

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20733; Directorate Identifier 2005-NM-004-AD; Amendment 39-14179; AD 2005-14-02]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. This AD requires inspecting to determine the part number of the left and right engine fire handles; and replacing the engine fire handles with engine fire handles having different part numbers if necessary. This AD is prompted by cases of the internal circuit of the engine fire handle failing. We are issuing this AD to prevent failure of the internal circuit of the engine fire handle that could disable the fuel shut-off valves and the discharge of the fire extinguishing agent, which, in the event of a fire, could result in the inability to extinguish a fire.

DATES: This AD becomes effective August 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 15, 2005.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, Washington, DC. This docket number is FAA-2005-20733; the directorate identifier for this docket is 2005-NM-004-AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. That action, published in the Federal Register on March 31, 2005 (70 FR 16447), proposed to require inspecting to determine the part number of the left and right engine fire handles; and replacing the engine fire handles with engine fire handles having different part numbers if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that has been submitted on the proposed AD.

Request To Allow Installation of Alternative Parts

The commenter asks that the language specified in the proposed AD be changed to allow installation of alternative parts. The commenter states that the proposed AD is objectionable because it specifies part numbers that are to be installed, to the exclusion of other possibly acceptable parts. The commenter notes that 14 CFR 21.303(a), Parts Manufacturing Approval (PMA), provides a legal mechanism for the installation of alternative parts; a rule that mandates only certain parts for installation contravenes existing law and may not be legally enforceable. The commenter adds that although no known PMA alternatives have been identified for the parts that are found defective per this proposed AD, it is still possible that parts now existing, or manufactured in the future, could be legally used in place of those specified in the proposed AD. The commenter states that allowing PMA alternatives can be accomplished by changing paragraph (f) of the proposed AD to add the phrase "or PMA alternatives" to the end of the sentence which identifies the part numbers for installation.

We do not agree. ADs are issued to provide a means of compliance for operators to ensure that the identified unsafe condition is properly addressed, and the service information referenced in this AD identifies the replacement parts necessary to obtain that compliance. It is impossible for us to foresee all the potential means to correct the unsafe condition, including the availability of replacement parts from sources other than the original manufacturer. This is especially true for yet-to-be designed replacement parts. It is our policy to allow the use of alternative parts, which may exist or may not yet be manufactured, in place of the replacement parts specified in the requirements of this AD only after a review of the design data for those parts to verify that the unsafe condition will not be reintroduced. This review is conducted once we receive a request for an alternative method of compliance. Any operator who would like to use an alternate type of engine fire handle may submit a request for approval of an alternative method of compliance, as specified in paragraph (i) of this AD. The request must include data substantiating that an acceptable level of safety would be maintained by use of the alternate type of engine fire handle. No change to the AD is needed in this regard.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the change

described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 616 airplanes of U.S. registry. The actions would take about 2 work hours per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$80,080, or \$130 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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

AIRWORTHINESS DIRECTIVE



Aircraft Certification Service
Washington, DC

U.S. Department
of Transportation
**Federal Aviation
Administration**

We post ADs on the internet at "www.faa.gov"

The following Airworthiness Directive issued by the Federal Aviation Administration in accordance with the provisions of Title 14 of the Code of Federal Regulations (14 CFR) part 39, applies to an aircraft model of which our records indicate you may be the registered owner. Airworthiness Directives affect aviation safety and are regulations which require immediate attention. You are cautioned that no person may operate an aircraft to which an Airworthiness Directive applies, except in accordance with the requirements of the Airworthiness Directive (reference 14 CFR part 39, subpart 39.3).

2005-14-02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39-14179.
Docket No. FAA-2005-20733; Directorate Identifier 2005-NM-004-AD.

Effective Date

- (a) This AD becomes effective August 15, 2005.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB-135 and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145-26-0012, Revision 01, dated January 6, 2005; and EMBRAER Service Bulletin 145LEG-26-0003, Revision 01, dated January 6, 2005.

Unsafe Condition

(d) This AD was prompted by cases of the internal circuit of the engine fire handle failing. We are issuing this AD to prevent failure of the internal circuit of the engine fire handle that could disable the fuel shut-off valves and the discharge of the fire extinguishing agent, which, in the event of a fire, could result in the inability to extinguish a fire.

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

(f) Within 1,000 flight hours or 180 days after the effective date of this AD, whichever is first: Inspect to determine the part number (P/N) of the left and right engine fire handles, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145-26-0012, Revision 01, dated January 6, 2005 (for Model EMB-135 and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes, except for Model EMB-135BJ airplanes); or EMBRAER Service Bulletin 145LEG-26-0003, Revision 01, dated January 6, 2005 (for Model EMB-135BJ series airplanes); as applicable. Instead of inspecting the left and right engine fire handles, a review of

airplane maintenance records is acceptable if the P/Ns of the left and right engine fire handles can be determined conclusively from that review. If left and right engine fire handles, P/Ns 1-7054-1 and 2-7054-1, respectively, are found installed on the airplane, then no further action is required by this paragraph. If any engine fire handle having P/N 1-7054-2 or 2-7054-2 is found installed on the airplane, before further flight, replace the engine fire handle with an engine fire handle having P/N 1-7054-1 or 2-7054-1, as applicable, in accordance with the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install left or right engine fire handles, P/Ns 1-7054-2 and 2-7054-2, on any airplane.

Credit for Previous Service Bulletin

(h) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145-26-0012, dated October 6, 2004; or EMBRAER Service Bulletin 145LEG-26-0003, dated October 6, 2004; as applicable; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) 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.

Related Information

(j) Brazilian airworthiness directive 2004-10-01, effective October 30, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 145-26-0012, Revision 01, dated January 6, 2005; or EMBRAER Service Bulletin 145LEG-26-0003, Revision 01, dated January 6, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, go to 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.

Issued in Renton, Washington, on June 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-13431 Filed 7-8-05; 8:45 am]

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