§ 430.2 Definitions.

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet, excluding low-pressure water dispensers and pot fillers.

* * * * *

Low-pressure water dispenser means a terminal fitting that dispenses drinking water at a pressure of 105 kPA (15 psi) or less.

* * * * *

Pot filler means a terminal fitting that can accommodate only a single supply water inlet, with an articulated arm or the equivalent that allows the product to reach to fill vessels when in use and allows the product to be retracted when not in use.

* * * * *

■ 3. Section 430.3 is amended by revising paragraph (h)(1) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(1) ASME A112.18.1–2018/CSA B125.1–2018, (''ASME A112.18.1''), Plumbing supply fittings, CSA-published July 2018; IBR approved for appendix S to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraphs (s) and (t) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(s) *Faucets.* Measure the water use for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, in gallons or liters per minute (gpm or L/min), in accordance to section 2.1 of appendix S of this subpart. Measure the water use for metering faucets, in gallons or liters per cycle (gal/cycle or L/cycle), in accordance to section 2.1 of appendix S of this subpart.

(t) *Showerheads.* Measure the water use for showerheads, in gallons or liters per minute (gpm or L/min), in accordance to section 2.2 of appendix S of this subpart.

* * * * *

■ 5. Appendix S to subpart B of part 430 is revised to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standards for faucets and showerheads at § 430.32(g)(o) and (p) as those standards appeared in January 1, 2023 edition of 10 CFR parts 200–499. Specifically, before November 20, 2023 representations must be based upon results generated either under this appendix as codified on June 23, 2023 or under this appendix as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2023. Any representations made on or after November 20, 2023 must be made based upon results generated using this appendix as codified on June 23, 2023.

0. Incorporation by Reference

In § 430.3, DOE incorporated by reference the entire standard for ASME A112.18.1; however, only enumerated provisions of ASME A112.18.1 apply to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard. Treat precatory language in ASME A112.18.1 as mandatory.

0.1 ASME A112.18.1:

(a) Section 5.4 ''Flow rate,'' including Figure 3 but excluding Table 1 and excluding sections 5.4.2.3.1(a) and (c), 5.4.2.3.2(b) and (c), and 5.4.3, as specified in section 2.1 and 2.2 of this appendix;

(b) Section 5.4.2.2(c), as specified in section 3.1 of this appendix.

(c) Section 5.4.2.2(d), as specified in sections 2.2 and 3.2 of this appendix.

0.2 [Reserved]

1. Scope

This appendix covers the test requirements to measure the hydraulic performance of faucets and showerheads.

2. Flow Capacity Requirements

2.1. Faucets—Measure the water flow rate for faucets, in gallons per minute (gpm) or liters per minute (L/min), or gallons per cycle (gal/cycle) or liters per cycle (L/cycle), in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME A112.18.1. Record measurements at the resolution of the test instrumentation. Round each calculation to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place for non-metered faucets, or two decimal places for metered faucets.

2.2. Showerheads—Measure the water flow rate for showerheads, in gallons per minute (gpm) or liters per minute (L/min), in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME A112.18.1. Record measurements at the resolution of the test instrumentation. Round each calculation to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place. If using the time/volume method of section 5.4.2.2(d), position the container to ensure it collects all water flowing from the showerhead, including any leakage from the ball joint.

3. General Instruction for Measuring Flow Rate

3.1. Using the Fluid Meter Method To Measure Flow Rate

When measuring flow rate upstream of a showerhead or faucet using a fluid meter (or equivalent device) as described in section 5.4.2.2(c) of ASME A112.18.1, ensure the fluid meter (or equivalent device) meets the following additional requirements. First, ensure the fluid meter is rated for the flow rate range of the product being tested. Second, when testing showerheads or non-metering faucets, ensure that the fluid meter has a resolution for flow rate of at least 0.1 gallons (0.4 liters) per minute. When testing a metering faucet, ensure that the fluid meter has a resolution for flow rate of at least 0.01 gallons (0.04 liters) per minute. Third, verify the fluid meter is calibrated in accordance with the manufacturer printed instructions.

3.2. Using the Time/Volume Method To Measure Flow Rate

There are several additional requirements when measuring flow rate downstream of a showerhead or faucet as described in section 5.4.2.2(d) of ASME A112.18.1 to measure flow rate. First, ensure the receiving container is large enough to contain all the water for a single test and has an opening size and/or a partial cover such that loss of water from splashing is minimized. Second, conduct the time/volume test for at least one minute, with the time recorded via a stopwatch with at least 0.1-second resolution. Third, measure and record the temperature of the water using a thermocouple or other similar device either at the receiving container immediately after recording the mass of water, or at the water in the supply line anytime during the duration of the time/volume test. Fourth, measure the mass of water to a resolution of at least 0.01 lb. (0.005 kg) and normalize it to gallons based on the specific gravity of water at the recorded temperature.

[FR Doc. 2023–10847 Filed 5–23–23; 8:45 am]

BILLING CODE 6450–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Chapter X

Consumer Financial Protection Circular 2023–02: Reopening Deposit Accounts That Consumers Previously Closed

AGENCY: Consumer Financial Protection Bureau.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) has issued Consumer Financial Protection Circular 2023–02, titled, ''Reopening Deposit Accounts That Consumers Previously

Closed.'' In this circular, the CFPB responds to the question, ''After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (*i.e.,* withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA)?''

DATES: The Bureau released this circular on its website on May 10, 2023.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Terry J. Randall, Senior Counsel for Policy and Strategy, Office of Enforcement, at (202) 435–9497. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (*i.e.,* withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA)?

Response

Yes. After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process debits or deposits, it can constitute an unfair practice under the CFPA. This practice may impose substantial injury on consumers that that they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

Background

Consumers may elect to close a deposit account for a variety of reasons. For example, after moving to a new area, a consumer may elect to use a new account that they opened with a different financial institution that has a branch close to their new home. A consumer also might close an account because they are not satisfied with the account for another reason, such as the imposition of fees or the adequacy of customer service.

The process of closing a deposit account often takes time and effort. For example, closing an account typically involves taking steps to bring the account balance to zero at closure. The financial institution typically returns any funds remaining in the account to the consumer at closure and the consumer typically must pay any negative balance at closure. Some institutions require customers to provide a certain period of notice (*e.g.,* a week) prior to closing the account to provide time for the financial institution to process any pending debits or deposits. Deposit account agreements typically indicate that the financial institution may return any debits or deposits to the account that the financial institution receives after closure and faces no liability for failing to honor any debits or deposits received after closure.

Sometimes after a consumer completes all of the steps that the financial institution requires to initiate the process of closing a deposit account and the financial institution completes the request, the financial institution unilaterally reopens the closed account if the institution receives a debit or deposit to the closed account. Financial institutions sometimes reopen an account even if doing so would overdraw the account, causing the financial institution to impose overdraft and non-sufficient funds (NSF) fees. Financial institutions may also charge consumers account maintenance fees upon reopening, even if the consumers were not required to pay such fees prior to account closure (*e.g.,* because the account previously qualified to have the fees waived).

In addition to subjecting consumers to fees, when a financial institution processes a credit through an account that has reopened, the consumer's funds may become available to third parties, including third parties that do not have permission to access their funds.

The Consumer Financial Protection Bureau (CFPB) has brought an enforcement action regarding the practice of account reopening under the CFPA's prohibition against unfair, deceptive, or abusive practices.[1] The CFPB found that a financial institution engaged in an unfair practice by reopening deposit accounts consumers had previously closed without seeking prior authorization or providing timely notice. This practice of reopening closed deposit accounts caused some account balances to become negative and potentially subjected consumers to various fees, including overdraft and NSF fees. In addition, when the financial institution reopened an account to process a deposit, creditors had the opportunity to initiate debits to the account and draw down the funds, possibly resulting in a negative balance and the accumulation of fees. These practices resulted in hundreds of thousands of dollars in fees charged to consumers. The CFPB concluded that the institution's practice of reopening consumer accounts without obtaining consumers' prior authorization and providing timely notice caused substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

Analysis and Findings

A financial institution's unilateral reopening of deposit accounts that consumers previously closed can constitute a violation of the CFPA's probation on unfair acts or practices.[2]

Under the CFPA, an act or practice is unfair when it causes or is likely to cause consumers substantial injury that is not reasonably avoidable by consumers and the injury is not outweighed by countervailing benefits to consumers or to competition.[3]

Unilaterally reopening a closed deposit account to process a debit or deposit may cause substantial injury to consumers.

Substantial injury includes monetary harm, such as fees paid by consumers due to the unfair practice. Actual injury is not required; significant risk of concrete harm is sufficient.[4] Substantial injury can occur when a small amount of harm is imposed on a significant number of consumers.[5]

After a consumer has closed a deposit account, a financial institution's act of unilaterally reopening that account upon receiving a debit or deposit may cause monetary harm to the consumer. Financial institutions frequently charge fees after they reopen an account. For example, consumers may incur penalty

[1] USAA Federal Savings Bank, File No. 2019–BCFP–0001 (Jan. 3, 2019).

[2] Depending on the circumstances, reopening a closed deposit account may also implicate the CFPA's prohibition on deceptive or abusive acts or practices. 12 U.S.C. 5531, 5536. *See generally* ''Statement of Policy Regarding Prohibition on Abusive Acts or Practices,'' 88 FR 21883 (Apr. 12, 2023). This conduct may also violate other applicable laws, including State law. *See, e.g., Jimenez* v. *T.D. Bank, N.A.,* 2021 WL 4398754, at *16 (D.N.J., 2021) (private plaintiff stated a claim for unfair practices under Massachusetts law where bank allegedly ''either opened a new account in her name or reopened a previously closed account, without her knowledge and without seeking or obtaining her authorization'' and then charged her fees).

[3] 12 U.S.C. 5531(c)(1).

[4] *See, e.g., F.T.C.* v. *Wyndham Worldwide Corp.,* 799 F.3d 236, 246 (3d Cir. 2015) (interpreting ''substantial injury'' under the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45(n), which uses the same language as the CFPA, 12 U.S.C. 5531(c)(1)).

[5] *See, e.g., Orkin Exterminating Co.* v. *Fed. Trade Comm'n,* 849 F.2d 1354, 1365 (11th Cir. 1988) (interpreting ''substantial injury'' under the FTC Act).

fees [6] when an account that they closed is reopened by the financial institution after receiving a debit or deposit. Since financial institutions typically require a zero balance to close an account, reopening a closed account to process a debit is likely to result in consumers incurring penalty fees.

In addition to fees, reopening a consumer's account to accept a deposit increases the risk that an unauthorized third party may gain access to the consumer's funds (*e.g.,* a person with the consumer's account information who pulls funds from the account without the consumer's authorization).

And if reopening the account overdraws the account and the consumer does not repay the amount owed quickly, the financial institution may furnish negative information to consumer reporting companies, which may make it harder for the consumer to obtain a deposit account in the future. Because reopening accounts that the consumer closed gives rise to these risks of monetary harm, this practice may cause substantial injury.

Consumers likely cannot reasonably avoid this injury.

An injury is not reasonably avoidable by consumers when consumers cannot make informed decisions or take action to avoid that injury. Injury that occurs without a consumer's knowledge or consent, when consumers cannot reasonably anticipate the injury, or when there is no way to avoid the injury even if anticipated, is not reasonably avoidable.[7]

Consumers often cannot reasonably avoid the risk of substantial injury caused by financial institutions' practice of unilaterally reopening accounts that consumers previously closed because they cannot control one or more of the following circumstances: a third party's attempt to debit or deposit money, the process and timing of account closure, or the terms of the deposit account agreements.

First, without the consumer's consent or knowledge, a third party may attempt to debit from or deposit to the closed account, prompting their previous financial institution to reopen the account. For example, a payroll provider may inadvertently send a consumer's paycheck to the closed account, even if the consumer informed the payroll provider about the account closure and directed them to deposit their paycheck in a new account. Similarly, a merchant may take an extended amount of time to process a refund to a customer's account for a returned item or may use the wrong account information to process a recurring monthly payment. Consumers cannot reasonably avoid these types of injuries resulting from these types of actions by a third party.

Second, financial institutions may require consumers to complete a multi-step process before closing a deposit account, which can involve completing paperwork in person, returning or destroying any access devices, bringing the balance to zero, and fulfilling waiting periods. When consumers begin this process, they likely will not know exactly when the financial institution will fulfill their request to close the account. Consumers, for example, do not control waiting periods or the length of time it takes a financial institution to settle transactions to bring a balance to zero. Consumers' lack of control over the financial institution's account closure process and timeline may make it more difficult for them to prevent debits and credits that will reopen the account, since the account may close earlier than they expect.

Finally, consumers may not have a reasonable alternative to financial institutions that permit this practice because most deposit contracts either permit or are silent on this practice. Further, to the extent that deposit account agreements allow or disclose such practices, these agreements typically are standard-form contracts prepared by financial institutions that specify a fixed set of terms.[8] Consumers have no ability to negotiate the terms of these agreements. Instead, financial institutions present these contracts to consumers on a take-or-leave-it basis. Thus, even if deposit account agreements reference this practice, consumers also have limited ability to negotiate the terms of such contracts, and consumers can incur injuries in circumstances beyond their control. Moreover, even if the financial institution informs the consumer at the time that the account is closed that the institution may reopen the account, pursuant to the account agreement, the consumer will still generally lack the practical ability to control whether the account will be reopened and to avoid fees and other monetary harms.

This injury is likely not outweighed by countervailing benefits to consumers or competition.

Reopening a closed account does not appear to provide any meaningful benefits to consumers or competition. To the extent financial institutions are concerned about controlling their own costs to remain competitive, they have alternatives to reopening a closed account upon receiving a debit or deposit that could minimize their expenses and liability. For example, the financial institution could decline any transactions that they receive for accounts consumers previously closed. In addition to minimizing the institution's costs, not reopening these accounts may protect the financial institution against the use of closed accounts to commit fraud.

Moreover, consumers do not generally benefit when a financial institution unilaterally reopens an account that consumers previously closed. Since financial institutions typically require consumers to bring the account balance to zero before closing an account, reopening an account in response to a debit will likely result in penalty fees rather than payment of an amount owed by the consumer. While consumers might potentially benefit in some instances where their accounts are reopened to receive deposits, which then become available to them, that benefit does not outweigh the injuries that can be caused by unilateral account reopening. Such benefits are unlikely to be significant because consumers can generally receive the same deposits in another way that they would prefer (such as through a new account that they opened to replace the closed account). And those uncertain benefits are outweighed by the risk that deposited funds will be depleted before the consumer can access (or is even aware of) the funds (*e.g.,* through maintenance or other fees assessed by the financial institution as a result of the reopening or debits from the reopened account by third parties).

Further, not reopening accounts may benefit consumers in certain circumstances. For example, declining a deposit submitted to a closed account alerts the fund's sender that they have incorrect account information and may encourage the sender to contact the consumer to obtain updated account information. Declining a debit also provides an opportunity for the sender of the debit to inform the consumer of any erroneous account information, providing the consumer with the opportunity to make the payment with

[6] In these circumstances, because there generally are no benefits to charging fees on reopened accounts (see countervailing benefits discussion below), such fees generally would function as penalty fees which cause substantial injury.

[7] *See FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1158 (9th Cir. 2010) (interpreting whether consumer's injuries were reasonably avoidable under the FTC Act); *Orkin Exterminating Co.,* 849 F.2d at 1365–66 (same); *American Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 976 (D.C. Cir. 1985) (same).

[8] *See American Fin. Servs. Ass'n,* 767 F.2d at 977 (concluding that certain practices were unfair even though disclosed and agreed to in agreements because consumers had no ability to negotiate the terms of form contracts).

a current account or through another process.

For these reasons, government enforcers should consider whether a financial institution has violated the prohibition against unfair acts or practices in the CFPA if they discover that a financial institution has unilaterally reopened accounts that consumers previously

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other ''enumerated consumer laws,'' 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with $10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–10982 Filed 5–23–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2023–0068; Special Conditions No. 25–821–SC]

Special Conditions: B/E Aerospace Ltd., MHI RJ Aviation ULC Model CL–600–2B19 Airplane; Installation of a Therapeutic Oxygen System for Medical Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the MHI RJ Aviation ULC Model CL–600–2B19 airplane. This airplane, as modified by B/E Aerospace Ltd. (B/E Aerospace), 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 an installation of a therapeutic oxygen system for medical use. 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 B/E Aerospace Ltd. on May 24, 2023. Send comments on or before July 10, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2023–0068 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://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.

Docket: Background documents or comments received may be read at *https://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: Robert Hettman, Mechanical Systems, AIR–623, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3171; email *robert.hettman@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 finds, pursuant to § 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

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, and will consider comments filed late if it is possible to do so