

skinned, yellow fleshed potatoes shall grade U.S. Commercial or better.

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Dated: February 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-1717 Filed 2-23-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1124 and 1131

[Docket No. AO-368-A32, AO-271-A37; DA-03-04B]

#### Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Order Amending the Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends provisions of the producer-handler definitions of the Pacific Northwest and Arizona-Las Vegas orders as contained in the Final Decision published in the *Federal Register* on December 14, 2005. More than the required number of producers for the Arizona-Las Vegas and Pacific Northwest marketing areas approved the issuance of the orders as amended.

**DATES:** *Effective Date:* April 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist or Gino Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231-Room 2971, 1400 Independence Avenue SW., Washington, DC 20250-0231, (202) 720-2357 or (202) 690-1366, e-mail addresses: [jack.rower@usda.gov](mailto:jack.rower@usda.gov) or [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This document amends the producer-handler and related provisions of the Pacific Northwest and Arizona-Las Vegas Federal milk orders. Specifically, this final rule permanently adopts a provision that will eliminate the exemption from pooling and pricing provisions of the orders for producer-handlers with in-area route disposition in excess of 3-million pounds per month.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final decision will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a milk marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Producer-handlers are defined as dairy farmers that process only their

own milk production. These entities must be dairy farmers as a pre-condition to operating processing plants as producer-handlers. The size of the dairy farm determines the production level of the operation and is the controlling factor in the capacity of the processing plant and possible sales volume associated with the producer-handler entity. Determining whether a producer-handler is considered a small or large business must depend on its capacity as a dairy farm where a producer-handler with annual gross revenue in excess of \$750,000 is considered a large business.

The amendments will place entities currently considered to be producer-handlers under the Pacific Northwest or the Arizona-Las Vegas orders on the same terms as all other fully regulated handlers provided they meet the criteria for being subject to the pooling and pricing provisions of the two orders. Entities currently defined as producer-handlers under the terms of these orders will be subject to the pooling and pricing provisions of the orders if their route disposition of fluid milk products is more than 3 million pounds per month.

Producer-handlers with route disposition of less than 3 million pounds during the month will not be subject to the pooling and pricing provisions of the orders. To the extent that current producer-handlers for each order have route disposition of fluid milk products outside of the marketing areas, such route disposition will be subject to an order's pooling and pricing provisions if total in-area route disposition causes them to become fully regulated.

Assuming that some current producer-handlers will have route disposition of fluid milk products of more than 3 million pounds during the month, such producer-handlers will be regulated subject to the pooling and pricing provisions of the orders like other handlers. Such producer-handlers will account to the pool for their uses of milk at the applicable minimum class prices and pay the difference between their use-value and the blend price of the order to the order's producer-settlement fund.

While this may cause an economic impact on those entities with more than 3 million pounds of route sales who currently are considered producer-handlers by the two orders, the impact is offset by the benefit to other small businesses. With respect to dairy farmers whose milk is pooled on the two marketing orders, such dairy farmers who have not heretofore shared in the additional revenue that accrues from the marketwide pooling of Class I

sales by producer-handlers will share in such revenue. This will have a positive impact on 486 small dairy farmers in the Pacific Northwest and Arizona-Las Vegas marketing areas. Additionally, all handlers who dispose of more than 3 million pounds of fluid milk products per month will pay at least the announced Federal order Class I price for such use. This will have a positive impact on 18 small regulated handlers.

The extent that current producer-handlers in the Pacific Northwest and the Arizona-Las Vegas orders become subject to the pooling and pricing provisions will be determined in their capacity as handlers. Such entities will no longer have restrictions applicable to their business operations that were conditions for producer-handler status and exemption from the pooling and pricing provisions of the two orders. In general, this includes being able to buy or acquire any quantity of milk from dairy farmers or other handlers instead of being limited by the current constraints of the two orders.

Additionally, the handlers' burden of balancing their milk production is relieved. Milk production in excess of what is needed to satisfy their Class I route disposition needs will receive the minimum price protection established under the terms of the two orders. The burden of balancing milk supplies will be borne by all producers and handlers who are pooled and regulated under the terms of the two orders.

During September 2003, the Pacific Northwest had 16 pool distributing plants, 1 pool supply plant, 3 cooperative pool manufacturing plants, 7 partially regulated distributing plants, 8 producer-handler plants and 2 exempt plants. Of the 27 regulated handlers, 16 or 59 percent were considered large businesses. Of the 691 dairy farmers whose milk was pooled on the order, 223 or 32 percent were considered large businesses. If these amendatory actions were not undertaken, 68 percent of the dairy farmers (468) in the Pacific Northwest order who are small businesses would continue to be adversely affected by the operations of large producer-handlers.

For the Arizona-Las Vegas order, during September 2003 there were 3 pool distributing plants, 1 cooperative pool manufacturing plant, 18 partially regulated distributing plants, 2 producer-handler plants and 3 exempt plants (including an exempt plant located in Clark County, Nevada) operated by 22 handlers. Of these plants, 15 or 68 percent were considered large businesses. Of the 106 dairy farmers whose milk was pooled on the order, 88 or 83 percent were considered

large businesses. If these amendatory actions were not undertaken, 17 percent of the dairy farmers in the Arizona-Las Vegas order who are small businesses would continue to be adversely affected by large producer-handler operations.

In their capacity as producers, 7 producer-handlers would be considered to be large producers because their annual marketing exceeds 6 million pounds of milk. Record evidence indicates that for the Pacific Northwest marketing order at the time of the hearing, four producer-handlers would potentially become subject to the pooling and pricing provisions of the order because of route disposition of more than 3 million pounds per month within the marketing area. For the Arizona-Las Vegas order, one producer-handler would be considered to be a large producer because its annual marketing exceeds 6 million pounds of milk and potentially would be subject to the pooling and pricing provisions of the order because of route disposition exceeding 3 million pounds per month.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments will have minimal impact on reporting, recordkeeping, or other compliance requirements for entities currently considered producer-handlers under the Pacific Northwest and the Arizona-Las Vegas marketing orders because they will remain identical to the current requirements applicable to all other regulated handlers who are currently subject to the pooling and pricing provisions of the two orders. No new forms are proposed and no additional reporting requirements are necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

#### **Prior Documents in This Proceeding**

*Notice of Hearing:* Issued July 31, 2003; published August 6, 2003 (68 FR 46505).

*Correction to Notice of Hearing:* Issued August 20, 2003; published August 26, 2003 (68 FR 51202).

*Notice of Reconvened Hearing:* Issued October 27, 2003; published October 31, 2003 (68 FR 62027).

*Notice of Reconvened Hearing:* Issued December 18, 2003; published December 29, 2003 (68 FR 74874).

*Recommended Decision:* Issued April 7, 2005; published April 13, 2005 (70 FR 19636).

*Final Decision:* Issued December 9, 2005; published December 14, 2005 (70 FR 74166).

#### **Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest and Arizona-Las Vegas orders:

(a) *Finding.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest and Arizona-Las Vegas marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing areas to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act:

(2) The issuance of this order amending the Pacific Northwest and Arizona-Las Vegas orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined by the orders as hereby amended;

(3) The issuance of the order amending the Pacific Northwest and Arizona-Las Vegas orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing areas.

#### List of Subjects in 7 CFR Parts 1124 and 1131

Milk marketing orders.

#### Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Pacific Northwest and Arizona-Las Vegas marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

#### PARTS 1124 AND 1131—[AMENDED]

■ 1. The authority citation for 7 CFR parts 1124 and 1131 continues to read as follows:

*Authority:* 7 U.S.C. 601–674, and 7253.

#### PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 2. Revise § 1124.10 to read as follows:

##### § 1124.10 Producer-handler.

*Producer-handler* means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

##### (a) Requirements for designation.

Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State

government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled, pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name

of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

#### **PART 1131—MILK IN THE ARIZONA-LAS VEGAS MARKETING AREA**

■ 3. Revise § 1131.10 to read as follows:

##### **§ 1131.10 Producer-handler.**

*Producer-handler* means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a

producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the

month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

Dated: February 15, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06-1587 Filed 2-23-06; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-23283; Directorate Identifier 2005-NM-185-AD; Amendment 39-14483; AD 2006-04-02]

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 adopting a new airworthiness directive (AD) for all EMBRAER Model EMB-135 airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. This AD requires repetitive inspections of the pitot static heating relay K0057 for damage to the pin-type contacts, relay enclosure, and finishing material and corrective actions if necessary. This AD also requires doing a terminating modification, which ends the repetitive inspections. This AD results from a report of a burning drain hose and smoke caused by an overheated pitot static heating relay. We are issuing this AD to prevent overheating of a certain pitot static heating relay, which could result in the burning of the windowsill drain hoses and consequent smoke or fire in the airplane cockpit.

**DATES:** This AD becomes effective March 31, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 31, 2006.

**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 98055-4056; 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 airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes. That NPRM was published in the **Federal Register** on December 13, 2005 (70 FR 73668). That NPRM proposed to require repetitive inspections of the pitot static heating relay K0057 for damage to the pin-type contacts, relay enclosure, and finishing material and corrective actions if necessary. That NPRM also proposed to require doing a terminating modification, which ends the repetitive inspections.

##### **Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

##### **Conclusion**

We have carefully reviewed the available data 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.