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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2006-26046; Directorate Identifier 2006-NM-172-AD; Amendment 39-14922; AD 2007-03-11]**

**RIN 2120-AA64**

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

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

**ACTION:** Final rule.

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**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires inspecting for discrepancies of the activation mechanism of certain chemical oxygen generators, and corrective action if necessary. This AD results from several incidents, on certain airplane models, of incorrect installation of the release pin into the safety pin hole of the activation mechanism of the chemical oxygen generator; this resulted in failure to activate the chemical oxygen generator when required. A separate incident occurred on a different airplane model during deployment of the cabin oxygen system, which resulted in failure of the release pin to activate the oxygen generator at a flight attendant station. We are issuing this AD to prevent failure of the activation mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

**DATES:** This AD becomes effective March 12, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 12, 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., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, 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) 228-7305; 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 CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. That NPRM was published in the Federal Register on October 12, 2006 (71 FR 60083). That NPRM proposed to require inspecting for discrepancies of the activation mechanism of certain chemical oxygen generators, and corrective action if necessary.

### **Comments**

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

### **Request To Incorporate by Reference/Publish Service Information**

The Modification and Replacement of Parts Association (MARPA) states that frequently ADs are derived from service information originating with the type certificate holder or its suppliers. MARPA also states that manufacturer's service documents are privately authored instruments generally enjoying copyright protection against duplication and distribution. MARPA contends that when a service document is incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into a public document such as an AD, it loses its private, protected status and becomes itself a public document. MARPA explains that if a service document is used as a mandatory element of compliance it should not simply be referenced, but should be incorporated into the regulatory document. MARPA states that public laws by definition must be public, which means they cannot rely for compliance upon private writings, especially when the writings originate in a foreign country. MARPA adds that the interpretation of a document is not a question of fact, but of law, bound by the figurative four corners of the document; therefore, unless the service document is incorporated by reference, a court of law will not consider it when interpreting the AD. MARPA is concerned that failure to incorporate-by-reference the relevant service information could result in a court decision invalidating the AD.

MARPA advises that it was informed that service documents are usually not incorporated into proposed actions (NPRMs), but only into final actions. MARPA notes that there is no indication in the NPRM that the FAA intends to incorporate by reference the necessary service information; in addition, there is no indication of which service documents are mandatory and which are merely sources of additional service information; therefore, the reader is unsure of the FAA's intent. MARPA asks that future proposed actions indicate the FAA intent by including the following, or a similar statement: "We intend to incorporate by reference the following publications."

MARPA also states that incorporation by reference service documents should be made available to the public by publication in the Docket Management System (DMS) keyed to the action that incorporates them. MARPA adds that, under the aforementioned authorities, incorporation by reference is a technique used to reduce the size of the Federal Register when the information is already available to the affected individuals. MARPA notes that, traditionally, "affected individuals

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

We understand MARPA's comment concerning incorporation by reference. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated 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.

The FAA does not concur with the commenter's request to indicate in an NPRM our intent to incorporate service information by reference. When we propose that actions be accomplished in accordance with certain service information in an NPRM, the public may assume we intend to IBR that service information, as requested by the Office of the Federal Register. Service information that is cited in the proposed AD as a source of additional information is not presented as a requirement, and the public may assume we do not intend to IBR that service information. No change to this final rule is necessary in regard to the commenter's request.

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

## **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**

This AD affects about 145 airplanes of U.S. registry.

The inspection in Bombardier Alert Service Bulletin A601R-35-014 takes about 3 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this inspection for U.S. operators is \$34,800, or \$240 per airplane.

The inspection in Bombardier Service Bulletin 601R-35-016 takes about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this inspection for U.S. operators is \$11,600, or \$80 per airplane.

## **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):



**2007-03-11 Bombardier, Inc. (Formerly Canadair):** Amendment 39-14922. Docket No. FAA-2006-26046; Directorate Identifier 2006-NM-172-AD.

**Effective Date**

(a) This AD becomes effective March 12, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; as identified in Bombardier Alert Service Bulletin A601R-35-014, dated September 25, 2003; and Bombardier Service Bulletin 601R-35-016, dated September 8, 2005.

**Unsafe Condition**

(d) This AD results from several incidents, on certain airplane models, of incorrect installation of the release pin into the safety pin hole of the activation mechanism of the chemical oxygen generator; this resulted in failure to activate the chemical oxygen generator when required. A separate incident occurred on a different airplane model during deployment of the cabin oxygen system, and resulted in failure of the release pin to activate the oxygen generator at a flight attendant station. We are issuing this AD to prevent failure of the activation mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

**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.

**Inspections/Corrective Action**

(f) Do the detailed inspections for discrepancies of certain chemical oxygen generators of each flight attendant and lavatory oxygen panel, as applicable, and each passenger service unit of the passenger oxygen system, as specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For airplanes identified in paragraph 1.A. of Bombardier Alert Service Bulletin A601R-35-014, dated September 25, 2003: Within 550 flight hours after the effective date of this AD, do a one-time inspection for correct alignment and engagement of the release pin with the lanyard tube in the mask container module of the activation (firing) mechanism in the chemical oxygen generator by doing all the actions, including all applicable corrective actions, in accordance with the

Accomplishment Instructions of Bombardier Alert Service Bulletin A601R-35-014, dated September 25, 2003. Do all applicable corrective actions before further flight.

(2) For airplanes identified in paragraph 1.A. of Bombardier Service Bulletin 601R-35-016, dated September 8, 2005: Within 1,100 flight hours after the effective date of this AD; do a one-time inspection for correct installation of the release pin of the activation mechanism of the chemical oxygen generator, by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R-35-016, dated September 8, 2005. Do all applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Note 2: Bombardier Service Bulletin 601R-35-016, dated September 8, 2005, refers to B/E Aerospace Service Bulletin 117003-35-4, dated March 29, 2001, as an additional source of service information for accomplishing the inspection and corrective action specified in paragraph (f) of this AD.

### **Alternative Methods of Compliance (AMOCs)**

(g)(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**

(h) Canadian airworthiness directive CF-2006-11, dated May 31, 2006, also addresses the subject of this AD.

### **Material Incorporated by Reference**

(i) You must use Bombardier Alert Service Bulletin A601R-35-014, dated September 25, 2003; and Bombardier Service Bulletin 601R-35-016, dated September 8, 2005; as applicable; 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 these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, 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 January 24, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-1600 Filed 2-2-07; 8:45 am]