

is installed: At the applicable times in paragraph 1.E, "Compliance," of Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009, except as required by paragraph (p)(2) of this AD, do LFEC, HFEC, and detailed inspections, as applicable, for cracking of the doubler, tripler, quadrupler, skin, bear strap, and inner chord strap, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E, "Compliance," of Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009.

#### (o) Supplemental Repair

If any cracking is found during any inspection required by paragraph (n) of this AD, before further flight, repair the crack in accordance with the procedures specified in paragraph (q) of this AD.

#### (p) Exceptions to Service Bulletin Specifications

The following exceptions apply to this AD.

(1) Where Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009, specifies a compliance time after the "original issue date" or "Revision 1 date of the service bulletin," this AD requires compliance after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009, specifies doing the HFEC, LFEC, and detailed inspections required by paragraph (n) of this AD before the accumulation of 37,500 total flight cycles, this AD requires the inspections to be accomplished at the latest of the times specified in paragraphs (p)(2)(i) and (p)(2)(ii) of this AD.

(i) Before the accumulation of 37,500 total flight cycles.

(ii) Within 24 months after the effective date of this AD.

(3) Where Boeing Special Attention Service Bulletin 757-53-0094, Revision 1, dated August 12, 2009, specifies contacting Boeing for repair instructions, this AD requires repairing in accordance with the procedures specified in paragraph (q) of this AD.

#### (q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: (425) 917-6440; fax: (425) 917-6432; email: [nancy.marsh@faa.gov](mailto:nancy.marsh@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2004-09-32, Amendment 39-13622 (69 FR 25481, May 7, 2004), are approved as AMOCs for the corresponding actions in paragraphs (g), (h), and (i) of this AD.

#### (r) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: (425) 917-6440; fax: (425) 917-6432; email: [nancy.marsh@faa.gov](mailto:nancy.marsh@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone (206) 544-5000, extension 1; fax (206) 766-5680; email [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced 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.

Issued in Renton, Washington, on December 16, 2011.

**Michael Kaszycki,**

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

[FR Doc. 2011-33355 Filed 12-28-11; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2011-1325; Directorate Identifier 2010-NM-250-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model ERJ 170 airplanes. The existing AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new

structural inspection requirements. Since we issued that AD, during full scale fatigue testing, cracks were found in certain structural components of the airplane. Analysis of these cracks resulted in manufacturer modifications of the ALS of Embraer ERJ 170 Maintenance Review Board Report (MRBR), which include new inspections tasks, or modification of the current tasks and their respective thresholds and intervals. This proposed AD would revise the maintenance program to incorporate new or revised structural inspection requirements. We are proposing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by February 13, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed 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; email: [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet: <http://www.flyembraer.com>. You may review copies of the referenced 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.

#### **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 this proposed AD, 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.

**FOR FURTHER INFORMATION CONTACT:**

Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2768; fax (425) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2011-1325; Directorate Identifier 2010-NM-250-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On May 14, 2010, we issued AD 2010-11-13, Amendment 39-16318 (75 FR 30284, June 1, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010-11-13, Amendment 39-16318 (75 FR 30284, June 1, 2010): The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2011-04-01, dated May 5, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During the airplane full scale fatigue test, cracks were found in some structural components of the airplane. Analysis of these cracks resulted in modifications on the Airworthiness Limitation Section (ALS) of Embraer ERJ 170 Maintenance Review Board Report (MRBR), to include new inspections tasks or modification of existing ones and its respective thresholds and intervals.

Failure to inspect these structural components, according to the new/revised tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could

adversely affect the structural integrity of the airplane.

\* \* \* \* \*

The required action is revising the maintenance program to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

EMBRAER has issued Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB-1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7-1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB-1621, Revision 7, dated November 11, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 166 products of U.S. registry.

The actions that are required by AD 2010-11-13, Amendment 39-16318 (75 FR 30284, June 1, 2010) and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of \$85 per work hour. Based on these figures, the estimated cost of the currently required actions is \$85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$14,110, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 proposed regulation:

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),
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 proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 removing Amendment 39–16318 (75 FR 30284, June 1, 2010) and adding the following new AD:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER);** Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD.

**(a) Comments Due Date**

We must receive comments by February 13, 2012.

**(b) Affected ADs**

This AD supersedes AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)

**(c) Applicability**

This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions 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 actions 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 (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1A.

**(d) Subject**

Air Transport Association (ATA) of America Code 53: Fuselage; 57: Wings.

**(e) Reason**

This AD was prompted by cracks found in certain structural components during full scale fatigue testing of the airplane. Analysis of these cracks resulted in manufacturer modifications of the ALS of Embraer ERJ 170 Maintenance Review Board Report (MRBR), which include new inspections tasks, or modification of the current tasks and their respective thresholds and intervals. We are issuing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

**(f) Compliance**

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Restatement of Requirements of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010):**

**(g) Actions**

Within 90 days after July 6, 2010 (the effective date of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate the inspection tasks identified in the EMBRAER temporary revisions (TRs) to Appendix A—Part 2 of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB–1621 listed in table 1 of this AD. The initial compliance times for the tasks start from the applicable threshold times specified in the TRs for the corresponding tasks of the maintenance review board report or within 500 flight cycles after July 6, 2010, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the “Applicability” column of the applicable TRs identified in table 1 of this AD. The threshold values stated in the TRs referenced in table 1 of this AD are total flight cycles on the airplane since the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness.

TABLE 1—INSPECTION TASKS

| TR           | Date                   | Subject   | Task No.   |
|--------------|------------------------|---|--|
| TR 4–1 ..... | October 15, 2007 ..... | Ram air turbine compartment, support structure and cut-out structure-internal.<br>Nose landing gear wheel well metallic structure ..... | 53–10–012–0002<br>53–10–012–0003<br>53–10–021–0005<br>53–10–021–0006 |
| TR 4–3 ..... | December 6, 2007 ..... | Wing stub spar 3 side fitting—internal .....  | 57–01–012–001  |
|              |                        | Wing upper skin panels—external .....   | 57–10–010–0002   |
|              |                        | Fixed trailing edge lower skin panel—external .....   | 57–50–002–0002   |
|              |                        | Fixed trailing edge rib 4A—external .....   | 57–50–005–0003   |
|              |                        | Fixed trailing edge rib 6—internal .....  | 57–50–005–0004   |
| TR 4–4 ..... | January 18, 2008 ..... | Wing stub main box lower—internal .....   | 57–01–002–003  |

**(h) No Alternative Inspections for Paragraph (g) of This AD**

Except as required by paragraph (i) of this AD, after accomplishing the actions specified in paragraph (g) 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 (k)(1) of this AD.

**New Requirements of This AD**

**(i) Revision of the Maintenance Program**

Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate the new or revised tasks

specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010, with the initial compliance times and intervals stated in these documents. The initial compliance times for the tasks start from the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness of the applicable airplane at the applicable time specified in the tasks, or within 600 flight cycles after revising the maintenance program, whichever occurs later. For certain tasks, the compliance times depend on the pre-

modification and post-modification status of the actions specified in the associated service bulletin, as specified in the “Applicability” column of Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010. For tasks identified in the documents identified in this paragraph, doing the initial task required by this paragraph terminates the requirements of paragraph (g) of this AD for that task.

**(j) No Alternative Actions Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)**

After accomplishing the revisions required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used other than those specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB-1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7-1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB-1621, Revision 7, dated November 11, 2010, unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2768; fax (425) 227-1320. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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.

**(l) Related Information**

Refer to MCAI Brazilian Airworthiness Directive 2011-04-01, dated May 5, 2011; and Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB-1621, Appendix A, Part 2, Airworthiness Limitations, Revision 7, dated November 11, 2010; and Temporary Revision (TR) 7-1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB-1621, Revision 7, dated November 11, 2010; for related information.

Issued in Renton, Washington, on December 19, 2011.

**Kalene C. Yanamura,**

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

[FR Doc. 2011-33279 Filed 12-28-11; 8:45 a.m.]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

**[DOD-2011-HA-0076]**

**RIN 0720-AB53**

**TRICARE; Extended Care Health Option**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) is publishing this proposed rule to establish TRICARE coverage under the Extended Care Health Option (ECHO) of Applied Behavior Analysis (ABA) for Autism Spectrum Disorders (ASD).

**DATES:** Written comments received at the address indicated below by February 27, 2012 will be accepted.

**ADDRESSES:** Comments may be submitted, identified by docket number and/or Regulatory Information Number (RIN) and title by either of the following methods:

- *Federal Rulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or RIN for **Federal Register** document. The General policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3520.

**SUPPLEMENTARY INFORMATION:****I. Background**

In response to Section 717 of the John Warner National Defense Authorization

Act for Fiscal Year 2007 (NDAA FY 2007) [Pub. L. 109-364, October 17, 2006], DoD submitted to Congress in July 2007 the “Department of Defense Report and Plan on Services to Military Dependent Children with Autism.” The plan included a proposal to use the authority under 10 U.S.C. 1092 to conduct a Demonstration within the ECHO with a view to improving the quality, efficiency, convenience and cost effectiveness of providing services to eligible Active Duty Family Members (ADFM) diagnosed with one of the Autism Spectrum Disorders (ASD). Central to the Demonstration was the authority under 10 U.S.C. 1092 to provide reimbursement for the one-on-one Applied Behavior Analysis (ABA) services rendered by an individual who is not a TRICARE-authorized provider. Such non-certified individual, referred to in the Demonstration as a “Tutor,” is referred to in this proposed rule as an “ABA Tutor.” This rule requires that ABA Tutors meet the minimum requirements set forth in the current demonstration or, at the discretion of the Director, TRICARE Management Activity (TMA), the DoD may either adopt standards established in the future by a qualified accreditation organization as defined in title 32, Code of Federal Regulations (CFR), 199.2 (32 CFR 199.2) or, after review and analysis of the effectiveness of ABA Tutors with various levels of training, establish additional education, training or certification requirements for ABA Tutors. Although it is common practice to use ABA Tutors to render direct “hands-on” contact with those diagnosed with an ASD, currently there is no national certification process or governance body that sets uniform education, experience, oversight and disciplinary standards for Tutors.

The purpose of the Demonstration was to test whether a tiered delivery and reimbursement methodology for ABA services would (1) provide increased access to ABA services, (2) provide ABA services to those most likely to benefit from them, (3) ensure the quality of ABA services by utilizing a professional community of providers including providers certified by the Behavior Analyst Certification Board (BACB), and (4) determine whether requirements are being met for State licensure or certification where such exists.

Following publication of the “Notice” in the **Federal Register** on December 4, 2007 (72 FR 68130) the Department of Defense Enhanced Access to Autism Services Demonstration [the “Demonstration”] was implemented on March 15, 2008 for a two-year period.