

*Executive Order 13132*

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act, 44 U.S.C. Chapter 35*

SBA has determined that this rule will impose a new reporting requirement on borrowers who request forgiveness of their PPP loan. SBA has developed Form 3508, Paycheck Protection Program—Loan Forgiveness Application, for use in collecting the information required to determine whether a borrower is eligible for loan forgiveness. SBA obtained approval of Form 3508 from the Office of Management and Budget (OMB) as a modification to the existing PPP collection of information (OMB Control Number (3245–0407)). This collection of information was approved under emergency procedures to facilitate immediate implementation of the PPP and expires on October 31, 2020.

*Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant

economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

[Docket Number SBA–2020–0033]

RIN 3245–AH47

#### **Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Interim final rule.

**SUMMARY:** On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the “Paycheck Protection Program,” to the SBA’s 7(a) Loan Program. The CARES Act also provides for forgiveness

of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 5, 2020, May 8, 2020, May 13, 2020, May 14, 2020, May 18, 2020, and May 20, 2020, and the Department of the Treasury (Treasury) posted an additional interim final rule on April 27, 2020. SBA and Treasury posted an interim final rule on Loan Forgiveness contemporaneously with this interim final rule on May 22, 2020. This interim final rule supplements the previously posted interim final rules in order to inform borrowers and lenders of SBA’s process for reviewing PPP loan applications and loan forgiveness applications, and requests public comment.

**DATES:**

*Effective date:* This rule is effective May 28, 2020.

*Applicability date:* This interim final rule applies to loan applications and loan forgiveness applications submitted under the Paycheck Protection Program.

*Comment date:* Comments must be received on or before July 1, 2020.

**ADDRESSES:** You may submit comments, identified by number SBA–2020–0033 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please send an email to [ppp-ifr@sba.gov](mailto:ppp-ifr@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

**SUPPLEMENTARY INFORMATION:**

#### **I. Background Information**

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of

Columbia. With the COVID-19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116-136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID-19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the "Paycheck Protection Program." Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program, and requires SBA to issue guidance and regulations implementing section 1106 within 30 days after the date of enactment of the CARES Act. On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) (the First Interim Final Rule) covering in part loan forgiveness. On April 8, 2020 and on April 26, 2020, SBA posted Frequently Asked Questions on loan forgiveness.<sup>1</sup> On April 14, 2020, SBA posted another PPP interim final rule (85 FR 21747) covering in part loan forgiveness. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139), which provided additional funding and authority for the Paycheck Protection Program.

As described below, this interim final rule informs borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness

applications. This interim final rule supplements the interim final rule on Loan Forgiveness posted contemporaneously with this interim final rule.

## II. Comments and Immediate Effective Date

The intent of the CARES Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning loan forgiveness requirements as rapidly as possible because borrowers can seek loan forgiveness as early as eight-weeks following the date of disbursement of their PPP loans. Because the first PPP loans were disbursed after April 3, providing borrowers with certainty on SBA's process for reviewing PPP loan applications and loan forgiveness applications will enhance borrowers' ability to determine whether, and to what extent, they should apply for PPP loans and loan forgiveness, and thereby carry out the purposes of the CARES Act in keeping their workers employed and paid, while at the same time taking necessary steps to maximize eligible loan forgiveness amounts. An immediate effective date also is necessary for PPP lenders who generally will make the loan forgiveness determinations, as provided in the CARES Act. Specifically, an immediate effective date is necessary for lenders so that they will have both a degree of certainty and sufficient time to develop their systems and policies and procedures in order to timely process loan forgiveness applications.

This interim final rule supplements previous regulations and guidance on the discrete issues related to SBA's process for review of PPP loan applications and loan forgiveness applications. This interim final rule is effective without advance notice and public comment because section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the CARES Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the ground that it would be contrary to the public interest. Specifically, SBA has determined that advance notice and public comment would delay the ability of PPP borrowers to understand with certainty SBA's process for reviewing PPP loan

applications and loan forgiveness applications. By providing a high degree of certainty to PPP borrowers through this interim final rule, PPP borrowers will be able to take immediate steps to maximize their loan forgiveness amounts. This rule is being issued to allow for immediate implementation of the forgiveness component of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of this interim final rule, including section III below. These comments must be submitted on or before July 1, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

## III. Paycheck Protection Program Requirements for SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

### Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID-19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and Treasury in the **Federal Register** (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321, 85 FR 26324, 85 FR 27287, 85 FR 29842, 85 FR 29845, 85 FR 29847, 85 FR 30835), as well as an SBA interim final rule posted on May 20, 2020 and an SBA and Treasury interim final rule posted on May 22, 2020 (collectively, the PPP Interim Final Rules).

Under the CARES Act, SBA is authorized to guarantee loans under the PPP, a new temporary 7(a) program, through June 30, 2020. The intent of the Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program.

The Small Business Act authorizes the Administrator to conduct investigations to determine whether a recipient or participant in any assistance under a 7(a) program, including the PPP, is ineligible for a loan, or has violated section 7(a), or any rule, regulation or order issued

<sup>1</sup> <https://www.sba.gov/document/support-faq-lenders-borrowers>.

thereunder. 15 U.S.C. 634(b)(11). Additionally, under section 7(a), the Administrator is empowered to make loans in cooperation with lenders through agreements to participate on a deferred (guaranteed) basis. 15 U.S.C. 636(a). Further, the Administrator may make such rules and regulations as deemed necessary and take any and all actions determined to be necessary or desirable with respect to 7(a) loans. 15 U.S.C. 634(b)(6) and (b)(7). Pursuant to these provisions of the Small Business Act, SBA has issued regulations establishing the standards by which it will investigate whether a loan met program requirements and the circumstances under which SBA will be released from liability on a guarantee for such a loan. 13 CFR 120.524.

In light of the structure of the PPP program established by the CARES Act and the PPP Interim Final Rules, in which loans and loan forgiveness are provided based on the borrower's certifications and documentation provided by the borrower, the Administrator, in consultation with the Secretary of the Treasury (Secretary), has determined that it is appropriate to adopt additional procedures and criteria through which SBA will review whether an action by the borrower has resulted in its receipt of a PPP loan that did not meet program requirements.<sup>2</sup> SBA's review of borrower certifications and representations regarding the borrower's eligibility for a PPP loan and loan forgiveness, and the borrower's use of PPP loan proceeds, is essential to ensure that PPP loans are directed to the entities Congress intended, and that PPP loan proceeds are used for the purposes Congress required, including the CARES Act's central purpose of keeping workers paid and employed.

#### 1. SBA Reviews of Individual PPP Loans

##### a. Will SBA review individual PPP loans?

Yes. SBA may review any PPP loan, as the Administrator deems appropriate, as described below.

##### b. What borrower representations and statements will SBA review?

The Administrator is authorized to review the following:

**Borrower Eligibility:** The Administrator may review whether a borrower is eligible for the PPP loan based on the provisions of the CARES

Act, the rules and guidance available at the time of the borrower's PPP loan application, and the terms of the borrower's loan application. See FAQ 17 (posted April 6, 2020).<sup>3</sup> These include, but are not limited to, SBA's regulations under 13 CFR 120.110 (as modified and clarified by the PPP Interim Final Rules) and 13 CFR 121.301(f) and the information, certifications, and representations on the Borrower Application Form (SBA Form 2483 or lender's equivalent form) and Loan Forgiveness Application Form (SBA Form 3508 or lender's equivalent form).

**Loan Amounts and Use of Proceeds:** The Administrator may review whether a borrower calculated the loan amount correctly and used loan proceeds for the allowable uses specified in the CARES Act.

**Loan Forgiveness Amounts:** The Administrator may review whether a borrower is entitled to loan forgiveness in the amount claimed on the borrower's Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form).

##### c. When will SBA undertake a loan review?

For a PPP loan of any size, SBA may undertake a review at any time in SBA's discretion. For example, SBA may review a loan if the loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower. 13 CFR 120.524(c). As noted on the Loan Forgiveness Application Form, the borrower must retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

Lenders must comply with applicable SBA requirements for records retention, which for Federally regulated lenders means compliance with the requirements of their federal financial institution regulator and for SBA supervised lenders (as defined in 13 CFR 120.10 and including PPP lenders with authority under SBA Form 3507) means compliance with 13 CFR 120.461.

<sup>3</sup> <https://www.sba.gov/document/support-faq-lenders-borrowers>.

##### d. Will I have the opportunity to respond to SBA's questions in a review?

Yes. If loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower, SBA will require the lender to contact the borrower in writing to request additional information. SBA may also request information directly from the borrower. The lender will provide any additional information provided to it by the borrower to SBA. SBA will consider all information provided by the borrower in response to such an inquiry.

Failure to respond to SBA's inquiry may result in a determination that the borrower was ineligible for a PPP loan or ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.

##### e. If SBA determines that a borrower is ineligible for a PPP loan, can the loan be forgiven?

No. If SBA determines that a borrower is ineligible for the PPP loan, SBA will direct the lender to deny the loan forgiveness application. Further, if SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or in part, as appropriate. SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies.

Section 1106(b) of the CARES Act provides for forgiveness of a PPP loan only if the borrower is an "eligible recipient." The Administrator has determined that to be an eligible recipient that is entitled to forgiveness under section 1106(b), the borrower must be an "eligible recipient" under 15 U.S.C. 636(a)(36)(A)(iv) and rules and guidance available at the time of the borrower's loan application. This requirement promotes the public interest, aligns SBA's functions with other governmental policies, and appropriately carries out the CARES Act's PPP provisions, including by preventing evasion of the requirements for PPP loan eligibility and ensuring program integrity with respect to this emergency financial assistance program. It is also consistent with the CARES Act's nonrecourse provision, 15 U.S.C. 636(a)(36)(F)(v), which limits SBA's recourse against individual shareholders, members, or partners of a PPP borrower for nonpayment of a PPP loan only if the borrower is an eligible

<sup>2</sup> This interim final rule is an exercise of SBA's rulemaking authority under 15 U.S.C. 634(b), 15 U.S.C. 633(d), and 5 U.S.C. App., Reorg. Plan No. 4 of 1965, 11(b), 13(a) (abolishing Loan Policy Board and transferring functions to the Administrator); and CARES Act sections 1106(k) and 1114.

recipient of the loan. Accordingly, the PPP Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form) notes that SBA may direct a lender to disapprove a borrower's loan forgiveness application if SBA determines that the borrower does not qualify as an eligible recipient for the PPP loan.

f. May a borrower appeal SBA's determination that the borrower is ineligible for a PPP loan or ineligible for the loan amount or the loan forgiveness amount claimed by the borrower?

Yes. SBA intends to issue a separate interim final rule addressing this process.

## 2. The Loan Forgiveness Process for Lenders

### a. What should a lender review?

For all PPP Loan Forgiveness Applications, each lender shall:

- i. Confirm receipt of the borrower certifications contained in the Loan Forgiveness Application Form.
- ii. Confirm receipt of the documentation borrowers must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the Loan Forgiveness Application Form.
- iii. Confirm the borrower's calculations on the borrower's Loan Forgiveness Application, including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments claimed on Lines 2, 3, and 4 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the Loan Forgiveness Application.
- iv. Confirm that the borrower made the calculation on Line 10 of the Loan Forgiveness Calculation Form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.75.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs

are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule<sup>4</sup> indicates, lenders may rely on borrower representations. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

### b. What is the timeline for the lender's decision on a loan forgiveness application?

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower. That decision may take the form of an approval (in whole or in part); denial; or (if directed by SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the lender reconsider its application for loan forgiveness, unless SBA has determined that the borrower is ineligible for a PPP loan. The Administrator has determined that this process appropriately balances the need for efficient processing of loan forgiveness applications with considerations of program integrity, including affording SBA the opportunity to ensure that borrower representations and certifications (including concerning eligibility for a PPP loan) were accurate.

When the lender issues its decision to SBA approving the application (in whole or in part), it must include (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; and (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender). The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. If the lender determines that the borrower

is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act.

When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial, together with (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; and (3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender). The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in 2.a. The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application. SBA reserves the right to review the lender's decision in its sole discretion. Within 30 days of notice from the lender, a borrower may request that SBA review the lender's decision by reviewing the loan in accordance with 2.c. below.

Enabling SBA to use the statutory 90-day period to review the PPP loan and forgiveness documentation is an appropriate procedural protection to prevent fraud or misuse of PPP funds, ensure that recipients of PPP loans are within the scope of entities that the CARES Act is intended to assist, and confirm compliance with the PPP requirements set forth in the statute, rules, and guidance. This protection is also important in light of the large number and diverse types of PPP lenders, many of which were not previously SBA participating lenders and which were approved rapidly in order to enable financial assistance to be provided as rapidly as feasible to millions of small businesses. SBA will use the 90-day period to help ensure that applicable legal requirements have been satisfied.

SBA will issue additional procedures on the process for advance purchase of PPP loans.

<sup>4</sup> 85 FR 20811, 20815–20816 (April 15, 2020).

c. What should a lender do if it receives notice that SBA is reviewing a loan?

SBA may begin a review of any PPP loan of any size at any time in SBA's discretion. If SBA undertakes such a review, SBA will notify the lender in writing and the lender must notify the borrower in writing within five business days of receipt.

Within five business days of receipt of such notice, the lender shall transmit to SBA electronic copies of the following:

i. The Borrower Application Form (SBA Form 2483 or lender's equivalent form) and all supporting documentation provided by the borrower.

ii. The Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form), and all supporting documentation provided by the borrower (if the lender has received such application). If the lender receives such application after it receives notice that SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to SBA within five business days of receipt. The lender must also request that the borrower provide the lender with a copy of the Schedule A Worksheet to the Loan Forgiveness Application, and the lender must submit the worksheet to SBA within 5 business days of receipt from the borrower.

iii. A signed and certified transcript of account.

iv. A copy of the executed note evidencing the PPP loan.

v. Any other documents related to the loan requested by SBA.

If SBA has notified the lender that SBA has commenced a loan review, the lender shall not approve any application for loan forgiveness for such loan until SBA notifies the lender in writing that SBA has completed its review.

### 3. Lender Fees

a. Is the lender eligible for a processing fee if SBA determines that a borrower is ineligible?

No. If SBA conducts a loan review and determines that the borrower was ineligible for a PPP loan, the lender is not eligible for a processing fee.

b. Are lender processing fees subject to clawback if SBA determines that a borrower is ineligible?

Yes. For any SBA-reviewed PPP loan, if within one year after the loan was disbursed SBA determines that a borrower was ineligible for a PPP loan based on the provisions of the CARES Act or applicable rules or guidance available at the time of the borrower's

loan application, or the terms of the loan application, SBA will seek repayment of the lender processing fee from the lender. However, SBA's determination of borrower eligibility will have no effect on SBA's guaranty of the loan if the lender has complied with its obligations under section III.3.b of the First Interim Final Rule and the document collection and retention requirements described in the lender application form (SBA Form 2484).

c. Are lender processing fees subject to clawback if a lender has not fulfilled its obligations under PPP regulations?

Yes. If a lender fails to satisfy the requirements applicable to lenders that are set forth in section III.3.b of the First Interim Final Rule or the document collection and retention requirements described in the lender application form (SBA Form 2484), SBA will seek repayment of the lender processing fee from the lender and may determine that the loan is not eligible for a guaranty.

### 4. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at [www.sba.gov](http://www.sba.gov). Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

### Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

*Executive Orders 12866, 13563, and 13771*

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

### *Executive Order 12988*

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

### *Executive Order 13132*

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

### *Paperwork Reduction Act, 44 U.S.C. Chapter 35*

SBA has determined that this rule will impose a new reporting requirement on the lenders that are participating in the PPP. As discussed above, when a lender approves or denies a request for loan forgiveness, the lender must submit to SBA limited information from the borrower's Loan Forgiveness Application (SBA Form 3508 or lender's equivalent form), including the portion of the form used to calculate the total amount to be forgiven, as well as the schedule used to determine the borrower's payroll expenses. In addition, for those loans that SBA selects for review, the applicable lenders will be required to submit information to allow SBA to review the loans for borrower eligibility, loan amount eligibility, and loan forgiveness eligibility. SBA will submit the new reporting requirements to OMB for approval as a modification to the existing PPP information collection. This information collection is currently approved as an emergency request under OMB Control Number 3245-0407 until October 31, 2020.

### *Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except

for such small government jurisdictions, neither State nor local governments are “small entities.” Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, “along with a statement providing the factual basis for such certification.” If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA’s waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,  
Administrator.

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1253

[Docket No. CPSC-2019-0023]

#### Children’s Toys and Child Care Articles: Determinations Regarding ASTM F963 Elements and Phthalates for Unfinished Manufactured Fibers

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission (CPSC) is issuing a final rule determining that certain unfinished manufactured fibers do not contain the ASTM F963 elements or specified phthalates that exceed the limits set

forth under the CPSC’s statutes and regulations for children’s toys and child care articles. Based on these determinations, the specified unfinished manufactured fibers would not be required to have third party testing for compliance with the requirements of the ASTM F963 elements or phthalates for children’s toys and child care articles.

**DATES:** The rule is effective on July 1, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Stephen W. Lee, Compliance Officer, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone 301-504-7814; email: *slee@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

##### 1. Third Party Testing and Burden Reduction

Section 14(a) of the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires that manufacturers of products subject to a consumer product safety rule or similar rule, ban, standard, or regulation enforced by the CPSC, must certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). For children’s products, certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* Public Law 112-28 (August 12, 2011) directed the CPSC to seek comment on “opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.” Public Law 112-28 also authorized the Commission to issue new or revised third party testing regulations if the Commission determines “that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.” *Id.* 2063(d)(3)(B).

To provide opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulations, the CPSC assessed whether children’s toys and child care articles manufactured with seven manufactured fibers: polyester (polyethylene terephthalate (PET)), nylon, polyurethane (spandex), viscose rayon, natural rubber latex, acrylic, and

modacrylic, would comply with CPSC’s requirements for ASTM F963 elements or phthalates. The Commission determines that such materials will comply with CPSC’s requirements with a high degree of assurance. Therefore, manufacturers do not need to have those materials tested by a third party testing laboratory in order to issue a Children’s Product Certificate (CPC).

##### 2. ASTM F963 Elements

Section 106 of the CPSIA provides that the provisions of ASTM International, *Consumer Safety Specifications for Toy Safety* (ASTM F963), shall be considered to be consumer product safety standards issued by the Commission.<sup>1</sup> 15 U.S.C. 2056b. The Commission has issued a rule that incorporates by reference the relevant provisions of ASTM F963 at 16 CFR part 1250.<sup>2</sup> Thus, children’s toys subject to ASTM F963 must be tested by a CPSC-accepted third party laboratory and demonstrate compliance with all applicable CPSC requirements for the manufacturer to issue a CPC before the children’s toys can be entered into commerce.

Section 4.3.5 of ASTM F963 requires that surface coating materials and accessible substrates of children’s toys that can be sucked, mouthed, or ingested<sup>3</sup> must comply with the solubility limits of eight elements given in Table 1 of the toy standard. The materials and their solubility limits are shown in Table 1. We refer to these eight elements as “ASTM F963 elements.”

<sup>1</sup> ASTM F963 is a consumer product safety standard, except for section 4.2 and Annex 4, or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

<sup>2</sup> The Commission is not incorporating ASTM F963 by reference into part 1253.

<sup>3</sup> ASTM F963 contains the following note regarding the scope of the solubility requirement: NOTE 4—For the purposes of this requirement, the following criteria are considered reasonably appropriate for the classification of children’s toys or parts likely to be sucked, mouthed or ingested: (1) All toy parts intended to be mouthed or contact food or drink, components of children’s toys which are cosmetics, and components of writing instruments categorized as children’s toys; (2) Children’s toys intended for children less than 6 years of age, that is, all accessible parts and components where there is a probability that those parts and components may come into contact with the mouth.