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(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 authorities, 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.[1] 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.[2] 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.[3] *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.[4] The Bureau stated that where it nevertheless decided to include an alleged abusiveness 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 abusiveness standard.[5] *Third,* the Bureau stated that it generally did 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.[6]

The Bureau asserted that the Policy Statement was necessary to address the uncertainty of the abusiveness 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.'' [7] 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 abusiveness standard's uncertainty for these and other reasons,[8] while others expressed the view that the statutory definition of abusiveness is sufficiently clear and that no evidence supported the claims that the uncertainty had affected business practices, including chilling innovation.[9]

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 abusiveness 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 abusiveness 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] Public Law 111–203, tit. X, sec. 1031(a), 124 Stat. 1376, 2005 (2010) (codified at 12 U.S.C. 5531(a)); *see also* 12 U.S.C. 5536(a)(1)(B) (making it unlawful for any covered person or service provider to engage in any abusive act or practice).

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

[3] *Id.* at 6736.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 6735–36.

[8] *Id.* at 6735 n.16 (citing panelists from the Bureau's June 2019 Symposium on Abusive Acts or Practices).

[9] *See, e.g.,* Adam J. Levitin, ''*Abusive*'' *Acts and Practices: Towards a Definition?,* Written Submission Prepared for 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 claims of certain trade associations on the matter are completely unsubstantiated''); Nicholas F.B. Smyth, presenting on behalf of Pennsylvania Attorney General Josh Shapiro, Statement submitted to the Bureau for the symposium on Abusive Acts or Practices at 1, 5 (June 25, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_smyth-written-statement_symposium-abusive.pdf* (asserting that the abusiveness standard ''does not stifle 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.'').

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.[10] 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.'' [11] 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.'' [12] 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 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. 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 acknowledged, courts have consistently found that section 1031(d) provides sufficient notice for due process purposes.[13] 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.[14] 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).[15] 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 supervision 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

[10] 85 FR at 6735–36.

[11] 12 U.S.C. 5511(b)(2).

[12] 12 U.S.C. 5511(a).

[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.,* 219 F. Supp. 3d 878, 906 (S.D. Ind. 2015) (''Because the CFPA 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).

[14] 12 U.S.C. 5531(d).

[15] 5 U.S.C. 553(b).

this rescission, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis for this rescission. The Bureau has also determined that the rescission of the 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 the rescission of the 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 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]

BILLING CODE 4810–AM–P

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 unusual 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 comments 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 Operations at 202–493–2251.

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.