

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

2004-02-05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39-13440. Docket 2002-NM-311-AD.

Applicability: Model DHC-8-400, -401, and -402 airplanes; certificated in any category; having serial numbers (S/Ns) 4001 through 4065 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the autopilot or manual pitch trim, which may increase the workload of the flightcrew and, under certain conditions, could result in reduced controllability of the airplane, accomplish the following:

Replacement of Flight Guidance Modules

(a) For airplanes with S/Ns 4001 through 4003 inclusive and 4005 through 4058 inclusive: Within 60 days after the effective date of this AD, replace flight guidance modules (FGMs) FGM1 and FGM2, part number (P/N) C12429AA06, with improved FGMs, P/N C12429AA07, and perform a Return-to-Service procedure, per Bombardier Service Bulletin 84-22-04, Revision 'B,' dated April 17, 2002.

Note 1: Bombardier Service Bulletin 84-22-04, Revision 'B,' refers to Thales Service Bulletin C12429A-22-003, dated November 29, 2001, as an additional source of service information for modifying FGMs from P/N C12429AA06 to P/N C12429AA07. The Thales service bulletin is included in the Bombardier service bulletin.

Replacement of Flight Control Electronic Control Units

(b) For all airplanes: Within 8 months after the effective date of this AD, replace flight control electronic control units (FCECUs), P/N 398500-1001 or -1003, with improved FCECUs, P/N 398500-1005, and perform a Return-to-Service procedure, per Bombardier Service Bulletin 84-27-14, Revision 'A,' dated April 2, 2002.

Note 2: Bombardier Service Bulletin 84-27-14, Revision 'A,' refers to Parker Service Bulletin 398500-27-235, dated January 9, 2002, as an additional source of service information for modifying FCECUs from P/N 398500-1001 or -1003 to P/N 398500-1005. The Parker service bulletin is included in the Bombardier service bulletin.

Alternative Methods of Compliance

(c) 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.

Incorporation by Reference

(d) The actions shall be done in accordance with Bombardier Service Bulletin 84-22-04, Revision 'B,' dated April 17, 2002; and Bombardier Service Bulletin 84-27-14, Revision 'A,' dated April 2, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF-2002-25, dated April 25, 2002.

Effective Date

(e) This amendment becomes effective on March 5, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-1910 Filed 1-29-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 5

[Docket No. OST-2004-16970]

RIN 2105-AC11

Use of Direct Final Rulemaking

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is implementing a rulemaking procedure that will expedite the processing of noncontroversial changes to its regulations. OST will publish rules that the Secretary judges to be noncontroversial and unlikely to result in adverse public comment as "direct final" rules. Such direct final rules will advise the public that no adverse comment is anticipated, and that, unless written adverse comment or written notice of intent to submit adverse comment is received, the rule will become effective a specified number of days after the date it is published in the **Federal Register**. This new procedure should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules where OST receives no public comment. This rule also corrects the applicability section to remove reference to modal administrations that now have their own rulemaking procedures. These changes are made on the initiative of OST.

EFFECTIVE DATE: March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590. (202) 366-4723.

SUPPLEMENTARY INFORMATION:

Background

In an August 4, 1995, Notice of Proposed Rulemaking (NPRM), 60 FR 39919, OST proposed adopting direct final rulemaking procedures for the promulgation of specified categories of rules it expects to be noncontroversial

and unlikely to result in adverse comments. Direct final rulemaking, in specified cases, eliminates the unnecessary second round of internal review and clearance, as well as public review, that presently exists for all proposed rules. The National Performance Review, a presidential initiative to reorganize and streamline the federal government, and the Administrative Conference of the United States both recommended the use of "direct final" rulemaking to improve the efficiency of agency rulemaking procedures.

OST will determine when it is appropriate to employ direct final rulemaking procedures. OST will base its determination that a particular rulemaking is noncontroversial and unlikely to result in adverse comment upon its experience with similar rules that were proposed in the past and did not receive adverse public comment. OST will determine whether a comment is "adverse." An "adverse" comment is one that is critical of the rule, that suggests that the rule should not be adopted, or that suggests a change should be made in the rule. A comment submitted in support of the rule will not be considered adverse. In addition, a comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule will not be considered adverse.

Rules for which OST believes that the direct final rulemaking procedure may be appropriate include noncontroversial rules that (1) affect internal procedures of OST, such as filing requirements and rules governing the inspection and copying of documents; (2) are nonsubstantive clarifications or corrections to existing rules; (3) update existing forms; (4) make minor changes in the substantive rules regarding statistics and reporting requirements, such as a lessening of the reporting frequency (for example, from monthly to quarterly) or eliminating a type of data that no longer needs to be collected by OST; (5) make changes to the rules implementing the Privacy Act; and (6) adopt technical standards set by outside organizations, such as those developed by the Architectural Barriers and Compliance Board for determining compliance with the Americans with Disabilities Act.

OST will publish direct final rules in the final rule section of the **Federal Register**. The document will advise the public that no adverse comment is anticipated and that, unless written adverse comment or written notice of intent to submit adverse comment is

received within the specified comment period, the rule will become effective a specified number of days after the date it is published. If no written adverse comment or written notice of intent to submit adverse comment is received in response to the rule, OST will then publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective a specified number of days after the date that the direct final rule was published.

If, however, OST receives any written adverse comment or written notice of intent to submit adverse comment, then a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and, if the agency decides a rulemaking is still warranted, a notice of proposed rulemaking will be published in the proposed rule section. The proposed rule will provide for a new comment period. The additional time and effort necessary to withdraw the rule and issue a Notice of Proposed Rulemaking if there is adverse comment will serve as incentive for OST to act conservatively in evaluating whether to use the procedure for a particular rule.

Response to Comments

OST received five comments on the NPRM. They were submitted by the Advocates For Highway and Auto Safety (Advocates), the Air Transport Association of America (ATA), Enron Operations Corp. (EOC), Akzo Nobel Chemicals, and Panhandle Eastern Corporation (Panhandle). Although commenters expressed general support for the direct final rule procedure, they expressed concern over certain aspects of the process. OST has decided to adopt the direct final rule procedures proposed in the NPRM with some minor modifications to address the concerns raised in the comments.

ATA argued that publishing the direct final rule in the proposed rule section of the **Federal Register** would be more appropriate than publishing it in the final rule section. ATA believes that people may misunderstand that the direct final rule is a proposal on which they may comment if it is published in the final rule section of the **Federal Register**. OST is required to publish final rules in the final rule section of the **Federal Register** in order to codify them in the Code of Federal Regulations. The **Federal Register's** publication procedures provide that only proposed rules may be published in the proposed rule section of the **Federal Register**. OST also believes that interested parties are more likely to read the final rule section than the proposed rule section

of the **Federal Register**. The public is used to providing comments in response to interim final rules. Nevertheless, in response to the concerns raised, we plan to work with the **Federal Register** to give the public as much notice as possible of the opportunity to provide comments. For example, we plan to have the "action" caption read "direct final rule" and include language in the summary and preamble so that interested parties will be aware of their right to comment.

Akzo Nobel Chemicals, Panhandle Eastern Corp., and ATA all expressed concern over whether, in practice, the public would have a sufficient opportunity to comment on a direct final rule before the rule became final. Panhandle suggested that OST consider establishing a standard comment period, such as 30 days, between the date of publication and the rule's effective date. Panhandle argued that this would better ensure that those wishing to submit comments on the direct final rule would have sufficient time to do so. ATA commented that a short comment period might create problems since some direct final rules may have complex implications that require time to evaluate before they can be determined to be noncontroversial. ATA argued that this possibility was particularly true for direct final rules that addressed technical standards.

OST normally provides at least a 60-day comment period for all rulemakings. In cases where OST provides a shorter comment period for a proposed rule, OST explains in the preamble why a shorter comment period is necessary. In practice, it is in OST's interest to provide a comment period of sufficient length to allow interested parties to determine whether they wish or need to submit adverse comments. Too short a comment period could stymie the direct final rule process by forcing commenters to err on the side of caution and file an intent to submit adverse comment to stop the direct final rule process in cases involving any uncertainty of the effect of a direct final rule.

Akzo also expressed concern that the proposed procedures did not specify any particular comment period. Akzo proposed that language be included in the direct final rule procedure that allows potentially impacted parties to submit a notice of preliminary estimate of significant impact that would halt the expedited rulemaking process and require OST to seek comment. OST believes that its procedures adequately address this issue and that such a notice would be redundant. The timely submission of an adverse comment or a

notice of intent to submit adverse comment will immediately halt the direct final rulemaking procedure and trigger the rule's withdrawal. OST sees no need to include an additional, essentially identical, procedure. If a party believes it needs more time to decide whether to file even a notice of intent to file adverse comment, it can ask OST to extend the comment period (and state that, if we do not, we should treat this request as a notice of intent). We stress that we do not intend to use these procedures for complex, potentially controversial matters, and it is to our disadvantage if we misuse it and have to take extra steps as a result.

ATA also expressed concern that explanations of proposed regulatory actions might suffer under the direct final rule procedures. Our response is simply that we will try to avoid this and remind ATA that, once again, this procedure will only be used for minor, noncontroversial rules, which will not usually require much explanation. Further, it is in OST's interest to give clear explanations for rules. According to the Administrative Procedure Act (APA) (5 U.S.C. 553(c)), OST must provide a concise general statement of the basis and purpose of any rule, including a direct final rule. The use of direct final rulemaking procedures in no way excuses OST from complying with the APA and adequately explaining its action in the preamble to the direct final rule. Further, OST has every incentive to ensure that the direct final rule adequately explains any regulatory action since misunderstandings over the effect of a rule could cause members of the public to unnecessarily file an adverse comment or an intent to submit adverse comment in cases involving uncertainty, effectively resulting in the rule's withdrawal and creating more work for OST.

Advocates expressed general support for the direct final rule making process, but were concerned with the use of this procedural device for the adoption of technical standards developed by private organizations, particularly by the Department's modal administrations. However, these direct final rulemaking procedures apply only to rulemakings done in OST. Rulemakings done in DOT's modal administrations, such as FAA, are governed by each modal administration's own rules. We agree that technical standards, for the most part, are not ministerial issues and thus, very few, will be subject to the direct final rule procedure. In addition, if an objectionable technical standard is published, the public may object in

writing and the usual NPRM process will commence immediately.

Advocates also asked for clarification as to whether the text of the adverse comment needs to be submitted to OST within the comment period when notice of intent to submit adverse comment has been filed. The text of the comment does not have to be submitted within the comment period. It may be submitted later, if at all. As long as the written notice of intent to file an adverse comment is received by OST within the comment period, the direct final rule is withdrawn and, if appropriate, the usual NPRM process is initiated and a full notice and comment period begins, with its own deadline for comment submission. Any adverse comment received would be placed in the docket and considered in the NPRM or as part of the process for deciding on a final rule.

Advocates also expressed concern that OST could abuse and exploit the direct final rule procedure. We would like to assure Advocates and the public that the use of this procedure by OST is purely to save time and expense in its enactment of noncontroversial rules where no adverse comment is anticipated. If OST tries to use this procedure for rules that are in fact controversial, adverse comments serve as a safeguard to force the NPRM process. In such a case, OST ends up with more work than if it proposed the rule the usual way, hence the incentive is to use the process only for rules that are truly anticipated to be noncontroversial.

Panhandle asked whether a request for a clarification of a direct final rule would be considered an adverse comment for purposes of terminating a direct final rule. Requests for clarification of direct final rules will not be considered adverse comments. OST notes, however, that during pendency of the comment period, it will answer requests for clarification of rules. If the party requesting the clarification believes that the clarification is insufficient, the party may send a notice of adverse comment, which will end the direct final rule process.

In its comments in support of the direct final rulemaking procedure, EOC stated that it believed the direct final rulemaking procedure would apply to safety regulations issued by the Research and Special Programs Administration (RSPA). This is not the case. RSPA has its own direct final rulemaking procedure (*see* 49 CFR part 190.339) and RSPA regulations are not issued under OST's procedures. In light of Enron's comment, OST is taking this opportunity to update 49 CFR part 5 to

conform to current practice. In addition, OST is updating the applicability section of part 5 to remove the reference to the United States Coast Guard. Under the Homeland Security Act of 2002 (Pub. L. 107-296), the Coast Guard was transferred from the Department of Transportation to the Department of Homeland Security.

Regulatory Analyses and Notices

OST has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. There will be some savings in **Federal Register** publication costs and efficiencies for the public and OST personnel in eliminating duplicative reviews. This rule will lessen the number of documents they must review and comment on. Finally, it will not be used that often and not for rules OST anticipates will warrant comment.

Because this rule will only apply to actions that are not expected to result in adverse comment and because it will eliminate an unnecessary second round of review, OST certifies that this rule will not have a significant economic impact on a substantial number of small entities. Moreover, any impact should be positive. OST also has determined that there are not sufficient federalism implications to warrant consultation on the preparation of a federalism impact statement.

Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Unfunded Mandates Reform Act of 1995

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 5

Administrative practice and procedure.

■ For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR part 5 as follows:

PART 5—RULEMAKING PROCEDURES

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657).

■ 2. In part 5, subpart A, revise paragraph (a) of § 5.1 to read as follows:

§ 5.1 Applicability.

(a) This part prescribes general rulemaking procedures that apply to the issuance, amendment, and repeal of rules of the Office of the Secretary of Transportation. It does not apply to rules issued by the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Research and Special Programs Administration, St. Lawrence Seaway Development Corporation, or Federal Motor Carrier Safety Administration.

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■ 3. In part 5, subpart C, amend § 5.21 by adding paragraph (d), to read as follows:

§ 5.21 General.

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(d) For rules for which the Secretary determines that notice is unnecessary because no adverse public comment is anticipated, the direct final rulemaking procedure described in § 5.35 of this subpart may be followed.

■ 4. In part 5, subpart C, add a new § 5.35, to read as follows:

§ 5.35 Procedures for direct final rulemaking.

(a) Rules that the Secretary judges to be noncontroversial and unlikely to

result in adverse public comment may be published as direct final rules. These include noncontroversial rules that:

- (1) Affect internal procedures of the Office of the Secretary, such as filing requirements and rules governing inspection and copying of documents,
- (2) Are nonsubstantive clarifications or corrections to existing rules,
- (3) Update existing forms,
- (4) Make minor changes in the substantive rules regarding statistics and reporting requirements,
- (5) Make changes to the rules implementing the Privacy Act, and
- (6) Adopt technical standards set by outside organizations.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Office of the Secretary within the specified time after the date of publication and that, if no written adverse comment or written notice of intent to submit adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by the Office of the Secretary within the specified time of publication in the **Federal Register**, the Office of the Secretary will publish a notice in the **Federal Register** indicating that no

adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Office of the Secretary receives any written adverse comment or written notice of intent to submit adverse comment within the specified time of publication in the **Federal Register**, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and, if the Office of the Secretary decides a rulemaking is warranted, a notice of proposed rulemaking will be published in the proposed rule section of the **Federal Register**.

(e) An “adverse” comment for the purpose of this subpart means any comment that the Office of the Secretary determines is critical of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC, on January 13, 2004.

Norman Y. Mineta,
Secretary.

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