

data using the above analytical methods need not be brand-name specific.

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that Federal agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by an ASTM/ISO compliant laboratory. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

§ 2902.9 Funding for testing.

(a) *USDA use of funds for biobased content and BEES testing.* USDA will use funds to support testing for biobased content and conduct of BEES testing for products within items USDA has selected to designate for preferred procurement through early regulatory action. USDA initially will focus on gathering the necessary test information on a sufficient number of products within an item (generic grouping of products) to support regulations to be promulgated to designate an item or items for preferred procurement under this program. USDA may accept cost sharing for such testing to the extent consistent with USDA product testing decisions. During this period USDA will not consider cost sharing in deciding what products to test. When USDA has concluded that a critical mass of items have been designated, USDA will exercise its discretion, in accordance with the competitive procedures outlined in paragraph (b) of this section, to allocate a portion of the available USDA testing funds to give priority to testing of products for which private sector firms provide cost sharing for the testing.

(b) *Competitive program for cost sharing for determining life cycle costs, environmental and health benefits, and performance.* (1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, <http://www.biobased.oce.usda.gov>.

(2) Proposals will be evaluated and assigned a priority rating. Priority ratings will be based on the following criteria:

(i) A maximum of 25 points will be awarded a proposal based on the market readiness;

(ii) A maximum of 20 points will be awarded a proposal based on the potential size of the market for that product in Federal agencies;

(iii) A maximum of 25 points will be awarded based on the financial need for assistance of the manufacturer or vendor;

(iv) A maximum of 20 points will be awarded a proposal based on the product's prospective competitiveness in the market place;

(v) A maximum of 10 points will be awarded a proposal based on its likely benefit to the environment.

(3) Cost-sharing proposals will be considered first for high priority products of small and emerging private business enterprises. If funds remain to support further testing, USDA will consider cost sharing proposals for products of all other producers of biobased items as well as the remaining proposals for products of small and emerging private business enterprises. Proposals will be selected based on priority rating until available funds for the fiscal year are committed.

(4)(i) For products selected for life cycle costs and environmental and health benefits testing under this paragraph, USDA could provide up to 50 percent of the cost of determining the life cycle costs and environmental and health effects, up to a maximum of \$5,000 of assistance per product.

(ii) For products selected for performance testing under this paragraph, USDA could provide up to 50 percent of the cost for performance testing, up to \$100,000 of assistance per product for up to two performance tests (measures of performance) per product.

(5) For selected proposals, USDA will enter into agreements with and provide the funds directly to the testing entities.

(6) Proposals submitted in one fiscal year, but not selected for cost sharing of testing in that year, may be resubmitted to be considered for cost sharing in the following year.

Subpart B—Designated Items [Reserved]

Dated: January 3, 2005.

Keith Collins,

Chief Economist, Department of Agriculture.
[FR Doc. 05-399 Filed 1-10-05; 8:45 am]

BILLING CODE 3410-GL-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 27854; Amendment No. 13-32]

RIN 2120-AE84

Civil Penalty Assessment Procedures; Correction

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; correction and technical amendment.

SUMMARY: This action makes minor editorial corrections to the final rule published in the **Federal Register** on October 4, 2004 (69 FR 59490) and technical corrections to one of the regulations it amended. That final rule adopted changed procedures concerning initiating and adjudicating an administratively assessed civil penalty against an individual acting as a pilot, flight engineer, mechanic, or repairman. Corrections include a quote and reference in the preamble, the removal of a redundant paragraph in the rule language, and several cross references to, and a typographical error in, redesignated paragraphs.

DATES: Effective January 11, 2005.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, Attorney, telephone (202) 267-3137.

SUPPLEMENTARY INFORMATION: The final rule, published on October 4, 2004 (69 FR 59490), codified in Part 13 procedures relating to FAA civil penalty actions against a pilot, flight engineer, mechanic, or repairman, which are subject to review by the National Transportation Safety Board under 49 U.S.C. 46301(d)(5). The rule also made other minor modifications to the FAA's procedures for assessing civil penalties against persons other than pilots, flight engineers, mechanics or repairmen.

This publication corrects a quote and a reference in the preamble and removes a redundant section in 14 CFR 13.14. In § 13.14, paragraphs (a) and (b) are substantively identical, only set out differently. Paragraph (a) is, therefore, removed, and the paragraphs renumbered.

This publication also corrects several cross references to, and one typographical error in, redesignated paragraphs in § 13.16. The entire text of § 13.16 is republished for clarity. The first sentence in paragraph (d) is changed to add a cross reference to paragraph (c). In paragraph (d)(2), the cross reference to paragraph (e)(2)(ii) is changed to paragraph (g)(2)(ii). In

paragraphs (g) and (g)(1)(ii), the cross references to paragraph (d)(2) are changed to paragraph (f)(2). In paragraph (h), the cross references to paragraph (d)(3) and paragraph (e)(2)(ii) are changed to paragraph (f)(3) and paragraph (g)(2)(ii), respectively. In paragraph (i), the cross references to paragraph (d)(3) and paragraph (e)(2)(ii) are also changed to paragraph (f)(3) and paragraph (g)(2)(ii), respectively. In the second sentence of program (m)(1), the word “nor” is changed to “or”

Corrections to Preamble

■ In final rule **Federal Register** Doc. 04–22276, published on October 4, 2004 (69 FR 58490), make the following corrections.

■ 1. On page 59492, in the second column, in the first sentence under Compromise Order remove the words “Section 46301(i)(1)” and correct to read “Section 46301(f)(1)”.

■ 2. On page 59493, in the third column, in the second line from the top, remove the word “with” and correct to read “within”.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Investigations, Law enforcement, Penalties.

The Amendment

■ The Federal Aviation Administration corrects Part 13 of Title 14 of the Code of Federal Regulations to read as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46318, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532; 49 CFR 1.47

§ 13.14 [Corrected]

■ 2. In § 13.14, remove paragraph (a) and redesignate paragraphs (b) through (d) as paragraphs (a) through (c).

■ 3. § 13.16 is revised to read as follows:

§ 13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

(a) The FAA uses these procedures when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in 40 U.S.C. 46301(d)(2) or 47531.

(b) *District court jurisdiction.*

Notwithstanding the provisions of paragraph (a) of this section, the United States district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in those paragraphs, under 49 U.S.C. 46301(d)(4), if—

(1) The amount in controversy is more than \$50,000 for a violation committed by any person before December 12, 2003;

(2) The amount in controversy is more than \$400,000 for a violation committed by a person other than an individual or small business concern on or after December 12, 2003;

(3) The amount in controversy is more than \$50,000 for a violation committed by an individual or a small business concern on or after December 12, 2003;

(4) The action is in rem based on the same violation has been brought;

(5) The action involves an aircraft subject to a lien that has been seized by the Government; or

(6) Another action has been brought for an injunction based on the same violation.

(c) *Hazardous materials violations.*

The FAA may assess a civil penalty against any person who knowingly commits an act in violation of 49 U.S.C. chapter 51 or a regulation prescribed or order issued under that chapter, under 49 U.S.C. 5123 and 49 CFR 1.47(k). An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder, is issued only after the following factors have been considered:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) With respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) Such other matters as justice may require.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraphs (a) or (c) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (g)(2)(ii) of this section

within 15 days after receipt of a final notice of proposed civil penalty.

(3) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

(4) Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(3) *Delegation of authority.* (1) The authority of the Administrator under 49 U.S.C. 46301(d), 47531, and 5123, and 49 CFR 1.47(k) to initiate and assess civil penalties for a violation of those statutes or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(2) The authority of the Administrator under 49 U.S.C. 5123, 49 CFR 1.47(k), 49 U.S.C. 46301(d), and 49 U.S.C. 46305 to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(3) The authority of the Administrator under 49 U.S.C. 46301(f) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(4) The authority of the Administrator under 49 U.S.C. 5123 (e) and (f) and 49 CFR 1.47(k) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel;

the Aeronautical Center Counsel; and the Technical Center Counsel.

(f) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation or to the agent for services for the person under 49 U.S.C. 46103. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation shall—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order shall be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing, in which case a complaint shall be filed with the hearing docket clerk.

(g) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (f)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty

action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any informal procedures under paragraph (f)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Request a hearing, in which case a complaint shall be filed with the hearing docket clerk.

(h) Request for a hearing. Any person charged with a violation may request a hearing, pursuant to paragraph (f)(3) or paragraph (g)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk (Hearing Docket, Federal Aviation Administration, 800, Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk) and shall mail a copy of the request to the agency attorney. The request for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten.

(i) *Hearing.* If the person charged with a violation requests a hearing pursuant to paragraph (f)(3) or paragraph (g)(2)(ii) of this section, the original complaint shall be filed with the hearing docket clerk and a copy shall be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the

administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(j) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to § 13.233 of subpart G, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirm, modify, or reverse the initial decision. The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint.

(k) *Payment.* A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(l) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order assessing civil penalty or other final order, the Administrator may take action provided under the law to collect the penalty.

(m) *Exhaustion of administrative remedies and judicial review.* (1) Cases under the FAA statute. A party may petition for review only of a final decision and order of the FAA decisionmaker to the courts of appeals of the United States for the circuit in which the individual charged resides or has his or her principal place of business or the United States Court of Appeals for the District of Columbia Circuit, under 49 U.S.C. 46110, 46301(d)(6), and 46301(g). Neither an initial decision or order issues by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under those sections.

(2) *Cases under the Federal hazardous materials transportation law.* A party may seek judicial review only of a final decision and order of the FAA decisionmaker involving a violation of the Federal hazardous materials transportation law or a regulation or order issued thereunder to an appropriate district court of the United States, under 5 U.S.C. 703 and 704 and 28 U.S.C. 1331. Neither an initial decision or order issued by an administrative law judge that has not been appealed to the FAA

decisionmaker, nor an order compromising a civil penalty action, may be appealed under these sections.

(n) *Compromise*. The FAA may compromise the amount of any civil penalty imposed under this section, under 49 U.S.C. 5123(e), 46031(f), 46303(b), or 46318 at any time before referring the action to the United States Attorney General, or the Delegate of the Attorney General, for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees not to make a finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-on amount or the signing of a promissory note. The compromise order states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

(ii) The FAA makes no finding of a violation.

(iii) The compromise order shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of a civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

Issued in Washington, DC, on December 23, 2004.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 05-528 Filed 1-10-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NE-33-AD; Amendment 39-13939; AD 2005-01-14]

RIN 2120-AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F series reciprocating engines. That AD currently requires venting of the lubrication system and inspection of the valve train on all

engines. That AD also requires venting of the lubrication system of all engines on which the lubrication system has been opened, and any engine on which the propeller has been rotated one full turn in the wrong direction. This AD requires similar actions, and also requires removing the existing part number oil dipstick from service and installing a new oil dipstick. This AD results from the need to clarify the mandated procedures for inspections and venting. This AD also results from the manufacturer discovering that under certain circumstances, the oil level in the oil tank can fall below the minimum level required to sustain proper engine lubrication. We are issuing this AD to prevent damage to the engine valve train due to inadequate venting of the lubrication system, which can result in an in-flight engine failure and forced landing.

DATES: This AD becomes effective February 15, 2005. The Director of the **Federal Register** previously approved the incorporation by reference of certain publications as listed in the regulations as of October 28, 2002 (67 FR 65033, October 23, 2002).

ADDRESSES: You can get the service information identified in this AD from Bombardier-Rotax GmbH, Gunskirchen, Austria; telephone 7246-601-423; fax 7246-601-760.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT:

Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238-7136; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD) to supersede AD 2002-21-16. The proposed AD applies to Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F series reciprocating engines. We published the proposed AD in the **Federal Register** on August 12, 2004 (69 FR 49829). That action proposed to do the following:

- At the next oil change, or within 100 hours TIS after the effective date of the AD, whichever is later, remove the oil dipstick, part number (P/N) 956150, from service, and install a serviceable dipstick that has a different P/N.

- Before the next engine start for engines with 50 hours or less time-in-service (TIS) on the effective date of the AD, since the engine had the oil system opened, or the oil was changed using other than specified procedures, or the propeller was rotated more than one turn in the wrong direction of rotation, inspect for valve train damage, proper venting of the lubrication system and inspect for the correct venting of the hydraulic valve tappets.

- Thereafter, for all engines, properly vent the lubrication system before starting the engine, after any of the following:

- Initial installation of a new or overhauled engine;
- Opening the oil system;
- Changing the oil using improper procedures;
- The propeller was rotated more than one turn in the wrong direction of rotation, allowing air to be ingested into the valve train components.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal 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

There are about 624 Bombardier-Rotax GmbH Type 912 F, 912 S, and 914 F series reciprocating engines of the affected design in the worldwide fleet. We estimate that 282 engines installed on aircraft of U.S. registry will be affected by this AD. We also estimate that it will take about one work hour per engine to perform one oil system inspection and venting, and that the average labor rate is \$65 per work hour. Required parts will cost about \$0.85 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$18,570.