

**EDA REGULATIONS: PART 308 PERFORMANCE INCENTIVES
COMPARISON OF 1999 EXISTING RULES VS 2005 INTERIM-FINAL RULES**

CURRENT FEDERAL REGULATIONS (1999)	INTERIM FINAL RULES (2005)	ANALYSIS / COMMENTS
	<p>PART 308 PERFORMANCE INCENTIVES Sec.308.1 Use of funds in Projects constructed under projected cost. 308.2 Performance awards. 308.3 Planning performance awards. AUTHORITY: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10-4.</p> <p>§ 308.1 Use of funds in Projects constructed under projected cost. (a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to: (1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or (2) Further improve the Project consistent with its purpose. (b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments. (c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.</p>	<p>New section required to implement the provisions, established in 2004 reauthorization action, for dealing with project cost under runs and new performance incentive programs.</p> <p>New section outlines the options for using money remaining from project cost underruns. Remaining money may be used by grantee to increase federal share in project or to further improve the project. The agency also has the option to use the excess money for another investment.</p>

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	<p>§ 308.2 Performance awards.</p> <p>(a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance under parts 305 or 307 of this chapter that is awarded on or after the date of enactment of Section 215 of PWEDA may receive a performance award no later than three (3) years following the Project's closeout in an amount not to exceed ten (10) percent of the Project's Investment award.</p> <p>(b) To qualify for a performance award, a Recipient must demonstrate exceptional Project performance in one (1) or more of the areas listed in this paragraph (b), weighted at the discretion of the Assistant Secretary:</p> <ul style="list-style-type: none"> (1) Meet or exceed the Recipient's projection of jobs created; (2) Meet or exceed the Recipient's projection of private sector capital invested; (3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval; (4) Demonstrate exceptional fulfillment of the proposal evaluation criteria set forth in § 301.8 of this chapter; or (5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary. <p>(c) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-federal share requirement of PWEDA or any</p>	<p>New section outlines the requirements for the 10 percent performance bonus program, established by the 2004 reauthorization act.</p> <p>Criteria for determining outstanding performance.</p> <p>Eligible use of performance awards.</p>

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	<p>other statute, the amount of a performance award shall be treated as nonfederal funds.</p> <p>(d) The applicable FFO may set forth additional requirements, qualifications and guidelines for performance awards.</p>	
	<p>§ 308.3 Planning performance awards. (a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance awarded on or after the date of enactment of Section 216 of PWEDA located in an EDA-funded Economic Development District may receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines no later than three (3) years following closeout of the Project that:</p> <p>(1) The Recipient, through the Project, actively participated in the economic development activities of the District;</p> <p>(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and</p> <p>(3) The Recipient demonstrated exceptional collaboration with federal, State and local economic development entities throughout the development of the Project.</p>	<p>New planning performance award replaces the previous bonus program for entities participating in Economic Development Districts. New provision, as outlined in the 2004 reauthorization act, replaces the 10% increase in the federal share of a project to a maximum of 5%. Note that additional criteria may be established each year in the agency's Federal Funding Opportunity notice.</p>

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	<p>(b) The Recipient shall use the planning performance award to increase, up to one hundred (100) percent, the federal share of the cost of a Project under this chapter.</p> <p>(c) The applicable FFO may set forth additional requirements, qualifications and guidelines for planning performance awards.</p>	