

requires intergovernmental consultation with State and local officials.

#### *E. Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agencies' considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

#### *F. Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### *G. Civil Rights Impact Analysis*

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

#### *H. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal

agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

#### *I. E-Government Act Compliance*

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### *J. Good Cause Determination*

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The language of Sections 4201(b) and 4201(c)(2) of the Farm Bill, which amend Sections 202A and 204(a)(1) of the EFAA, respectively, is clear and leaves no room for discretion. Consequently, that language also renders 7 CFR 251.6(b) and 7 CFR 251.8(e)(1) inconsistent with the Sections 202A and 204(a)(1) of the EFAA, respectively. This final rule will bring program regulations into compliance with the EFAA. Thus, FNS has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(b), finds that good cause exists for making this action effective without prior public comment.

#### **List of Subjects in 7 CFR Part 251**

Food assistance programs, Grant programs-social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR Part 251 is amended as follows:

#### **PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM**

■ 1. The authority citation for 7 CFR Part 251 continues to read as follows:

**Authority:** 7 U.S.C. 7501-7516.

■ 2. Section 251.6 is amended by revising paragraph (b) to read as follows:

##### **§ 251.6 Distribution plan.**

\* \* \* \* \*

(b) *Plan submission and amendments.* Once approved, State plans are permanent. State agencies must submit amendments to the distribution plan when necessary to reflect any changes in program operations or administration as described in the plan, or at the

request of FNS, to the appropriate FNS Regional Office.

\* \* \* \* \*

■ 3. Section 251.8 is amended by revising paragraph 251.8(e)(1)(i) to read as follows:

##### **§ 251.8 Payment of funds for administrative costs.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities (including donated wild game); except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

\* \* \* \* \*

Dated: November 20, 2009.

**Julia Paradis,**

*Administrator, Food, Nutrition, and Consumer Services.*

[FR Doc. E9-28611 Filed 11-27-09; 8:45 am]

**BILLING CODE 3410-30-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

[Docket No. CE303; Special Conditions No. 23-243-SC]

#### **Special Conditions: Embraer S.A., Model EMB-505; High Altitude Operations**

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Embraer S.A. Model EMB-505 airplane. This airplane will have a novel or unusual design feature(s) associated with the operation at altitudes not previously envisioned. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 12, 2009. We must receive your comments by December 30, 2009.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE-7, Attn: Rules Docket No. CE303, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE303. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Leslie B. Taylor, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329-4134; facsimile (816) 329-4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which

the docket number appears. We will stamp the date on the postcard and mail it back to you.

### Background

On October 9, 2006, Embraer S.A. applied for a type certificate for their new Model EMB-505. The EMB-505 is a twin engine jet which has applied for type certification in the commuter category. As such, the airplane is proposed to be type certificated in the commuter category of 14 CFR part 23 (and comparable Brazilian requirements RBHA 23) by exemption from 14 CFR 23.3(d). The EMB-505 is predominantly of metallic construction and is a conventionally configured low-wing monoplane with a T-tail and tricycle landing gear. The airplane's maximum takeoff weight is 17,490 pounds. The  $V_{MO}/M_{MO}$  is 320 KCAS/M .78 with a maximum operating altitude of 45,000 feet. Requested operations are day/night VFR/IFR and icing operations.

The FAA issues high altitude special conditions for normal, commuter and transport category airplanes when the certificated altitude exceeds human physiological limits.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program which will detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 23.571, Amendment 23-55. The cabin altitude after failure may not exceed specified limits.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet,

reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above 37,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

### Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Embraer S.A. must show that the Model EMB-505 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23-1 through 23-55, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model EMB-505 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB-505 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory

adequacy under § 611 of Public Law 92–574, the “Noise Control Act of 1972.”

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

#### Novel or Unusual Design Features

The Embraer S.A. Model EMB–505 will incorporate the following novel or unusual design features:

Operations at altitudes not envisioned by 14 CFR part 23.

#### Applicability

As discussed above, these special conditions are applicable to the Model EMB–505. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

This action affects only certain novel or unusual design features on one model, Model EMB–505, of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer S.A. Model EMB–505 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

#### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

#### Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

#### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer S.A. Model EMB–505 airplanes.

##### 1. Pressure Vessel Integrity

a. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

b. Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

c. For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Embraer must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

##### 2. Ventilation

In lieu of the requirements of § 23.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

##### 3. Air Conditioning

In addition to the requirements of § 23.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

a. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

b. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

##### 4. Pressurization

In addition to the requirements of § 23.841, the following apply:

a. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control

systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

b. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), *etc.*) that affects pressurization.

(3) Complete loss of thrust from all engines.

c. In showing compliance with paragraphs 4a and 4b of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

##### 5. Oxygen Equipment and Supply

a. In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

b. In addition to the requirements of § 23.1443, the following applies: A

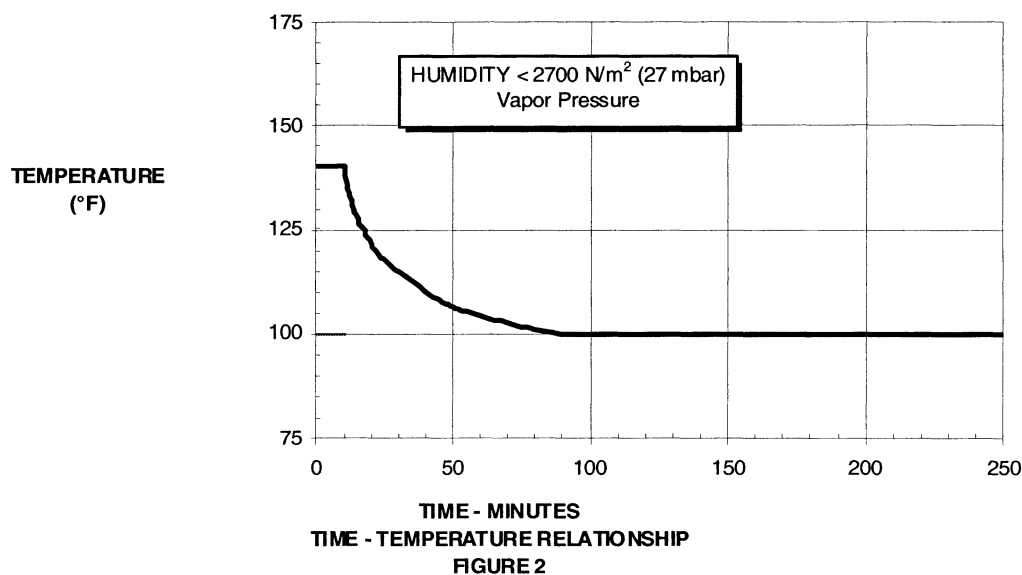
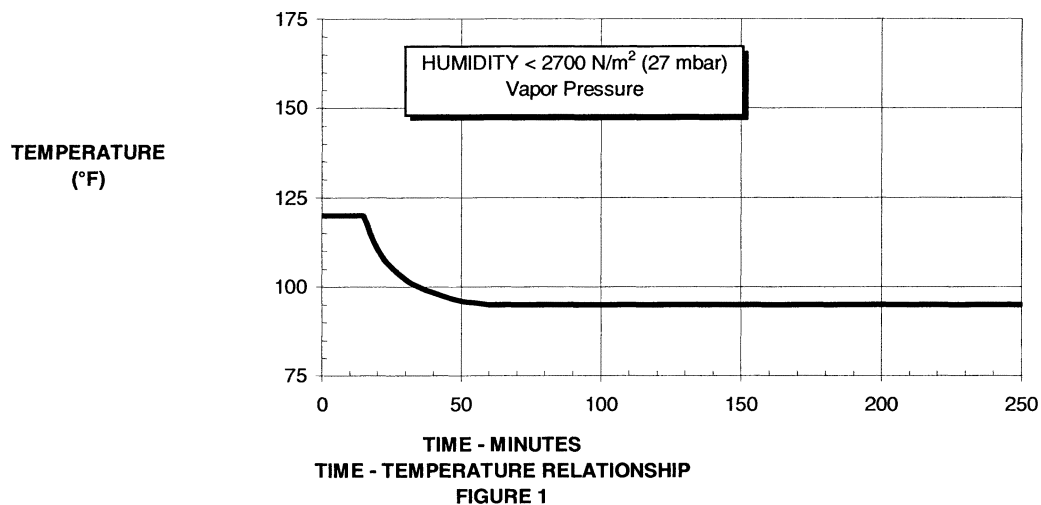
continuous flow oxygen system must be provided for each passenger.

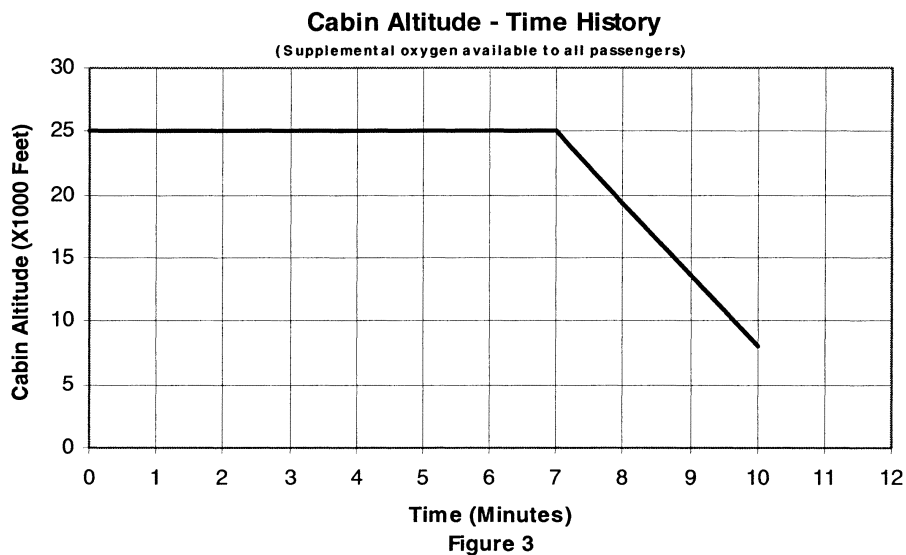
c. In addition to the requirements of § 23.1445, the following applies: If the

flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply

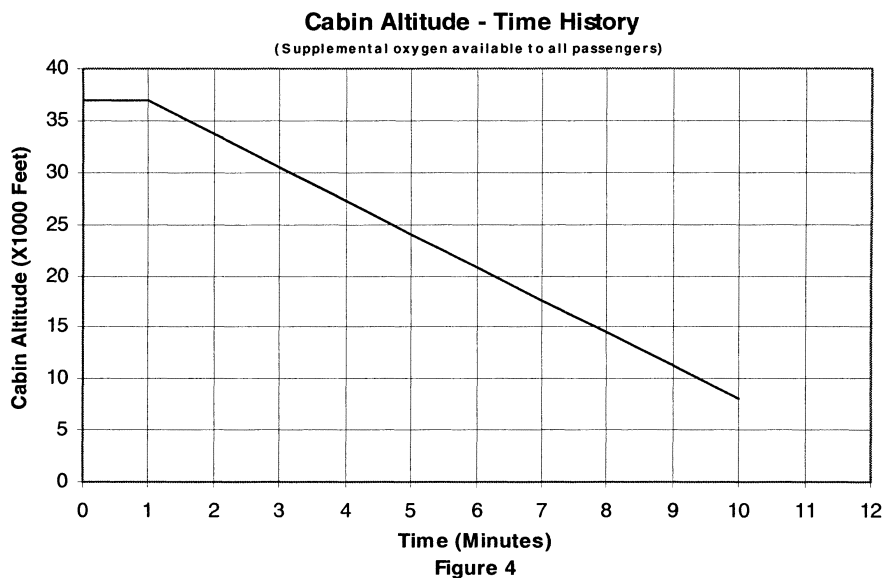
required by the flightcrew must be provided.

BILLING CODE 4910-13-P





NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Kansas City, Missouri on  
November 12, 2009.

**Kim Smith,**

*Manager, Small Airplane Directorate, Aircraft  
Certification Service.*

[FR Doc. E9-28204 Filed 11-27-09; 8:45 am]

BILLING CODE 4910-13-C