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.

Jovita Carranza,
Administrator Small Business Administration.

Michael Faulkender,
Assistant Secretary for Economic Policy, Department of the Treasury.

[FR Doc. 2020–11536 Filed 5–28–20; 8:45 am] BILLING CODE 8026–03–P

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. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppl–frs@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:

1. 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, using hand sanitizer, 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 part loan forgiveness. On April 8, 2020 and on April 26, 2020, SBA posted Frequently Asked Questions on loan forgiveness. 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 disburse 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 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

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meet program requirements. SBA’s
in its receipt of a PPP loan that did not
an action by the borrower has resulted
through which SBA will review whether
adopt additional procedures and criteria
Secretary of the Treasury (Secretary),
Administrator, in consultation with the
provided by the borrower, the
provided based on the borrower’s
which loans and loan forgiveness are
program established by the CARES Act
released from liability on a guarantee for
circumstances under which SBA will be
will investigate whether a loan met
Department of the Treasury (Treasury),
SBA has issued regulations
these provisions of the Small Business
U.S.C. 634(b)(6) and (b)(7). Pursuant to
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, 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
in its receipt of a PPP loan that did not
meet program requirements. 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 loans 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). 2 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
institutions 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.

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

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2 This interim final rule is an exercise of SBA’s
rulemaking authority under 15 U.S.C. 634(b), 15
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.

3 https://www.sba.gov/document/support—faq-
lenders-borrowers.
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 4 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. The lender shall not later than 90 days after receipt of a loan forgiveness application 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.

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 borrower 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. 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
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


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.


SUPPLEMENTARY INFORMATION:

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 and 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. 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 1250.2 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 3 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.”

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 flexibility 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 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.

[FR Doc. 2020–11533 Filed 5–28–20; 8:45 am]

BILLING CODE 8026–03–P

1 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.

2 The Commission is not incorporating ASTM F963 by reference into part 1253.

3 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.