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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2023-2399; Project Identifier MCAI-2023-00592-T; Amendment 39-22644; AD 2023-26-01]**

**RIN 2120-AA64**

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

#### **AGENCY:**

Federal Aviation Administration (FAA), DOT.

#### **ACTION:**

Final rule; request for comments.

#### **SUMMARY:**

The FAA is adopting a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 190-300 and -400 airplanes. This AD was prompted by a report that the method for calculating level-off altitude by the computerized airplane flight manual (CAFM), may result in a non-conservative level-off height. This AD requires revising the existing airplane flight manual (AFM) to incorporate new CAFM versions as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

#### **DATES:**

This AD is effective January 18, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 18, 2024

The FAA must receive comments on this AD by February 20, 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–2023–2399; 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 final rule, 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 service information identified in this final rule, 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; telephone 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 material on the ANAC website at [sistemas.anac.gov.br/certificacao/DA/DAE.asp](http://sistemas.anac.gov.br/certificacao/DA/DAE.asp).
- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–2399.

#### **FOR FURTHER INFORMATION CONTACT:**

Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 216–316–6418; email: [joshua.k.bragg@faa.gov](mailto:joshua.k.bragg@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–2399; Project Identifier MCAI–2023–00592–T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

### **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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 216–316–6418; email: [joshua.k.bragg@faa.gov](mailto: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 2023–04–02, effective April 11, 2023 (ANAC AD 2023–04–02) (also referred to as the MCAI), to correct an unsafe condition for all Embraer S.A. Model ERJ 190–300 and –400 airplanes. The MCAI states that the method to calculate level-off altitude by the CAFM may result in a non-conservative level-off height. In case of an engine failure during a takeoff, the airplane may not be able to overcome obstacles when the airport is limited to obstacle clearance in the acceleration segment. Since this condition may occur in other airplanes and affects flight safety, corrective action is required.

The FAA is issuing 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–2023–2399.

### **Related Service Information Under [1 CFR Part 51](#)**

ANAC AD 2023–04–02 specifies procedures for updating Supplement 1 of the AFM to incorporate CAFM version 1.9 or further versions for Model ERJ 190–300 airplanes or CAFM version 1.5 or further versions for Model ERJ 190–400 airplanes, as approved versions in the Limitations block. This service information 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 AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

## Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2023-04-02 described previously, except for any differences identified as exceptions in the regulatory text of this 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, ANAC AD 2023-04-02 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2023-04-02 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2023-04-02 for compliance will be available at *regulations.gov* under Docket No. FAA-2023-2399 after this AD is published.

## Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) ([5 U.S.C. 551](#) *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

In addition, the FAA finds that good cause exists pursuant to [5 U.S.C. 553\(d\)](#) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to [5 U.S.C. 553\(b\)\(3\)\(B\)](#). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to [5 U.S.C. 553\(d\)](#) for making this amendment effective in less than 30 days.

## Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to [5 U.S.C. 553](#) to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

## Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

## Estimated Costs for Required Actions

Labor cost	Parts cost	Cost per product
1 work-hour × \$85 per hour = \$85	\$0	\$85

### 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

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, and
- (2) Will not affect intrastate aviation in Alaska.

### List of Subjects in [14 CFR Part 39](#)

- Air transportation
- Aircraft
- Aviation safety
- Incorporation by reference
- Safety

### 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 FAA amends § 39.13 by adding the following new airworthiness directive:

**2023–26–01 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.):** Amendment 39–22644; Docket No. FAA–2023–2399; Project Identifier MCAI–2023–00592–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective January 18, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–300 and –400 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 34, Navigation.

**(e) Reason**

This AD was prompted by a report that the method for calculating level-off altitude by the computerized airplane flight manual (CAFM), for Model ERJ 190–300 and ERJ 190–400 airplanes, may result in a non-conservative level-off height. The FAA is issuing this AD to address the possibility that, in the event of an engine failure during takeoff, an airplane may not be able to overcome obstacles when the airport is limited to obstacle clearance in the acceleration segment.

**(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, Agência Nacional de Aviação Civil (ANAC) AD 2023–04–02, effective April 11, 2023 (ANAC AD 2023–04–02).

**(h) Exceptions to ANAC AD 2023–04–02**

(1) Where ANAC AD 2023–04–02 refers to its effective date, this AD requires using the effective date

of this AD.

(2) Paragraph (c) of ANAC AD 2023–04–02 is not adopted by this AD.

### **(i) 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 International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: [9-AVS-AIR-730-AMOC@faa.gov](mailto:9-AVS-AIR-730-AMOC@faa.gov). 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.

### **(j) Additional Information**

(1) Refer to ANAC AD 2023–04–02, effective April 11, 2023, for related information. This ANAC AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–2399.

(2) For more information about this AD, contact Joshua Bragg, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 216–316–6418; email: [joshua.k.bragg@faa.gov](mailto:joshua.k.bragg@faa.gov).

### **(k) 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 2023–04–02, effective April 11, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023–04–02, 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; telephone 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 at [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 St., 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 December 18, 2023.

Victor Wicklund,

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

[[FR Doc. 2023-28850](#) Filed 1-2-24; 8:45 am]

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