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[Page 71480-71483]  
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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

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

**[Docket No. FAA-2006-25422; Directorate Identifier 2006-NM-095-AD; Amendment 39-14848; AD 2006-25-07]**

**RIN 2120-AA64**

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

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

**ACTION:** Final rule.

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**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model EMB-135ER and -135KE airplanes and Model EMB-145, -145ER, -145MR, -145MP, and -145EP airplanes. This AD requires inspecting the fuel quantity indication system (FQIS) wire harness and the direct current (DC) fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and properly separated from one another, and performing corrective actions if necessary. This AD results from a report that the FQIS wire harness may not be properly attached at its attachment points or properly separated from the DC fuel pump wire harness. We are issuing this AD to prevent chafing between those harnesses or chafing of the harnesses against adjacent airplane structure or components, which could present a potential ignition source that could result in a fire or explosion.

**DATES:** This AD becomes effective January 16, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 16, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at <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, Transport Airplane Directorate, FAA, 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 would apply to all EMBRAER Model EMB-135 and EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. That NPRM was published in the Federal Register on July 24, 2006 (71 FR 41745). That NPRM proposed to require inspecting the fuel quantity indication system (FQIS) wire harness and the DC fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and properly separated from one another, and performing corrective actions if necessary.

### **Comments**

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

### **Requests To Add Revised Service Information**

EMBRAER advises that Revision 04, dated November 7, 2005, of EMBRAER Service Bulletin 145-28-0025, referenced in the NPRM as the appropriate source of service information for accomplishing the specified actions, has been revised. EMBRAER notes that EMBRAER Service Bulletin 145-28-0025, Revision 05, dated May 23, 2006, contains minor changes and that no additional work is required.

American Eagle (AE) asks that Revision 05 of the referenced service bulletin be added to paragraph (f) of the AD as the source of service information for accomplishing the specified actions. AE states that the only change to Revision 05 of the service bulletin is the reduced effectivity.

We agree with the commenters. We have reviewed Revision 05 of the service bulletin and agree that it does not necessitate additional work; Revision 04 of the service bulletin was referenced in the NPRM as the appropriate source of service information for accomplishing the specified actions. We have revised paragraph (f) of the AD to reflect the revised service bulletin. In addition, we have revised the table in paragraph (h) of this AD to specify that accomplishing the actions in paragraph (f) of the AD in accordance with Revision 04 of the service bulletin is also considered to be an acceptable method of compliance.

### **Requests To Limit Applicability**

EMBRAER notes that only airplanes with dry wing stubs are affected by the service bulletin, but the NPRM applies to all EMBRAER Model EMB-135ER and EMB-145 airplanes. EMBRAER states

that since only Model EMB-135ER and -135KE airplanes and Model EMB-145, -145ER, -145MR, -145MP, and -145EP airplanes have dry wing stub configurations, the applicability in the NPRM should be changed to identify only those airplanes.

AE asks that the applicability in the NPRM be limited to Model EMB-135ER and EMB-145ER airplanes only. AE also notes that only airplanes with dry wing stubs are affected by the NPRM. AE adds that it does not operate the affected airplanes.

We agree with EMBRAER for the reasons provided. We have changed the applicability throughout this AD to reflect the applicability identified by EMBRAER. We have also changed the number of affected airplanes from 494 to 35 in the Costs of Compliance section of this AD.

### **Request To Change Incorporation of Certain Information**

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Document Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporated by reference method is brevity, to keep from expanding the Federal Register needlessly by publishing documents already in the hands of the affected individuals; traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under part 21 of the Federal Aviation Regulations (14 CFR part 21), § 21.303 (parts manufacturer approval). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. 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 document 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.

We are currently reviewing our practice of publishing proprietary service information. 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. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the AD in this regard.

## **Change to AD**

We have changed paragraph (g) of this AD to specify that the actions required in that paragraph must be done in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. In addition, we have clarified the specific section of the EMBRAER Standard Wiring Practices Manual and identified it as one approved method of compliance for doing the required actions.

## **Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## **Costs of Compliance**

This AD affects about 35 airplanes of U.S. registry. The actions take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$2,800, or \$80 per airplane.

## **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 adding the following new airworthiness directive (AD):



**2006-25-07 Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Amendment 39-14848.  
Docket No. FAA-2006-25422; Directorate Identifier 2006-NM-095-AD.

**Effective Date**

- (a) This AD becomes effective January 16, 2007.

**Affected ADs**

- (b) None.

**Applicability**

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

**Unsafe Condition**

- (d) This AD results from a report that the fuel quantity indication system (FQIS) wire harness may not be properly attached at its attachment points or properly separated from the direct current (DC) fuel pump wire harness. We are issuing this AD to prevent chafing between those harnesses or chafing of the harnesses against adjacent airplane structure or components, which could present a potential ignition source that could result in a fire or explosion.

**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.

**Inspecting Harnesses for Proper Attachment and Separation**

- (f) Within 5,000 flight hours after the effective date of this AD: Do a one-time general visual inspection of the FQIS wire harness and the DC fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and properly separated from one another, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145-28-0025, Revision 05, dated May 23, 2006. All applicable corrective actions must be done before further flight.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting,

flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

### **Further Corrective Actions**

(g) If any broken, frayed, cracked, or damaged wire, or a damaged harness, is found: Before further flight, repair the damaged wire or harness in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. One approved method is using Section 20-21-00 of the EMBRAER Standard Wiring Practices Manual.

### **Actions Accomplished Previously**

(h) Actions done before the effective date of this AD in accordance with one of the service bulletins identified in Table 1 of this AD are acceptable for compliance with the corresponding actions required by this AD.

**Table 1 – Previous Issues of the Service Information**

<b>Embraer Service Bulletin</b>	<b>Revision Level</b>	<b>Date</b>
145-28-0025	Original	April 19, 2004
145-28-0025	01	June 9, 2004
145-28-0025	02	November 8, 2004
145-28-0025	03	April 28, 2005
145-28-0025	04	November 7, 2005

### **Alternative Methods of Compliance (AMOCs)**

(i)(1) The Manager, International Branch, ANM-116, 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**

(j) Brazilian airworthiness directive 2006-03-01, dated April 19, 2006, also addresses the subject of this AD.

### **Material Incorporated by Reference**

(k) You must use EMBRAER Service Bulletin 145-28-0025, Revision 05, dated May 23, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. EMBRAER Service Bulletin 145-28-0025, Revision 05, dated May 23, 2006, contains the following effective pages:

<b>Page No.</b>	<b>Change level shown on page</b>	<b>Date shown on page</b>
1, 2, 8	05	May 23, 2006.
3-7, 9-15	04	November 7, 2005.

The Director of the Federal Register approved the incorporation by reference of this document 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 Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on November 21, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-20862 Filed 12-8-06; 8:45 am]