

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 330

[Docket No. 02-011-3]

#### Redelivery of Cargo for Inspection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We are withdrawing a proposed rule that would have allowed inspectors from the Animal and Plant Health Inspection Service (APHIS) to require that cargo be returned to the port of first arrival or, if convenient, another location as specified by APHIS for inspection when necessary. The proposed rule was intended to simplify the inspection process by allowing APHIS inspectors to deal directly with owners, shippers, brokers, and their agents rather than having to request that the U.S. Customs Service act on APHIS' behalf and order the cargo returned to the port for inspection. We are taking this action after consulting with the Department of Homeland Security and determining that the incorporation of both Customs and APHIS port inspectors into that department has made the proposed change in the regulations unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane E. Levy, Senior Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737-1236; (301) 734-8259.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 20, 2002, we published in the *Federal Register* (67 FR 41868-41869, Docket No. 02-011-1) a proposal to amend the regulations pertaining to the inspection of cargo entering the United States to provide that inspectors from the Animal and Plant Health Inspection Service (APHIS) could require that cargo

be returned to the port of first arrival or, if convenient, another location as specified by APHIS for inspection when necessary. The proposed rule was intended to simplify the inspection process by allowing APHIS inspectors to deal directly with owners, shippers, brokers, and their agents, rather than having to request that the U.S. Customs Service act on APHIS' behalf and order the cargo returned to the port for inspection.

We solicited comments for 60 days ending August 19, 2002. We received three comments by that date. On August 27, 2002, we published in the *Federal Register* (67 FR 54976, Docket No. 02-011-2) a notice that we were reopening the comment period for the proposed rule until September 16, 2002. We did not receive any additional comments by that date.

After consultation with the Department of Homeland Security (DHS), we have determined that proceeding with a final rule is unnecessary since both Customs and APHIS port inspectors have been incorporated into the Border and Transportation Security Division of DHS. Therefore, we are withdrawing the June 20, 2002, proposed rule.

**Authority:** 7 U.S.C. 450, 7701-7772, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 31st day of March, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-7739 Filed 4-5-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-79-AD]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-120 series airplanes. This proposal would require repetitive inspections for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG) wheels; repetitive measurement of the gap and height dimensions of the coupling clips; corrective actions, if necessary; and eventual replacement of all coupling clips with new, improved coupling clips. This action is necessary to prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the MLG, which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by May 6, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-79-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-79-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP 12.225, Sao Jose dos Campos-SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003-NM-79-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-79-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

##### Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-120

series airplanes. The DAC advises that it received reports of momentary loss of normal braking during low speed taxiing. In two of the reported incidents there was a complete loss of normal braking in all four main landing gear (MLG) wheels. Investigation revealed an excessive gap in the anti-skid drive coupling clips for the hubcaps of the inboard and outboard MLG wheels. These excessive gaps may impair the proper coupling of the clips with the anti-skid wheel speed transducer shaft, causing a temporary loss of normal braking in all four main wheels. This condition, if not corrected, could result in momentary loss of the normal braking system at low speeds and reduced controllability of the airplane.

##### Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120-32-0088, Revision 01, dated October 1, 2003, which describes procedures for the following actions:

- A visual inspection for cracks, damage, distortion or broken-off pieces of the anti-skid drive coupling clips for the hubcaps of the inboard and MLG wheels.
- Measurement of the "G" (gap) and "H" (height) dimensions of the coupling clips to ensure they are within the tolerances specified in Figure 1 of the service bulletin; and repetitive measurement of dimension "G" at every wheel or transducer change.
- For certain airplanes, a one-time re-inspection of the anti-skid drive coupling clips for the affected MLG wheel hubcap at the next MLG wheel change, per Part II of the service bulletin.

The service bulletin also describes procedures for the following corrective actions:

- Replacement of any coupling clip having evidence of cracks, damage, distortion, or broken-off pieces; or having a measurement of dimension "H" that is outside the specified tolerance; with a new, improved part.
- Adjustment of any clip with dimension "G" outside the specified tolerance.
- Replacement of any clip where dimension "G" cannot be adjusted to the specified tolerance.
- Eventual replacement of all coupling clips with new, improved clips at the next C-check.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2003-01-01,

dated February 6, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

##### FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept us informed of the situation described above. We have examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

##### Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

##### Difference Between the Brazilian Airworthiness Directive, the Service Bulletin, and the Proposed AD

Paragraph (c) of the Brazilian airworthiness directive recommends that no later than March 30, 2003, the installation procedures for the MLG be revised to include a mandatory visual inspection for cracks, evident damage, distortion or broken-off pieces, of the anti-skid drive coupling clips for the MLG wheel hubcap; and a complete clip dimensional verification including the gap and the height. This proposed AD does not include a requirement to revise the installation procedures for the MLG wheels. However, paragraph (a) of this proposed AD does require repetitive general visual inspections and repetitive measurements of dimensions "G" and "H" of the anti-skid drive coupling at every wheel change or wheel speed transducer change.

The service bulletin states that if the measurement of dimension "G" of any anti-skid drive coupling clip is out of the tolerance specified in the service bulletin, and the clip can be adjusted to the specified tolerance, one re-inspection is necessary at the next MLG wheel change per Part II of the service bulletin. The service bulletin also contains a note stating that dimension "G" should be checked at every wheel or transducer change. This proposed AD does not include such a requirement;

however, as previously mentioned, paragraph (a) of this proposed AD does require repetitive measurements of dimensions "G" and "H" of the anti-skid drive coupling at every wheel change or wheel speed transducer change.

#### Clarification of Inspection Terminology

The service bulletin specifies a visual inspection of the MLG wheel hubcap clips for cracks, evident damage, distortion, or broken-off pieces. This proposed AD requires a general visual inspection. A note has been added to define that inspection.

#### Cost Impact

We estimate that 220 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to do the proposed general visual inspection and measurement of dimensions "G" and "H", at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the proposed actions on U.S. operators is estimated to be \$28,600, or \$130 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to do the proposed replacement of the coupling clips, at an average labor rate of \$65 per work hour. Required parts would cost approximately \$600 per airplane. Based on these figures, the cost impact of the proposed action on U.S. operators is estimated to be \$146,300, or \$665 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption

#### ADDRESSES.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket 2003–NM–79–AD.

*Applicability:* Model EMB–120 series airplanes having serial numbers 120003, 120004, and 120006 through 120359 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG), which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane, accomplish the following:

#### General Visual Inspection, Measurement of Clip Dimensions, and Corrective Actions

(a) Within 400 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a general visual inspection for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the MLG wheel hubcap; and measure the "G" (gap) and "H" (height) dimensions of the coupling clips; and do any applicable corrective action; per the Accomplishment Instructions of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Any applicable corrective action must

be done prior to further flight per the service bulletin. Repeat the inspection and dimension measurement thereafter at every wheel change or wheel speed transducer change.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

#### Replacement of Coupling Clips

(b) Within 800 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace any anti-skid drive coupling clip for the MLG wheel hubcap that was not previously replaced per paragraph (a) of this AD, with a new, improved part specified in and per Part III of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Repeat the applicable actions required by paragraph (a) of this AD thereafter at every wheel change or wheel speed transducer change.

#### Parts Installation

(c) As of the effective date of this AD, no person may install an anti-skid drive coupling clip, part number 40–91115, on any airplane, unless the part number is identified as 40–91115 REV. D.

#### Credit for Actions Done per Previous Issue of Service Bulletin

(d) Accomplishment of the specified actions before the effective date of this AD per EMBRAER Service Bulletin 120–32–0088, dated November 18, 2002, is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

#### Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Brazilian airworthiness directive 2003–01–01, dated February 6, 2003.

Issued in Renton, Washington, on March 30, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 04–7713 Filed 4–5–04; 8:45 am]

**BILLING CODE 4910–13–P**