Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on March 15, 2021.

Treena V. Garrett, Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–05585 Filed 3–18–21; 8:45 am]
BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Statement of Policy Regarding Prohibition on Abusive Acts or Practices; Rescission

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Rescission of statement of policy.

SUMMARY: The Bureau of Consumer Financial Protection is rescinding the Statement of Policy Regarding Prohibition on Abusive Acts or Practices.

DATES: This rescission of the policy statement published at 85 FR 6733 on February 6, 2020, is applicable on March 19, 2021.

FOR FURTHER INFORMATION CONTACT: Mehul Madia, Division of Supervision, Enforcement, and Fair Lending, at (202) 435–7104. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: Section 1031(d) of the Dodd-Frank Act sets forth standards for when the Bureau may declare that an act or practice is abusive for purposes of the Dodd-Frank Act. On January 24, 2020, the Bureau announced a policy statement entitled “Statement of Policy Regarding Prohibition on Abusive Acts or Practices” (Policy Statement), which provided a framework for the Bureau’s exercise of its supervisory and enforcement authority to address abusive acts or practices. Specifically, the Policy Statement provided that the Bureau intended to apply the following three principles during its supervision and enforcement work. First, the Bureau stated that it intended to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concluded that the harms to consumers from the conduct outweighed its benefits to consumers. Second, the Bureau stated that it would generally avoid challenging conduct as abusive that relied on all or nearly all of the same facts that the Bureau alleged are unfair or deceptive. The Bureau stated that where it nevertheless decided to include an alleged abusive violation, the Bureau intended 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. The Bureau stated that, in its supervision activity, the Bureau similarly intended to provide more clarity as to the specific factual basis for determining that a covered person had violated the abuse standard. Third, the Bureau stated that it generally did 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 abuse standard.

The Bureau asserted that the Policy Statement was necessary to address the uncertainty of the abuse standard based on the Bureau’s conclusions that such uncertainty was “not beneficial,” presented “significant challenges” to businesses, imposed “substantial costs, including impeding innovation,” and may cause consumers to “lose the benefits of improved products or services and lower prices.” As the Policy Statement referenced, some panelists at the Bureau’s June 2019 Symposium on Abusive Acts or Practices urged the Bureau to resolve the abuse standard’s uncertainty for these and other reasons, while others expressed the view that the statutory definition of abuse is sufficiently clear and that no evidence supported the claims that the uncertainty had affected business practices, including chilling innovation.

Based on its review of, and experience in applying, the Policy Statement, however, the Bureau has concluded that the principles set forth in the Policy Statement do not actually deliver clarity to regulated entities. In fact, the Policy Statement’s intended principles, including “making a good-faith effort to comply with the abuse standard,” themselves afford the Bureau considerable discretion in its application and add uncertainty to market participants. Additionally, the Bureau’s further consideration of and experience under the Policy Statement have led it to conclude that the intended principles have the effect of hampering certainty over time. Not asserting abusiveness claims solely because of their overlap with unfair or deceptive conduct or based on the other intended principles articulated in the Policy Statement has the effect of slowing the Bureau’s ability to clarify the statutory abuse standard by articulating abusiveness claims as well as through the ensuing issuance of judicial and administrative decisions. It is thus counterproductive to the purpose of the original Policy Statement.

1 See, e.g., Adam J. Levitin, “Abusive Acts and Practices: Towards a Definition?,” written statement prepared for the CFPB Symposium on “Abusive” at 6–7, 9, https://files.consumerfinance.gov/f/documents/cfpb_levitin-written-statement_symposium-abusive.pdf (arguing that the “statutory language of the [Dodd-Frank Act] and the Bureau’s enforcement actions to date provide a sense of the scope of ‘abusive,’” that “[t]he Bureau would do better to allow the term to be better defined through the common law process,” and that “there is no evidence that uncertainty on the issue is affecting business practices at all; the claim of ‘abusive’ has led trade associations on the matter are completely unsubstantiated’’); Nicholas F.B. Smyth, presenting at the June 25, 2019, symposium on Abusive Acts and Practices at 1, 5, https://files.consumerfinance.gov/f/documents/cfpb_smyth-written-statement_symposium-abusive.pdf (asserting that the abuse standard “does not stiffe innovation any more than the prohibitions on unfairness or deception do,” and that “[e]very time Congress creates a new standard, there is a period of time when some uncertainty may exist as to what conduct violates that standard and what does not. This is perfectly normal, and the Courts are well equipped to interpret new standards.”).

2 85 FR 6733 (Feb. 6, 2020).

3 Id. at 6735–36.

4 Id.

5 Id.

6 85 FR 6733 (Feb. 6, 2020).

7 Id. at 6736.

8 Id.

9 Id.

10 Id. at 6735–36.
The Policy Statement also provided that the Bureau intended to focus on citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concluded that the harms to consumers from the conduct outweighed its benefits to consumers. This principle was intended to “ensure[] that the Bureau is committed to using its scarce resources to address conduct that harms consumers” and to ensure consistency across supervisory and enforcement matters. The Bureau has concluded, however, that there is no basis to treat application of the abusiveness standard differently from the normal considerations that guide the Bureau’s general use of its enforcement and supervisory discretion. The Bureau also did not find this principle helpful in practice.

Moreover, based on its review of, and experience in applying, the Policy Statement, the Bureau has concluded that the principles set forth in the Policy Statement have the opposite effect on preventing harm. One of the Bureau’s statutory objectives is “ensuring that, with respect to consumer financial products and services . . . consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination.” Declining to apply the full scope of the statutory standard pursuant to the policy has a negative effect on the Bureau’s ability to achieve its statutory objective of protecting consumers from abusive practices. In particular, the policy of declining to seek certain types of monetary relief for abusive acts or practices—specifically civil money penalties and disgorgement—is contrary to the Bureau’s current priority of achieving general deterrence through penalties and other monetary remedies and of compensating victims for harm caused by violations of the Federal consumer financial laws through the Bureau’s Civil Penalty Fund. Likewise, adhering to a policy that disfavors citing or alleging conduct as abusive when that conduct is also unfair or deceptive is contrary to the Bureau’s current priority of maximizing the Bureau’s ability to successfully resolve its contested litigation, as it does not allow the Bureau to assert alternative legal causes of action in a judicial action or administrative proceeding. The Bureau’s statutory purpose includes “ensuring . . . that markets for consumer financial products and services are fair, transparent, and competitive.”

Declining to cite or penalize conduct as abusive based on the articulated principles in the Policy Statement may also skew the consumer financial marketplace, to the detriment of market participants who do not act abusively. The Bureau will, of course, continue to engage in typical prosecutorial discretion as appropriate and can use that discretion to marshal its resources effectively.

The Policy Statement was not required under the abusiveness standard set forth in the Dodd-Frank Act. The Bureau has concluded that it has the authority to declare an “abusive act or practice” is set forth in section 1031(d) of the Dodd-Frank Act. The Policy Statement stated an intent to refrain from applying the abusiveness standard even when permitted by law. Had Congress intended to limit the Bureau’s authority to apply the full scope of the abusiveness standard, it could have prescribed a narrower abusiveness prohibition, but it did not. As the Policy Statement itself acknowledges, it consistently found that section 1031(d) provides sufficient notice for due process purposes. Moreover, because the Policy Statement did not create binding legal obligations on the Bureau or create or confer any substantive rights on external parties, it did not create any reasonable reliance interests for industry participants. Thus, rescinding the Policy Statement is consistent with the Bureau’s statutory authority.

The Bureau has determined that it should exercise the full scope of its supervisory and enforcement authority to identify and remediate abusive acts or practices. On reconsideration, the Bureau has concluded the Policy Statement’s effectiveness in accomplishing its stated purposes does not justify its potential to harm consumers and the marketplace. For these reasons, the Bureau is rescinding the Policy Statement and instead, in its discretion, intends to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.

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. 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). When the Bureau alleges an abusiveness violation, the Bureau intends to satisfy these elements.

Regulatory Requirements: The Policy Statement constituted a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It was intended to provide information regarding the Bureau’s general plans to exercise its supervisory and enforcement discretion and did not impose any legal requirements on external parties, nor did it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. The rescission of this policy statement likewise is a general statement of policy exempt from the notice and comment rulemaking requirements of the APA. It is intended to provide information regarding the Bureau’s general plans to exercise its supervisory and enforcement discretion and does not impose any legal requirements on external parties or create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceedings. Because no notice of proposed rulemaking was originally required in issuing the Policy Statement, and is not required in issuing

[13] See, e.g., CFPB v. All Am. Check Cashing, Inc., No. 16–cv–356, 2018 WL 9812125, at *3 (S.D. Miss. Mar. 21, 2018) (rejecting vagueness challenge to the abusiveness prohibition); CFPB v. ITT Educ. Servs., Inc., 239 F. Supp. 3d 878, 906 (S.D. Ind. 2015) (“Because the CFP itself elaborates the conditions under which a business’s conduct may be found abusive—and because agencies and courts have successfully applied the term as used in closely related consumer protection statutes and regulations—we conclude that the language in question provides at least the minimal level of clarity that the due process clause demands of non-criminal economic regulation.”); Illinois v. Alta Colleges, Inc., No. 14–cv–3786, 2014 WL 4377579, at *4 (N.D. Ill. Sept. 4, 2014) (rejecting vagueness challenge to abusiveness prohibition).
Glass in the Passenger Cabin
Installation of Large, Non-Structural
Special Conditions: Lufthansa
[Docket No. FAA–2021–0203; Special
14 CFR Part 25
Federal Aviation Administration
DEPARTMENT OF TRANSPORTATION
BILLING CODE 4810–AM–P
Acting Director, Bureau of Consumer
Information and Regulatory Affairs has
designated the rescission of the Policy
Statement as not a “major rule” as
defined by 5 U.S.C. 804(2).
Dated: March 8, 2021.
David Uejio,
Acting Director, Bureau of Consumer
Financial Protection.
[FR Doc. 2021–05437 Filed 3–18–21; 8:45 am]
DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 25
[Docket No. FAA–2021–0203; Special
Conditions No. 25–784–SC]
Special Conditions: Lufthansa
Technik, Boeing Model 787–8 Airplane;
Installation of Large, Non-Structural
Glass in the Passenger Cabin
AGENCY: Federal Aviation
Administration (FAA), DOT.
ACTION: Final special conditions; request
for comments.
SUMMARY: These special conditions are
issued for the Boeing Model 787–8
airplane. This airplane as modified by
Lufthansa Technik, will have a novel or
unalusual design feature when compared
to the state of technology envisioned in
the airworthiness standards for
transport category airplanes. This design
feature is the installation of large, non-
structural glass in the passenger cabin.
The applicable airworthiness
regulations do not contain adequate or
appropriate safety standards for this
design feature. These special conditions
contain the additional safety standards
that the Administrator considers
necessary to establish a level of safety
equivalent to that established by the
existing airworthiness standards.
DATES: This action is effective on
Lufthansa Technik on March 19, 2021.
Send comments on or before May 3,
2021.
ADDRESSES: Send comments identified
by Docket No. FAA–2021–0203 using
any of the following methods:
• Federal eRegulations Portal: Go to
http://www.regulations.gov/ and follow
the online instructions for sending your
comments electronically.
• Mail: Send comments to Docket
Operations, M–30, U.S. Department of
Transportation (DOT), 1200 New Jersey
Avenue SE, Room W12–140, West
Building Ground Floor, Washington, DC
20590–0001.
• Hand Delivery or Courier: Take
to Docket Operations in Room W12–140
of the West Building Ground Floor at
1200 New Jersey Avenue SE, Washington,
DC, between 9 a.m. and 5 p.m., Monday through
Friday, except Federal holidays.
• Fax: Fax comments to Docket
• Privacy: The FAA will post all
comments it receives, without change,
to http://www.regulations.gov/
including any personal information the
commenter provides. Using the search
function of the docket website, anyone
can find and read the electronic form of
all comments received into any FAA
docket, including the name of the
individual sending the comment (or
signing the comment for an association,
business, labor union, etc.). DOT’s
complete Privacy Act Statement can be
found in the Federal Register
published on April 11, 2000 (65 FR 19477–19478).
• Docket: Background documents or
comments received may be read at
http://www.regulations.gov/ at any time.
Follow the online instructions for
accessing the docket or go to Docket
Operations in Room W12–140 of the
West Building Ground Floor at 1200
New Jersey Avenue SE, Washington,
DC, between 9 a.m. and 5 p.m., Monday through
Friday, except Federal holidays.
FOR FURTHER INFORMATION CONTACT:
Shannon Lennon, Human Machine
Interface Section, AIR–626, Transport
Standards Branch, Policy and
Innovation Division, Aircraft
Certification Service, Federal Aviation
Administration, 2200 South 216th
Street, Des Moines, Washington 98198;
telephone and fax 206–231–3209; email
Shannon.Lennon@faa.gov.
SUPPLEMENTARY INFORMATION: The
substance of these special conditions
has been published in the Federal
Register for public comment in several
prior instances with no substantive
comments received. Therefore, the FAA
has determined that prior public notice
and comment are unnecessary, and
finds that, for the same reason, good
cause exists for adopting these special
conditions upon publication in the
Federal Register.
Comments Invited
The FAA invites interested people to
take part in this rulemaking by sending
written comments, data, or views. The
most helpful comments reference a
specific portion of the special
conditions, explain the reason for any
recommended change, and include
supporting data.
The FAA will consider all comments
received by the closing date for
comments. The FAA may change these
special conditions based on the
comments received.
Background
On September 27, 2019, Lufthansa
Technik applied for a supplemental
type certificate for installation of large,
non-structural glass in the passenger
cabin in the Boeing Model 787–8
airplane. The Boeing Model 787–8 is a
twin-engine, transport category airplane,
with capacity for 381 passengers, and a
maximum takeoff weight of 476,000
pounds.
Type Certification Basis
Under the provisions of title 14, Code
of Federal Regulations (14 CFR) 21.101,
Lufthansa Technik must show that the
Boeing Model 787–8 airplane, as
changed, continues to meet the
applicable provisions of the regulations
listed in Type Certificate No. TC No.
T00021SE or the applicable regulations
in effect on the date of application for
the change, except for earlier
amendments as agreed upon by the
FAA.
If the Administrator finds that the
applicable airworthiness regulations
e.g., 14 CFR part 25) do not contain
adequate or appropriate safety standards
for the Boeing Model 787–8 airplane
because of a novel or unusual design
feature, special conditions are
prescribed under the provisions of
§ 21.16.
Special conditions are initially
applicable to the model for which they
are issued. Should the applicant apply
for a supplemental type certificate to
modify any other model included on the
same type certificate to incorporate the
same novel or unusual design feature,
these special conditions would also
apply to the other model under § 21.101.