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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24440; Directorate Identifier 2006-NM-058-AD; Amendment 39-14862; AD 2006-26-04]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-145XR 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 EMB-145XR airplanes. This AD requires replacement of certain segments of the passenger seat tracks with new, improved seat tracks. This AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are issuing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

DATES: This AD becomes effective January 31, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 31, 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 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 supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB-145XR airplanes. That supplemental NPRM was published in the Federal Register on August 8, 2006 (71 FR 44935). That supplemental NPRM proposed to require replacement of certain segments of the passenger seat tracks with new, improved seat tracks.

Comments

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

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). MARPA adds 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 supplemental NPRM be incorporated by reference into the regulatory instrument and published in DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. 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 the Department of Transportation's 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.

Request To Allow Use of Parts Manufacturer Approval (PMA) Parts

MARPA states that the practice of requiring the replacement of a defective part with a certain part conflicts with 14 CFR 21.303. MARPA asserts that requiring installation of a certain part prevents installation of other good parts and prohibits the development of new parts. MARPA also states that the practice of requiring an alternative method of compliance (AMOC) to install a PMA part should be stopped. MARPA concludes that this practice presumes that all PMA parts are inherently defective and require an additional layer of approval.

MARPA further states the NPRM does not comply with FAA Order 8040.2; that order states that replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identity. That order also states that any parts approved under this regulation and installed should be subject to the actions of the AD and included in the applicability.

MARPA states that if a PMA part is defective, then it must be addressed in an AD and not just simply implied by an AMOC requirement. MARPA suggests that we adopt language used in ADs issued by directorates other than the Transport Airplane Directorate, which specify installing an "FAA-approved equivalent part number" or "airworthy parts." MARPA contends that the mandates contained in Section 1, paragraph (b)(1) of Executive Order 12866 are not being met because the directorates differ in their treatment of this issue. MARPA, therefore, requests that we revise the supplemental NPRM to allow use of PMA parts.

We do not agree to revise this AD. The supplemental NPRM does not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the supplemental NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs.

We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in ADs in a standardized way at the national level. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to this AD in this regard.

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 in the supplemental NPRM.

Costs of Compliance

This AD affects about 97 airplanes of U.S. registry. The required actions take about 10 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts cost about \$82 per airplane. Based on these figures, the estimated cost of this AD on U.S. operators is \$85,554, or \$882 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):



2006-26-04 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39-14862.
Docket No. FAA-2006-24440; Directorate Identifier 2006-NM-058-AD.

Effective Date

- (a) This AD becomes effective January 31, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to EMBRAER Model EMB-145XR airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145-53-0059, Revision 01, dated March 9, 2006.

Unsafe Condition

- (d) This AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are issuing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

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 of Passenger Seat Tracks

- (f) Within 5,000 flight hours after the effective date of this AD, replace segments of the internal and external passenger seat tracks with new, improved seat tracks, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145-53-0059, Revision 01, dated March 9, 2006.

Alternative Methods of Compliance (AMOCs)

- (g)(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

(h) Brazilian airworthiness directive 2006-01-01R1, effective May 23, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 145-53-0059, Revision 01, dated March 9, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. EMBRAER Service Bulletin 145-53-0059, Revision 01, dated March 9, 2006, contains the following effective pages:

<u>Page Number</u>	<u>Revision Level Shown on Page</u>	<u>Date Shown on Page</u>
1, 2, 16	01	March 9, 2006
3-15, 17	Original	July 1, 2005

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 December 11, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-22041 Filed 12-26-06; 8:45 am]