

# Proposed Rules

Federal Register

Vol. 89, No. 64

Tuesday, April 2, 2024

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2024-0772; Project Identifier MCAI-2023-01203-T]

RIN 2120-AA64

#### Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.) Airplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 airplanes. This proposed AD was prompted by a manufacturing quality escape concerning some overheat detection system (ODS) sensing elements. This proposed AD would require inspecting the ODS sensing elements and performing applicable corrective actions, and would prohibit the installation of affected parts, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by May 17, 2024.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

**AD Docket:** You may examine the AD docket at *regulations.gov* under Docket No. FAA-2024-0772; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

**Material Incorporated by Reference:**

- For material identified in this NPRM, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; phone 55 (12) 3203-6600; email: *pac@anac.gov.br*; website: *anac.gov.br/en/*. You may find this material on the ANAC website: *sistemas.anac.gov.br/certificacao/DA/DAE.asp*. It is also available at *regulations.gov* under Docket No. FAA-2024-0772.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

**FOR FURTHER INFORMATION CONTACT:** Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 817-222-5366; email: *joshua.k.bragg@faa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2024-0772; Project Identifier MCAI-2023-01203-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

#### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 817-222-5366; email: *joshua.k.bragg@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023-11-01, effective November 21, 2023 (ANAC AD 2023-11-01) (also referred to as the MCAI), to correct an unsafe condition on certain Embraer S.A. Model ERJ 170-100 LR, -100 SE, -100 STD, and -100 SU airplanes; and Model ERJ 170-200 LL, -200 LR, -200 STD, and -200 SU airplanes. The MCAI states a quality escape occurred during manufacturing concerning some ODS sensing elements produced before January 31, 2021. A defective sensing element may not be able to detect a thermal bleed leak, which is a latent failure, and depending on the affected area, may start an ignition source in the fuel tank, which could damage some electronic boxes and expose the wing structure to high temperature gradients and unexpected thermal loads, which

could result in reduced structural integrity of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2024-0772.

**Related Service Information Under 1 CFR Part 51**

ANAC AD 2023-11-01 specifies procedures for a detailed inspection of the ODS sensing elements of the airplane bleed lines and replacing, if applicable. In addition, ANAC AD 2023-11-01 specifies procedures for re-activating ODS sensing elements that were deactivated. Also, ANAC AD 2023-11-01 prohibits installing an affected ODS sensing element, unless it is inspected, and one face of the connector hex nut is marked.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**FAA’s Determination**

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in ANAC AD 2023-11-01 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

**Explanation of Required Compliance Information**

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2023-11-01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2023-11-01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2023-11-01 for compliance will be available at *regulations.gov* under Docket No. FAA-2024-0772 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 70 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × \$85 per hour = \$425 .....	\$0	\$425	\$29,750

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

**ESTIMATED COSTS OF ON-CONDITION ACTIONS**

Labor cost	Parts cost	Cost per product
2 work-hours × \$85 per hour = \$170 .....	\$500	\$670

**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.

The FAA is 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**

The FAA 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) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**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 adding the following new airworthiness directive:

**Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.):** Docket No. FAA-2024-0772; Project Identifier MCAI-2023-01203-T.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 17, 2024.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.) Model ERJ 170-100 LR, -100 SE, -100 STD, and -100 SU airplanes, and Model ERJ 170-200 LL, -200 LR, -200 STD, and -200 SU airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2023-11-01, effective November 21, 2023 (ANAC AD 2023-11-01).

#### (d) Subject

Air Transport Association (ATA) of America Code: 75, Bleed Air.

#### (e) Unsafe Condition

This AD was prompted by a manufacturing quality escape concerning some overheat detection system (ODS) sensing elements. The FAA is issuing this AD to address defective sensing elements. The unsafe condition, if not addressed, could result in a sensing element not being able to detect a thermal bleed leak, which is a latent failure, and depending on the affected area, may start an ignition source in the fuel tank, which could damage some electronic boxes and expose the wing structure to high temperature gradients and unexpected thermal loads, which could result in reduced structural integrity of the airplane.

#### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

#### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023-11-01.

#### (h) Exceptions to ANAC AD 2023-11-01

(1) Where ANAC AD 2023-11-01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraphs (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1), of ANAC AD 2023-11-01 specify to inspect ODS sensing

elements at various locations, this AD requires adding “in accordance with Embraer Service Bulletin 170-36-0027, revision 04, dated September 5, 2023; or later revisions approved by ANAC.”

(3) Where paragraphs (b) through (h) of ANAC AD 2023-11-01 specify on-condition actions based on the results of the ODS sensing element inspections required by paragraphs (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1) of ANAC AD 2023-11-01, this AD requires performing all applicable on-condition actions before further flight after each inspection.

(4) This AD does not adopt paragraph (k) of ANAC AD 2023-11-01.

#### (i) Parts Returned to Supplier

Where the service information referenced in ANAC AD 2023-11-01 specifies to send removed sensing elements to the supplier, this AD does not include that requirement.

#### (j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD or email to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov). If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information referenced in ANAC AD 2023-11-01 contains steps in the Accomplishment Instructions or figures that are labeled as RC, the instructions in RC steps, including subparagraphs under an RC step and any figures identified in an RC step, must be done to comply with this AD; any steps including substeps under those steps, that are not identified as RC are recommended. The instructions in steps, including substeps under those steps, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC. If a step or substep is labeled “RC

Exempt,” then the RC requirement is removed from that step or substep.

#### (k) Additional Information

For more information about this AD, contact Joshua Bragg, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 817-222-5366; email: [joshua.k.bragg@faa.gov](mailto:joshua.k.bragg@faa.gov).

#### (l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023-11-01, effective November 21, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023-11-01, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; phone 55 (12) 3203-6600; email: [pac@anac.gov.br](mailto:pac@anac.gov.br); website: [anac.gov.br/en/](http://anac.gov.br/en/). You may find this ANAC AD on the ANAC website: [sistemas.anac.gov.br/certificacao/DA/DAE.asp](http://sistemas.anac.gov.br/certificacao/DA/DAE.asp).

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations](http://www.archives.gov/federal-register/cfr/ibr-locations), or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

Issued on March 27, 2024.

#### Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024-06900 Filed 4-1-24; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2024-0583; Airspace Docket No. 24-ANE-1]

RIN 2120-AA66

#### Establishment of Class E Airspace; York, ME

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

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