

Issued in Renton, Washington, on January 12, 2007.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25904; Directorate Identifier 2006-NM-077-AD; Amendment 39-14883; AD 2007-01-11]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model DHC-8-100, -200, and -300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model DHC-8-100, -200, and -300 series airplanes. That AD currently requires modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges if necessary. This new AD requires using revised procedures for modifying and inspecting the flight compartment door and reduces the applicability of the existing AD. This AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are issuing this AD to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

**DATES:** This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2007.

On May 12, 1999 (64 FR 16803, April 7, 1999), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin S.B. 8-52-39, Revision 'C,' dated September 1, 1997; and Bombardier Service Bulletin S.B. 8-52-

39, Revision 'D,' dated February 27, 1998.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7320; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

##### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 99-08-04, amendment 39-11109 (64 FR 16803, April 7, 1999). The existing AD applies to certain Bombardier Model DHC-8-100, -200, and -300 series airplanes. That NPRM was published in the **Federal Register** on September 26, 2006 (71 FR 56070). That NPRM proposed to continue to require modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges if necessary. That NPRM also proposed to require using revised procedures for modifying and inspecting the flight compartment door and to reduce the applicability of the existing AD.

##### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

#### Request To Publish Service Information/Incorporate by Reference in NPRM

The Modification and Replacement Parts Association (MARPA) states that ADs are based on service information that originates from the type certificate holder or its suppliers. MARPA adds that manufacturer's service documents are privately authored instruments, generally having copyright protection against duplication and distribution. When a service document is incorporated by reference into a public document, such as an AD, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that if a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated by reference. MARPA believes that public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA adds that the legal interpretation of a document is a question of law, not of fact; therefore, unless the service document is incorporated by reference, it cannot be considered. MARPA is concerned that failure to incorporate essential service information could result in a court decision invalidating the AD.

MARPA points out that in another AD issued from a Directorate other than the Transport Airplane Directorate, the FAA advised that documents are not incorporated by reference into proposed actions; only in final actions. MARPA can point to hundreds, if not thousands, of final rules where the documents were not incorporated by reference—either intentionally or by oversight. MARPA can also provide hundreds of references where the incorporation by reference text has been included in the proposed rule; thus there does not seem to be a consistent policy from action to action and across all Directorates on how to handle this issue.

MARPA also states that service documents incorporated by reference should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates those documents. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service

information by the manufacturer. MARPA adds that, a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 ("Replacement and modification parts") of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

In conclusion, MARPA notes that "looking at" a policy or procedure is not exactly the same as implementing it. Therefore, MARPA will continue to comment and request until such time as a decision has been implemented.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the actions required by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

#### Clarification of Paragraph (h) of This AD

We have changed paragraph (h) of this AD to clarify that the modification required by paragraph (f) of this AD is included in the inspection requirements in paragraph (h).

#### Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

#### Costs of Compliance

This AD affects about 167 airplanes of U.S. registry. The new actions of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

The modification takes about 4 work hours per airplane, at an average labor rate of \$80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the modification is \$53,440, or \$320 per airplane.

The inspection takes about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the inspection is \$26,720, or \$160 per airplane, per inspection cycle.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the ADDRESSES section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

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

#### § 39.13 [Amended]

- 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11109 (64 FR 16803, April 7, 1999) and by adding the following new airworthiness directive (AD):

**2007–01–11 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–14883. Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–AD.

#### Effective Date

- (a) This AD becomes effective March 5, 2007.

#### Affected ADs

- (b) This AD supersedes AD 99–08–04.

#### Applicability

- (c) This AD applies to Bombardier Model DHC–8–100, –200 and –300 series airplanes, certificated in any category; equipped with a flight compartment door installation having part number (P/N) 82510074–(\*), 82510294–(\*), 82510310–001, 8Z4597–001, H85250010–(\*), 82510700–(\*), or 82510704–(\*); except P/Ns 82510704–502 and 82510704–503.

**Note 1:** (\*) denotes all dash numbers.

#### Unsafe Condition

- (d) This AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are issuing this AD to prevent failure of the

alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Restatement of Requirements of Ad 99-08-04 With Revised Procedures

#### Modification

(f) Except as required by paragraph (g) of this AD: Within 90 days after May 12, 1999 (the effective date of AD 99-08-04), modify the lower hinge assembly and main door latch (Modification 8/2337) of the flight compartment door, in accordance with Bombardier Service Bulletin S.B. 8-52-39, Revision 'D,' dated February 27, 1998; or Revision 'H,' dated September 9, 2004. After the effective date of this AD, only Revision 'H' may be used for accomplishing the modification.

(g) For airplanes on which the modification required by paragraph (f) of this AD was done before the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8-52-39, dated August 30, 1996; or Revision 'A,' dated October 31, 1996: Within 90 days after the effective date of this AD, do the modification required by paragraph (f) of this AD in accordance with Bombardier Service Bulletin 8-52-39, Revision 'H,' dated September 9, 2004.

#### Inspection

(h) Within 800 flight hours after doing the modification required by paragraph (f) or (g) of this AD, as applicable: Inspect the hinge areas around the hinge pin holes of the flight compartment door for wear in accordance with Bombardier Service Bulletin S.B. 8-52-39, Revision 'D,' dated February 27, 1998; or Revision 'H,' dated September 9, 2004. After the effective date of this AD, only Revision 'H' may be used for accomplishing the inspection.

(1) If no wear is detected, or if the wear is less than or equal to 0.020 inch in depth, repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(2) If any wear is detected and its dimension around the hinge pin holes is less than 0.050 inch and greater than 0.020 inch in depth, prior to further flight, perform the applicable corrective actions specified in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(3) If any wear is detected and its dimension around the hinge pin holes is greater than or equal to 0.050 inch in depth, prior to further flight, replace the worn hinges with new hinges in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

#### Credit for Actions Accomplished Previously

(i) Modifications and inspections done before the effective date of this AD in

accordance with Bombardier Service Bulletin S.B. 8-52-39, Revision 'B,' dated July 4, 1997; Revision 'C,' dated August 1, 1997; Revision 'E,' dated May 10, 1999; Revision 'F,' dated February 4, 2000; or Revision 'G,' dated May 17, 2001; are considered acceptable for compliance with the modification and inspections required by this AD.

#### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 99-08-04 are approved as AMOCs for the corresponding provisions of paragraphs (f), (g), (h), and (i) of this AD.

(3) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Related Information

(k) Canadian airworthiness directive CF-1996-20R4, dated August 10, 2005, also addresses the subject of this AD.

#### Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin S.B. 8-52-39, Revision 'D,' dated February 27, 1998; and Bombardier Service Bulletin 8-52-39, Revision 'H,' dated September 9, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 8-52-39, Revision 'H,' dated September 9, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 12, 1999 (64 FR 16803, April 7, 1999), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin S.B. 8-52-39, Revision 'D,' dated February 27, 1998.

(3) Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on December 26, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25205; Directorate Identifier 2006-NM-071-AD; Amendment 39-14905; AD 2007-02-18]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 767-200 and -300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 767-200, -300, and -300F series airplanes. That AD currently requires an inspection of visually accessible areas for indications of overheating of the heater tape attached to the potable water fill and drain lines in the forward and aft cargo compartments, exposed foam insulation or missing or damaged protective tape around the potable water fill and drain lines, and debris or contaminants on or near the potable water fill and drain lines. That AD also requires corrective action, as necessary. This new AD requires repetitive inspections of the forward and aft cargo compartments, as applicable, for discrepancies of the potable water supply and gray water drain lines; and applicable corrective actions if necessary. This AD also requires replacing the heater tapes on the potable water supply and gray water drain lines of the forward and aft cargo compartments, as applicable, with new ribbon heaters, or deactivating and removing any defective heater tape and wrapping the drain line with foam insulation; either action ends the repetitive inspections. This AD results from a report of a fire in the aft cargo compartment. We are issuing this AD to prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane.

**DATES:** This AD becomes effective March 5, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 5, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket