

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such *in camera*, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests, foreign policy interests, or the confidentiality of commercial and/or financial information.

**§ 404.31 Procedure for declining to testify and/or produce records.**

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

**§ 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.**

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

**§ 404.33 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.32 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

**§ 404.34 Procedure for demands for testimony or production of documents regarding confidential information.**

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

**§ 404.35 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.**

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

**§ 404.36 No private right of action.**

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

Dated: March 15, 2006.

**Howard A. Schweitzer,**  
*General Counsel (Acting), Export-Import Bank of the United States.*

[FR Doc. 06–2749 Filed 3–21–06; 8:45 am]

BILLING CODE 6690–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD; Amendment 39–14516; AD 2006–06–07]

RIN 2120–AA64

**Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires inspecting the main landing gear (MLG) main fitting for cracks, and repair if necessary. This AD also requires installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

**DATES:** This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 26, 2006.

**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 Fokker Services B.V., Technical Services Dept, P.O. Box 231,

2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1137; 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 Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on January 4, 2006 (71 FR 293). That NPRM proposed to require inspecting the main landing gear (MLG) main fitting for cracks, and repair if necessary. That NPRM proposed also to require installing a placard and revising the airplane flight manual (AFM) to include procedures to prohibit the application of brakes during backward movement of the airplane.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Explanation of Changes to the NPRM**

We have added the model number in paragraph (f). We have also corrected a typographical error in paragraph (g) of the AD. We have also corrected the service bulletin name in paragraphs (i) and (j) of the AD, and corrected the service bulletin reference in paragraphs (h), (i) and (j) of the AD.

**Conclusion**

We have carefully reviewed the available data, 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**

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection .....	2	\$65	\$0	\$130	11	\$1,430
AFM Revision and Placard Installation ....	1	65	0	65	11	715

**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):

**2006-06-07 Fokker Services B.V.:**  
Amendment 39-14516. Docket No. FAA-2005-23476; Directorate Identifier 2005-NM-204-AD.

**Effective Date**

- (a) This AD becomes effective April 26, 2006.

**Affected ADs**

- (b) None.

**Applicability**

- (c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category; equipped with Messier-Dowty main landing gears (MLGs).

**Unsafe Condition**

- (d) This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks

in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

#### 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.

#### Airplane Flight Manual (AFM) Revision and Placard Installation

(f) Within 14 days after the effective date of this AD, amend the Limitations section of the Fokker F.28 AFM to prohibit application of brakes during backward movement of the airplane. This may be done by inserting a copy of this AD in the AFM.

**Note 1:** When a statement to prohibit application of brakes during backward movement of the airplane has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(g) Within 14 days after the effective date of this AD, affix a placard on the pedestal, next to the parking brake handle, having the following wording: "APPLICATION OF BRAKES DURING BACKWARD MOVEMENT IS PROHIBITED."

#### Inspection and Corrective Action

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Do an eddy current inspection of the MLG main fittings and repair before further flight as applicable, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100-32-106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, except as provided by paragraphs (i) and (j) of this AD.

(1) For airplanes on which an inspection has not been done in accordance with Messier-Dowty Service Bulletin F100-32-104, Revision 2, dated October 30, 2003: Within 3 months after the effective date of this AD.

(2) For airplanes on which an inspection has been done in accordance with Messier-Dowty Service Bulletin F100-32-104, Revision 2, dated October 30, 2003: Within 2,000 flight cycles since the last inspection done in accordance with the service bulletin or within 3 months after the effective date of this AD, whichever occurs later.

#### Exceptions to the Service Bulletin

(i) Where Messier-Dowty Service Bulletin F100-32-106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies contacting the manufacturer for repair: Before further flight, repair using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority—The Netherlands (CAA-NL) (or its delegated agent).

(j) Although Messier-Dowty Service Bulletin F100-32-106, including Appendices A through C and excluding Appendix D, dated February 18, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

#### Parts Installation

(k) As of the effective date of this AD, no person may install, on any airplane, a Messier-Dowty MLG, unless it has been inspected/repared according to paragraph (h) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM-116, 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

(m) Dutch airworthiness directives 2002-115/2, dated October 8, 2004; and NL-2005-002, dated April 14, 2005, also address the subject of this AD.

#### Material Incorporated by Reference

(n) You must use Messier-Dowty Service Bulletin F100-32-106, including Appendices A through C and excluding Appendix D, dated February 18, 2005; 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 Fokker Services B.V., Technical Services Dept, P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on March 10, 2006.

#### Kalene C. Yanamura,

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

[FR Doc. 06-2674 Filed 3-21-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-23475; Directorate Identifier 2005-NM-117-AD; Amendment 39-14518; AD 2006-06-09]

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 revising the Airworthiness Limitations section (ALS) of the airplane maintenance manual (AMM) to include new, specific maintenance tasks related to the incorporation of a new horizontal stabilizer actuator. This AD also requires revising the ALS of the AMM to include revised repetitive inspection intervals for certain tasks in the maintenance plan related to the aileron and flap/slat flight controls system. This AD results from safety assessments of the aileron and flap/slat flight controls system, conducted after the type certification of the airplane, which showed that some dormant faults did not comply with the safety assessment criteria. We are issuing this AD to prevent failure of the aileron and flap/slat controls system, which could result in reduced controllability of the airplane.

**DATES:** This AD becomes effective April 26, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 26, 2006.

**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, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton,