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Issued in Renton, Washington, on September 6, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-21345; Directorate Identifier 2005-NM-005-AD; Amendment 39-14266; AD 2005-19-01]

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 all EMBRAER Model ERJ 170 airplanes. This AD requires inspecting the hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic pressure tubes. This AD results from failure of a hydraulic system due to leakage of hydraulic fluid from a crack in the pipe coming from the pressure side of the engine-driven pump. We are issuing this AD to prevent cracking of the hydraulic pressure pipes, which could result in failure of hydraulic system 1 or 2 or both, and consequent reduced controllability of the airplane.

**DATES:** This AD becomes effective October 19, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 19, 2005.

**ADDRESSES:** You may examine the AD docket on the Internet at [http://](http://dms.dot.gov)

[dms.dot.gov](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 98055-4056; 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 all EMBRAER Model ERJ 170 airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32544). That NPRM proposed to require inspecting the hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic pressure tubes.

##### **Comments**

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

##### **Request To Withdraw NPRM**

One commenter, the airplane manufacturer, asserts that hydraulic pressure tubes having the affected serial numbers have been removed from all EMBRAER Model ERJ 170 airplanes. The commenter states that, since issuance of Brazilian airworthiness directive 2004-11-06, dated November 29, 2004, the affected hydraulic pressure tubes have not been installed in production on EMBRAER Model ERJ 170 airplanes. The commenter also states that, as of December 2004, EMBRAER Service Bulletin 170-29-

0001, dated August 9, 2004, has been accomplished on the entire worldwide fleet of Model ERJ 170 airplanes. We infer the commenter requests that we withdraw the NPRM.

We do not agree. Even if the worldwide fleet is in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that an affected spare part is not installed on any airplane in the future. The manufacturer has advised us that there are about five affected hydraulic pressure tubes that have not been destroyed or returned to the manufacturer. Issuance of this AD will ensure that an affected spare part is not installed on an airplane at some future time. Therefore, we cannot withdraw the NPRM.

##### **Change to Applicability**

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

##### **Change to Service Bulletin Reference**

We have revised the note in paragraph (f) of this AD to reference the correct service bulletin name of the secondary source of service information to EMBRAER Service Bulletin 170-29-0001.

##### **Conclusion**

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

##### **Costs of Compliance**

This AD affects about 27 airplanes of U.S. registry. The inspection takes about 1 work hour per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is \$1,755, or \$65 per airplane.

The replacement, if necessary, takes about 3 work hours per airplane, at an average labor rate of \$65 per work hour. Required parts are \$0 per airplane. Based on these figures, the estimated cost of the replacement is \$195 per airplane, if necessary.

##### **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):

**2005–19–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER):**  
Amendment 39–14266. Docket No. FAA–2005–21345; Directorate Identifier 2005–NM–005–AD.

#### Effective Date

(a) This AD becomes effective October 19, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100LR, –100 STD, –100SE, and –100 SU airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD was prompted by failure of a hydraulic system due to leakage of hydraulic fluid from a crack in the pipe coming from the pressure side of the engine-driven pump. We are issuing this AD to prevent cracking of the hydraulic pressure pipes, which could result in failure of hydraulic system 1 or 2 or both, and consequent reduced controllability 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.

#### Inspection and Replacement if Necessary

(f) Within 100 flight hours or 14 days after the effective date of this AD, whichever is first: Inspect the left and right hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004.

(1) If neither hydraulic pressure tube has a serial number as identified in Part I of the service bulletin, then no further action is required by this paragraph.

(2) If only one hydraulic pressure tube has a serial number as identified in Part I of the service bulletin: Within 600 flight hours after the inspection, replace the affected hydraulic pressure tube with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin.

(3) If both hydraulic pressure tubes have serial numbers as identified in Part I of the service bulletin: Before further flight, replace one of the affected hydraulic pressure tubes with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin. Within 600 flight hours after the inspection, replace the other affected hydraulic pressure tube with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin.

**Note 1:** EMBRAER Service Bulletin 170–29–0001 refers to Macchi-Hurel Dubois (MHD) Service Bulletin CF34–8E MHD 71–00–011, dated August 3, 2004, as an additional source of service information for inspecting the hydraulic pressure tubes to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic

pressure tube as applicable. Macchi-Hurel Dubois (MHD) Service Bulletin CF34–8E MHD 71–00–011 is included in EMBRAER Service Bulletin 170–29–0001.

#### No Reporting Requirement

(g) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

#### Parts Installation

(h) As of the effective date of this AD, no person may install a hydraulic pressure pipe having any part and serial numbers identified in Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004, on any airplane.

#### 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.

#### Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004, 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/cfr/ibr-locations.html>.

Issued in Renton, Washington, on September 6, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
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