

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

RIN 3206-AG47

#### Pay Administration; Premium Pay

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing revised interim regulations on availability pay (a form of premium pay that applies to criminal investigators who are required to complete substantial amounts of unscheduled overtime duty) to incorporate the provisions of three laws that have become effective since interim regulations were first published on December 23, 1994. These statutory changes extend the coverage of availability pay to special agents employed in the Diplomatic Security Service of the Department of State and to pilots employed by the United States Customs Service who are law enforcement officers; permit any Office of Inspector General that employs fewer than five criminal investigators to elect to exclude those employees from availability pay; and provide alternative requirements for compensating overtime work and crediting unscheduled duty hours for special agents and other criminal investigators who provide protective services for Federal officials and other individuals.

**DATES:** *Effective date:* January 29, 1999.

*Applicability dates:* Except for availability pay for special agents employed by the Department of State, these regulations are applicable on January 29, 1999. Availability pay for special agents in the Diplomatic Security Service of the Department of State is applicable on January 31, 1999.

*Comments date:* Comments must be received on or before March 30, 1999.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200, FAX: (202) 606-0824, or email: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** James R. Weddel, (202) 606-2858, FAX: (202) 606-0824, or email: [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** Section 633 of the Treasury, Postal Service, and General Government Appropriations Act, 1995 (Pub. L. 103-329, September 30, 1994), amended title 5, United States Code, to provide for a form of premium pay called availability pay for criminal investigators. Availability pay became effective on the first day of the first pay period beginning on or after October 30, 1994, except that implementation was delayed until September 1995 for certain criminal investigators employed by Inspectors General. Criminal investigators receiving availability pay are exempt from the minimum wage and overtime pay provisions of the Fair Labor Standards Act of 1938, as amended (FLSA), and may not receive annual premium pay for administratively uncontrollable overtime (AUO) work authorized by 5 U.S.C. 5545(c)(2).

On December 23, 1994, the Office of Personnel Management (OPM) published interim regulations on availability pay in the **Federal Register** (59 FR 66149). We have received numerous comments on these interim regulations. We plan to address those comments, as well as any comments we receive on the revised interim regulations, when we publish final regulations. Therefore, it is not necessary to resubmit any comments that were submitted on the interim regulations published on December 23, 1994.

#### Coverage of Special Agents in the Diplomatic Security Service

Section 407 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in section 101(b) in Division A of Pub. L. 105-277, the Omnibus Consolidated

and Emergency Supplemental Appropriations Act, 1999 (October 21, 1998), amended 5 U.S.C. 5545a by adding a new subsection (k), which extends coverage of law enforcement availability pay to special agents of the Diplomatic Security Service in the Department of State. A provision identical to section 407 is also contained in section 2316 of the Foreign Affairs Reform and Restructuring Act of 1998, Division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. A conforming amendment was also made to 5 U.S.C. 5545a(a)(2) to delete a provision that previously excluded special agents in the Diplomatic Security Service from the definition of "criminal investigator."

As implemented in these interim regulations, availability pay applies to a law enforcement officer in the Diplomatic Security Service if one of the following criteria is met: (1) the employee is a special agent in a position properly classified in the GS-1811 occupational series; (2) the employee is a special agent in a position that has been properly determined by the Department of State to have a Foreign Service primary skill code of 2501; (3) the employee is a special agent who has been placed by the Department of State in a non-covered position on a long-term training assignment that will be career-enhancing for a current or future assignment as a Diplomatic Security Service special agent, provided the employee is expected to return to duties as a Special Agent in a Foreign Service position with a 2501 primary skill code or to a position properly classified in the GS-1811 series immediately following such training; or (4) the employee occupies a position in the Department of State in which he or she performs duties and responsibilities of a special agent requiring Foreign Service primary skill code 2501, pending the opening of a position with primary skill code 2501 and placement in that position as a Special Agent.

In addition, availability pay applies to a special agent with a Foreign Service personal primary skill code of 2501 (or whose position is properly classified in the GS-1811 series) if he or she meets all of the following three conditions:

(i) The individual is assigned outside the Department of State;

(ii) The assigned position would have a primary skill code of 2501 (or would be properly classified in the GS-1811 series under the General Schedule classification system based on OPM classification standards) if the position were under the Foreign Service (or General Schedule) in the Department of State; and

(iii) The individual is expected to return to a position as a special agent in the Diplomatic Security Service with a 2501 primary skill code (or to a position that is properly classified in the GS-1811 series) immediately following such outside assignment. (See the revised definition of *criminal investigator* in § 550.103.)

Availability pay does not apply to members of the Senior Foreign Service, Foreign Service Officers, or members of the Senior Executive Service. These groups of employees are not covered by subchapter V—Premium Pay—of chapter 55 of title 5, United States Code, including 5 U.S.C. 5545a, the legal authority for availability pay for criminal investigators. (See 5 U.S.C. 5541(2)(xiv), (xv), and (xvi).)

Section 407 also provides that no later than the effective date for availability pay for special agents, each special agent in the Diplomatic Security Service who is a criminal investigator (as defined in § 550.103), and the appropriate supervisory officer designated by the Secretary of State, must make an initial certification to the Secretary of State that the special agent is expected to meet the unscheduled duty hours requirement for availability pay in 5 U.S.C. 5545a(d). Section 5545a(d) provides that a criminal investigator must have an annual average of 2 unscheduled duty hours for each regular workday. Under section 407, General Schedule and Foreign Service special agents in the Diplomatic Security Service may not rely on 5 U.S.C. 5545a(d)(2)(B) to satisfy the unscheduled duty hour requirement in section 5545a(d)(1). These special agents may count only hours actually worked as unscheduled duty hours, not hours the agent was available for work. This requirement is reflected in §§ 550.182 (a) and (d).

Hours of availability are also not counted as hours of work for the purpose of determining overtime pay on an hourly basis under 5 U.S.C. 5542. Therefore, § 550.111(h) has been added to clarify this point.

In addition, section 407 provides that, while performing protective duties under the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(3)), special agents of the Diplomatic Security Service may receive

overtime pay on an hourly basis for all regularly scheduled overtime work (including the first 2 hours of overtime work on a regular workday), provided they perform, on the same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek. This change in law is reflected in §§ 550.103 (definition of “protective duties”), 550.111(f)(2), and 550.182(b)(2).

Section 407 provides that in applying the requirement in 5 U.S.C. 5545a(h) that availability pay will be 25 percent of basic pay, any reference to basic pay will be considered to include, with respect to a special agent in the Diplomatic Security Service, amounts designated as “salary.” Therefore, § 550.185(a) has been amended to provide that availability pay is an amount equal to (1) 25 percent of a criminal investigator’s rate of basic pay, as defined in § 550.103, including amounts designated as “salary” for special agents in the Diplomatic Security Service; or (2) a lesser amount to avoid exceeding the special maximum earnings limitation for law enforcement officers in 5 U.S.C. 5547(c). This special maximum earnings limitation for law enforcement officers is also found in § 550.107 and applies to all criminal investigators, including those who are special agents in the Diplomatic Security Service.

Section 407 amended 5 U.S.C. 5545a(h)(2)(A) with regard to special agents in the Diplomatic Security Service to provide that availability pay will be considered basic pay for the purposes of sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended, which pertain to Foreign Service retirement benefits. Therefore, a parallel paragraph has been added at § 550.186(b)(7).

Section 407 amended 5 U.S.C. 5545a(h)(2)(B) to provide that availability pay is also basic pay for any other purposes explicitly provided for by law or as OPM or the Secretary of State (to the extent that matters exclusively within the jurisdiction of the Secretary are concerned) may prescribe by regulation. Therefore, a parallel provision has been added at § 550.186(b)(8).

Finally, section 407 requires the Director of OPM and the Secretary of State to determine that all regulations necessary to implement availability pay for special agents are in effect. The Director of OPM and the Secretary of State agree that, with the publication of these regulations, all regulations necessary to implement availability pay for special agents are in effect.

### **Suspension of Availability Pay for Special Agents**

Special agents in the Diplomatic Security Service of the Department of State who are in the Foreign Service are not covered by the adverse action procedures in 5 U.S.C. 7512 and 5 CFR part 752. (See 5 U.S.C. 7511(b)(6) and 5 CFR 752.401(d)(6).) Therefore, the requirements in 5 U.S.C. 5545a(e)(2), which provide that involuntary reductions in pay resulting from a denial of certification for availability pay must be accomplished under the adverse action procedures in subchapter II of 5 U.S.C. chapter 75, are not applicable to special agents in the Foreign Service. Instead, § 550.184(e) has been amended to provide that involuntary suspension of availability pay for Foreign Service special agents, resulting from a denial or cancellation of certification for availability pay under § 550.184(d), will be administered under procedures established by regulations of the Department of State.

### **Coverage in Offices of Inspectors General**

After the publication of the original interim availability pay regulations, section 901 of Pub. L. 104-19, July 27, 1995 (109 Stat. 230), amended section 5545a of title 5, United States Code, to add a new subsection (j), which provides that “[n]otwithstanding any other provision of this section, any Office of Inspector General which employs fewer than 5 criminal investigators may elect not to cover such criminal investigators under this section.” Therefore, § 550.181(a) has been amended, and § 550.181(b) has been added, to reflect the authority to exempt criminal investigators in Offices of Inspectors General with fewer than five criminal investigators. This authority became effective on July 27, 1995, the date of enactment of Pub. L. 104-19.

### **Coverage of Customs Service Pilots Who Are Law Enforcement Officers**

After publication of the original interim availability pay regulations, section 902 of Pub. L. 104-19, July 27, 1995 (109 Stat. 230), amended section 5545a of title 5, United States Code, to add a new subsection (i), which provides that “[t]he provisions of subsections (a)–(h) providing for availability pay shall apply to a pilot employed by the United States Customs Service who is a law enforcement officer as defined under section 5541(3).”

Section 902 also provides that coverage of the designated Customs Service pilots under the law authorizing

availability pay became effective on the first day of the first applicable pay period that began on or after the 30th day following the date of enactment of Pub. L. 104-19. Pub. L. 104-19 was enacted on July 27, 1995. Therefore, section 902 became effective on the first day of the first pay period that began on or after August 26, 1995. The revised interim regulations reflect this change in law by adding "[w]ho is a pilot employed by the United States Customs Service" to the definition of *criminal investigator* in § 550.103.

#### Overtime Pay for Criminal Investigators Who Perform Protective Duties

After publication of the original interim availability pay regulations, section 531 of Pub. L. 104-52, November 19, 1995 (109 Stat. 496), amended section 5542 of title 5, United States Code, to add a new subsection (e), which provides that "[n]otwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18, United States Code, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek."

This amendment provides for payment of overtime pay on an hourly basis for all regularly scheduled overtime hours of work for criminal investigators performing protective duties authorized by section 3056(a) of title 18, including the first 2 overtime hours on a regular workday. However, payment of overtime pay for all regularly scheduled overtime hours worked is permitted only if the criminal investigator performs 2 hours of overtime work during the same workday that were not scheduled in advance of the administrative workweek. Hours of availability may not be substituted for the required unscheduled overtime work. This change in law became effective on November 19, 1995, the date of enactment, and is reflected in the revised interim regulations at §§ 550.103 (definition of protective duties), 550.111(f)(2), and 550.182(b)(2). (Note: Except for days on which employees perform protective duties authorized by section 3056(a) of title 18, United States Code, or by section 2709(a)(3) of title 22, United States Code, the first 2 overtime hours on a regular workday are always compensated by availability pay for criminal investigators, even if those overtime hours are regularly scheduled

in advance of the administrative workweek.)

#### Availability Pay Is Basic Pay for the Thrift Savings Plan

Pub. L. 104-208, September 30, 1996, repealed 5 U.S.C. 8431 and amended 5 U.S.C. 8401(4) to provide that the term "basic pay" has the meaning given that term by 5 U.S.C. 8331(3) for the purpose of regulations issued by the Federal Retirement Thrift Savings Board. Paragraph (d) of section 628 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) in Division A of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, amended 5 U.S.C. 8331(3) to add availability pay for a criminal investigator authorized by 5 U.S.C. 5545a to the definition of "basic pay" in 5 U.S.C. 8331(3). Since 5 U.S.C. 8431 was repealed in 1996, § 550.186(b)(5) has been revised to state that availability pay is basic pay for the purpose of the Thrift Savings Plan authorized by subchapter III of chapter 84 of title 5, United States Code.

#### Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**, except that regulations implementing availability pay for special agents in the Diplomatic Security Service will become effective on January 31, 1999. Section 407 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in section 101(b) in Division A of Pub. L. 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provides that the amendments providing availability pay for special agents will take effect on the first day of the first applicable pay period that begins on or after the 90th day following the enactment of the Act, and on which date all regulations necessary to carry out such amendments are (in the judgment of the Director of the Office of Personnel Management and the Secretary of State) in effect. This waiver is also appropriate because the attached changes in regulations update Office of Personnel Management regulations to make them consistent with the following changes in law that are already effective and have previously been implemented.

#### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

#### PART 550—PAY ADMINISTRATION (GENERAL)

##### Subpart A—Premium Pay

1. The authority citation for part 550, subpart A, is revised to read as follows:

**Authority:** 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105-277, 112 Stat. 2681-101 and 2681-828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

2. In § 550.103, the definition of *Criminal investigator* is revised, and a new definition of *Protective duties* is added in alphabetical order to read as follows:

#### § 550.103 Definitions.

\* \* \* \* \*

*Criminal investigator* means a law enforcement officer as defined in 5 U.S.C. 5541(3) and this section—

(1) Whose position is properly classified under the GS-1811 or GS-1812 series in the General Schedule classification system based on OPM classification standards (or would be so classified if covered under that system);

(2) Who is a pilot employed by the United States Customs Service;

(3) Who is a special agent in the Diplomatic Security Service in a position which has been properly determined by the Department of State to have a Foreign Service primary skill code of 2501;

(4) Who is a special agent in the Diplomatic Security Service who has been placed by the Department of State in a non-covered position on a long-term training assignment that will be career-enhancing for a current or future assignment as a Diplomatic Security

Service special agent, provided the employee is expected to return to duties as a special agent in a Foreign Service position with a 2501 primary skill code or to a position properly classified in the GS-1811 series immediately following such training;

(5) Who occupies a position in the Department of State in which he or she performs duties and responsibilities of a special agent requiring Foreign Service primary skill code 2501, pending the opening of a position with primary skill code 2501 and placement in that position as a special agent; or

(6) Who is a special agent in the Diplomatic Security Service with a Foreign Service personal primary skill code of 2501 (or whose position immediately prior to the detail was properly classified in the GS-1811 series) and who meets all of the following three conditions:

(i) The individual is assigned outside the Department of State;

(ii) The assigned position would have a primary skill code of 2501 (or would be properly classified in the GS-1811 series under the General Schedule classification system based on OPM classification standards) if the position were under the Foreign Service (or General Schedule) in the Department of State; and

(iii) The individual is expected to return to a position as a special agent in the Diplomatic Security Service with a 2501 primary skill code (or to a position that is properly classified in the GS-1811 series) immediately following such outside assignment.

\* \* \* \* \*

*Protective duties* means duties authorized by section 3056(a) of title 18, United States Code, or by section 2709(a)(3) of title 22, United States Code.

\* \* \* \* \*

3. In § 550.111, paragraph (f) is revised, and a new paragraph (h) is added to read as follows:

**§ 550.111 Authorization of overtime pay.**

\* \* \* \* \*

(f)(1) Except as provided in paragraph (f)(2) of this section, for any criminal investigator receiving availability pay under § 550.181, overtime work means actual work that is scheduled in advance of the administrative workweek—

(i) In excess of 10 hours on a day containing hours that are part of such investigator's basic 40-hour workweek; or

(ii) On a day not containing hours that are part of such investigator's basic 40-hour workweek.

(2) Notwithstanding paragraph (f)(1) of this section, all overtime work scheduled in advance of the administrative workweek on a day containing part of a criminal investigator's basic 40-hour workweek must be compensated under this section if both of the following conditions are met:

(i) The overtime work involves protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code; and

(ii) The investigator performs on that same day at least 2 consecutive hours of overtime work that are not scheduled in advance of the administrative workweek and are compensated by availability pay.

(3) Any work that would be overtime work under this section but for paragraphs (f)(1) and (f)(2) of this section will be compensated by availability pay under § 550.181.

\* \* \* \* \*

(h) Availability hours, as described in § 550.182(c), are not hours of work for the purpose of determining overtime pay under this section.

4. Section 550.181 is revised to read as follows:

**§ 550.181 Coverage.**

(a) Each employee meeting the definition of *criminal investigator* in § 550.103, and fulfilling the conditions and requirements of 5 U.S.C. 5545a and §§ 550.181 through 550.186, must receive availability pay to compensate the criminal investigator for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency, except as provided in paragraph (b) of this section.

(b) Any Office of Inspector General that employs fewer than five criminal investigators may elect not to cover such criminal investigators under the availability pay provisions of 5 U.S.C. 5545a.

5. In § 550.182, paragraph (a) is revised; paragraphs (b) through (f) are redesignated as paragraphs (c) through (g), respectively; a new paragraph (b) is added; and the newly redesignated paragraph (d) is revised to read as follows:

**§ 550.182 Unscheduled duty.**

(a) *Unscheduled Duty Hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or (except for a special agent in the Diplomatic Security Service) is determined by the employing

agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111.

(b) *Regularly Scheduled Overtime Hours.* For criminal investigators receiving availability pay, regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111 are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding—

(1) The first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)(1); or

(2) The first 2 hours of overtime work performing protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code, on any day containing a part of the investigator's basic 40-hour workweek, unless the investigator performs 2 or more consecutive hours of unscheduled overtime work on that same day.

\* \* \* \* \*

(d) *Availability Hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status is not considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and § 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval). A special agent in the Diplomatic Security Service may not be credited with availability hours and will be credited with only hours actually worked.

\* \* \* \* \*

6. In § 550.184, paragraph (e) is revised to read as follows:

**§ 550.184 Annual certification.**

\* \* \* \* \*

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under

paragraph (d) of this section is a reduction in pay for the purpose of applying the adverse action procedures of 5 U.S.C. 7512 and part 752 of this chapter, except for special agents in the Foreign Service. For special agents in the Foreign Service, an involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section will be administered under procedures established by regulations of the Department of State.

\* \* \* \* \*

7. In § 550.185, paragraph (a) is revised to read as follows:

**§ 550.185 Payment of availability pay.**

(a) Availability pay is paid only for periods of time during which a criminal investigator receives basic pay. Availability pay is an amount equal to the lesser of—

(1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as "salary" for special agents in the Diplomatic Security Service; or

(2) The maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers in 5 U.S.C. 5547(c).

\* \* \* \* \*

8. In § 550.186, paragraph (b) is revised to read as follows:

**§ 550.186 Relationship to other payments.**

\* \* \* \* \*

(b) Availability pay is treated as part of basic pay or basic salary only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(6) 5 U.S.C. 8704(c), pertaining to life insurance;

(7) Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended (Pub. L. 96-465), pertaining to Foreign Service retirement benefits; and

(8) For any other purposes explicitly provided for by law or as the Office of Personnel Management or the Secretary of State (for matters exclusively within

the jurisdiction of the Secretary) may prescribe by regulation.

\* \* \* \* \*

[FR Doc. 99-2153 Filed 1-27-99; 3:16 pm]

BILLING CODE 6325-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-NM-386-AD; Amendment 39-11015; AD 99-01-12]

RIN 2120-AA64

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-145 Series Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 99-01-12 that was sent previously to all known U.S. owners and operators of certain EMBRAER Model EMB-145 series airplanes by individual notices. This AD requires revisions to the Airplane Flight Manual to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. This AD also requires installation of certain warning placards. This action is prompted by a report indicating that, during a flight test of a similar airplane model, the pitch trim monitoring subsystem malfunctioned internally. The actions specified by this AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

**DATES:** Effective February 2, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99-01-12, issued December 29, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-386-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information 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; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rob Cappezzuto, Aerospace Engineer, ACE-116A, Systems and Flight Test Branch, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 773-6071; fax (770) 703-6097.

**SUPPLEMENTARY INFORMATION:** On December 29, 1998, the FAA issued emergency AD 99-01-12, which is applicable to certain EMBRAER Model EMB-145 series airplanes.

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-145 series airplanes. The DAC advises that, during a flight test of a similar airplane model, equipped with a Honeywell Primus 1000 Integrated Avionics System, the pitch trim monitoring subsystem experienced an internal malfunction. The cause of the failure of this system has been attributed to a software error, which resulted in failure of the trim monitoring subsystem to detect a trim malfunction. This condition, if not corrected, could cause undetected autopilot trim runaway, which could result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss. If these conditions occur at low altitude, control of the airplane could be unrecoverable.

**Explanation of Relevant Service Information**

EMBRAER has issued Alert Service Bulletin S.B. 145-31-A010, dated December 15, 1998, which describes procedures for installation of certain warning placards on the left and right