

Issued in Kansas City, Missouri, on February 5, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25925; Directorate Identifier 2006-NM-167-AD; Amendment 39-14934; AD 2007-04-03]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 Airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model EMB-135 airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. That AD currently requires repetitive inspections of the pitot static heating relay K0057 and corrective actions if necessary. That AD also requires doing a terminating modification, which ends the repetitive inspections. This new AD removes the existing repetitive inspections and instead requires a one-time detailed inspection for damage of the relay, relay socket, and silicone gasket; applicable corrective actions; and a new action to modify and re-identify the relay socket. This AD also revises the existing terminating modification—replacing/rerouting the windowsill drain hoses—into two parts, each with a different, reduced compliance time. This AD results from a report of smoke in the cockpit. We are issuing this AD to prevent ignition of a windowsill drain hose by an overheated relay, which could cause fire and smoke in the cockpit.

**DATES:** This AD becomes effective March 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 21, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at [http://](http://dms.dot.gov)

[dms.dot.gov](http://dms.dot.gov) or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP 12.225, Sao Jose dos Campos-SP, Brazil, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006-04-02, amendment 39-14483 (71 FR 9434, February 24, 2006). The existing AD applies to all EMBRAER Model EMB-135 airplanes, and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. That NPRM was published in the **Federal Register** on September 28, 2006 (71 FR 56900). That NPRM proposed to remove the existing repetitive inspections and instead to require a one-time detailed inspection for damage of the relay, relay socket, and silicone gasket; applicable corrective actions; and a new action to modify and re-identify the relay socket. That NPRM also proposed to revise the existing terminating modification—replacing/rerouting the windowsill drain hoses—into two parts, each with a different, reduced compliance time.

##### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

#### Request To Allow Use of Existing Alternative Method of Compliance (AMOC)

One commenter, ExpressJet Inc., requests that we allow for termination of certain repetitive inspections described in the NPRM. The commenter states that it has received AMOC number ANM-116-06-244 to AD 2006-04-02, which allows ending the repetitive relay inspections described in EMBRAER Service Bulletin 145-30-0042 once EMBRAER Alert Service Bulletin 145-30-A050 is accomplished; and, further, that doing EMBRAER Service Bulletin 145-30-0041 also provides terminating action for the repetitive inspections. The commenter states that paragraph (f) of the NPRM proposes to require repetitive inspections as described in EMBRAER Alert Service Bulletin 145-30-A050 until EMBRAER Service Bulletin 145-30-0041 is accomplished, and requests that we revise the NPRM to allow those inspections to be terminated if the modification described in either EMBRAER Alert Service Bulletin 145-30-A050 or EMBRAER Service Bulletin 145-30-0041 is accomplished in accordance with the AMOC.

We find that clarification is necessary. This AD cancels the repetitive inspections required by AD 2006-04-02, which cites EMBRAER Service Bulletins 145LEG-30-0012 and 145-30-0042, both dated April 18, 2005, as the appropriate sources of service information for doing the repetitive inspections. EMBRAER Alert Service Bulletins 145LEG-30-A017 and 145-30-A050, both dated May 31, 2006, supersede Service Bulletins 145LEG-30-0012 and 145-30-0042, respectively, and replace the repetitive inspections with a one-time only inspection. Therefore, as of the effective date of this AD, the repetitive inspections are no longer required. No change is needed to the AD in this regard.

#### Request To Change Incorporation of Certain Information

One commenter, the Modification and Replacement Parts Association (MARPA), requests that we revise our procedures for incorporation by reference (IBR) of service information in ADs. MARPA asserts that ADs are frequently derived from privately-authored, copyright-protected manufacturer service documents, but that when such a document is incorporated by reference into a public document like an AD, it loses its private, protected status and becomes itself a public document. MARPA continues that public laws by definition must be public and cannot rely for

compliance upon private writings, and that unless such writings are incorporated by reference, a court of law will not consider them in interpreting the AD and might invalidate the AD. MARPA contends that IBR service documents should be published in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA states that IBR was adopted to relieve the **Federal Register** from publishing documents already held by affected individuals, which traditionally meant aircraft owners and operators who received service information from manufacturers. However, MARPA contends that a new affected class of maintenance and repair organizations (MRO), component service and repair shops, parts purveyors and distributors, and organizations that manufacture or service alternatively certified parts under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303), now perform a majority of aircraft maintenance. MARPA continues that service information distributed to owners and operators who are financing or leasing institutions may not reach this class, who may actually be responsible for accomplishing ADs. MARPA therefore requests that service documents deemed essential to accomplishing this proposed action be (1) incorporated by reference into the regulatory instrument, and (2) published in the DMS.

We acknowledge the commenter's requests. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to MARPA's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service

bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

**Request To Comply With Draft FAA Order 8040.2**

MARPA asserts that the NPRM, as written, does not comply with proposed FAA Order 8040.2 which states, "Parts Manufacturer Approval (PMA). MCAI that require replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identity. We have determined that any parts approved under this regulation and installed should be subject to the actions of our AD and included in the applicability of our AD." MARPA contends that including certain language from proposed FAA Order 8040.2 to permit the use of any PMA part and including such parts in the applicability of the AD would resolve the issue of possibly defective PMA parts being installed and not affected by the proposed action.

The NPRM did not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs; therefore we have not changed the AD in this regard.

**Request To Revise Specification of Replacement Parts**

MARPA requests that we revisit the manner in which PMA parts are addressed in the NPRM. MARPA asserts that type certificate holders, particularly foreign manufacturers, almost universally ignore any possible PMA parts while frequently specifying replacing a part with a part having a different part number as a corrective action in their service documents. MARPA contends that this "runs afoul of 14 CFR § 21.303," which permits development, certification, and installation of PMA parts. MARPA expresses concern that parts having different part numbers will not be

subject to the AD if part numbers are not specified, asserting that if a part number is used to designate defective parts, the AD must address any defective PMA parts that have different part numbers but the same defects. MARPA continues that mandating only one part is not generally favored and can prevent installing perfectly good parts while prohibiting development of new parts as permitted under 14 CFR 21.303. MARPA asserts that identifying specifically numbered parts for installation should be only one of several methods of addressing the problem. MARPA continues that another directorate has published ADs containing language permitting the use of "FAA-approved equivalent parts," which differs markedly from the policies of the other directorates. Because of this difference, MARPA claims that the requirements of Executive Order 12866 for all agencies to act uniformly on a given issue are not being met. MARPA therefore requests that the NPRM be modified to consider possibly defective PMA parts and to permit the use of PMA parts meeting the "new and improved" criteria pursuant to existing laws and regulations and the issues set forth in the current proposed regulatory action.

The FAA recognizes the need for standardization of this issue and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

**Conclusion**

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of \$80 per work hour.

ESTIMATED COSTS

Action/item	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection .....	1	None	\$80	651	\$52,080

## ESTIMATED COSTS—Continued

Action/item	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification/reidentification of relay socket .....	1	<sup>1</sup> \$10	90	651	58,590
Replacement of drain hoses <sup>2</sup> .....	2	268	428	651	278,628

<sup>1</sup> Operator-supplied parts.

<sup>2</sup> Includes rerouting of drain hoses of cockpit horizontal linings, if applicable.

### 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.

We are 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

We have determined that 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;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14483 (71 FR 9434, February 24, 2006) and by adding the following new airworthiness directive (AD):

**2007-04-03 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39-14934. Docket No. FAA-2006-25925; Directorate Identifier 2006-NM-167-AD.

#### Effective Date

(a) This AD becomes effective March 21, 2007.

#### Affected ADs

(b) This AD supersedes AD 2006-04-02.

#### Applicability

(c) This AD applies to all EMBRAER Model EMB-135BJ, -135ER, -135KE, -135KL, and -135LR airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes; certificated in any category.

#### Unsafe Condition

(d) This AD results from a report of smoke in the cockpit. We are issuing this AD to prevent ignition of a windowsill drain hose by an overheated relay, which could cause fire and smoke in the cockpit.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Inspection and Modification of Relay/Relay Socket, and Corrective Actions

(f) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first: Do a one-time detailed inspection for discrepancies of the pitot static heating relay K0057, relay socket XK0057,

and silicone gasket; modify and re-identify the XK0057 relay socket; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG-30-A017, dated May 31, 2006 (for Model EMB-135BJ airplanes); or EMBRAER Alert Service Bulletin 145-30-A050, dated May 31, 2006 (for Model EMB-135ER, -135KE, -135KL, and -135LR airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes); as applicable; except where the service bulletins specify to contact the manufacturer if damage to components for the relay support is found, this AD does not require that action. All applicable corrective actions must be done before further flight.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

#### Replacement and Modification of Right-Hand Windowsill Drain Hoses

(g) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG-30-0011, Revision 01, dated June 7, 2006 (for Model EMB-135BJ airplanes); or EMBRAER Service Bulletin 145-30-0041, Revision 01, dated June 5, 2006 (for Model EMB-135ER, -135KE, -135KL, and -135LR airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes); as applicable.

(1) For all airplanes: Modify and re-identify the drain hose having part number (P/N) 123-15435-405, in accordance with Figure 1 of the applicable service bulletin.

(2) For all airplanes: Replace the right-hand windowsill drain hoses having P/N 123-15435-403 with new, improved hoses, P/N 145-13047-001 and 145-13044-005; and replace the tiedown straps with new tiedown straps, in accordance with Figure 1 of the applicable service bulletin.

(3) For Model EMB-135BJ airplanes: Reroute the drain hoses of the right cockpit horizontal linings, in accordance with Figure 2 of the applicable service bulletin.

**Replacement of Left-Hand Windowsill Drain Hoses**

(h) Within 1,200 flight hours or 360 days after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (h)(1) and (h)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG-30-0011, Revision 01, dated June 7, 2006 (for Model EMB-135BJ airplanes); or EMBRAER Service Bulletin 145-30-0041, Revision 01, dated June 5, 2006 (for Model EMB-135ER, -135KE, -135KL, and -135LR airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes); as applicable.

(1) *For all airplanes:* Replace the left-hand windowsill drain hoses having P/N 123-15435-401 and -403 with new, improved hoses having P/N 145-13044-001 and P/N 145-13047-001, and replace the tiedown straps with new tiedown straps, in accordance with Figure 1 of the applicable service bulletin.

(2) *For Model EMB-135BJ airplanes:* Reroute the drain hoses of the left cockpit

horizontal linings, in accordance with Figure 2 of the applicable service bulletin.

**Actions Accomplished According to Previous Issue of Service Bulletin**

(i) Any replacement/rerouting of the drain hoses accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145-30-0041 or 145LEG-30-0011, both dated April 20, 2005, as applicable, is considered acceptable for compliance with the requirements of paragraphs (g) and (h) this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(k) Brazilian airworthiness directive 2005-08-04R1, effective July 27, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(l) You must use the applicable EMBRAER service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER—	Revision level—	Date—
Alert Service Bulletin 145-30-A050 .....	Original .....	May 31, 2006.
Alert Service Bulletin 145LEG-30-A017 .....	Original .....	May 31, 2006.
Service Bulletin 145-30-0041 .....	01 .....	June 5, 2006.
Service Bulletin 145LEG-30-0011 .....	01 .....	June 7, 2006.

Issued in Renton, Washington, on February 5, 2007.

**Ali Bahrami,**

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

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**BILLING CODE 4910-13-P**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 38**

**RIN 3038-AC28**

**Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations (“SROs”)**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission hereby adopts final acceptable practices for minimizing conflicts of interest in decision making by designated contract markets (“DCMs” or “exchanges”),<sup>1</sup> pursuant to Section 5(d)(15) (“Core

Principle 15”)<sup>2</sup> of the Commodity Exchange Act (“CEA” or “Act”).<sup>3</sup> The final acceptable practices are the first issued for Core Principle 15 and are applicable to all DCMs.<sup>4</sup> They focus upon structural conflicts of interest within modern self-regulation, and offer DCMs a “safe harbor” by which they may minimize such conflicts and comply with Core Principle 15. To receive safe harbor treatment, DCMs must implement the final acceptable practices in their entirety, including instituting boards of directors that are at least 35% public and establishing oversight of all regulatory functions through Regulatory Oversight

<sup>2</sup>Core Principle 15 states: “CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the contract market and establish a process for resolving such conflicts of interest.” CEA § 5(d)(15), 7 U.S.C. 7(d)(15).

<sup>3</sup>The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

<sup>4</sup>Any board of trade that is registered with the Securities and Exchange Commission (“SEC”) as a national securities exchange, is a national securities association registered pursuant to section 15(A)(a) of the Securities Exchange Act of 1934, or is an alternative trading system, and that operates as a designated contract market in security futures products under Section 5f of the Act and Commission Regulation 41.31, is exempt from the core principles enumerated in Section 5 of the Act, and the acceptable practices thereunder, including those adopted herein.

Committees (“ROCs”) consisting exclusively of public directors.

**DATES:** *Effective Date:* March 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418-5429, or Sebastian Pujol Schott, Special Counsel (202) 418-5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

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<sup>1</sup>The acceptable practices for core principles reside in Appendix B to Part 38 of the Commission’s Regulations, 17 CFR Part 38, App. B.