

# Proposed Rules

Federal Register

Vol. 88, No. 236

Monday, December 11, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards: Revised Size Standards Methodology

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

**ACTION:** Notice of availability of white paper on Revised Size Standards Methodology for comments.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its white paper explaining how it establishes, reviews, and modifies small business size standards. The revised white paper provides a detailed description of SBA's size standards methodology, including changes from SBA's 2019 Revised Size Standards Methodology (2019 Methodology, available at [www.sba.gov/size](http://www.sba.gov/size)), which guided SBA's recently completed second five-year review of size standards as required by the Small Business Jobs Act of 2010 (Jobs Act). SBA welcomes comments and feedback on the 2023 Revised Methodology, which SBA intends to apply to the forthcoming third five-year review of size standards.

**DATES:** SBA must receive comments to the 2023 Revised Methodology on or before February 9, 2024.

**ADDRESSES:** The 2023 Revised Methodology White Paper, titled "SBA's Size Standards Methodology (December 2023)," is available on the SBA's website at <http://www.sba.gov/size> and on the Federal rulemaking portal at [www.regulations.gov](http://www.regulations.gov).

Comments may be submitted on the 2023 Revised Methodology, identified by Docket number SBA-2023-0015, by one of the following methods: (1) Federal eRulemaking Portal: <http://www.regulations.gov> (follow the instructions for submitting comments), (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail

Code 6530, Washington, DC 20416, or (3) Email at [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

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 submit the information to Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to [sizestandards@sba.gov](mailto:sizestandards@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 of whether it will publish the information or not.

**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, Chief, Office of Size Standards, (202) 205-7189 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (commonly referred to as "size standards") for private sector industries in the United States. Under the Small Business Act, the SBA's Administrator has authority to establish small business size standards for Federal Government programs. SBA's existing size standards use two primary measures of business size: average annual receipts and average number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, the SBA's Small Business Investment Company (SBIC), 7(a), Certified Development Company (CDC/504) Programs determine small business eligibility using either the industry based size standards or tangible net worth and net income based alternative size standards. Presently, there are 102 different size standards, covering 978 industries and 14 exceptions. Of these, 505 are based on average annual receipts, 483 on number of employees (one of which also includes barrels per calendar day total refining capacity), and four on average assets.

The Jobs Act (Pub. L. 111-240, 124 Stat. 2504, Sept. 27, 2010) requires SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. SBA completed the first five-year review of size standards under

the Jobs Act in early 2016<sup>1</sup> and completed the second five-year review of size standards in early 2023.<sup>2</sup> SBA will begin the next (third) five-year review of size standards in the near future.

The goal of SBA's size standards review is to determine whether its existing small business size standards reflect the current industry structure and Federal market conditions and revise them if the latest available data suggests that revisions are warranted. The Small Business Act (the Act), 15 U.S.C. 632(a) (Pub. L. 85-536, 67 Stat. 232, as amended) requires that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. SBA evaluates the structure of each industry in terms of four economic characteristics or factors, namely average firm size, average assets size as a proxy of startup costs and entry barriers, the four-firm concentration ratio as a measure of industry competition, and size distribution of firms using the Gini coefficient (13 CFR 121.102(a)). Besides industry structure, SBA also examines the impact of an existing size standard as well as the potential impact of a revised size standard on small business participation in Federal contracting as an additional primary factor when establishing or reviewing the size standards. SBA generally considers these five factors—average firm size, average assets size, four-firm concentration ratio, Gini coefficient, and small business participation in Federal contracting—to be the most important factors in determining an industry's size standard. The 2023 Revised Size Standards Methodology White Paper provides a detailed description of evaluation of these factors (including relevant data sources) and derivation of size standards based on the results.

SBA also periodically adjusts all monetary based standards for inflation. In accordance with SBA's regulations

<sup>1</sup> See Report on the First Five-Year Comprehensive Review of Size Standards at <https://www.sba.gov/sites/sbagov/files/2023-09/Report%20on%20the%20First%205-Year%20Comprehensive%20Size%20Standards%20Review-508F.pdf>.

<sup>2</sup> See Report on the Second Five-Year Comprehensive Review of Size Standards at [https://www.sba.gov/sites/sbagov/files/2023-07/SBA%27s%20Report%20on%20the%20Second%205%20Year%20Review%20of%20Size%20Standards\\_Final.pdf](https://www.sba.gov/sites/sbagov/files/2023-07/SBA%27s%20Report%20on%20the%20Second%205%20Year%20Review%20of%20Size%20Standards_Final.pdf).

(13CFR 121.102(c)) and rulemaking (67 FR 3041; January 23, 2002), an adjustment to size standards for inflation is made at least once every five years. In response to higher than normal rates of inflation, some past inflation adjustments have been made on more frequent intervals. For example, in response to ongoing higher than normal inflation, SBA issued an out-of-cycle inflation adjustment to monetary based size standards on November 17, 2022 (87 FR 69118). The SBA size standards methodology also explains how it adjusts monetary based size standards for inflation. SBA also updates its size standards, every five years, to adopt the Office of Management and Budget's (OMB) quinquennial NAICS revisions to its table of small business size standards. Effective October 1, 2022, SBA adopted the OMB's 2022 NAICS revisions (86 FR 72277; December 21, 2021) for its table of small business size standards (87 FR 59240; September 29, 2022). The white paper also explains the SBA procedures for adopting updated NAICS definitions for the table of size standards.

Section 3(a) of the Act provides the SBA's Administrator (Administrator) with authority to establish small business size standards for Federal Government programs. The Administrator has discretion to determine precisely how SBA should establish small business size standards. The Act and its legislative history highlight three important considerations for establishing size standards. First, as stated earlier, size standards should vary from industry to industry according to differences among industries. 15 U.S.C. 632(a)(3). Second, a firm that qualifies as small under the SBA's size standard shall not be dominant in its field of operation. 15 U.S.C. 632(a)(1). Third, pursuant to 15 U.S.C. 631(a), the policies of the Agency should assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These three considerations continue to form the basis for the SBA's methodology for establishing, reviewing, or revising small business size standards.

The 2023 Revised Methodology, available for review and comment on the SBA's website at [www.sba.gov/size](http://www.sba.gov/size), as well as at [www.regulations.gov](http://www.regulations.gov), describes in detail how SBA establishes, evaluates, and adjusts its small business size standards pursuant to the Act and related legislative guidelines. Specifically, the document provides a brief review of the legal authority and early legislative and regulatory history of small business size standards,

followed by a detailed description of the size standards analysis. Below, SBA provides a brief summary of the revisions to SBA's size standards methodology, which are described in greater detail in the 2023 Revised Methodology.

### Revisions to SBA's Size Standards Methodology

SBA's 2023 Revised Methodology describes various changes and revisions to the 2019 Methodology and provides a detailed history of changes to SBA's methodology for evaluating size standards over the years. In the past, including the first five-year review of size standards under the Jobs Act, to determine an overall size standard for each industry, SBA compared the characteristics of each industry with the average characteristics of a group of industries associated with an "anchor" size standard. For example, in the first five-year review of size standards, \$7 million (now \$9 million due to the inflation adjustments in 2014, 2019, and 2022) was considered the "anchor" for receipts based size standards and 500 employees was considered the "anchor" for employee based size standards. If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor size standard for that industry. If the specific industry's characteristics were significantly higher or lower than those for the anchor group, SBA assigned a size standard that was higher or lower than the anchor.

In response to public comments received during the first five-year review of size standards concerning SBA's size standards methodology, section 3(a)(7) of the Act that limits the SBA's ability to create common size standards by grouping industries below the four-digit NAICS level, and its own review of the methodology, in the 2019 Methodology, SBA replaced the "anchor" approach with the "percentile" approach, as a basis of evaluating industry factors and deriving a size standard for each industry factor for each industry.<sup>3</sup> Under the "percentile" approach, for each factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.*, receipts or employees). Combining that result with

the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry, then computes a weighted average of the resulting supported size standards to obtain an overall size standard for each industry.

In the 2023 Revised Methodology, SBA is maintaining the "percentile" approach as a basis of evaluating industry factors and deriving size standards for each industry factor for each industry; however, based on its review of the current methodology, SBA is proposing two major changes to its size standards methodology.

The first major change is to replace the current approach to account for the Federal contracting factor with the disparity ratio approach. Under the 2019 Methodology SBA defines the Federal contracting factor in terms of the difference between the small business share of total contract obligations and the small business share of industry receipts. If the small business share of an industry total receipts exceeds the small business share of total contract obligations by ten percentage points or more, all else being the same, SBA would increase that industry's current size standard by certain amount depending on the amount of that difference. If that difference is less than ten percentage points, SBA considers that the current size standard is sufficient with respect to the Federal contracting factor.

Under the disparity ratio approach, SBA computes a disparity ratio as a ratio (instead of the difference) between the small business share of contract obligations (utilization ratio) and the small business share of industry receipts (availability ratio). SBA also computes a second disparity ratio as a ratio between small business share of the number of contracts (utilization ratio) and the share of small firms in the total population of firms that are willing, ready, and able to bid on and perform Federal contracts (availability ratio).

If an industry's disparity ratio is less than 0.8, SBA would assume that small businesses are either materially underrepresented (*i.e.*, the disparity ratio is 0.5 or greater and less than 0.8) or substantially underrepresented (*i.e.*, the disparity ratio is less than 0.5) in the Federal market under that industry's current size standard and would generally propose to increase the current size standard. If an industry's disparity ratio is 0.8 or higher, small businesses are considered overrepresented (*i.e.*, the disparity ratio is 0.8 or higher and less than 1.2) or

<sup>3</sup> For a detailed justification for replacement of the "anchor" approach to size standards analysis with the "percentile" approach and a detailed description of the percentile approach, see the SBA's 2019 Size Standards Methodology White Paper, available at [www.sba.gov/size](http://www.sba.gov/size).

substantially overrepresented (*i.e.*, the disparity ratio is 1.2 or higher) in the Federal market in that industry under the current size standard, and the size standard is maintained at the current level.

The second proposed major change is to replace the 20th percentile and 80th percentile values of industry factors for evaluating size standards at subindustry levels (“exceptions”) from those calculated based on the Economic Census data with those calculated using The Federal Procurement Data System—Next Generation (FPDS) and The System for Award Management (SAM) data.

SBA is proposing these changes in order to refine and improve its analysis of Federal contracting data used in the evaluation of industry size standards. These changes are also in response to public comments received during the second five-year review of size standards that pertained to Federal contracting trends generally. Although SBA did not specifically seek comments to the 2019 Methodology as part of the series of proposed rules issued to review size standards under the second five year review,<sup>4</sup> SBA notes that, a number of commenters to SBA’s proposed rules expressed positions both for and against SBA’s proposed size standards based on Federal contracting trends, data, or analysis.<sup>5</sup> Thus, given the demonstrated relevance of Federal contracting trends to small businesses, SBA believes that it is important to continually review and adjust its methodology for evaluating

<sup>4</sup> See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (85 FR 62239; October 2, 2020), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (85 FR 62372; October 2, 2020), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (85 FR 72584; November 13, 2020), Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (85 FR 76390; November 27, 2020), and Small Business Size Standards: Wholesale Trade and Retail Trade (86 FR 28012; May 25, 2021), Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade (87 FR 24752; April 26, 2022). Comments available at [www.regulations.gov](http://www.regulations.gov).

<sup>5</sup> Prior to finalizing the 2019 Methodology for revising size standards under the second five-year review, SBA issued a notification in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the 2019 Methodology. SBA considered all public comments in finalizing the 2019 Methodology. For a summary of comments and SBA’s responses, refer to the SBA’s April 11, 2019, **Federal Register** notification (84 FR 14587).

Federal contracting data to ensure its analysis accurately captures the varying impact of Federal contracting trends by industry.

To determine how the above changes in the methodology would affect size standards across various industries and sectors, SBA derived the new size standards for all industries averaging \$20 million or more in Federal contract dollars annually (excluding Sectors 42 and 44–45) using the 2019 Methodology and the disparity ratio approach of defining the Federal contracting factor. Overall, the calculated size standards were quite similar between the two approaches when compared to the existing size standards, with size standards increasing for some industries and decreasing for others under both approaches.

SBA believes that using FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the exceptions, instead of using the percentiles from the Economic Census, will promote consistency in its analysis of the exceptions by ensuring that the percentile values and factor values for each exception are in comparable terms. Specifically, SBA has found that for most industries, the average firm size of businesses participating in Federal contracting is generally larger than the average firm size of businesses represented in the Economic Census. There are also inconsistencies in data reporting between SAM/FPDS–NG data and the Economic Census, which SBA will address by adopting the revised approach. Thus, SBA believes that using FPDS–NG and SAM to obtain the percentile values of industry factors for the exceptions will better reflect the varying economic characteristics of the underlying industries. The full results of SBA’s impact analysis as well as a detailed description of the major changes to SBA’s evaluation of size standards are included in the 2023 Revised Methodology.

In the 2023 Revised Methodology, SBA is also updating the minimum and maximum size standard levels based on current minimum and maximum size standard levels. The minimum size standard generally reflects the size a small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts. On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would cause significant competitive disadvantage to smaller businesses when accessing Federal assistance. SBA will not

generally propose or adopt a size standard that is either below the minimum or above the maximum level, even though the calculations might yield values below the minimum or above the maximum level.

With respect to receipts based size standards, SBA is proposing \$8 million and \$47 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in Subsectors 111 and 112). These levels reflect the current minimum and the current maximum of receipts based size standards. As in the 2019 Methodology, the latest industry data from the 2017 Census of Agriculture suggests that \$8 million minimum and \$47 million maximum size standard levels would be too high for agricultural industries in Subsector 111 and Subsector 112. Accordingly, SBA is proposing \$2.25 million and \$5.5 million, respectively, as the minimum and maximum size standard levels for agricultural industries in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310). These levels represent the current minimum and current maximum levels of size standards in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310).<sup>6</sup>

Regarding employee based size standards for manufacturing and other industries that have employee based size standards (excluding Wholesale and Retail Trade), SBA’s proposed 250-employee minimum and 1,500-employee maximum are the current minimum and maximum employee based size standards among those industries. For employee based size standards for Wholesale Trade and Retail Trade industries, the proposed minimum and maximum size standards levels are 50 employees and 250 employees, respectively.<sup>7</sup>

SBA is also updating the percentile values, derived from the latest 2017 Economic Census and other industry data, used to evaluate the structure of each industry in terms of the four economic characteristics or factors, namely average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient. As explained in

<sup>6</sup> NAICS 112112 (Cattle Feedlots) and NAICS 112310 (Chicken Egg Production) currently have a size standard of \$22 million and \$19 million, respectively, and will be subjected to the \$8 million minimum and \$47 million maximum size standards proposed for other industries with receipts based size standards.

<sup>7</sup> Current employee based size standards for the wholesale and retail trade industries range from 100 employees to 250 employees. However, as in the 2019 Methodology, SBA is proposing a lower 50-employee level as the minimum employee-based size standard to account for differences among industries more accurately.

the 2023 Revised Methodology, SBA ranks industries by size standard types in terms of the four industry factors and in terms of the existing size standards, then computes the 20th percentile and 80th percentile values for both. SBA then evaluates each industry by comparing its value for each industry factor to the 20th percentile and 80th percentile values for the corresponding factor for industries under a particular type of size standard. The updated 20th percentile and 80th percentile values for the four factors for receipts based and employee based size standards are found in Table 5 and Table 6 of the 2023 Revised Methodology, respectively; the updated 20th percentile and 80th percentile values of size standards are found in Table 7.

### Request for Comments

SBA welcomes comments from the public on a number of issues concerning its size standards methodology. Specifically, SBA invites feedback and suggestions on the following:

- Should SBA establish size standards that are higher than industry's entry-level business size? SBA generally sets size standards higher than the entry-level business size to enable small businesses to compete against others of their size and considerably larger businesses for Federal contracts set aside for small businesses. It is important that small businesses be able to apply for and be eligible for SBA's various business development programs that have additional requirements, such as a minimum number of years in business to qualify for its 8(a) Business Development Program. This precludes setting size standards at too low a level or at the entry-level size. Additionally, establishing size standards at the industry entry-level firm size would cause small businesses to outgrow their eligibility very quickly, thereby lacking sufficient cushion or experience to succeed outside of the small business market. Finally, size standards must be above the entry-level size to ensure small businesses have necessary resources and capabilities to be able to perform and meet Federal Government contracting requirements.

- Should there be a ceiling beyond which a business concern cannot be considered as small? In other words, should there be a maximum size standard? SBA has not increased its employee based standards beyond the 1,500-employee level. However, receipts based size standards have gradually increased over time due to inflationary adjustments and the highest receipts based size standard stands at \$47 million today. This is a policy decision

that the Agency should make—is there a size beyond which a business is not small?

- Should SBA consider adjusting employee based size standards for labor productivity growth or increased automation? Just as firms in industries with receipts based standards may lose small business eligibility due to inflation, firms in industries with employee based standards may gain eligibility due to improvement in labor productivity and technical change.

- Should SBA consider lowering its size standards generally? SBA receives periodic comments from the public that its standards are too high in certain industries or for certain types of Federal contracting opportunities. The comments generally concern the competitive edge that large small businesses have over the “truly small businesses” (a phrase heard frequently from commentators). On the other hand, SBA also receives comments from advanced small businesses that its size standards are too small to qualify for Federal contracting opportunities and other Federal small business assistance. This has always been a challenging issue, one that SBA has had to deal with over the years. SBA's size standards appear too large to the smallest of small businesses while more advanced small businesses often request even higher size standards.

- In response to the distressed economic environment in the aftermath of the 2007–2009 Great Recession, in the first five-year review of size standards, SBA adopted a policy of not lowering size standards even though the data supported lowering them. Similarly, in response to the COVID–19 pandemic and its impacts on small businesses and the overall economy, during the second five-year review of size standards, SBA adopted a similar policy of not lowering any size standards even if the analytical results supported lowering them. Should SBA lower size standards regardless of prevailing economic conditions when the analytical results support lowering them or should it consider the prevailing economic environment when deciding on whether to revise size standards?

- Should SBA adopt new disparity ratio approach to evaluating small business participation in the Federal market, which will replace the Federal contracting factor the Agency used in the past. Should SBA adopt the results from the power analyses of the disparity ratios? Since only a very few industries were impacted by the power analyses, SBA has decided to not use the results from the power analyses.

- SBA is proposing to use FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the NAICS exceptions, instead of using the percentiles from the Economic Census. Should SBA continue using the Economic Census data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for exceptions or should it start using FPDS–NG and SAM data to calculate 20th and 80th percentile values of industry factors for evaluating exceptions?

- Should size standards vary from program to program? In other words, should SBA establish one set of standards for SBA financial programs, another for Federal procurement, or yet another for other Federal programs? SBA had, in the 1980s, established different size standards for different programs. The result had been that some firms were small for some programs and large for others. Such size standards were very confusing to users and caused unnecessary and unwanted complexity in their application. The statutory guidance encourages an industry-by-industry analysis and not a program-by-program analysis when developing small business size definitions. While the characteristics and needs of a particular SBA program may necessitate the deviation from the uniform size standards, the Agency will continue its general policy of favoring one set of size standards for all programs. However, SBA has established 14 special size standards for some activities (commonly referred to as “exceptions”) within certain industries for Federal Government purposes. Similarly, for industries in Wholesale Trade and Retail Trade, SBA has established industry specific size standards for SBA's loan and other Federal nonprocurement programs and a common 500-employee size standard for Federal procurement under the nonmanufacturer rule. Additionally, for SBA's SBIC, 7(a), and CDC/504 Programs businesses can qualify either based on industry specific size standards for their primary industries or based on a tangible net worth and net income based alternative size standard.

- Should size standards apply nationally or should they vary geographically? The data SBA obtains from the Economic Census are national data. While the Economic Census does publish a Geographic Series of the data, application of those data to evaluating and establishing size standards would be cumbersome and time consuming at best, resulting in a very complex set of size standards that would likely be

unusable. For example, in Federal contracting, how would a contracting officer set the size standard on a contracting opportunity? Would it depend on the contracting officer's location, on the location of the Agency's headquarters, or on the place of delivery of the product or service? What about multiple delivery locations? On the location of the prospective contractor? On the location of the prospective contractor's headquarters? What about subcontractors, since size standards apply to subcontracts as well? The same questions could be asked about them, which would affect a prime contractor's ability to bid. Would this encourage firms to relocate based upon perceived favorable size standards? That would defeat the purpose behind geographic distinctions. The undue complexity and resulting confusion would render geographically based size standards unusable, for all practical purposes.

- Are there alternative approaches that SBA should consider for determining small business size standards?
- How have SBA's latest size standards revisions impacted competition in general and within a specific industry?
- Are there alternative or additional factors or data sources that SBA should consider when establishing, reviewing, or revising size standards?
- Does SBA's current approach to establishing or modifying small business size standards make sense in the current economic environment?

SBA encourages the public to review and comment on the Revised Methodology, which is available at [www.sba.gov/size](http://www.sba.gov/size) as well as at [www.regulations.gov](http://www.regulations.gov). SBA will thoroughly evaluate and consider all comments and suggestions when finalizing the 2023 Revised Methodology, which the Agency will apply in the forthcoming, third five-year review of size standards as required by the Jobs Act.

**Isabella Casillas Guzman,**  
Administrator.

[FR Doc. 2023-27053 Filed 12-8-23; 8:45 am]

BILLING CODE 8026-09-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2023-2238; Project Identifier MCAI-2023-00698-R]

RIN 2120-AA64

#### Airworthiness Directives; Leonardo S.p.a. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model A109C, A109E, A109K2, A109S, and AW109SP helicopters. This proposed AD was prompted by reports of loose tail rotor duplex bearing locking nuts, possibly caused by improper installation. This proposed AD would require disassembling certain tail rotor duplex bearings and reassembling them in accordance with updated service information. This proposed AD would also prohibit installing certain tail rotor duplex bearings. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by January 25, 2024.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at [www.regulations.gov](http://www.regulations.gov) under Docket No. FAA-2023-2238; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For EASA material identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find the EASA material on the EASA website [ad.easa.europa.eu](http://ad.easa.europa.eu).

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. The EASA material is also available at [www.regulations.gov](http://www.regulations.gov) under Docket No. FAA-2023-2238.

**FOR FURTHER INFORMATION CONTACT:** Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7241; email: [sungmo.d.cho@faa.gov](mailto:sungmo.d.cho@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-2238; Project Identifier MCAI-2023-00698-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [www.regulations.gov](http://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

##### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each