

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2002–NM–345–AD.

**Applicability:** Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes; as listed in Boeing Service Bulletin DC9–57–225, dated December 10, 2002; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148 due to fatigue cracking, which could result in a deflected flap that may cause asymmetric lift and consequent reduced controllability and structural integrity of the airplane, accomplish the following:

#### Inspections

(a) Prior to the accumulation of 40,000 total landing cycles on the outboard idler hinge fitting of the left and right wing flap at station Xw=333.148, or within 8,000 landing cycles on the fitting after the effective date of this AD, whichever occurs later: Do high

frequency eddy current (HFEC) inspections for cracking of the counterbore of the two lower mounting holes and the lower forward edge of the flap idler hinge fitting at station Xw=333.148, per the Accomplishment Instructions of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Although the service bulletin specifies to report inspection findings to the airplane manufacturer, this AD does not include such a requirement.

#### Condition 1: No Crack Is Found

(b) If no crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, install a new nut, plain washer, and pre-load indicating (PLI) washer per the Accomplishment Instructions of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings on the fitting until the replacement required by paragraph (e) of this AD is done.

#### Condition 2: Crack Is Found

(c) If any crack is found during any inspection required by this AD: Before further flight, replace the cracked flap idler hinge fitting with a new or serviceable fitting having a part number identified under the "New Part Number" column of the applicable table shown in paragraph 2.C.1. of the Material Information section of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Do the replacement per the Accomplishment Instructions of the service bulletin.

#### Reinstatement of Inspections

(d) Prior to the accumulation of 40,000 total landing cycles on any new or serviceable fitting, do the HFEC inspections required by paragraph (a) of this AD. Repeat the HFEC inspections thereafter at intervals not to exceed 1,000 landing cycles on the fitting until the replacement required by paragraph (e) of this AD is done.

#### Replacement

(e) Prior to the accumulation of 80,500 total landing cycles on the flap idler hinge fitting, replace the fitting with a new or serviceable fitting having a part number identified under the "New Part Number" column of the applicable table shown in paragraph 2.C.1. of the Material Information section of Boeing Service Bulletin DC9–57–225, dated December 10, 2002. Do the replacement per the Accomplishment Instructions of the service bulletin. Repeat the replacement thereafter at intervals not to exceed 80,500 total landing cycles on the fitting.

#### Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on January 20, 2004.

**Kalene C. Yanamura,**

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

[FR Doc. 04–1912 Filed 1–28–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–NM–157–AD]

RIN 2120–AA64

#### Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. This proposal would require replacement of landing gear control handle components with new, improved components. This action is necessary to prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by March 1, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003–NM–157–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from

Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York, 11590; telephone (516) 228-7305; fax (516) 794-5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-157-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-157-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-2B19 (Regional Jet series 100 & 440) airplanes. TCCA advises that there have been two in-flight incidents where the slider within the landing gear control handle (LGCH) fractured during gear selection. This condition, if not corrected, could result in an inability to lower or retract the landing gear using the LGCH, which could result in use of Emergency Procedures using the landing gear manual release.

**Explanation of Relevant Service Information**

Bombardier has issued Service Bulletin 601R-32-084, dated May 17, 2002, which describes procedures for replacing the landing gear control handle with a new landing gear handle, which eliminates the need for temporary periodic inspections for the existing landing gear control handle. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF-2003-03, dated February 3, 2003, in order to assure the continued airworthiness of these airplanes in Canada.

**FAA's Conclusions**

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Difference Between Proposed Rule and Referenced Service Bulletin**

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. The FAA does not need this information from operators.

**Cost Impact**

The FAA estimates that 184 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$11,960, or \$65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions.

**Regulatory Impact**

The regulations proposed herein would 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

#### **Bombardier, Inc. (Formerly Canadair):** Docket 2003–NM–157–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7375 through 7632 inclusive, certificated in any category; equipped with landing gear control handle assemblies, Canadair Part Number (P/N) 601R50967–7 (Vendor P/N 7–45502–1) or Canadair P/N 601R50967–9 (Vendor P/N 7–45502–3).

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release, accomplish the following:

#### Replacement

(a) Within 5,000 flight cycles after the effective date of this AD, or within one year after the effective date of this AD, whichever occurs first; replace the landing gear control handle with a new landing gear control handle, Canadair P/N 601R50967–11 (Vendor P/N 7–45502–5), per the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–084, dated May 17, 2002.

#### Exception to Service Bulletin Reporting

(b) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

#### Maintenance Requirements Manual Revision

(c) Accomplishment of the actions in paragraph (a) of this AD constitutes terminating action for periodic crack inspections, as specified in Temporary Revision 2B–627 of Part 2 of the Maintenance Requirements Manual, Appendix B, Airworthiness Limitations.

#### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Canadian airworthiness directive CF–2003–03, dated February 3, 2003.

Issued in Renton, Washington, on January 20, 2004.

**Kalene C. Yanamura,**

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

[FR Doc. 04–1911 Filed 1–28–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 316

**RIN 3084–AA96**

#### Label For E-mail Messages Containing Sexually Oriented Material

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Trade Commission (“FTC” or “Commission”) seeks comment on the proposed rule setting forth the mark that is to be included in commercial electronic mail (“e-mail”) that includes sexually oriented material. Section 5(d) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187 (Dec. 16, 2003) (“CAN–SPAM Act” or “the Act”) directs the Commission to prescribe, within 120 days of enactment of that law, clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material. Pursuant to this mandate and its authority under section 13(a) of the Act, the Commission issues this Notice of Proposed Rulemaking and requests public comment on the proposed rule requiring that the prescribed mark be placed on certain commercial e-mail.

**DATES:** Written comments will be accepted until February 17, 2003. Due to the time constraints of this rulemaking procedure, the Commission does not contemplate any extensions of this comment period or any additional periods for written comments or rebuttal

comment. Comments that are not timely submitted and directly responsive to the specific questions set forth in Section G of this document may not be considered.

**ADDRESSES:** Comments should refer to “Proposed Mark for Sexually Oriented Spam, Project No. P044405.” Comments filed in paper form should also include this reference on their envelopes, and should be mailed or delivered, as prescribed in Section C of the Supplementary Information section, to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in Section C of the Supplementary Information section, to the following email box: [adulthood@ftc.gov](mailto:adulthood@ftc.gov). All federal government agency rulemaking initiatives are also available online at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan Kraden, (202) 326–2614 (e-mail: [adulthood@ftc.gov](mailto:adulthood@ftc.gov)), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### Section A. The CAN–SPAM Act of 2003

On December 16, 2003, the President signed into law the CAN–SPAM Act. In enacting this legislation, Congress found, *inter alia*, as set forth in section 2 of the Act, that “some commercial e-mail contains material that many recipients may consider vulgar or pornographic in nature.”<sup>1</sup>

Indeed, citizens across the country have expressed concern over the increasing amount of unsolicited commercial e-mail that they receive and, most notably, the sexually explicit images that are often included in these e-mails.<sup>2</sup> This concern has prompted eighteen (18) states to enact legislation in recent years requiring a label to be attached to unsolicited commercial e-mails that include sexually explicit or

<sup>1</sup> CAN–SPAM Act at section 2(a)(5).

<sup>2</sup> A study done by FTC staff found that 17% of pornographic offers sent in a sampling of unsolicited commercial e-mail contained images of nudity that appeared automatically when a consumer opened the e-mail message. Over 40% of these sampled e-mails contained false statements in their “From” or “Subject” lines, making it more likely that recipients would open the messages without knowing that pornographic images would appear. False Claims In Spam, April 30, 2003, available at <http://www.ftc.gov/opa/2003/04/spamrpt.htm>.