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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25889; Directorate Identifier 2006-NM-168-AD; Amendment 39-14902; AD 2007-02-15]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This AD requires replacement of certain electrical bonding clamps and attaching hardware with new or serviceable parts, as applicable, and other specified action. This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective March 1, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 1, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for service information identified in this AD.

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

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 EMBRAER Model ERJ 170 airplanes. That NPRM was published in the Federal Register on September 26, 2006 (71 FR 56062). That NPRM proposed to require replacement of certain electrical bonding clamps and attaching hardware with new or serviceable parts, as applicable, and other specified action.

Comments

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

Request To Extend Compliance Time

EMBRAER requests that we extend the compliance from 5,000 flight hours to 6,600 flight hours. EMBRAER states that 6,000 flight hours corresponds with a heavy maintenance visit, and that an additional 600 flight hours is needed for the logistics associated with such maintenance intervention. As justification, EMBRAER states that (1) There is a large number of bonding clamps to replace, (2) low levels of lightning currents were measured on the tank tubes during airplane certification testing, and (3) very conservative results were obtained during laboratory lightning tests of the tank tubes.

We agree. Extending the compliance time to 6,600 flight hours will not adversely affect safety and will allow the replacement to be performed during regularly scheduled maintenance at a base where special equipment and trained maintenance personnel will be available if necessary. Further, we have coordinated with the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, and ANAC agrees with extending the compliance time as proposed by the commenter. Therefore, we have revised paragraph (f) of this AD to specify a compliance time of 6,600 flight hours.

Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds 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; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated 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 notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the Federal Register needlessly by publishing documents already in the hands of the affected individuals; traditionally, “affected individuals” means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds 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 notes that this new class includes maintenance and repair organizations, 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). 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.

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 document 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.

In regard to the commenter's request to post service bulletins on DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on 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 with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 68 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Required parts cost about \$41 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is \$8,228, or \$121 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):



2007-02-15 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39-14902.
Docket No. FAA-2006-25889; Directorate Identifier 2006-NM-168-AD.

Effective Date

(a) This AD becomes effective March 1, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes, certificated in any category; serial numbers 17000007, 17000033, 17000034, 17000036 through 17000046 inclusive, and 17000050 through 17000067 inclusive.

Unsafe Condition

(d) This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

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.

Replacement

(f) Within 6,600 flight hours after the effective date of this AD: Replace all electrical bonding clamps having part number AN735D4 or AN735D6 with new clamps and replace the attaching hardware with new or serviceable attaching hardware, and do the other specified action, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170-28-0009, Revision 01, dated February 23, 2006. The other specified action must be done before further flight.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170-28-0009, dated December 30, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) 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.

(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

(i) Brazilian airworthiness directive 2006-06-03, effective July 7, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170-28-0009, Revision 01, dated February 23, 2006, 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 this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, 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.

Issued in Renton, Washington, on January 11, 2007.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-899 Filed 1-24-07; 8:45 am]