

Issued in Renton, Washington, on November 19, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-1106; Directorate Identifier 2009-NM-171-AD; Amendment 39-16122; AD 2008-09-24 R1]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model DHC-8-400, DHC-8-401, and DHC-8-402 Airplanes

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above that would revise an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002-043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525-001, to determine if mandatory corrective action is required.

The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions. Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. \* \* \*

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective December 21, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 21, 2009.

On June 6, 2008 (73 FR 24143, May 2, 2008), the Director of the Federal

Register approved the incorporation by reference of certain other publications listed in the AD.

We must receive comments on this AD by January 19, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; e-mail [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Richard Fiesel, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7304; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On April 24, 2008, we issued AD 2008-09-24, Amendment 39-15505 (73 FR 24143, May 2, 2008). That AD applied to all Bombardier Model DHC-8-400, DHC-8-401, and DHC-8-402 airplanes. That AD required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the CDCCLs specified in Dash 8 Q400 (Bombardier) Temporary Revisions (TRs) ALI-55, dated April 19, 2006; and

ALI-56, dated April 19, 2006; to Part 2, "Airworthiness Limitations Items," of the Bombardier Dash 8 Q400 Maintenance Requirements Manual (MRM) PSM 1-84-7.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory \* \* \* procedures \* \* \* have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS. But once the CDCCLs are incorporated into the ALS, future maintenance actions on components must be done in accordance with those CDCCLs.

#### Relevant Service Information

AD 2008-09-24 cites Dash 8 Q400 (Bombardier) Temporary Revision (TR) ALI-55, dated April 19, 2006; and TR ALI-56, dated April 19, 2006; to Part 2, "Airworthiness Limitations Items," of the Bombardier Dash 8 Q400 Maintenance Requirements Manual PSM 1-84-7. Since we issued that AD, Bombardier has revised the referenced service information. We have reviewed Dash 8 Q400 (Bombardier) TR ALI-76, dated January 24, 2008, to Part 2, "Airworthiness Limitations Items," of the Bombardier Dash 8 Q400 MRM PSM

1–84–7. The revised TR supersedes and cancels TR ALI–56 and updates applicability information, but adds no new procedures.

#### FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

#### Explanation of Additional Change to AD

AD 2008–09–24 allowed the use of alternative CDCCLs if they are part of a later revision of Part 2, Revision 4, dated October 30, 2003, of the Bombardier Dash 8 Q400 MRM PSM 1–84–7, Revision 4. That provision has been removed from this AD. Allowing the use of “a later revision” of a specific service document violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use an alternative CDCCL that is part of a later revision of the referenced service document as an alternative method of compliance, under the provisions of paragraph (g)(1) of this AD.

#### Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

#### Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that this AD will affect about 45 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the

cost of this AD to the U.S. operators to be \$3,600, or \$80 per product.

#### FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2009–1106; Directorate Identifier 2009–NM–171–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

#### 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 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 this AD:

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. 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.

#### 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 FAA amends § 39.13 by removing amendment 39–15505 (73 FR 24143, May 2, 2008) and adding the following new AD:

**2008–09–24 R1 BOMBARDIER, INC. (Formerly de Havilland, Inc.):**  
Amendment 39–16122. Docket No. FAA–2009–1106; Directorate Identifier 2009–NM–171–AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective December 21, 2009.

#### Affected ADs

(b) This AD revises AD 2008–09–24, Amendment 39–15505.

#### Applicability

(c) This AD applies to all Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category, all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states: “Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.”

“The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions. Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. Revisions have been made to Part 2 “Airworthiness Limitations Items” of the Maintenance Requirements Manual of the affected models to introduce the required CDCCL.”

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to include the CDCCL data.

**Restatement of Requirements of AD 2008–09–24, With Updated Service Information**

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) For all airplanes: Within 60 days after June 6, 2008 (the effective date of AD 2008–09–24), revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs specified in Dash 8 Q400 (Bombardier) Temporary Revisions (TRs) ALI–55, dated April 19, 2006; ALI–56, dated April 19, 2006; and TR ALI–76, dated January 24, 2008; to Part 2, “Airworthiness Limitations Items,” of the Bombardier Dash

8 Q400 Maintenance Requirements Manual (MRM) PSM 1–84–7.

**Note 1:** The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of the applicable TRs into the maintenance requirements manual. When the TRs have been included in the general revision of the maintenance program, the general revision may be inserted into the maintenance requirements manual, provided the relevant information in the general revision is identical to that in the applicable TRs, and the TRs may be removed.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

**New Information**

**Explanation of CDCCL Requirements**

**Note 2:** Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraph (f)(1) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational

Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to ensure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–06, dated January 15, 2008, and the service information specified in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Dash 8 Q400 (Bombardier) TR—	Dated—
ALI–55 .....	April 19, 2006.
ALI–56 .....	April 19, 2006.
ALI–76 .....	January 24, 2008.

**Material Incorporated by Reference**

(i) You must use the service information specified in Table 2 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—SERVICE INFORMATION INCORPORATED BY REFERENCE

Dash 8 Q400 (Bombardier) TR—	Dated—
ALI–55 to Part 2, “Airworthiness Limitations Items,” of the Bombardier Dash 8 Q400 Maintenance Requirements Manual (MRM) PSM 1–84–7.	April 19, 2006.
ALI–56 to Part 2, “Airworthiness Limitations Items,” of the Bombardier Dash 8 Q400 Maintenance Requirements Manual (MRM) PSM 1–84–7.	April 19, 2006.
ALI–76 to Part 2, “Airworthiness Limitations Items,” of the Bombardier Dash 8 Q400 Maintenance Requirements Manual (MRM) PSM 1–84–7.	January 24, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of Dash 8 Q400 (Bombardier) TR ALI–76, dated January 24, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Dash 8 Q400 (Bombardier) TR ALI–55, dated April 19, 2006; and Dash 8 Q400 (Bombardier) TR ALI–56, dated April

19, 2006; on June 6, 2008 (73 FR 24143, May 2, 2008).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

(4) You may review copies of the service information at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal\\_register/](http://www.archives.gov/federal_register/)

[code\\_of\\_federal\\_regulations/  
ibr\\_locations.html](#)

Issued in Renton, Washington, on  
November 19, 2009.

**Stephen P. Boyd,**

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

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## **RAILROAD RETIREMENT BOARD**

### **20 CFR Part 220**

**RIN 3220-AB62**

### **Removal of Listing of Impairments and Related Amendments**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board removes the Listing of Impairments from its regulations. The Board's Listing of Impairments (the Listings) is out of date and no longer reflects advances in medical knowledge, treatments, and methods of evaluation. These amendments provide public notice as to how the Railroad Retirement Board will determine disability after removal of the Listings.

**DATES:** This rule will be effective December 4, 2009.

**ADDRESSES:** Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** We remove and reserve the entire Part A and Part B that comprise the Listing of Impairments (the Listings), as well as the introductory paragraphs, in Appendix 1 of Part 220, Title 20, of the Board's regulations. The Listings have been used to evaluate disability under the Railroad Retirement Act (RRA). When the Listings were originally published on March 28, 1991 (56 FR 12980), they conformed to the criteria used to evaluate disability under the Social Security Act. The basis for this conformity is that disability for any "regular work" under the RRA is defined by reference as an inability to engage in any "substantial gainful activity" as that term is used in the Social Security Act, and courts have held that disability for "regular employment" as that term is used in the RRA has the same meaning as disability for "substantial gainful activity" as that term is used in the Social Security Act.

See, for example, *Peppers v. Railroad Retirement Board*, 728 F.2d 404 (7th Cir. 1984). For this reason, many of the Board's regulations used to determine disability parallel the regulations of the Social Security Administration in subpart P, part 404 of title 20 [Determining Disability and Blindness].

### **What Programs Will the Final Rule Affect?**

The Board pays benefits based on disability for any regular work to insured employees, surviving spouses and surviving children disabled prior to age 22, as well as benefits based on disability for one's regular railroad occupation to insured employees who meet additional service requirements. The Listing of Impairments has been used in the evaluation of claims based on disability for benefits under the RRA.

### **How Is Disability Defined?**

Disability under the RRA means that an otherwise qualified claimant is unable either to do his or her past regular railroad occupation, or to do any other regular work, as a result of a medically determinable physical or mental impairment, or combination of impairments, expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. The difference in eligibility for an "occupational" disability or a disability for any "regular work" is based on the employee's years of service or age and his or her current connection to the railroad industry.

### **How Is Disability Determined?**

The Board, in general, follows a sequential method of evaluating disability which takes into consideration the claimant's current work activity, if any, and then considers all medical evidence. If a claimant cannot be found to be disabled based on medical factors alone, the Board then considers vocational factors such as age, education and work experience.

The five steps used to evaluate disability for any regular employment under the Act, set out in section 220.100 of the Board's regulations, parallel the steps in section 404.1520 of the regulations of the Social Security Administration, used to determine disability for a period of disability, disability insurance benefits, child's insurance benefits based on disability and widow(er)'s insurance benefits based on disability for months after 1990.

The first step of that sequence is to determine if the claimant is working and if so, if that work is substantial gainful activity (SGA). If it is, then the

claimant is not disabled, regardless of his or her impairments. If the claimant is not working in SGA, the second step is to evaluate the medical severity of the impairment or combined impairments. If the impairment(s) is not so severe that it significantly limits the claimant's ability to do basic work activities, the claim is denied. If it does, and the impairment(s) has lasted or is expected to last for at least 12 months, or is expected to result in death, the third step has been to determine whether the impairment(s) meets or is medically equal to an impairment listed in appendix 1 of that part. If so, the claimant is disabled. It is this step that will be changed by these amendments. If the claimant is not disabled based on medical factors alone, the fourth step is to determine the claimant's residual functional capacity and whether his or her impairment(s) prevents the performance of the physical and mental demands of his or her past relevant work. If the claimant can still perform that work, then he or she is not disabled. If he or she cannot, then the Board determines, at the fifth step, whether there exists other work in the national economy which an individual of the claimant's age, education, work experience and residual functional capacity can be expected to perform. If such work exists, disability is denied. Otherwise disability is allowed.

### **What Is the Listing?**

The Listing of Impairments sets out the medical criteria that have been used to determine whether a claimant's impairment(s) is so severe that he or she is disabled based on medical factors alone. The listing has been considered at the first step of the sequence followed when evaluating a claimant's disability for work in his or her regular railroad occupation, as set out in section 220.13 of the Board's regulations, and at the third step of the sequence followed when evaluating disability for any regular work, as set out in section 220.100. The listing has been in two parts. Part A listed the criteria used to evaluate impairments of individuals age 18 or older. Part B listed the criteria used to evaluate the impairments of children under age 18. Each part of the listing was organized by body systems, and each body system had an introductory text explaining types of evidence and other factors to be considered when evaluating the medical documentation of impairments of that body system for disability. The introductory text was followed by a list of impairments and the specific medical criteria which had to be met or equaled for that impairment to be so severe that