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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0132; Directorate Identifier 2008-NM-081-AD; Amendment 39-16306; AD 2010-11-01]

RIN 2120-AA64

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

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. 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:

During aircraft full scale fatigue test, it has been found the occurrence of cracks in the cockpit windshield post lower eyelet fitting at the attachment of the center post on the forward fuselage (SSI 53-10-19). Further analysis of this cracking resulted in modifications on the aircraft Airworthiness Limitation Items (ALI), to include new inspection tasks and its respective intervals. Undetected fatigue cracking in this area could adversely affect the structural integrity of these airplanes.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 6, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 6, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the Federal Register on February 18, 2009 (74 FR 7570). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During aircraft full scale fatigue test, it has been found the occurrence of cracks in the cockpit windshield post lower eyelet fitting at the attachment of the center post on the forward fuselage (SSI 53-10-19). Further analysis of this cracking resulted in modifications on the aircraft Airworthiness Limitation Items (ALI), to include new inspection tasks and its respective intervals. Undetected fatigue cracking in this area could adversely affect the structural integrity of these airplanes.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Explanation of Revised Service Information

Empresa Brasileira de Aeronautica S.A. (EMBRAER) has issued Revision 12, dated September 19, 2008, of Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER EMB135/EMB145 Maintenance Review Board Report (MRBR) MRB-145/1150. In the NPRM we referred to EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 11, dated September 19, 2007, as an appropriate source of service information.

We have revised paragraph Table 1 of this AD to refer to Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 12, dated September 19, 2008. We have also added a new paragraph (f)(3) to this AD to specify that actions done before the effective date of this AD in accordance with EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 11, dated September 19, 2007, are acceptable for compliance with the corresponding requirements of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Extend Grace Period

EMBRAER requests that we consider extending the grace period for doing the tasks required by paragraph (f) of the NPRM from 200 flight cycles after revising the ALS to 500 flight cycles after revising the ALS. EMBRAER explains that the extension of the grace period would allow operators to better program their maintenance schedules, thereby avoiding grounding airplanes without affecting flight safety.

We disagree with the request to extend the grace period to 500 flight cycles after revising the ALS. The commenter did not provide any technical information to substantiate the assertion that the

extension would not adversely affect flight safety. However, under the provisions of paragraph (g)(1) of this AD, we will consider requests for adjustments to the grace period if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Allow Later Revisions of Service Information

EMBRAER recommends that we accept later revisions of Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER EMB135/EMB145 Maintenance Review Board Report (MRBR) MRB-145/1150, Revision 11, dated September 19, 2007. EMBRAER points out that AD 2008-13-14, Amendment 39-15577 (73 FR 35904, June 25, 2008), accepts later revisions of the MRBR included in that AD.

We disagree with adding a general statement to the AD that accepts any later revision of EMBRAER MRBR MRB-145/1150, Revision 11, dated September 19, 2007, that we have not reviewed and approved. We note that we approved use of later revisions of the MRBR referenced in AD 2008-13-14 only if approved by the Manager, ANM-116, FAA, or Agência Nacional de Aviação Civil (or its delegated agent). We cannot use the phrase, "or later FAA-approved revisions," in an AD when referring to the service document because doing so violates Office of the Federal Register (OFR) regulations for approval of materials "incorporated by reference" in rules. To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (g)(1) of this AD.

However, as stated previously, we have reviewed and approved Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 12, dated September 19, 2008, which is now referenced as the appropriate source of service information for this AD. We have made no further change to this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This 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 our FAA policies. Any such differences are highlighted in a Note within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from \$80 per work-hour to \$85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 709 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 \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$60,265, or \$85 per product.

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.

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 the NPRM, 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.

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 AD:



2010-11-01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39-16306.
Docket No. FAA-2009-0132; Directorate Identifier 2008-NM-081-AD.

Effective Date

- (a) This airworthiness directive (AD) becomes effective July 6, 2010.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ, -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes, certificated in any category, all serial numbers, except Model EMB-145LR airplanes that have been modified in accordance with Brazilian Supplemental Type Certificates 2002S06-09, 2002S06-10, and 2003S08-01.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25-1529-1.

Subject

- (d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states:

During aircraft full scale fatigue test, it has been found the occurrence of cracks in the cockpit windshield post lower eyelet fitting at the attachment of the center post on the forward fuselage (SSI 53-10-19). Further analysis of this cracking resulted in modifications on the aircraft Airworthiness Limitation Items (ALI), to include new inspection tasks and its respective intervals. Undetected fatigue cracking in this area could adversely affect the structural integrity of these airplanes.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new structural inspection requirements.

Actions and Compliance

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

(1) Within 90 days after the effective date of this AD revise the ALS of the Instructions for Continued Airworthiness to incorporate the structural inspection item (SSI) 53-10-19's applicable tasks identified in Appendix 2, "Airworthiness Limitation Requirements," of the applicable document listed in Table 1 of this AD. The initial compliance times for the task start from the applicable time specified in SSI 53-10-19 or within 200 flight cycles after revising the ALS, whichever occurs later. Repeat the applicable inspection thereafter at the interval specified in Appendix 2 of the applicable document listed in Table 1 of this AD, except as provided by paragraphs (f)(2) and (g) of this AD.

Table 1 – Service information

Model -	Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER -
EMB-135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes	EMB135/EMB145 Maintenance Review Board Report (MRBR) MRB-145/1150, Revision 12, dated September 19, 2008
EMB-135BJ airplanes	Legacy BJ - Maintenance Planning Guide MPG-1483, Revision 5, dated March 22, 2007

Note 2: Appendix 2, "Airworthiness Limitation Requirements," of EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 12, dated September 19, 2008, includes EMBRAER Temporary Revision 10-6, dated May 23, 2007, which is referred to in the MCAI as an applicable document to incorporate into the maintenance program.

(2) After accomplishing the actions specified in paragraph (f)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspection or inspection interval is approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent); or unless the inspection or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

(3) Actions done before the effective date of this AD in accordance with EMBRAER EMB135/EMB145 MRBR MRB-145/1150, Revision 11, dated September 19, 2007, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

(1) We have removed the requirement to mandate the SSI tasks in Section 4—"Structural Inspection Requirements," of the applicable document listed in Table 1 of this AD which are referred to in the MCAI. Those SSI tasks are included in Appendix 2, "Airworthiness Limitation Requirements," of the applicable document listed in Table 1 of this AD.

(2) We have not included the 21,336-flight-cycle threshold specified in the MCAI because the airplanes in the U.S.-registered fleet have surpassed that threshold. Instead, we included a 200-flight-cycle grace period for accomplishing the SSI 53-10-19 tasks.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, 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: Todd Thompson, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. 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.

(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 assure 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 Brazilian Airworthiness Directive 2007-07-02, effective August 21, 2007, and the service information listed in Table 1 of this AD, for related information.

Material Incorporated by Reference

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

Table 2 – Material incorporated by reference

Document	Revision	Date
EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB-145/1150	12	September 19, 2008
EMBRAER Legacy BJ - Maintenance Planning Guide MPG-1483	5	March 22, 2007

EMBRAER EMB135/EMB145 Maintenance Review Board Report (MRBR) MRB-145/1150, Revision 12, dated September 19, 2008, contains the following effective pages:

List of Effective Pages:

Page Title/ Description	Page(s)	Revision Number	Date Shown on Page(s)
MRBR Title Page	None shown*	12	September 19, 2008
MRBR Record of Temporary Revisions	None shown*	12	September 19, 2008
MRBR List of Effective Pages	A-L	None shown*	September 19, 2008

Appendix 2 – Airworthiness Limitation Requirements

	A2-1 through A2-22	None shown*	September 19, 2007
	A2-23 through A2-90	None shown*	September 19, 2008

(*Only the Record of Temporary Revisions of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB-145/1150, Revision 12, dated September 19, 2008, contains the revision levels that correspond to the revision dates; no other page of the document contains this information.)
EMBRAER Legacy BJ–Maintenance Planning Guide (MPG) MPG-1483, Revision 5, dated March 22, 2007, contains the following effective pages:

List of Effective Pages

Page Title/ Description	Page(s)	Revision Number	Date Shown on Page(s)
MPG Title Page	None shown*	5	March 22, 2007
MPG Record of Temporary Revisions	None shown*	5	March 22, 2007
MPG List of Effective Pages	A-J	None shown*	March 22, 2007

Appendix 2 – Airworthiness Limitation Requirements

	A2-1 through A2-8, A2-12, A2-14 through A2-16	None shown*	October 14, 2005
	A2-9, A2-10, A2-13	None shown*	July 31, 2003
	A2-11	None shown*	April 1, 2004
	A2-17 through A2-40	None shown*	March 22, 2007

(*Only the Record of Temporary Revisions of EMBRAER Legacy BJ–Maintenance Planning Guide MPG-1483, Revision 5, dated March 22, 2007, contains the revision levels that correspond to the revision dates; no other page of the document contains this information.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227-901 São Jose dos Campos–SP–BRASIL; telephone: +55 12 3927-5852 or +55 12 3309-0732; fax: +55 12 3927-7546; e-mail: distrib@embraer.com.br; Internet: <http://www.flyembraer.com>.

(3) 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.

(4) 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/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 10, 2010.

Ali Bahrami,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.