This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

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SUMMARY: Section 1031(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (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 “abusive act or practice” 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.4

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

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2 The Bureau intends this Policy Statement to apply with respect to any person against whom the Bureau cites conduct as abusive in supervision or challenges conduct as abusive in enforcement, including, where applicable, covered persons, service providers, and persons that provide substantial assistance to an abusive act or practice by a covered person or service provider. See 12 U.S.C. 5514 through 5516, 5531, 5536. For brevity, this Policy Statement refers simply to “covered persons” throughout.
deception and unfairness standards.\footnote{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.”).} Moreover, the abusive 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.\footnote{See, e.g., Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Comm. on Commerce, Science and Transportation, U.S. Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), reprinted in In re Int’l Harvester Co., 104 F.T.C. 949, 970, 1073 (1984); Letter from the FTC to Hon. John D. Dingell, Chairman, Comm. on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983) (FTC policy statement on deception), reprinted in In re Clifford Associates, Inc., 103 F.T.C. 110, 174 (1984); Int’l Harvester Co., 104 F.T.C. at 949; Am. Fin. Servs. Ass’n v. FTC, 767 F.2d 957 (D.C. Cir. 1985); section 5i of the FTC Act, 15 U.S.C. 45n), as enacted by Congress in the Federal Trade Commission Act Amendments of 1994, Public Law 103–312, sec. 9, 108 Stat. 1691, 1695.} Federal prudential regulators have also enforced the UDAP prohibitions in the FTC Act since before the Bureau’s existence.\footnote{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.”).} The Bureau has applied the abusive standard since it commenced operation in 2011. The Bureau has brought 32 enforcement actions that included an abusive standard, including as recently as fall 2019. But 30 of those 32 enforcement actions had both an abusive standard and an unfairness or deception claim (i.e., only two enforcement actions contained just an abusive standard). And in many of those 30 actions, the abusive standard 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 abusive 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 agreement, this enforcement activity has resulted in few reported judicial or Bureau administrative decisions that address the contours of the abusive standard.\footnote{6 Federal prudential regulators have also enforced the UDAP prohibitions in the FTC Act since before the Bureau’s existence.} Regarding supervision, the Bureau’s UDAP examination procedures largely restate the language of the Dodd-Frank Act. And although 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 abusive standard in such documents.\footnote{See, e.g., Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Comm. on Commerce, Science and Transportation, U.S. Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), reprinted in In re Int’l Harvester Co., 104 F.T.C. 949, 970, 1073 (1984); Letter from the FTC to Hon. John D. Dingell, Chairman, Comm. on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983) (FTC policy statement on deception), reprinted in In re Clifford Associates, Inc., 103 F.T.C. 110, 174 (1984); Int’l Harvester Co., 104 F.T.C. at 949; Am. Fin. Servs. Ass’n v. FTC, 767 F.2d 957 (D.C. Cir. 1985); section 5i of the FTC Act, 15 U.S.C. 45n), as enacted by Congress in the Federal Trade Commission Act Amendments of 1994, Public Law 103–312, sec. 9, 108 Stat. 1691, 1695.} 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.\footnote{7 These few reported decisions are all from Federal district courts. See, e.g., CFPB v. ITT Educ. Servs., Inc., 219 F. Supp. 3d 878 (S.D. Ind. 2015).} In 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).\footnote{8 Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 FR 54472 (Nov. 17, 2017).} 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 abusive standard. For example, in response to the Bureau’s Spring 2018 Call for Evidence, the Bureau received comments from stakeholders about these concerns.\footnote{9 Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 FR 45252, 4576 (Feb. 14, 2019).} In response to the Bureau’s Requests for Information on the Bureau’s Adopted Regulations and New Rulemaking Authorities and the Bureau’s Inherited Regulations and Inherited Rulemaking Authorities, the Bureau received approximately 15 comments that addressed the Bureau’s UDAP authorities (nearly all from trade associations or other industry stakeholders). See generally Request for Information Regarding the Bureau’s Adopted Regulations and New Rulemaking Authorities, Mar. 21, 2018, Docket CFPB–2018–0011, https://www.regulations.gov/?D=CFPB-2018-0011, and Request for Information Regarding the Bureau’s Inherited Regulations and Inherited Rulemaking Authorities, Mar. 26, 2018, Docket CFPB–2018–0012, https://www.regulations.gov/?D=CFPB-2018-0012. The most common UDAP-related issue identified by these commenters was the lack of clarity presented by the abusive standard. For example, a credit card issuer commented that the unclear statutory definition of “abusive” practices combined with a lack of Bureau guidance on the standard “creates uncertainty, chills beneficial innovation, and leads to unnecessary compliance burdens for institutions trying in good faith to comply with the law.” A trade association representing credit unions wrote that “[c]onsumers and industry need more certainty about exactly what the rules and requirements are and how the Bureau plans to engage in enforcement actions surrounding them.” A policy and research organization commented that the abusive standard leaves financial institutions “mired in confusion” and that “[a]n ambiguous abusive standard is not conducive to a well-functioning financial market or regulatory system.” Note that some stakeholders raised these concerns in response to other Spring 2018 Call for Evidence dockets. For example, a trade association commented in response to the Request for Information Regarding Bureau Enforcement Processes that the Bureau should address the “great deal of uncertainty” around the abusive standard “by describing in rulemaking or public guidance the circumstances under which the Bureau will bring ‘abusive’ cases under its UDAP authority.” See generally Request for Information Regarding Bureau Enforcement Processes, Feb. 12, 2018, CFPB–2018–0003, https://www.regulations.gov/docket?D=CFPB-2018-0003.}
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 more extensive body of precedent interpreting the standard has developed. In short, featuring four outside experts and a Bureau moderator. The first panel included academics specializing in consumer protection issues. The second panel, featuring Richard Cordray and other participants, asserted that “a policy statement defining the term... will help prevent divergent interpretations of the ‘abusiveness’ standard.”

The Symposium participants expressed views on this issue. The Symposium participants’ feedback has been an important part of the process of determining whether the Bureau should use its rulemaking or other tools to provide clarity about the general meaning of the abusiveness standard—and, if so, which principles should be applied to determine the scope of the standard. The Bureau appreciates the differing perspectives shared by these experts—and by the many other stakeholders who have expressed views on this issue.

The Bureau has concluded that there is uncertainty as to the scope and meaning of the abusiveness standard. Although the current uncertainty is not beneficial, businesses that want to comply with the law face significant challenges in doing so, and these challenges raise meaningful due process concerns to responsible businesses. The Symposium featured four outside experts and a Bureau moderator. The first panel included academics specializing in consumer protection issues. The second panel, featuring Richard Cordray and other participants, asserted that “a policy statement defining the term... will help prevent divergent interpretations of the ‘abusiveness’ standard.”

The Symposium participants’ feedback has been an important part of the process of determining whether the Bureau should use its rulemaking or other tools to provide clarity about the general meaning of the abusiveness standard—and, if so, which principles should be applied to determine the scope of the standard. The Bureau appreciates the differing perspectives shared by these experts—and by the many other stakeholders who have expressed views on this issue.

The Bureau has concluded that there is uncertainty as to the scope and meaning of the abusiveness standard. Although 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. 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. 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.

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 to consumers from the conduct outweigh its benefits to consumers. 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.

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,” 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.”

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.

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 to consumers from the conduct outweigh its benefits to consumers (including its effects on access to credit). 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 ensure 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. 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

[27] The Bureau’s focus on the effects of conduct on consumers is consistent with the FTC’s approach to unfairness and deception. Section 5(n) of the FTC Act expressly codifies in its unfairness standard, a weighing of the costs and benefits of the conduct at issue. 15 U.S.C. 45(n). Section 5 of the FTC Act does not expressly direct the FTC to consider costs and benefits as part of its deception standard. 15 U.S.C. 45(a)(1). As a leading commentator has explained, however, “the primary difference between full-blown unfairness analysis and deception analysis is that deception does not ask about offsetting benefits. Instead, it presumes that false or misleading statements either have no benefits, or that the injury they cause to consumers can be avoided by the company at very low cost. In other words, deception analysis essentially creates a shortcut, assuming that when a material falsehood exists, the practice would not pass the full benefit/cost analysis of unfairness, because there are rarely, if ever, countervailing benefits to deception.” J. Howard Beales, The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection [May 30, 2005], https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection.

[28] 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.

its consequences may chill or overly
alleged violation. This uncertainty and
amounts in monetary relief based on the
standard and will seek substantial
conduct violates the abusiveness
whether the Bureau will allege that
notwithstanding uncertainty as to
certainty, especially as to covered
although certainty to covered persons as to the
clear transparency as to the conduct the
violations in Matters Requiring
Acknowledging the need for greater clarity in supervisory materials about how the Bureau views particular facts and how those facts support an abusiveness 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

29 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.

30 To make clear that 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.

31 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.


34 S. 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)(i).
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).


Examine 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:

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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 39–18964 (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 B787–82105–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 C91144–006 P/N is allowed on Model 787–10 airplanes. Boeing asserted that all documentation available to operators specifically states that spoiler EMA P/N C91144–006 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 rotateable parts that could later be installed on Boeing Model 787 series airplanes that previously did not have affected EMAs installed. Existing in-