

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 adding the following new airworthiness directive (AD):

**2007-02-15 Empresa Brasileira De Aeronautica S.A. (EMBRAER):**  
Amendment 39-14902. Docket No. FAA-2006-25889; Directorate Identifier 2006-NM-168-AD.

#### Effective Date

- (a) This AD becomes effective March 1, 2007.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes, certificated in any

category; serial numbers 17000007, 17000033, 17000034, 17000036 through 17000046 inclusive, and 17000050 through 17000067 inclusive.

### Unsafe Condition

(d) This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

### 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.

### Replacement

(f) Within 6,600 flight hours after the effective date of this AD: Replace all electrical bonding clamps having part number AN735D4 or AN735D6 with new clamps and replace the attaching hardware with new or serviceable attaching hardware, and do the other specified action, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170-28-0009, Revision 01, dated February 23, 2006. The other specified action must be done before further flight.

### Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170-28-0009, dated December 30, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) 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

(i) Brazilian airworthiness directive 2006-06-03, effective July 7, 2006, also addresses the subject of this AD.

### Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170-28-0009, Revision 01, dated February 23, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, 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 January 11, 2007.

**Kevin M. Mullin,**

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

[FR Doc. E7-899 Filed 1-24-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25328; Directorate Identifier 2006-NM-130-AD; Amendment 39-14880; AD 2007-01-08]

**RIN 2120-AA64**

### Airworthiness Directives; Bombardier Model DHC-8-400 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC-8-400 series airplanes. This AD requires inspecting for fouling and chafing damage of the outboard brake control cable of the main landing gear, replacing the control cable if necessary, reworking the control cable cover, and, if applicable, manufacturing/installing an offset plate on the control cable cover. This AD results from a review of brake control cable operation conducted by the manufacturer. We are issuing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

**DATES:** This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 2007.

**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 would apply to certain Bombardier Model DHC-8-400 series airplanes. That NPRM was published in the **Federal Register** on July 12, 2006 (71 FR 39244). That NPRM proposed to require inspecting for fouling and chafing damage of the outboard brake control cable of the main landing gear, replacing the control cable if necessary, reworking the control cable cover, and, if applicable, manufacturing/installing an offset plate on the control cable cover.

**Comments**

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

**Request To Publish Service Information**

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA states that, as an AD is a public regulatory instrument, it can not rely upon private writings. MARPA asserts that such IBR documents lose any original proprietary, protected status and become public documents, and, therefore, that they must be published in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA addresses the stated purpose of the Office of the Federal Register (OFR) IBR method, brevity, which is intended to relieve the

OFR from needlessly publishing documents already supplied to affected individuals (owners and operators of affected aircraft). MARPA asserts that "affected individuals" are no longer merely owners and operators, but, since most aircraft maintenance is now performed by specialty shops, that a new class of affected individuals has emerged. This new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303). Further, MARPA contends that the concept of brevity is now nearly archaic as most documents are kept in electronic files. MARPA therefore requests that IBR documents be posted in the DMS docket for the applicable AD.

We understand MARPA's comment concerning incorporation by reference. The 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 document 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.

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.

**Request for Policy Changes and Clarification**

MARPA also expresses concern about several perceived inconsistencies in current FAA policy regarding parts manufacturing approval (PMA) parts. MARPA states that type certificate holders in their service documents universally ignore the possible existence of PMA parts and that this is especially true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. Frequently the service document upon which an airworthiness directive is based will require the removal of a certain part-numbered part and the

installation of a different part-numbered part as a corrective action. This practice "runs afoul of 14 CFR 21.303," which permits development, certification, and installation of alternatively certified parts.

MARPA's statement that "this practice runs afoul of 14 CFR 21.303," under which the FAA issues PMAs, appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including 14 CFR 21.203, are intended to ensure that aeronautical products comply with applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Unless an operator obtains approval for an alternative method of compliance (AMOC), replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

**Request for Agreement on Parts Replacement**

MARPA further states the belief that the practice of requiring an AMOC to install a PMA part should be stopped, asserting that this is somehow tantamount to illogically stating that all PMA parts are inherently defective and require an additional layer of approval when the original equipment manufacturer (OEM) part is determined to be defective. MARPA states that the FAA personnel who diligently labored to certify the PMA part might disagree with such a narrow, OEM-slanted view. MARPA states that if the PMA part is defective, it must be deemed so in the AD and not simply implied by a catch-all AMOC requirement. MARPA states that this is the reason for its repeated

requests that language be adopted to trap such defective parts and suggests the Transport Airplane Directorate adopt the language used by the Small Airplane Directorate to accomplish this. MARPA asserts that the Small Airplane Directorate has developed a blanket statement that resolves this issue as set forth in AD 2006–20–10, amendment 39–14779 (71 FR 57405, September 29, 2006):

(f) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase “or FAA-approved equivalent P/N” in this AD is intended to allow for the installation of parts approved through identity to the design of the replacement parts. Equivalent replacement parts to correct the unsafe condition under PMA (other than identity) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.

MARPA concludes that, typically, the Engine Directorate and the Rotorcraft Directorate avoid the issue by specifying “airworthy parts” be installed, leaving the determination of exactly which parts to the installer. MARPA contends that, because this proposed action differs markedly in treatment of this issue from that of the other directorates, the mandates contained in Section 1, paragraph (b)(10), of Executive Order 12866, which requires that all agencies act uniformly on a given issue, are not

being met. MARPA therefore requests that steps be taken to bring the universe of PMA parts under the appropriate scope of this proposed action, both with respect to possible defective PMA parts and the use of possible present or future approved parts.

The FAA recognizes the need for standardization on this issue and currently is in the process of reviewing it at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

**Request To Comply With Draft FAA Order 8040.2**

MARPA asserts that the NPRM, as written, does not comply with proposed FAA Order 8040.2 which states, “Parts Manufacturer Approval (PMA). MCAI (mandatory continuing airworthiness information) that require replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identity. We have determined that any parts approved under this regulation and installed should be

subject to the actions of our AD and included in the applicability of our AD.”

The NPRM did not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs. We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in MCAI-related ADs. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. No change to the AD is needed in this regard.

**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 as proposed.

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of \$80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspect brake cable .....	1	N/A	\$80	17 .....	\$1,360.
Rework cable cover .....	3	N/A	240	17 .....	\$4,080.
Manufacture/install offset plate, as applicable .....	3	\$200	440	Up to 17 .....	Up to \$7,480.

**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 adding the following new airworthiness directive (AD):

**2007-01-08 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39-14880. Docket No. FAA-2006-25328; Directorate Identifier 2006-NM-130-AD.

#### Effective Date

(a) This AD becomes effective March 1, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Bombardier Model DHC-8-400 series airplanes, certificated in any category; having serial numbers 4003, 4004, 4006, 4008 through 4064 inclusive, 4072, and 4073.

#### Unsafe Condition

(d) This AD results from a review of brake control cable operation conducted by the manufacturer. We are issuing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

#### 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.

#### Inspection of Control Cable

(f) Within 12 months after the effective date of this AD, perform a general visual inspection for fouling and chafing damage of the outboard brake control cable of the main landing gear, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-53-37, Revision 'C,' dated December 5, 2005.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

#### Control Cable Cover Rework Only

(g) If no fouling or damage is found during the inspection required by paragraph (f) of

this AD: Within 24 months after the accomplishment date of the inspection, rework the control cable cover and, as applicable, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-53-37, Revision 'C,' dated December 5, 2005.

#### Cable Replacement and Control Cable Cover Rework

(h) If any fouling or damage is found during the inspection required by paragraph (f) of this AD: Before further flight, replace the control cable with a new control cable, rework the control cable cover and, if not already installed, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-53-37, Revision 'C,' dated December 5, 2005.

#### Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 84-53-37, Revision 'A,' dated October 17, 2005; or Revision 'B,' dated November 24, 2005; are considered acceptable for compliance with the corresponding actions specified in 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) 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-2006-05, dated March 31, 2006, also addresses the subject of this AD.

#### Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84-53-37, Revision 'C,' dated December 5, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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.*

[FR Doc. E7-911 Filed 1-24-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2006-26597; Directorate Identifier 2006-CE-86-AD; Amendment 39-14900; AD 2007-02-13]**

**RIN 2120-AA64**

#### Airworthiness Directives; DORNIER LUFTFAHRT GmbH Model 228-212 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for DORNIER LUFTFAHRT GmbH Model 228-212 airplanes. This AD requires you to inspect the landing gear carbon brake assembly. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union. We are issuing this AD to inspect the landing gear carbon brake assembly to detect and replace loose bolts or self-locking nuts, which could result in the brake assembly detaching and malfunctioning, degrade brake performance and potentially cause loss of control of the aircraft during landing and roll-out.

**DATES:** This AD becomes effective on March 1, 2007.

As of March 1, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by February 26, 2007.

**ADDRESSES:** Use one of the following addresses to comment on this AD.

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Fax:** (202) 493-2251.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.