

DEPARTMENT OF COMMERCE**Economic Development Administration**

13 CFR Parts 300, 301, 302, 303, 304, 305, 306, 307, 308, 314, 316, 317, and 318

[Docket Nos. 990106003-9169-03 and 980813217-9141]

RIN 0610-AA56 and 0610-AA59

Revision To Implement Economic Development Administration Reform Act of 1998

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) has amended its regulations to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Administration Reform Act of 1998. EDA has clarified and simplified requirements and incorporated into the body of the rules, requirements unique to EDA for construction projects previously appearing in the EDA regulations and EDA's Civil Rights Guidelines.

EFFECTIVE DATE: This rule is effective on December 14, 1999.

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SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998, creating stability and opportunities for EDA to better serve economically distressed communities across the country. On February 3, 1999, EDA published an interim-final rule, Economic Development Administration Regulation: Revision to Implement the Economic Development Reform Act of 1998 (64 FR 5347-5486).

EDA continues to take steps toward improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA had completely revised its regulations, thereby creating fewer burdens on and making them more accessible to the public. This final rule continues EDA's efforts in this regard.

The public was invited to submit comments on the interim-final rule for a period of sixty (60) days ending April 5, 1999.

Comments on the Interim-Final Rule

• **Comments on the RLF Task Force:**

As noted in the preamble to the interim-final rule, EDA established a Task Force to examine its Revolving Loan Fund (RLF) program. Though EDA received several comments on EDA's RLF program, we will not be addressing such comments now, but will do so in an interim final rule to be published by the end of December, 1999, consistent with the report and recommendations of the EDA FLF Task Force.

• **Comments on the Plain English Initiative:**

A commenter suggested that we use the question and answer format in 13 CFR 304.1 and 2, project selection process and evaluation criteria.

We concur and have changed the rule on selection and evaluation accordingly. EDA continues its efforts to use plain language throughout the final rule, with particular attention to areas where commenters have requested clarification or interpretation.

• **Paperwork Reduction Act:**

No individual or entity commented on the Paperwork Reduction Act burden hour statement in the interim-final rule.

• **Comments on Regulatory Text:**

EDA received comments from more than forty (40) persons and entities. Responses include additional modifications resulting from matters inadvertently overlooked by EDA in the promulgation of its interim-final rule. All comments and responses refer to subparts, sections and paragraphs as numbered in this final rule.

• **Definitions.**

Commenters suggested that for simplicity "CED Strategy" be deleted to be replaced by the acronym "CEDs."

We concur and have modified 13 CFR 300.2 and references throughout the rule to replace "CED Strategy" with "CEDs".

Commenters recommended that 13 CFR 300.2 be amended to reinstate the term "Overall Economic Development Program" or "OEDP" since these terms are easily understood and accepted, whereas the term "Comprehensive Economic Development Strategy" (or "CEDs") may be confusing.

EDA does not concur because the rule as written reflects the language used in PWEDA. The Economic Development Administration Reform Act of 1998 replaced the Overall Economic Development Program with the Comprehensive Economic Development Strategy. We believe the new

terminology will be readily understood and accepted.

A commenter suggested that the definition of "Eligible applicant" in 13 CFR 300.2 be revised to include special purpose units of local governments.

We have not changed 13 CFR 302.2, because special purpose units of local governments are already included in the definition of eligible applicants as political subdivisions of States. However, to distinguish between general purpose and special purpose units of local governments, and incidentally confirm that special purpose units of local government are included as political subdivisions of States, we have changed 13 CFR 301.1(b) to provide that cooperation resolutions or letters for non-profit or for-profit applicants must be from authorized representatives of general purpose units of local governments.

A commenter suggested that the definition of "Eligible applicant" in 13 CFR 300.2 be revised to include Community Development Corporations (CDCs) and to exempt CDCs from the requirement for a resolution or letter of cooperation under 13 CFR 301.1(b).

We do not concur with the first part of this suggestion because it is apparent that CDCs are nonprofit organizations and as such they are eligible for EDA assistance. As to the second part, after careful legal analysis we have concluded that the cooperation requirement for non-profits applies to CDCs and that the rule as now written is in accordance with requirements under PWEDA.

A commenter suggested a definition be added for "Federally-declared disaster."

We concur and have changed 13 CFR 300.2 to add such a definition.

A commenter suggested that the definition of "Overall Economic Development Program" or "OEDP" be removed as unnecessary.

EDA concurs, since the Civil Rights provisions in 13 CFR part 317 (the only place in the interim-final rule where the term OEDP appeared) have been changed to refer to CEDs, instead of to OEDP. We have revised 13 CFR 300.2 to remove such definition.

Commenters suggested that a definition be added for "Presidentially-declared disaster."

We concur and have changed 13 CFR 300.2 to add such definition.

• **Area eligibility.**

A commenter recommended that 13 CFR 301.2 and 301.4(b) be modified so that "projected" unemployment or low income could be used to determine eligibility and/or grant rates.

We determined that this was unnecessary as to eligibility, because the special needs criteria in EDA's NOFA is adequate to qualify areas of significant anticipated unemployment or low income. As to grant rates, we examined the practicality and policy implications of the suggestion and determined that it would be difficult if not impossible to make reliable distress projections. Consequently, we have not modified the regulation.

A commenter recommended that 13 CFR 301.2(e) be amended to define what is meant by "significant" employment opportunities and what the impact must be to qualify as an eligible non-distressed area.

Determining significant employment opportunities and the level of impact to qualify as an eligible non-distressed area are decisions that EDA officials will have to make on a case-by-case basis in light of the narrative and supporting material provided by the applicant. While we appreciate that the term is not precise, in the real world application of eligibility criteria it is evident that applying a numerical or other specific quantifiable standard would not add to the utility or clarity of the criteria, given the variety of situations and the differing contexts of the data. Consequently, we have not modified the regulation.

Commenters suggested that unemployment and per capita income data below the county level should be available via special community surveys to establish eligibility of sub-county areas and pockets of distress. A commenter suggested that for "special needs", EDA allow applicants to submit other data, as appropriate.

After discussion and consideration of this suggestion, we have clarified 13 CFR 301.2(e) by adding that State data is that which is conducted by or at the direction of the State government. We concur with the suggestion on "special needs" and consequently have modified 13 CFR 301.2(h).

A commenter suggested that the reference to future publication in a NOFA of special needs criteria be changed to the present tense.

We concur and have modified the rule accordingly.

A commenter suggested correction of a typographical error appearing in a parenthetical phrase under Economic Adjustment planning requirements by changing "i.e." before the word "strategy" to "e.g." since the intent was to provide an example of planning activities.

We concur and have changed 13 CFR 301.3(a) accordingly.

- *Strategy required.*

Commenters suggested that we reconcile inconsistencies in CEDS requirements by using the same requirements throughout the rule.

We concur and have changed the rule accordingly so that 13 CFR 303.3 contains the CEDS requirements, which apply to CEDS for Public Works and Economic Adjustment Projects, for district designation, and for continuation planning funding for districts and other EDA supported planning organizations. 13 CFR 303.2 contains additional reporting and updating requirements for districts and other EDA supported planning entities. 13 CFR 301.3(b) and 308.4(b) have been changed to refer to requirements under 13 CFR 303.3.

Commenters suggested that the requirement that a strategy be approved by an applicant for a public works or economic adjustment project be changed so that the strategy may be approved by the entity developing the strategy or by the applicant. In the case of a CEDS approved by a State official, it was suggested approval should be by the governor or his/her designee, instead of by the applicant's governing body (i.e., the legislature).

We concur and have revised 13 CFR 301.3(d) accordingly.

Commenters suggested that 13 CFR 301.3 be revised to state that a strategy developed by an entity within the boundaries of the district but not by the district organization itself, be subject to approval by the district organization. Other commenters suggested that the rule be revised to provide that district organizations be given an opportunity to review and comment on strategies within their districts.

District organizations are major partners with EDA in providing economic development assistance, with expertise in the economic development needs and planning process for the district area. Therefore, we concur with the suggestion that districts have an opportunity to review and comment on such non-district strategies.

Consequently, we have amended 13 CFR 301.3 to provide that districts will have a 30-day period within which to review and comment upon such strategies. We do not however, concur with the recommendation for approval of such strategies by the districts, since the approval of strategies is the responsibility of EDA under PWEDA.

A commenter suggested that sub-county areas be required to utilize a county level CEDS and that a single representative entity within the county act as applicant for assistance to the sub-county area.

We believe this suggestion is in conflict with the provisions of PWEDA (sections 301(b) and 302(a)) that authorize sub-county areas to be applicants for EDA assistance, and authorize applicants to submit CEDS, without restrictions as to the area covered by the CEDS. Consequently, we have not modified 13 CFR 301.3.

- *Grant Rates.*

On June 18, 1999, EDA published an interim-final rule with changes in the grant rate table in 13 CFR 301.4(b) covering criteria for maximum grant rate eligibility based on disasters and unemployment rates. For an explanation of such changes and the text of the grant rate table, please see 64 FR 32973. No other changes are being made to the grant rate table in 13 CFR 301.4(b).

Commenters suggested clarifying the rule to add language stating that maximum grant rates for projects supporting ongoing operations of districts or university centers could be found in 13 CFR parts 306 and 307.

We concur and have changed 13 CFR 301.4(c) accordingly.

Commenters suggested that language be clarified stating that University Center projects under part 307 subpart B and district organizations are not eligible for the 10% incentive.

We concur and have modified 13 CFR 301.4(d) accordingly.

Commenters suggested that the district incentive in 13 CFR 301.4(d) should only be awarded for projects included in a list in the district's CEDS in order to encourage consistency with district CEDS and deference to the districts.

We do not concur since language in the rule, as modified, accurately reflects PWEDA's intent to encourage active participation with the district.

A commenter recommended that 13 CFR 301.4(e)(2) (maximum grant rates when EDA and another Federal agency are funding a project), be either clarified or deleted.

This rule on supplementary grant assistance for construction is consistent with language in PWEDA, and therefore should not be deleted. Moreover, we were unable to find a clearer way of explaining the grant rates and believe they are clear as presented. We considered including an example, but did not believe it was necessary. If we can clarify this provision in the future, we will do so by amending the rule as appropriate.

Commenters suggested that 13 CFR 301.4(e) on supplemental grants be broadened to include non-construction as well as construction projects.

We do not concur because EDA's authorizing legislation is different from

that of other agencies. The rule as now written accurately reflects PWEDA which limits the supplementary grant provisions to projects for construction or equipping of public works, public service, or development facilities. Note however, that PWEDA has cooperation and fund transfer authorities which apply to all programs under the Act.

A commenter suggested a reduction in the non-Federal share for infrastructure and planning awards comparable to those under HUD and USDA Rural Development initiatives.

We do not concur because the rule as now written provides for reductions in the non-Federal share match if certain criteria are met in accordance with PWEDA.

- *Economic Development Districts.*

Commenters suggested that 13 CFR 302.3(c)(3) be modified to provide for greater flexibility in district organization, e.g., eliminate the requirement that 20 percent of the district organization be composed of private citizens.

EDA considered removing the 20 percent private citizen requirement and determined that EDA's long standing requirements for grass roots broad-based community planning has been successful historically and should be continued to carry out the agency's mission.

A commenter suggested that we substitute 60 days for 30 days as the time period for prior written notice of termination or suspension of district status, and to clarify that such notice will be provided to the district organization, member counties or other areas and each affected State.

We concur and have changed 13 CFR 302.6 accordingly.

A commenter suggested that the rule be modified to remove language requiring the approval of the State or States affected when the district has asked for termination.

We concur and have changed 13 CFR 302.6(c) accordingly.

- *Planning Process for District and Other Planning Organizations Supported by EDA.*

Commenters suggested that language in 13 CFR 303.2(e) be revised to provide that strategies prepared by districts should not be required to have the concurrence of States, some suggesting that States be given the opportunity to review, but not approve such strategies, (others suggested that the rule be clarified to explain the role of States in the review/approval process, or that strategies be submitted to the States for information purposes only).

We agree that it is inappropriate for States to be given veto power over EDA

approval of district strategies, particularly as States had to have requested designation of districts in the first instance. Consequently, we have deleted the provision in 13 CFR 303.2(e) calling for concurrence by the States and added instead, that States have 30 days within which to comment on strategies developed by districts within their boundaries.

Commenters suggested that CEDS requirements be modified to include a statement about the continuing nature of such process, that the strategy be developed with broad-based and diverse community participation, that the strategy background section be changed to require the inclusion of the listed factors only "as appropriate", and require the inclusion, as appropriate, of a discussion of infrastructure and transportation systems.

We concur and have changed 13 CFR 303.3 accordingly.

- *General Selection Process and Evaluation Criteria.*

A commenter suggested that personal pronouns be used to explain to interested parties how to make contact with the agency for information on proposals and applications.

We concur and have changed 13 CFR 304.1 accordingly.

Commenters suggested that provisions referring to additional criteria or priority consideration factors as being included in a NOFA be moved from other parts of the rule to the part on selection and evaluation because of the general applicability of these criteria. A commenter made a similar suggestion about provisions requiring "a reasonable budget".

We concur with both suggestions and have changed 13 CFR 304.1 (c) and 304.2 accordingly.

A commenter suggested that 13 CFR part 304 be modified to contain more flexible organizational requirements and performance based criteria.

EDA considers district organization criteria to be an integral part of the district program's effectiveness in grass-roots planning and implementation to meet the needs of the entire area served by each district. Consequently, we have not modified district organizational requirements. Performance based criteria are addressed in 13 CFR 316.18 and 318.2.

- *Grants for Public Works and Development Facilities.*

Commenters suggested that the appendix containing construction requirements be removed from the rule and that the rule itself contain those requirements that are specific to EDA. A commenter suggested that the rules be

organized to accurately reflect the grant process for public works projects.

We concur and have removed Appendix A, Requirements for Construction Grants; we have revised, added to, reordered, and renamed 13 CFR 305.5–26 accordingly, without providing any additional requirements.

A commenter recommended including a provision offering a "bonus" for minority firms for construction projects.

PWEDA provides no statutory authority for such a bonus.

Consequently, we have not modified the rule.

- *Planning Assistance.*

Commenters suggested that 13 CFR 306 be revised to state that districts are EDA's primary planning grant recipients.

Though districts have been and are likely to remain EDA's primary planning grant recipients, PWEDA does not limit eligible planning grant recipients to districts. Consequently, we have not made the suggested modification. Nevertheless, as noted below, we have distinguished between district organizations and other planning grantees in the determination of maximum grant rates.

Some commenters suggested that districts be eligible for the 75 percent Federal grant rate if they meet any one of the four listed criteria, instead of having to meet all four criteria; other commenters suggested that the maximum grant rate eligibility provision be revised to delete the four criteria and to provide instead that the maximum Federal grant rate is a flat 75 percent.

We do not concur with the suggestions as presented, because they exceed the authority in PWEDA for increasing the maximum grant rate (to more than 50 percent). We have clarified the provisions in 13 CFR 306.3 to state that districts may supplement the 50 percent grant rate if (and only if) they meet the criteria in 13 CFR 306.3(b). We have modified the rule so that districts are not eligible to supplement a 50 percent grant using the table in 13 CFR 301.4(b), because districts are unique as multi-jurisdictional organizations made up primarily of governmental entities. Also, for additional clarity, we have changed language in 13 CFR 306.3(b)(3)(i) and (ii) to substitute "high unemployment" for "substantial unemployment", to delete "significantly" to describe low per capita income and to substitute "significant" for "substantial" when describing activities addressing the needs of the most economically distressed parts of the applicant's area to be served. We have also modified 13

CFR 306.3(b)(1) to provide that non-district planning applicants are eligible for supplemental grant awards if (and only if) they meet the criteria in the table in 13 CFR 301.4(b). Non-district applicants cannot use the four criteria of 13 CFR 306.3(b)(2) to supplement the 50 percent grant rate.

A commenter suggested that the rule on district incentives be clarified to explain that districts should not be rewarded with a 10 percent incentive for acting in cooperation with themselves, and should not therefore be eligible for the incentive.

We concur and have changed 13 CFR 301.4(d) and 306.3(b)(4) accordingly. We have provided that projects may be eligible for the incentive, so long as the non-district co-applicant is qualified to obtain the incentive, even if a district is a co-applicant.

Commenters suggested that the sections in the rule titled "Award conditions" be renamed more appropriately as "Post-approval requirements".

We concur and have changed 13 CFR 305.6, 306.4, 307.4, and 307.8 accordingly.

- *Local Technical Assistance.*

Commenters suggested that reporting requirements be moved to the section on post-award requirements.

We concur and have moved reporting requirements to 13 CFR 307.4.

Commenters suggested that award and grant rate requirements be clarified to provide how the maximum Federal grant rate can be supplemented "up to and including 100 percent".

We concur and have added 13 CFR 307.3(c)(4) to provide for a grant rate up to and including 100 percent with the concurrence of the Assistant Secretary.

A commenter suggested clarification on the 10 percent incentive rule to state more directly that Local Technical Assistance applicants receiving a supplemental grant under 13 CFR 307.3(c)(2) are not eligible to receive a 10 percent incentive.

We concur and have changed 13 CFR 13 CFR 307.3(c)(3) accordingly.

- *University Center Program.*

As noted above, the evaluation criteria for a reasonable budget has been deleted from 13 CFR 307 Subpart B and added to 13 CFR part 304.

Commenters suggested that requirements for supplementary grant rates be clarified, including an explanation that the distress factors table in 13 CFR 301.3(b) cannot be used by applicants under the University Center program, and that such applicants are not eligible for the 10 percent incentive.

We concur and have changed 13 CFR 307.7 and added 13 CFR 301.4(d)(4) accordingly.

Commenters suggested that EDA's rules provide for a 20 percent "cap" on indirect costs for University Center projects. These commenters argued that in the absence of such a cap, there would often be insufficient grant funds to accomplish direct program activities. The nature of the University Center program, they asserted, did not warrant a higher indirect cost rate because the program did not utilize extensive university-wide services.

We concur that the cap in EDA's previous regulations helped to focus EDA funds on direct program expenditures. Accordingly, we have added to 13 CFR 307.7 a new paragraph (d) which states that at least 80 percent of EDA funding must be allocated to direct costs of program delivery.

- *National Technical Assistance, Training, Research and Evaluation.*

Commenters suggested that language on grant rates be clarified to indicate that maximum grant rates can be supplemented for "up to and including" 100 percent.

We concur and have changed 13 CFR 307.11(c) accordingly.

- *Requirements for Economic Adjustment Grants.*

Commenters suggested that appendices A–D to part 308–Economic Adjustment, be eliminated from the rule because they are too detailed and cumbersome.

While we agree that the inclusion of these appendices in the rule is cumbersome, we do not concur with this suggestion at this time, because this suggestion will be addressed in an interim final rule to be published by the end of December, 1999, consistent with the report and recommendations of the EDA RLF Task Force.

Commenters suggested that requirements for strategy grants under this program be the same as for other programs, as noted above.

We concur and have changed 13 CFR 308.4(b) accordingly.

A commentator suggested correction of a typographical error appearing in a parenthetical phrase under Economic Adjustment planning requirements by changing "i.e." before the word "strategy" to "e.g." since the intent was to provide an example of planning activities.

We concur and have changed 13 CFR 308.5(b) accordingly.

- *Property.*

Commenters suggested that the requirements for uses of property be modified to allow for the replacement of

real property, in the same manner as for replacement of personal property.

We believe there are major differences between replacement of personal property, which is often occasioned by the need to upgrade outmoded as well as partially worn-out equipment, and replacement of real property, which is unique and specific to the project. We believe replacement of real property is generally not consistent with a project's purposes. Nevertheless, there can be occasional exceptions, and we have modified 13 CFR 314.3(d) to allow for the replacement of real property upon the approval of the Assistant Secretary, thereby, giving EDA the flexibility to make a determination on a case-by-case basis.

A commenter suggested that the rule on unauthorized use be modified to be more specific about how EDA may assert its interest in grant property to recover the Federal share of its value for the Federal Government, i.e., that such actions be the same as are provided for loan and loan guarantee property interests, in 13 CFR 316.5(c).

We concur and have changed 13 CFR 314.4(b) accordingly.

- *Excess Capacity.*

A commenter suggested that clarifying modifications be made to the definitions of "beneficiary", and "commercial product or service".

We concur and have changed 13 CFR 316.2(a) accordingly.

A commenter suggested that we make clarifying modifications concerning studies or reports for known beneficiaries, and that we clarify language explaining exemptions for projects that benefit the community as a whole, are primarily for production/distribution, retention, replacement, rebuilding or modernizing, and projects primarily for planning, technical assistance, research, evaluation, other studies or training of workers.

We concur and have changed 13 CFR 316.2(e) accordingly. These changes do not modify the intent or substantive effect of the provisions, but provide clearer guidance to the reader.

- *Intergovernmental Review of projects.*

A commenter suggested changes in the title and paragraph (a) of 13 CFR 316.11 so that the 15 day review requirement for special purpose units of local governments is only applicable to public works and economic adjustment projects where the applicant is a special purpose unit of local government. Some commenters suggested that project applications submitted by entities that are not participating in the district should be reviewed by the district organization for consistency with the

economic development activities in the region.

As to the first suggestion, we believe that projects under the public works and economic adjustment programs for which special purpose units of governments are applicants, are likely to be of particular concern to appropriate general purpose local governments for review purposes under this section. Consequently, we have modified 13 CFR 316.11 accordingly. As to the second suggestion, there are already intergovernmental review procedures in place under 13 CFR 316.11 and districts will have the opportunity to review and comment on CEDS of project applicants under 13 CFR 301.3. Consequently, we have not made this suggested change to the rule.

- *Project Administration by District Organization.*

Commenters suggested that 13 CFR 316.19(2) be amended to eliminate the requirement that as a prerequisite for project administration districts show that they have the ability to manage projects more efficiently and effectively than any other entity.

This provision on project administration by district organizations incorporates into a regulation EDA's policy and practice developed in response to situations calling for sole sourcing a project to a district. This practice has worked well under the criteria set forth in the rule and is consistent with sole source justifications in accordance with 15 CFR parts 14 and 24. Consequently, we have not modified this rule.

A commenter suggested that districts be allowed to use their own procurement procedures.

There is no authority for this under government-wide requirements for grants administration (OMB Circulars A-102 and A-110; 15 CFR parts 14 and 24, for the Department of Commerce). Therefore, we have not included such a provision.

- *Civil Rights.*

Commenters suggested that the final rule include all civil rights requirements specific to EDA.

We concur and have added provisions to 13 CFR part 317 on discrimination on the basis of age and handicap, as well as reporting, recordkeeping and other EDA civil rights requirements.

- *Evaluation of University Centers.*

Commenters recommended that EDA continue its previous peer review evaluation process, or some variation of such earlier review process. Commenters also suggested that language explaining the purpose of such evaluations be softened to more closely

parallel language used in the section on evaluations of districts.

We concur with the suggestion about language as to the purpose of the evaluations, as it was not EDA's intent to imply dissatisfaction with any currently funded University Centers. Consequently, we have changed the rule at 13 CFR 318.1 accordingly. Since the evaluation process is currently under study by the agency, we have not modified the rule on the evaluation process at this time.

Commenters suggested that EDA provide in the rule that it will reimburse those participating in the peer review process.

We concur. It was an oversight to have been silent on this matter and we have changed 13 CFR 318.1 accordingly.

- *Evaluation of Districts.*

Commenters suggested that 13 CFR 318.2 be modified to provide that the reviewing peer district be outside the state or even the EDA region of the district being evaluated.

We have not made the suggested change at this time because the evaluation process is currently under study by the agency.

Commenters suggested that the provision that districts be assessed "in accordance with the current instructions for performance appraisals" be removed as ambiguous and outside of the requirements of PWEDA.

We concur and have changed 13 CFR 318.2 accordingly.

Commenters suggested that EDA provide in the rule that it will reimburse those participating in the peer review. Some of these commenters suggested supplemental grants to cover such costs.

We concur in the general suggestion and have changed 13 CFR 318.2 accordingly.

Savings Clause

The rights, duties, and obligations of all parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

Executive Order 12866 and 12875

This rule has been determined to be not significant for purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601-612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), as amended, and has been cleared under OMB's clearance process under OMB approval numbers 0610-0093, 0610-0094, and 0610-0096, valid until November 30, 2002 and 0610-0095, valid until August 31, 2002.

Administrative Procedure Act and Regulatory Flexibility Act

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

List of Subjects

13 CFR Part 300

Reporting and recordkeeping requirements; Non-profit organizations; American Indians.

13 CFR Part 301

Grant programs; Community development; American Indians.

13 CFR Part 302

Community development; Grant programs-community development; Technical assistance.

13 CFR Part 303

Community Development; Grant programs-community development.

13 CFR Part 304

Selection and Evaluation.

13 CFR Part 305

Community development; Community facilities; Grant programs-community development.

13 CFR Part 306

Community development; Grant programs-community development.

13 CFR Part 307

Business and industry; Community development; Community facilities; Grant program-business; Grant programs-community development; Research; Technical assistance.

13 CFR Part 308

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; American Indians; Manpower training programs; Mortgages; Research; Technical assistance.

13 CFR Part 314

Community development; Grant programs-community development.

13 CFR Part 316

Community development; Grant programs-community development; Freedom of Information Act; Loan programs-business; Loan programs-community development; Environmental protection; Record retention; Records.

13 CFR Part 317

Civil rights; Sex discrimination.

13 CFR Part 318

Colleges and universities.

Accordingly, the interim rule revising 13 CFR Chapter III which was published at 64 FR 5347 on February 3, 1999, is adopted as a final rule with the following changes:

PART 300—GENERAL INFORMATION

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

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

2. Section 300.2 is amended by revising the definition of *Comprehensive Economic Development Strategy*, by adding in alphabetical order the definitions *Federally-declared disaster* and *Presidentially-declared disaster*, to read as set forth below and by removing the definition of "OEDP."

§ 300.2 Definitions.

Comprehensive Economic Development Strategy, CEDS, or strategy means a strategy approved by EDA under § 301.3 of this chapter.

Federally-declared disaster means a Federally-declared disaster pursuant to the Magnuson-Stevens Fishery Conversation and Management Act (Public Law 94-265) as amended by the Sustainable Fisheries Act (Public Law

104-297), or a Federal declaration pursuant to the Consolidated Farm and Rural Development Act, as amended (Public Laws 92-419, 96-438, 97-35, 98-258, 99-198, 100-233, 100-387, and 101-624), or a Federally-declared disaster pursuant to the Small Business Act, as amended (Public Law 85-536).

Presidentially-declared disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

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

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

2. Section 301.1 is amended by revising paragraph (b) to read as follows:

§ 301.1 Applicants.

(b) Except as otherwise provided in part 307 of this chapter, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by, an authorized representative of a general purpose political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

3. Section 301.2 is amended by revising paragraphs (e) and (h) to read as follows:

§ 301.2 Area eligibility.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located, i.e., conducted by or at the direction of the State government. Other data may be submitted, as appropriate, to substantiate eligibility based on special needs, under paragraph (b)(3) of this section.

(h) EDA describes special needs criteria under paragraph (b)(3) of this section in a NOFA.

4. Section 301.3 is amended by revising paragraphs (a), (b), and (d) and

by adding a new paragraph (e) to read as follows:

§ 301.3 Strategy required.

(a) To be eligible for a project grant under part 305 or 308 of this chapter, the application for assistance must include a CEDS acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, e.g., a strategy grant, under part 308 of this chapter.) The strategy must be in conformance with CEDS requirements under § 303.3 of this chapter.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of § 303.3 of this chapter. The strategy may be one developed:

- (1) With EDA assistance,
- (2) Under another Federally supported program, or
- (3) Through a local, regional, or State process.

(d) To be acceptable, a strategy must be approved, within one year prior to the date of application, by the entity developing the strategy or by the applicant. In the case of a strategy approved by the applicant, approval must be by the applicant's governing body, or in the case of a State, by the governor or the governor's designee(s).

(e) Before EDA approves a strategy for an area all or partly within the boundaries of an EDD, the EDD organization must be given a 30-day opportunity to review and comment upon such strategy.

5. Section 301.4 is amended by revising paragraph (c), and adding new paragraphs (d)(4) and (5) to read as follows:

§ 301.4 Grant rates.

(c) The table in paragraph (b) of this section does not apply to projects which support the on-going operations of Economic Development Districts or University Centers. Grant rates for those projects are provided in part 306 and subpart B of part 307, of this chapter, respectively.

(4) The project is not a University Center project under subpart B of part 307, of this chapter; and

(5) The district organization is not itself the sole project applicant. Projects (other than planning projects under part 306 of this chapter) for which the district organization is a co-applicant are eligible for the incentive if the co-

applicant with the district is actively participating in the economic development activities of the district and the project is otherwise eligible for such incentive. Planning projects under part 306 of this chapter for which the district organization is an applicant or a co-applicant are not eligible for the 10 percent increase in assistance.

* * * * *

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

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

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

2. Section 302.4 is amended by redesignating paragraphs (a)(1)(v) through (vii) as paragraphs (a)(1)(vi) through (viii) respectively, by adding a new paragraph (a)(1)(v), and by revising paragraph (b) introductory text to read as follows:

§ 302.4 District organization functions and responsibilities.

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

(v) The inclusion of private citizens who are not officials of or employees appointed by the officials of a general purpose unit of local government;

* * * * *

(b) District organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

* * * * *

(3) Section 302.6 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 302.6 Termination and suspension of district designation.

EDA may, upon 60 days prior written notice to the district organization, member counties or other areas as determined by EDA, and each affected State, terminate the designation status of an Economic Development District:

* * * * *

(c) When a district has requested termination.

* * * * *

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

1. The authority citation for part 303 continues to read as follows:

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

2. Section 303.1 is amended by revising paragraphs (a)(1), and (b) to read as follows:

§ 303.1 Definitions, purpose and scope.

(a) * * *

(1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 of this chapter which grant is awarded in whole or in part to develop, update, or replace a CEDS, and

* * * * *

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. Though the strategy requirements are the same under all EDA programs which call for a strategy, the planning process and reporting and updating requirements for EDA supported planning organizations are more stringent.

3. Section 303.2 is amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 303.2 Planning process.

* * * * *

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require a 30 day opportunity for review and comment by the Governor or Governors, or designee(s), of the State or States in which they are located, prior to EDA approval.

(f) If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

4. Section 303.3 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 303.3 Requirements for a strategy.

A strategy must be the result of a continuing economic development planning process, developed with broad-based and diverse community participation, and contain the following:

* * * * *

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including as appropriate, geography, population, labor force,

resources, infrastructure, transportation systems, and the environment;

* * * * *

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

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

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

2. Section 304.1 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (b)(1), by redesignating paragraph (c) as (d) and revising it, and by adding a new paragraph (c) as follows:

§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

(a) *Local projects.* If you are or represent a party eligible to be an applicant, and are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant, you should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

* * * * *

(b) *National technical assistance, training, research, or evaluation projects.* If you are or represent a party eligible to be an applicant, and are interested in a national technical assistance, training, research, or evaluation project under PWEDA, you should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under § 304.2, program specific sections of this chapter, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative.

* * * * *

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

3. Section 304.2 is amended by revising paragraph (a) to read as follows:

§ 304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for conformance to statutory and regulatory requirements, the reasonableness of the budget presented, and the following criteria:

- (1) The relative severity of the economic problem of the area,
- (2) The quality of the scope of work proposed to address the problem,
- (3) The merits of the activity(ies) for which funding is requested, and
- (4) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

* * * * *

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

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

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

§ 305.2 [Amended]

2. Section 305.2 is amended by removing paragraph (c) and by redesignating paragraph (d) as paragraph (c).

3.-4. Section 305.5 is redesignated as § 305.24, and a new § 305.5 is added to read as follows:

§ 305.5 Pilot program.

(a) The Chicago Regional Office (CRO) has been authorized to conduct a pilot program through December of 1999 to develop simplified and streamlined procedures for monitoring approved EDA construction projects. Other EDA regional offices have been authorized to conduct their own pilot programs for monitoring compliance with the post-approval project management requirements, provided they first obtain the approval of the Deputy Assistant Secretary for Program Operations. The knowledge and efficiencies gained from the pilot programs will be evaluated and used to improve and revise EDA's post-

approval project management requirements and procedures.

(b) As part of this pilot program, the procedures developed by CRO vary from those listed in this subpart B of part 305 in that they place greater reliance on a recipient's certification of compliance. No additional requirements are imposed by CRO procedures. CRO provides guidelines, in its version of the "Requirements for Approved Projects," to all recipients of grants for construction projects monitored by the CRO. The recipient is not required to submit to EDA certain documentation at any set time, but is required to maintain all documentation supporting any and all certifications submitted to CRO, for the period of time provided in 15 CFR part 14 or 24, as appropriate.

5. Section 305.6 is redesignated as § 305.25, and a new § 305.6 is added to read as follows:

§ 305.6 Project management conference.

After the EDA financial assistance award has been accepted by the recipient, EDA may schedule a planning conference with the recipient's representatives to explain the post-approval requirements for administration of the EDA assisted project.

6. Section 305.7 is revised to read as follows:

§ 305.7 Selection of the Architect/Engineer.

Guidelines for the selection of the Architect/Engineer (A/E), services to be performed by the A/E, contract provisions for those services and eligible fees for the A/E are as follows:

(a) Selection of the A/E may be by sealed bids using formal advertising or by competitive proposal procedures subject to negotiation of fair and reasonable compensation. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(b) The A/E agreement shall provide for all services required by the recipient for the engineering feasibility, design and contract administration of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council, American Society of Civil Engineers, National Society of Professional Engineers, and/or the American Institute of Architects may be used where the grantee does not have standard procurement/contract documents.

(c) Exhibit A-1, Checklist for Architect/Engineer Services, in the EDA publication, *Requirements for Approved*

Construction Projects, displayed at EDA's Web Site, <http://www.doc.gov/eda> (a copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance), lists the contract provisions which EDA recommends for the A/E contract. The A/E agreement must be furnished to EDA in order for the allowability of the costs of A/E services to be determined.

(d) Eligible project costs may include, but not be limited to, costs for A/E fees, resident inspection, test borings, and the testing of materials provided under an agreement or contract with the recipient. The A/E fees should be in conformity with similar costs and projects in the area.

7. Sections 305.8 through 305.23 are added to read as follows:

§ 305.8 Project phasing.

The recipient is strongly urged to award all contracts for construction at one time.

(a) Where compelling reasons justify phasing the project, the recipient must secure the approval of EDA for phasing prior to advertising any portion for bid.

(b) The recipient's request for approval of phasing must include valid reasons justifying the request and a statement from the recipient that it can, and will, fund any overrun that arises in the later phases.

(c) Normally, EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of an underground source of water when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as described in the grant application).

(d) Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time.

(e) The recipient must be capable of paying incurred costs prior to the first disbursement of EDA grant funds.

§ 305.9 Recipient furnished equipment and materials.

The recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts.

(a) It is the responsibility of the recipient to assure that such equipment and/or materials are adequate for the proposed use.

(b) The use of such equipment and materials must be approved by EDA to

be eligible for EDA financial participation. The recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

(c) The recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs.

(d) Acquisitions of recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR part 24 or 15 CFR part 14.

§ 305.10 Construction Management services.

Construction Management is defined as the services of a firm with competent and experienced staff to act as the recipient's agent to perform all or part of project administration. EDA will not normally approve the use of a Construction Management firm for projects costing less than \$5 million. EDA will participate in such cost only if EDA approves the contract for such services.

§ 305.11 Design/Build method of construction.

EDA discourages the use of the same entity to both design and to build EDA assisted facilities. If the recipient desires to use such a method, its use must be justified and EDA must approve the contract. The procurement of, and the compensation to, the designer/builder will be subject to the same rules as for the procurement of construction services.

§ 305.12 Advertising for bids.

In the absence of State or local law to the contrary, the advertisement for bids for construction projects should appear in publications of general circulation a minimum of four times within a 30-day period prior to the opening of bids. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids. Generally, a minimum of 30 days should be allowed for submission of bids.

§ 305.13 Bid overrun.

If at the construction contract bid opening the lowest responsive bid less deductive alternates, if any, exceeds the funds available for construction, the recipient may reject all bids or augment the funds available in an amount sufficient to enable the award to be

made to the low bidder. If available, the recipient may take deductive alternates in the order given in the Invitation for Bids until at least one of the responsive bids less deductive alternates results in a price within the funds announced as available prior to the bid opening. The award then may be made to that bidder. Additional information on the procedures to be followed is in the EDA publication, *Requirements for Approved Construction Projects*.

§ 305.14 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the funds available for construction, EDA must be notified immediately to determine whether any unneeded grant funds should be deobligated.

§ 305.15 Contract award.

EDA must concur in the award of all necessary contracts for design and construction of the EDA assisted facility in order for the cost to be eligible for EDA reimbursement. Pending EDA approval of the construction contract(s), the recipient may issue the notice to proceed permitting the work to go forward. If the work does go forward prior to EDA approval, the recipient will be proceeding at its own risk pending EDA review and concurrence. The EDA regional office will advise the recipient of the documents that are required to obtain EDA approval.

§ 305.16 Construction progress schedule.

If requested by EDA, the recipient will secure from the contractor or A/E and furnish a copy to EDA of the estimated construction progress chart and a schedule of amounts for contract payments. The construction progress chart should be updated monthly by the recipient, the A/E or the contractor, and an up-to-date copy furnished to EDA quarterly throughout the construction of the project.

§ 305.17 Project sign.

The recipient shall be responsible for the construction, erection, and maintenance in good condition throughout the construction period, of a sign or signs, (recommended specifications for the sign are included as an exhibit to the EDA publication, *Requirements for Approved Construction Projects*) at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if the project's location so warrants. The recipient should confer with the EDA regional office for

suggestions on where the sign(s) should be located.

§ 305.18 Occupancy prior to completion.

If the project or any part of it is to be occupied or used prior to the project's acceptance from the contractor, the recipient must notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use, secure the written consent of the contractor; secure an endorsement from the insurance carrier and consent of the surety company permitting occupancy or use during the period of construction; secure permanent fire and extended coverage insurance and, when required, secure a permit to occupy the facility from the appropriate authority, e.g. the local building inspector.

§ 305.19 Contract change orders.

After construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor.

(a) All contract change orders must be concurred in by EDA even if the recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced.

(b) The work on the project may continue pending EDA review and concurrence in the change order but the recipient should be aware that all such work will be at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received.

(c) EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the approved project budget.

(d) EDA approval of change orders must be based on a finding by EDA that the work called for in the change order is within the project scope and is required for satisfactory operation or functioning of the project.

§ 305.20 Project development time schedule.

The recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office.

§ 305.21 Controlling budget.

The tabulation of estimated project costs contained in the EDA grant award is the controlling budget for the project.

(a) Budget line item revisions, including the addition of a new line item, which do not involve a change of scope may be approved by EDA if no new EDA funds are involved; another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and unless the line item that is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed.

(b) The recipient shall notify EDA of any proposed transfer of funds from one budget line item to another. The recipient's attention is called to the fact that the addition of a new line item to the approved budget may involve an impermissible change of scope and, therefore, may result in such costs being excluded from EDA's participation. Accordingly, the recipient is advised to discuss the need to add a new line item to the approved budget with EDA regional office staff before any costs are incurred under such new line item.

§ 305.22 Services performed by the recipient's own forces.

The recipient may wish to have a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the project performed by personnel who are employed by the recipient either full or part time (in-house). Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is discouraged.

(a) If EDA approves the use of the recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the recipient doing the same or similar work. If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area

as established by the U.S. Department of Labor.

(b) The use of in-house forces for construction may be approved by EDA if:

(1) The recipient has a special skill required for the construction of the project, e.g., construction of unique Indian structures, or

(2) The recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the project area, or

(3) Substantial cost savings can be demonstrated.

§ 305.23 Public Works projects for design and engineering work.

In general, EDA prefers to award a Public Works grant that includes all of the costs required for the successful completion of a project, including the design and engineering work.

(a) When the purpose of the Public Works project is to accomplish only the design and engineering work for a proposed future construction project, EDA may award a grant for the design and engineering work with the understanding that EDA cannot make a commitment against a future fiscal year appropriation to fund the proposed construction project.

(b) The purpose of the EDA assisted project for design and engineering work is to produce all of the documents required for the construction of the proposed future project in a format and in sufficient quantity to permit a construction contract to be advertised and awarded soon after the project's construction financing has been arranged. The EDA document, *Requirements for Approved Construction Projects*, should be used to ensure that the proposed construction project meets all applicable Federal requirements.

(c) Design and engineering projects will not generally be considered unless the nature of the proposed project to be considered is complex or environmentally sensitive and EDA makes a determination that it is in the best interest of the Government to award a separate grant for design and engineering.

(d) EDA requires the design/engineering contract to be submitted to and approved by EDA before any EDA grant funds can be disbursed.

8. Redesignated § 305.24 is amended by revising paragraph (a)(4) to read as follows:

§ 305.24 Disbursements of funds for grants.

(a) * * *

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds not yet expended, is on deposit;

* * * * *

9. Redesignated § 305.25 is revised to read as follows:

§ 305.25 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

10. Section 305.26 is added to read as follows:

§ 305.26 Reports.

Financial and performance report requirements will be specified in the Special Award Conditions of the grant. Construction progress schedule reports will be as required in § 305.16.

PART 306—PLANNING ASSISTANCE

1. The authority citation for part 306 continues to read as follows:

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

2. Section 306.3 is amended by revising paragraphs (b)(1) and (2), by redesignating paragraph (b)(3) as (b)(4) and revising it, by adding a new paragraph (b)(3), and by revising paragraph (c)(1) to read as follows:

§ 306.3 Award requirements.

* * * * *

(b) * * *

(1) The maximum Federal grant rate for a project under this part for recipients other than Economic Development Districts is 50 percent, except as supplemented as provided in § 301.4(b) of this chapter.

(2) The maximum Federal grant rate for a project under this part for a district is:

(i) 50 percent, or
(ii) 75 percent, if the project meets the criteria of paragraph (b)(3) of this section.

(3) A district project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

(i) The project is intended to address problems arising from actual or threatened high unemployment, low per

capita income, or a special need that qualifies an area for eligibility under § 301.2(b) of this chapter,

(ii) The project is in significant part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicant, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(4) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(3) of this section is not eligible for additional Federal grant assistance under § 301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(c) * * *
(1) The State must have or develop a CEDS;

* * * * *

3. The heading of § 306.4 is revised to read as follows:

§ 306.4 Post-approval requirements.

* * * * *

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

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

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

2. Section 307.2 is amended by removing paragraph (f) and by revising paragraphs (d) and (e) to read as follows:

§ 307.2 Application evaluation criteria.

* * * * *

(d) Demonstrates innovative approaches to stimulating economic development in distressed areas; and
(e) Is consistent with the CEDS or other strategy accepted by EDA for the area in which the project is located.

3. Section 307.3 is amended by removing paragraph (b) and by redesignating paragraphs (c) and (d) as (b) and (c) accordingly, and by revising redesignated paragraph (c) to read as follows:

§ 307.3 Award and grant rate requirements.

* * * * *

(c) Grant rate:
(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that,

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share;

or
(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (c)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(4) A local technical assistance project is eligible for a Federal grant rate of more than 75 percent, up to 100 percent, only if approved by the Assistant Secretary.

4. Sections 307.7 through 307.9 are redesignated as §§ 307.9 through 307.11, respectively; §§ 307.4 through 307.6 are redesignated as §§ 307.5 through 307.7 in subpart B; and a new § 307.4 is added to read as follows:

§ 307.4 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

5. Redesignated § 307.6 is amended by removing paragraph (d) and by redesignating paragraphs (e) and (f) as (d) and (e) respectively.

6. Redesignated § 307.7 is amended by revising paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 307.7 Award and grant rate requirements.

* * * * *

(d) Grant rate:
(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, or
(ii) 75 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 75 percent when the applicant is able to demonstrate that:

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project awarded under this subpart is not eligible for additional Federal grant assistance under the table in § 301.4(b) or the provisions of § 301.4(d) of this chapter, i.e., the 10 percent incentive increase for certain projects in districts.

(e) Direct costs: At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

7. A new § 307.8 is added to subpart B to read as follows:

§ 307.8 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the special award conditions of the grant or cooperative agreement.

8. Redesignated § 307.11 is amended by removing paragraph (c), by redesignating paragraph (d) as paragraph (c) and by revising redesignated paragraphs (c)(1)(ii) and (c)(2) introductory text to read as follows:

§ 307.11 Award and grant rate requirements.

* * * * *

(c) * * *
(1) * * *

(ii) Up to and including 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b) of this chapter.

(2) A project is eligible for a supplemental grant increasing the Federal share up to and including 100 percent when the applicant is able to demonstrate that:

* * * * *

9. Section 307.12 is added to read as follows:

§ 307.12 Post-approval requirements.

Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

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

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

2. Section 308.1 is amended by revising paragraph (b)(1) to read as follows:

§ 308.1 Purpose and scope.

* * * * *

(b) * * *

(1) Help organize and carry out a CEDS;

* * * * *

3. Section 308.4 is amended by revising paragraph (b) to read as follows:

§ 308.4 Selection and evaluation factors.

* * * * *

(b) *Strategy grants.* EDA will review strategy grant applications for assurances that the proposed activities will conform to the CEDS requirements in § 303.3 of this chapter.

* * * * *

4. Section 308.5 is amended by revising paragraph (b) to read as follows:

§ 308.5 Applicant requirements.

* * * * *

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 of this chapter (except that a strategy is not required when a funding request is for planning assistance, *e.g.*, a strategy grant);

* * * * *

PART 314—PROPERTY

1. The authority citation for part 314 continues to read as follows:

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341-2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10-4.

2. Section 314.3 is amended by revising paragraph (d) to read as follows:

§ 314.3 Use of property.

* * * * *

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property

originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property. In extraordinary and compelling circumstances, EDA may allow replacement of real property, with the approval of the Assistant Secretary.

3. Section 314.4 is amended by revising paragraph (b) to read as follows:

§ 314.4 Unauthorized use.

* * * * *

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. To that end, EDA may take such actions as are provided in connection with loans and loan guarantees, in § 316.5(c) of this chapter. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for part 316 continues to read as follows:

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et. seq.*, Department of Commerce Organization Order 10-4.

2. Section 316.2 is amended by revising the definitions of "*Beneficiary*" and "*Commercial product or service*" in paragraph (a), and by revising paragraphs (e) introductory text, and (e)(1), (2), (4), (6) and (8) to read as follows:

§ 316.2 Excess capacity.

(a) * * *

Beneficiary means a firm or group of firms, a public or private enterprise or organization that provides a commercial product or service and that directly benefits from an EDA-assisted project.

* * * * *

Commercial product or service means a product or service sold on the open market in competition with another provider's product or service of the same kind.

* * * * *

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects with known beneficiaries, and which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without significantly expanding the output of commercial products or services;

(2) The project is primarily to be used for non-production or non-distribution purposes;

* * * * *

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of the same kinds of commercial products or services;

* * * * *

(6) The project will replace, rebuild or modernize, within the same commuting area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

* * * * *

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the direct benefit of a firm or an industry that produces a commercial product or service; or

* * * * *

3. Section 316.11 is amended by revising the heading and paragraph (a) to read as follows:

§ 316.11 Intergovernmental review of projects.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on a proposed project under EDA's public works and economic adjustment programs. Under these programs, applicants shall furnish the following with their application: if no comments were received, a statement of the efforts made to obtain such comments; or, if comments were received, a copy of the comments and a statement of any actions taken to address such comments.

* * * * *

PART 317—CIVIL RIGHTS

1. The authority citation for part 317 is revised to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 2000d-1; 29 U.S.C. 794; 42 U.S.C. 3123; 42 U.S.C. 6709; 20 U.S.C. 1681; 42 U.S.C. 6101; Department of Commerce Organization Order 10-4.

2. Section 317.1 is amended by revising paragraph (a)(5) and adding paragraph (a)(6); by redesignating paragraph (f) as paragraph (h) and revising it; by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and revising them; and by adding new paragraphs (b) and (g) to read as follows:

§ 317.1 Civil rights.

(a) * * *

(5) 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program; and

(6) Other Federal statutes, regulations and Executive Orders as applicable.

(b) No recipient or other party shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, 42 U.S.C. 3123, 42 U.S.C. 6709, and the Age Discrimination Act of 1975, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(c) Definitions:

(1) *Other Parties* means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to, create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(d) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with EDA regulations and other Department of Commerce regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers and made accessible to the responsible Department official.

(e) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, EDA may require that applicants submit a project service map and information on which to determine that services are provided to all segments of the area being assisted. Applicants may be required to submit any other information EDA may deem necessary for such determination.

(f) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and CEDS committees to take appropriate steps to ensure, where appropriate to the area, that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and CEDS committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(3) Prior to approval of EDA initial funding, and for district designations, each district and other planning organizations so supported by EDA is required to report to EDA the membership of its governing bodies, executive committees, and staff. This report shall include the following items:

(i) The total population and minority population of the area served by the organization;

(ii) A list of organizations in the area representing the interests of minorities, women, and people with disabilities;

(iii) A list of the membership of the governing board, executive committee

indicating race, sex, national origin, age, and those who self-identify, as having disabilities;

(iv) A description of actions taken and methods used in its diversity efforts to promote, as much as possible, the participation of all segments of the areas served;

(v) Information regarding how they notified and provided organizations, including neighborhood associations representing the interests of minorities, women, and people with disabilities, the opportunity to select members and their own representatives;

(vi) A list of employees on the staff of the organization by name, position title, salary, funding source, and hiring data indicating race, sex, national origin, and age;

(vii) A brief summary of any economic development activities undertaken during the previous 12 months that may have impacted the covered persons in the area. This information is required with the initial application and annually thereafter for continuation planning funding.

(4) Prior to approval of continuation funding for a planning grant each district and other planning organization so supported by EDA is required to submit a report which includes the items outlined in paragraph (f)(3) of this section except items in paragraphs (f)(3)(ii) and (v), (although paragraph (f)(3)(v) may be required when changes to the boards and committees affecting minorities, women, people with disabilities have occurred), and a summary indicating the annual progress made in the diversity efforts including a list by name, race, national origin, sex, and age of all hires, promotions, terminations, and composition of applicant pools since the last reporting period and steps taken to ensure nondiscrimination and to provide equal employment opportunity.

(5) In order to determine whether districts and other planning organizations supported by EDA are complying with the requirements in paragraph (f)(3), EDA shall conduct annual compliance reviews of these organizations through either an in-depth desk audit or onsite review.

(g) Applicants for Revolving Loan Funds will provide information describing the make-up of the existing or proposed RLF Loan Board members by race, national origin, gender, age, and those who voluntarily self-identify as having disabilities. The reports submitted to EDA by RLF grantees will be used to monitor civil rights compliance. Additional information may be requested as needed to determine compliance. Compliance

issues which will be reviewed and monitored include, but are not limited to, the following:

(1) The representation of minorities, women, and those who voluntarily self-identify as having disabilities, as well as the age of members on the RLF Loan Board;

(2) Recipient's plans to openly market the RLF to prospective minority, disabled, and women business borrowers; and

(3) Recipient's monitoring plans for borrowers' compliance with civil rights requirements concerning employees or applicants for employment, and/or providers of goods and services.

(h) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8b, 8c, and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

1. The authority citation for part 318 continues to read as follows:

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

2. Section 318.1 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 318.1 University Center performance evaluations.

(a) * * *

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation on a cost-reimbursement basis.

(b) A purpose of the evaluation is to determine if the University Center should continue to receive funding under the program.

3. Section 318.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 318.2 Economic Development District performance evaluations.

* * * * *

(b) Assess the Economic Development District's management standards, financial accountability, and program performance; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation on a cost-reimbursement basis.

Dated: December 6, 1999.

Chester J. Straub, Jr.,

Acting Assistant Secretary for Economic Development.

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