

**§ 201.3 Extensions of credit generally.**

\* \* \* \* \*

(e) *Credit ratings for Term Asset-Backed Securities Loan Facility (TALF).*

(1) If the Board requires that a TALF advance, discount, or other extension of credit be against collateral (other than commercial mortgage-backed securities) that is rated by one or more credit rating agencies, the Federal Reserve Bank of New York may accept the ratings of any credit rating agency that:

(i) Is registered with the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization for issuers of asset-backed securities;

(ii) Has a current and publicly available rating methodology specific to asset-backed securities in the particular TALF asset sector (as defined in the TALF haircut schedule) for which it wishes its ratings to be accepted; and

(iii) Demonstrates that it has sufficient experience to provide credit ratings that would assist in the Federal Reserve Bank of New York's risk assessment on the most senior classes of newly issued asset-backed securities in the particular TALF asset sector by having made public or made available to a paying subscriber base, since September 30, 2006, ratings on at least ten transactions denominated in U.S. dollars within the particular category to which the particular TALF asset sector is assigned as set out below—

(A) Category 1—auto, floorplan, and equipment TALF sectors;

(B) Category 2—credit card and insurance premium finance TALF sectors;

(C) Category 3—mortgage servicing advances TALF sector; and

(D) Category 4—student loans TALF sector.

(2) For purposes of the requirement in paragraph (e)(1)(iii) of this section, ratings on residential mortgage-backed securities may be included in Category 3 (servicer advances).

(3) The Federal Reserve Bank of New York may in its discretion review at any time the eligibility of a credit rating agency to rate one or more types of assets being offered as collateral.

(4) *Process.*

(i) Credit rating agencies that wish to have their ratings accepted for TALF transactions should send a written notice to the Credit, Investment, and Payment Risk group of the Federal Reserve Bank of New York including information on the factors listed in paragraph (e)(1) of this section with respect to each TALF asset sector for which they wish their ratings to be accepted.

(ii) The Federal Reserve Bank of New York will notify the submitter within 5 business days of receipt of a submission whether additional information needs to be submitted.

(iii) Within 5 business days of receipt of all necessary information to evaluate a credit rating agency pursuant to the factors set out in paragraph (e)(1) of this section, the Federal Reserve Bank of New York will notify the credit rating agency regarding its eligibility.

(5) *Conditions.* The Federal Reserve Bank of New York may accept credit ratings under this subsection only from a credit rating agency that agrees to—

(i) Discuss with the Federal Reserve its views of the credit risk of any transaction within the TALF asset sector that has been submitted to TALF and upon which the credit rating agency is being or has been consulted by the issuer; and

(ii) Provide any information requested by the Federal Reserve regarding the credit rating agency's continued eligibility under paragraph (e)(1) of this section.

By the Board of Governors of the Federal Reserve System, October 5, 2009.

**Jennifer J. Johnson,**  
*Secretary.*

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM414 Special Conditions No. 25-09-10-SC]

**Special Conditions: Boeing Model 747-8/-8F Series Airplanes; Design Roll Maneuver Requirement**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Boeing Model 747-8/-8F airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers. These proposed 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. Additional special conditions will be issued for other novel or unusual design features of the Boeing 747-8/-8F airplanes.

**DATES:** Comments must be received on or before November 9, 2009.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM414, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM414. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1178; facsimile (425) 227-1232.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting 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. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the

**ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We

will stamp the date on the postcard and mail it back to you.

### Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA, 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747-8 series passenger airplane and the new Model 747-8F freighter airplane. The Model 747-8 and the Model 747-8F are derivatives of the 747-400 and the 747-400F, respectively. Both the Model 747-8 and the Model 747-8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 975,000 pounds and new General Electric GENx-2B67 engines. The Model 747-8 will have two flight crew and the capacity to carry 660 passengers.

### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747-8 and 747-8F (hereafter referred as 747-8/-8F series) meet the applicable provisions of part 25, as amended by Amendments 25-1 through 25-117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747-8/-8F.

In addition, the certification basis includes other regulations, special conditions and exemptions that are not relevant to these proposed special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these airplanes.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747-8/-8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747-8/-8F series must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model or series that incorporates the same or similar novel or unusual design feature, or should any

other model or series already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model or series under § 21.101.

### New or Unusual Design Features

The Boeing Model 747-8/-8F will incorporate the following novel or unusual design features: An electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers.

### Discussion

The 747-8/-8F is equipped with an electronic flight control system that provides roll control of the airplane through pilot inputs to the flight computers. Current part 25 airworthiness regulations account for "control laws," for which aileron deflection is proportional to control wheel deflection. They do not address any nonlinearities<sup>1</sup> or other effects on aileron and spoiler actuation that may be caused by electronic flight controls. Therefore, the FAA considers the flight control system to be a novel and unusual feature compared to those envisioned when current regulations were adopted. Since this type of system may affect flight loads, and therefore the structural capability of the airplane, special conditions are needed to address these effects.

These proposed special conditions differ from current requirements in that the special conditions require that the roll maneuver result from defined movements of the cockpit roll control as opposed to defined aileron deflections. Also, these proposed special conditions require an additional load condition at design maneuvering speed ( $V_A$ ), in which the cockpit roll control is returned to neutral following the initial roll input.

These proposed special conditions differ from similar special conditions applied to previous designs. These special conditions are limited to the roll axis only, whereas previous special conditions also included pitch and yaw axes. A special condition is no longer needed for the yaw axis because § 25.351 was revised at Amendment 25-91 to take into account effects of an electronic flight control system. No special condition is needed for the pitch axis because the current requirement (§ 25.331(c)) is adequate.

<sup>1</sup> A nonlinearity is a situation where output does not change in the same proportion as input.

### Applicability

As discussed above, these proposed special conditions are applicable to Boeing Model 747-8/-8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

### Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747-8/-8F airplanes. It is not a rule of general applicability.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

### The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 747-8/-8F series airplanes.

In lieu of compliance with § 25.349(a), the Boeing Model 747-8/-8F must comply with the following special conditions.

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and separately, two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

(a) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(b) At  $V_A$ , sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(c) At  $V_C$ , the cockpit roll control must be moved suddenly and

maintained so as to achieve a roll rate not less than that obtained in paragraph (b).

(d) At  $V_D$ , the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph (b).

Issued in Renton, Washington, on September 30, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

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## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3001 and 3005

[Docket No. RM2009-12; Order No. 293]

#### Subpoena Procedures

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing rules to address issuance of, compliance with, and enforcement of administrative subpoenas directed to the Postal Service. The proposed rules also address orders related to depositions and interrogatory responses. The Commission has developed this proposal in response to new statutory authority. It invites comments on its proposed approach to implementation of this new authority.

**DATES:** Comments due November 9, 2009. Reply comments due November 23, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Background
- III. Changes Made by the PAEA
- IV. Discussion of the Proposed Rules
- V. Section-by-Section Analysis
- VI. Public Representative
- VII. Ordering Paragraphs

#### I. Introduction

This notice of proposed rulemaking is the latest in a series of actions being taken by the Postal Regulatory Commission (Commission) to implement provisions of the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat.

3198, December 20, 2006. Section 602 of the PAEA amends section 504 of title 39 of the United States Code by adding a new paragraph 504(f)<sup>1</sup> which, among other things, authorizes: (a) The issuance of subpoenas requiring officers, employees, agents, or contractors of the United States Postal Service (Postal Service) to appear and present testimony or to produce documentary or other evidence; and (b) the issuance of orders that require the taking of depositions and responses to written interrogatories by any of those same persons. As amended, section 504 further authorizes the enforcement of subpoenas by appropriate district courts of the United States. *See* 39 U.S.C. 504(f)(3).

#### II. Background

Prior to passage of the PAEA, the Commission's authority to compel the production of relevant information from the Postal Service was limited. Section 3603 of the Postal Reorganization Act (PRA)<sup>2</sup> gave the Commission's predecessor, the Postal Rate Commission, the authority to

promulgate rules and regulations and establish procedures, subject to chapters 5 [Administrative Procedure] and 7 [Judicial Review] of \* \* \* [the Administrative Procedure Act, 5 U.S.C. 101, *et seq.*] \* \* \*, and [to] take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter [of the PRA].

Acting pursuant to these authorities, the Postal Rate Commission established a number of procedures and adopted rules of practice.

Among the procedures regularly used by the Commission and presiding officers in proceedings over the years has been the procedure of issuing information requests. Such requests have been routinely issued to obtain information that supplemented, clarified or more fully explained information presented by, or positions taken by, the Postal Service and other participants in Commission proceedings.

In addition, the Commission's original rules of practice were codified as 39 CFR part 3001. Rule 3 of those rules states that "[t]he rules of practice in this part are applicable to proceedings before the \* \* \* Commission under the Act,

including those which involve a hearing on the record before the Commission or its designated presiding officer." Several rules govern discovery in Commission proceedings: Rule 25 (Discovery—general policy); rule 26 (Interrogatories for the purpose of discovery); rule 27 (Requests for production of documents or things for purpose of discovery); and rule 28 (Requests for admission for purpose of discovery).

Prior to passage of the PAEA, there were occasions on which the Commission and the Postal Service could not agree on whether certain information requested by the Commission had to be produced. While in most cases the Commission and the Postal Service were able to resolve their disagreements in a mutually satisfactory manner, there were cases in which disagreements proved to be irreconcilable. In those instances, the Postal Service's refusal to provide information delayed and complicated the Commission's ability to carry out its duties.<sup>3</sup> The Postal Service's refusal to provide the requested information forced the Commission to rely upon alternate and less desirable information in order to carry out its statutory responsibilities.

The Commission's inability to obtain the specific information it had requested in those cases was ultimately due to the fact that the Commission could not enforce its orders. Neither the PRA, nor the Administrative Procedure Act (APA), authorized the Commission to seek a court order directing production of the requested information.

The typical mechanism for enabling an administrative agency to compel production of information is the judicially enforceable administrative subpoena.<sup>4</sup> Without the authority to

<sup>3</sup> *See* PRC Op. R94-1, paras. 3188-93 (refusal of Postal Service to comply with order compelling responses to interrogatories); and PRC Op. MC96-3 at 35 (refusal of Postal Service to comply with order directing it to present additional cost presentations).

<sup>4</sup> *See Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities*, U.S. Department of Justice Office of Legal Policy (December 2002). Administrative subpoenas and their enforcement by courts must be specifically provided for by statute. *Id.* The PRA contains no provision for issuing administrative subpoenas. Section 555(d) of the APA provides that "[a]gency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought." (Emphasis added.) Without further authorization by law, § 555(d) does not give an agency the power to issue subpoenas. Similarly, § 556(c)(2) authorizes presiding officers at agency hearings to "issue subpoenas authorized by law \* \* \*." (Emphasis added.) Once again, further authorization is needed for an agency to issue an administrative subpoena. Without the