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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Statement of Policy Regarding Prohibition on Abusive Acts or Practices

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy statement.

SUMMARY: Section 1031(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that the Bureau of Consumer Financial Protection (Bureau) may use its supervisory and enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Since its inception, the Bureau has used its supervisory and enforcement authority to identify and seek relief where covered persons engage in unfair, deceptive, or abusive acts or practices (UDAAPs).

The statutory standard for what the Bureau has authority to declare an “abusiveness standard” is set forth in section 1031(d) of the Dodd-Frank Act. Specifically, section 1031(d) of the Dodd-Frank Act sets forth general standards for when the Bureau may declare that an act or practice is abusive for purposes of the Dodd-Frank Act. Uncertainty remains as to the scope and meaning of abusiveness. This uncertainty creates challenges for covered persons in complying with the law. The Bureau wants to make sure that such uncertainty does not impede or deter the provision of otherwise lawful financial products or services that could be beneficial to consumers. To convey and foster greater certainty about the meaning of abusiveness, this general statement of policy (Policy Statement) provides a framework for the Bureau’s exercise of its supervisory and enforcement authority to address abusive acts or practices.

DATES: This Policy Statement is applicable on January 24, 2020.

FOR FURTHER INFORMATION CONTACT: Colin Reardon, Division of Supervision, Enforcement, and Fair Lending, at (202) 435–9668. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1031(a) of the Dodd-Frank Act provides that the Bureau may use its supervisory and enforcement authority, among other things, to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Since its inception, the Bureau has used its supervisory and enforcement authority to identify and seek relief where covered persons engage in unfair, deceptive, or abusive acts or practices (UDAAPs).

The statutory standard for what the Bureau has authority to declare an “abusiveness standard” is set forth in section 1031(d) of the Dodd-Frank Act. Specifically, section 1031(d) states that the Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—(1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of—(A) A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Through the language in section 1031(d), Congress defined the abusiveness standard in general terms and did not attempt to include a complete list of abusive practices. To demonstrate a violation of section 1031(d), the Bureau therefore must satisfy the specific elements of sections 1031(d)(1), 1031(d)(2)(A), 1031(d)(2)(B), or 1031(d)(2)(C). This Policy Statement refers to these provisions collectively as the “abusiveness standard.”

The Dodd-Frank Act is the first Federal law to prohibit abusive acts or practices with respect to consumer financial products and services generally. Although Congress, through the language in section 1031(d), provided some indication of the abusiveness standard, the Dodd-Frank Act does not further elaborate on the meaning of the terms used in section 1031(d), and there is relatively limited legislative history discussing the meaning of the language in section 1031(d) (including in distinguishing the abusiveness standard from the...
deception and unfairness standards). Moreover, the abrasiveness standard does not have the long and rich history of the deception and unfairness standards. The FTC has used its authority under the FTC Act to address unfair and deceptive acts or practices (UDAPs) for more than 80 years, over which time policy statements, administrative and judicial precedent, and statutory amendments have provided important clarifications about the meaning of unfairness and deception. Federal prudential regulators have also enforced the UDAP prohibitions in the FTC Act since before the Bureau’s existence.

The Bureau has applied the abrasiveness standard since it commenced operations in 2011. The Bureau has brought 32 enforcement actions that included an abrasiveness claim, including as recently as fall 2019. But 30 of those 32 enforcement actions had both an abrasiveness and an unfairness or deception claim, and two enforcement actions contained just an abrasiveness claim. And in many of those 30 actions, the abrasiveness claim arose from the same course of conduct as the unfairness or deception claim. It is difficult to discern from those actions unique fact patterns to which only the abrasiveness standard would apply. Given the prevalence of dual-pleading, along with the relatively nascent nature of this legal authority (and of the Bureau itself) and the number of matters the Bureau has resolved via settlement agreements, this enforcement activity has resulted in few reported judicial or Bureau administrative decisions that address the contours of the abrasiveness standard.

Regarding supervision, the Bureau’s UDAP examination procedures largely restate the language of the Dodd-Frank Act and the Bureau has issued 18 editions of Supervisory Highlights since 2012, these documents only rarely have described citations of abusive acts or practices in a manner that would provide guidance as to how the Bureau concluded the statutory language used in section 1031(d) applied to the conduct at issue. Additionally, the Bureau has mentioned the risk of abusive acts or practices in non-binding guidance documents but has not set forth a detailed explication of the abrasiveness standard in such documents.

The Bureau’s 2017 Final Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule) included identification of two abusive practices: The first with respect to making a covered loan without determining a consumer’s ability to repay (remedied by stringent underwriting requirements prescribed by the Bureau), and the second with respect to making repeated failed attempts to debit a consumer’s account to collect payment on a covered loan. The 2017 Final Rule, the Bureau identified the same two practices as unfair practices. The Bureau has proposed to rescind the ability-to-repay provisions of the 2017 Final Rule and the identification of the abusive and unfair practice on which those provisions are based (2019 Rescission Proposal). One of the Bureau’s rationales for the 2019 Rescission Proposal was its preliminary conclusion that legal grounds do not sustain the 2017 Final Rule’s identification as an abusive practice the making of a covered loan without determining the consumer’s ability to repay (remedied by stringent underwriting requirements prescribed by the Bureau).

Substantial concerns have been raised about the uncertain meaning of the abrasiveness standard. For example, in response to the Bureau’s Spring 2018 Call for Evidence, the Bureau received comments from stakeholders about these concerns.

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5 See, e.g., S. Rep. No. 111–176, at 172 (Apr. 30, 2010) (“Current law prohibits unfair or deceptive acts or practices. The addition of ‘abusive’ will ensure that the Bureau is empowered to cover practices where providers unreasonably take advantage of consumers.”); Public Law 111–203, pmbl. (listing, in the preamble to the Dodd-Frank Act, one of the purposes of the Act as “protect[ing] consumers from abusive financial services practices’’); see also S. Rep. No. 111–176, at 9 n.19 (“Today’s consumer protection regime . . . could not stem a plague of abusive and unaffordable mortgages.”); id. at 11 (“This financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms.”); H.R. Rep. No. 111–376, at 91 (Dec. 9, 2009) (”[T]he disparate regulatory system has been blamed in part for the lack of aggressive enforcement against abusive and predatory loan products that contributed to the financial crisis, such as subprime and nontraditional mortgages.”); H.R. Rep. No. 111–517, at 876–77 (June 30, 2010) (Conf. Rep.) (“The Act also prohibits financial incentives . . . that may encourage mortgage originators . . . to steer consumers to higher-cost and more abusive mortgages.”).


8 Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 FR 54472 (Nov. 17, 2017).
Many commentators and other stakeholders have raised similar concerns dating back to the early years of the Bureau, although the viewpoints have not been uniform. To obtain further information about these concerns, in June 2019 the Bureau held a Symposium on Abusive Acts or Practices (Symposium). At the Symposium, eight academics and practitioners with expertise in UDAAP issues engaged in dialogue on a number of topics, including the necessity of clarifying the abusiveness standard (and if so, whether rulemaking or another tool should be used), the degree of uncertainty posed by the statutory language, the particular aspects of the standard most in need of clarification, the practical consequences of this uncertainty on consumer financial markets, and how the Bureau should enforce the abusiveness standard. These experts also submitted written statements as part of their participation in the Symposium.

The Symposium participants provided a variety of perspectives. Most urged the Bureau to take action to clarify the abusiveness standard to help entities comply with the law. Others expressed the alternative view that the statutory definition of abusiveness is sufficiently clear and that, to the extent further clarification may be warranted, the Bureau should wait until a more extensive body of precedent interpreting the standard has developed. In short, featuring four outside experts and a Bureau moderator. The first panel included academicians specializing in consumer protection issues. The second panel, comprising of others with significant experience applying UDAAP laws at the Federal and State levels. Among the panelists were several former Bureau and FTC officials. The Bureau selected the panelists to represent diverse viewpoints on the topics under discussion.

See id. See, e.g., William MacLeod, Interpreting Abusive Practices at 7, 15, 16 submission for CFPB Symposium, (noting that “the CFPB’s approach toward the abusiveness standard as ‘cautiously incremental, focused on peripheral comparisons of abusive practices, oriented toward protecting vulnerable consumers, largely concomitant with traditional deception or unfairness claims, and entirely advanced through either negotiated settlements or under the adjudication of federal judges’.”)

14 See, e.g., Stephen J. Canzona, ‘I’ll Know It When I See It: Defending the Consumer Financial Protection Bureau’s Approach of Interpreting the Scope of its UDAAP Enforcement Authority,” 45 J. Legis. 60, 61, 79 (2018) (arguing that “the CFPB’s practice of interpreting UDAAP standards through enforcement actions strikes the proper balance between safeguarding the interests of consumers and responsible providers of financial services” and that to date the Bureau has applied its UDAAP enforcement authority to a “narrow range of conduct that . . . is clearly proscribed by the plain meaning of the terms ‘unfair,’ ‘deceptive,’ and ‘abusive’ . . . (and) does not present meaningful due process concerns to responsible financial services providers’); Christopher L. Peterson, Consumer Financial Protection Bureau Law Enforcement: An Empirical Review, 90 Tul. L. Rev. 1057, 1100–01 (2016) (characterizing the Bureau’s approach toward the abusiveness standard as “cautiously incremental, focused on peripheral comparisons of abusive practices, oriented toward protecting vulnerable consumers, largely concomitant with traditional deception or unfairness claims, and entirely advanced through either negotiated settlements or under the adjudication of federal judges”)


The Bureau has concluded that there is uncertainty as to the scope and meaning of the abusiveness standard. The current uncertainty is not beneficial. Businesses that want to comply with the law face significant challenges in doing so, and these
challenges can impose substantial costs, including impeding innovation. As a result of those costs, consumers may lose the benefits of improved products or services and lower prices. In light of this uncertainty, the Bureau has decided to provide greater clarity on how the Bureau plans to implement and apply the abusiveness standard in its supervisory and enforcement work. In issuing this Policy Statement, the Bureau does not foreclose the possibility of engaging in a future rulemaking to further define the abusiveness standard.

II. Policy Statement

Clarifying the abusiveness standard is in the public interest and the issuance of a supervision and enforcement policy statement regarding the abusiveness standard is beneficial to all stakeholders. Among other things, greater certainty as to how the Bureau intends to use the abusiveness standard in supervision and enforcement furthers the Bureau’s purpose in implementing and enforcing the prohibition on abusiveness in the Dodd-Frank Act. 21 In addition, an approach to the abusiveness standard that provides greater certainty and fosters the development of a clearer standard will promote compliance with that standard. This compliance, in turn, assists the Bureau in achieving its objective under the Dodd-Frank Act of protecting consumers from abusive acts or practices. 22 The Bureau therefore issues this Policy Statement to describe certain aspects of how it intends to approach its use of the abusiveness standard in its supervision and enforcement matters going forward. 23

First, consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms 24 to consumers from the conduct outweigh its benefits to consumers. 25 Second, the Bureau will generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that the Bureau alleges are unfair or deceptive. Where the Bureau nevertheless decides to include an alleged abusiveness violation, the Bureau intends to plead such claims in a manner designed to clearly demonstrate the nexus between the cited facts and the Bureau’s legal analysis of the claim. In its supervision activity, the Bureau similarly intends to provide more clarity as to the specific factual basis for determining that a covered person has violated the abusiveness standard. Third, the Bureau generally does not intend to seek certain types of monetary relief for abusiveness violations where the covered person was making a good-faith effort to comply with the abusiveness standard.

A. Prevention of Consumer Harm From Abusive Acts or Practices

The Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law, including the authority to issue supervision and enforcement policy statements, for the purpose of ensuring that “consumers are protected from unfair, deceptive, and abusive acts and practices,” 26 thereby preventing the harm to consumers from the conduct. The Dodd-Frank Act also states that the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that “all consumers have access to markets for consumer financial products and services” and that such markets are “fair, transparent, and competitive.” 27 To fulfill these statutory mandates, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts and practices. 28

Consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concludes that the harms 29 to consumers from the conduct outweigh its benefits to consumers including its effects on access to credit. 30 Explicitly incorporating this focus into the Bureau’s supervision and enforcement decisions concerning abusiveness not only ensures that the Bureau is committed to using its scarce resources to address conduct that harms consumers, but also ensures that the Bureau’s supervisory and enforcement decisions are consistent across matters.

B. Articulating Acts or Practices That Violate the Abusiveness Standard

Whether conduct constitutes an unfair, deceptive, or abusive act or practice often is dependent upon the facts and circumstances of a particular matter. In enforcement, the Bureau’s experience indicates that a single course of conduct may provide the factual basis for allegations of unfair, deceptive, or abusive acts or practices. Where such circumstances arise, the Bureau intends generally to avoid alleging an abusiveness violation that relies on all or nearly all the same facts as an unfairness or deception violation. 31 The Bureau nevertheless intends to allege “stand-alone” abusiveness violations (i.e., violations that are not accompanied by related unfairness or deception violations) where doing so would be consistent with the abusiveness standard and this Policy Statement. Where the Bureau alleges “stand-alone” abusiveness violations, it intends to plead such claims in a manner designed to demonstrate clearly the nexus between the cited facts and

23 The Bureau intends to apply this Policy Statement going forward in its enforcement and supervisory activities. Where the Bureau has previously asserted an abusiveness claim in an enforcement action that remains pending in court, the Bureau in its discretion will determine how to proceed in light of this Policy Statement based on the facts and circumstances of the particular case. In general, the Bureau intends to take this Policy Statement into account when seeking monetary relief in pending cases asserting abusiveness claims.
24 The Bureau’s consideration of the harms and benefits of the conduct (i.e., its effects on consumers) can be qualitative as well as quantitative. That is, a quantitative analysis is not necessary for every citation or challenge to conduct as being a violation of the abusiveness standard.
29 Competition among firms can lead to lower prices for and innovation in consumer financial products and services. Conduct that fosters competition can benefit consumers, while conduct that impedes competition can harm consumers. 12 U.S.C. 5511(b).
31 In limited circumstances, the Bureau intends to allege both an abusiveness violation and a related unfairness or deception violation where it would help clarify the scope of the abusiveness standard. Where the Bureau alleges both an abusiveness violation and a related unfairness or deception violation, the Bureau intends to allege the abusiveness violation with sufficient detail to distinguish it from the related unfairness or deception violation.
the Bureau’s legal analysis of the claims.29

The Bureau believes that this approach to pleading will provide more certainty to covered persons as to the metes and bounds of conduct the Bureau determines is abusive. It also will facilitate the development of a body of jurisprudence as to the conduct courts conclude is abusive.30

In its supervision activity, the Bureau similarly intends to provide more clarity as to the factual basis for determining that a covered person has violated the abusiveness standard. In citing covered persons during examinations for having engaged in abusive acts or practices, the Bureau intends to apply the same approach as set forth above with regard to pleading abuse in enforcement actions. In addition, in future editions of Supervisory Highlights, the Bureau intends to describe the basis for abusiveness citations with greater clarity (consistent with the need to keep the identity of the supervised entities confidential). Additional clarity in supervisory materials about how the Bureau views particular facts and how those facts support an abusive violation will result in more transparency as to the conduct the Bureau determined violates the abusiveness standard, thereby providing more certainty, especially as to covered persons who are subject to Bureau supervisory authority.

C. Limits on Monetary Relief in Abusiveness Enforcement Actions

The Bureau recognizes that covered persons must make decisions about whether to engage in conduct notwithstanding uncertainty as to whether the Bureau will allege that conduct violates the abusiveness standard and will seek substantial amounts in monetary relief based on the alleged violation. This uncertainty and its consequences may chill or overly deter covered persons from engaging in conduct that may be beneficial to consumers.

Accordingly, to ensure that uncertainty regarding the abusiveness standard does not impede beneficial conduct, the Bureau generally does not intend to seek certain monetary remedies for abusive acts or practices if the covered person made a good-faith effort to comply with the law based on a reasonable—albeit mistaken—interpretation of the abusiveness standard.31 Similarly, in supervisory actions, the Bureau will apply the same standard when requesting action as a result of violations in Matters Requiring Attention or other supervisory requests. However, if a covered person makes a good-faith but unsuccessful effort to comply with the abusiveness standard, the Bureau still intends to seek legal or equitable remedies, such as damages and restitution, to redress identifiable consumer injury caused by the abusive acts or practices that would not otherwise be redressed. Absent unusual circumstances, the Bureau does not intend to seek civil penalties or disgorgement if a covered person made good-faith efforts to comply with the abusiveness standard.

Further, the Bureau emphasizes that it is committed to aggressively pursuing the full range of monetary remedies against bad actors who were not acting in good faith in violating the abusiveness standard, such as those who engage in fraudulent practices or consumer scams. The Bureau’s seeking such relief will prevent and deter the continuation or recurrence of such abusive acts or practices. In determining whether a covered person made a good-faith effort to comply with the abusiveness standard, the Bureau intends to consider all relevant factors, including but not limited to the considerations outlined in CFPB Bulletin 2013–06 regarding Responsible Business Conduct.32 A “reasonable” interpretation for purposes of this Policy Statement is one based on the text of the abusiveness standard set forth in the Dodd-Frank Act, as well as prior precedent and guidance, including judicial precedent, the Bureau’s administrative decisions, rulemakings, supervisory guidance, and past allegations of abusive acts or practices in public enforcement actions.

Covered persons that believe that regulatory uncertainty is hindering the development of new products or services are also reminded that the Bureau has created the Office of Innovation to focus on encouraging consumer-beneficial innovation. The Bureau, primarily through the Office of Innovation, has issued policies to reduce regulatory uncertainty and processes applications from entities under those policies.33

D. Conclusion

For the reasons set forth above, in alleging an act or practice as abusive in violation of the Dodd-Frank Act, the Bureau intends to apply the following principles: (1) Consistent with the priority it accords to the prevention of harm, the Bureau intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers; (2) the Bureau will generally avoid challenging conduct as abusive that relies on all or nearly all of the same facts that the Bureau alleges are unfair or deceptive. Where the Bureau nevertheless decides to include an alleged abusive violation, the Bureau intends to plead such claims in a manner designed to clearly demonstrate the nexus between the cited facts and the Bureau’s legal analysis of the claim. In its supervision activity, the Bureau similarly intends to provide more clarity as to the specific factual basis for determining that a covered person has violated the abusiveness standard; and (3) the Bureau generally does not intend to seek certain types of monetary relief for abusive violations where the covered person was making a good-faith effort to comply with the abusiveness standard. Nothing in these principles affect whether and how the Bureau will proceed in taking supervisory or enforcement action to address violations of any other provision of the Dodd-Frank Act (including its prohibition of unfair or deceptive acts or practices), or any of the other statutes, rules, or orders that the Bureau enforces.

III. Regulatory Requirements

This Policy Statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.34 It is intended to provide information regarding the Bureau’s general plans to exercise its discretion and does not impose any legal requirements on covered persons.28

28 Because the Bureau will be guided by the facts in determining which claims to bring, examinations and investigations may seek information that could relate to unfair, deceptive, or abusive acts or practices without distinguishing among the potential claims. The Bureau may also use its supervisory and enforcement processes to seek an institution’s written response where the facts indicate that the institution’s conduct may qualify as abusive or unfair or deceptive.

29 To the extent practicable, the Bureau in the future intends to develop model pleadings and updates to its UDAAP examination procedures in order to provide greater specificity and clarity as to the abusiveness standard.

30 Although the covered person’s good-faith efforts to comply would be relevant to whether the Bureau seeks monetary remedies, it would not be an affirmative defense to an alleged violation.


33 See 5 U.S.C. 553(b). However, this is not a “statement of policy” as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

34 5 U.S.C. 553(b).
external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. The Bureau has also determined that this Policy Statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 et seq., the Bureau will submit a report containing this Policy Statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this Policy Statement as not a “major rule” as defined by 5 U.S.C. 804(2).


Kathleen L. Kraninger,
Director, Bureau of Consumer Financial Protection.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39


RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–15–04, which applied to certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2017–15–04 required replacement of affected electromechanical actuators (EMAs). This AD retains the requirements of AD 2017–15–04; expands the applicability to include all The Boeing Company Model 787 series airplanes; and adds a new requirement to identify, for certain airplanes, the part number of EMAs and to replace affected EMAs. This AD was prompted by wire harness chafing on the EMAs for certain spoilers due to insufficient separation with adjacent structure. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 12, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 25, 2017 (82 FR 33785, July 21, 2017).


Examining the AD Docket

You may examine the AD docket on the internet at https://www.regulations.gov by searching for and locating Docket No. FAA–2019–0442; 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 final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: douglas.tsuji@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–15–04, Amendment 39–19864 (82 FR 33785, July 21, 2017) (“AD 2017–15–04”). AD 2017–15–04 applied to certain The Boeing Company Model 787–8 and 787–9 airplanes. The NPRM published in the Federal Register on July 2, 2019 (84 FR 31526). The NPRM was prompted by a determination that discrepant EMAs could be installed on airplanes outside the original applicability of AD 2017–15–04. The NPRM proposed to continue to require replacement of affected EMAs. The NPRM also proposed to expand the applicability to include all The Boeing Company Model 787 series airplanes, and add a new requirement to identify, for certain airplanes, the part number of EMAs and to replace affected EMAs. The FAA is issuing this AD to address chafing and consequent wire damage that could result in a potential source of ignition in the flammable leakage zone and a consequent fire or explosion.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment.

Support for the NPRM

United Airlines stated that it has no objection to the NPRM.

Request To Withdraw the NPRM

Boeing requested that the FAA withdraw the NPRM and retain AD 2017–15–04. Boeing stated that the proposal to expand the applicability to include all Boeing Model 787 series airplanes is not necessary. Boeing pointed out that discrepant spoiler EMAs are only applicable to Model 787–8 and 787–9 airplanes, which is the current applicability of AD 2017–15–04. Boeing further pointed out that the changes to the spoiler EMAs, as described in Boeing Service Bulletin B787–81205–SB270030–00, is the baseline for that model, and was incorporated in production on the first Model 787–10 airplane and on. Boeing also stated that the Illustrated Parts Data (IPD) defines the effectivity of the new spoiler EMA part numbers (P/Ns) by line number, and shows that only the C99144–006 P/N is allowed on Model 787–10 airplanes. Boeing asserted that all documentation available to operators specifically states that spoiler EMA P/N C99144–006 is the only approved P/N for Model 787–10 airplanes.

The FAA does not agree with the request to withdraw the NPRM. EMAs are rotatable parts that could later be installed on Boeing Model 787 series airplanes that previously did not have affected EMAs installed. Existing in-