

of the elevator during takeoff could result in loss of controllability of the airplane.

The DAC issued Brazilian airworthiness directive 2002-12-03, dated December 20, 2002, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination

In light of this information, the FAA finds that certain procedures must be included in the AFM for Model EMB-135 and -145 series airplanes to provide the flightcrew with appropriate procedures for preventing a locked elevator during takeoff. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

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 the FAA informed of the situation described above. The FAA has 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 the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002-26-51 to prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane. The AD requires revising the Limitations Section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and to provide the appropriate procedures to prevent it. This AD is consistent with the Brazilian airworthiness directive.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual

notices issued on December 20, 2002, to all known U.S. owners and operators of certain EMBRAER Model EMB-135 and -145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-348-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

2002-26-51 Empresa Brasileira de Aeronautica S.A. (Embraer):
Amendment 39-13008. Docket 2002-NM-348-AD.

Applicability: Model EMB-135 and -145 series airplanes, certificated in any category, equipped with an electromechanical gust lock system.

Compliance: Required as indicated, unless accomplished previously.

To prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane, accomplish the following:

(a) Within 24 clock hours after receipt of this AD, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Every single time the gust lock lever is set to the unlocked position, the elevator movement must be checked. This check must be performed no sooner than 10 seconds after positioning the gust lock lever to the fully forward unlocked position by moving the