers and amount presently available in the market area.

(2) If the primary beneficiary has conducted or commissioned a market study supporting the proposed project, such market study shall be made available to EDA early in the project selection process for verification and possible use by EDA as a basis for the 702 study or report.

(e) A section 702 report (a summary of supply/demand factors) will form an acceptable basis on which to make a section 702 compliance finding when the characteristics described in paragraph (c) (1) or (2) of this section are present and in addition, it is readily apparent that the resulting increase in output alleviates a shortage of goods or services in the market area.

(f) EDA will make a blanket finding of compliance with section 702 of PWEDA for those projects which have one or more of the following characteristics:

- (1) The project has no primary beneficiary;
- (2) The beneficiary's projected new or additional annual output is less than 1

percent of the last recorded annual output in the market area;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster;

(4) The project will assure the retention of the physical capacity and/or employment;

(5) The project will replace, rebuild or modernize, within the same labor market area, facilities displaced by official governmental action;

(6) The project assures completion of a project previously assisted by EDA where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(7) When the purpose of research or evaluation grants or cooperative agreements is to determine the causes of or to assist in the formulation of programs to address, or to provide personnel needed to conduct programs concerning unemployment, underemployment, underdevelopment, or chronic depression;

(8) When the purpose of planning grants to state or local governments, or regional or area organizations is to fund administrative expenses of a planning process or for the preparation of economic development plans or programs;

(9) When a technical assistance grant is not designed to assist a specific firm or group of firms or lead directly to expanded productive capacity or output of specific goods or services for sale in a designated market area; and

(10) PWIP projects.

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§ 316.4 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to

inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing the economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.5 Electric and gas facilities.

(a) General requirements for funding under PWEDA are as follows:

(1) Except for those types of facilities listed in paragraph (a)(2), (b) and (c) of this section, no financial assistance authorized under PWEDA will be used to finance:

(i) The cost of facilities for the generation, transmission, or distribution of electrical energy; or

(ii) For the production or transmission of natural, manufactured or mixed gas.

(2) Electric or gas facilities are eligible to receive EDA funding under