

has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's working group meeting on December 16, 1998, subcommittee meeting on January 6, 1999, and the Committee meeting on January 15, 1999, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to begin assessing handlers at the \$8.50 rate as soon as possible to generate sufficient revenue to meet its expenses; (2) the 1998-99 crop year began on August 1, 1998, and the order requires that the rate of assessment for each crop year apply to all raisins acquired during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this rule provides for a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 989.347 is revised to read as follows:

#### § 989.347 Assessment rate.

On and after August 1, 1998, an assessment rate of \$8.50 per ton is established for assessable raisins produced from grapes grown in California.

Dated: February 17, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-4540 Filed 2-23-99; 8:45 am]

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### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

##### 14 CFR Part 39

[Docket No. 98-ANE-74-AD; Amendment 39-11050; AD 98-24-03]

RIN 2120-AA64

#### Airworthiness Directives; BMW Rolls-Royce GmbH Models BR700-710A1-10 and BR700-710A2-20 Turbofan Engines

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98-24-03 that was sent previously to all known U.S. owners and operators of BMW Rolls-Royce GmbH (BRR) Models BR700-710A1-10 and BR700-710A2-20 turbofan engines by individual letters. This AD requires repetitive visual inspections of the fairing and fasteners for correct installation and damage, and verification that the engine core fairing fasteners are torqued to the higher torque value. This amendment is prompted by a report of an engine compressor core fairing failure during engine ground runs. The actions specified by this AD are intended to prevent engine compressor or combustion core fairing detachment and damage to the engine bypass duct, resulting in engine failure and damage to the aircraft.

**DATES:** Effective March 11, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98-24-03, issued on November 12, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 26, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 98-ANE-74-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from BMW Rolls-Royce GmbH, Eschenweg 11, D-15827 Dahlewitz, Germany; telephone 011-49-33-7086-1883; fax 011-49-33-7086-3276. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7133, fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** On November 12, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98-24-03, applicable to BMW Rolls-Royce GmbH (BRR) Models BR700-710A1-10 and BR700-710A2-20 turbofan engines, which requires visual inspections of the fairing and fasteners to ensure proper installation and for cracks or damage, and if cracked or damaged, replacement with serviceable parts, and also requires that the engine core fairing fasteners be torqued to a higher torque value. That action was prompted by a report of an engine compressor core fairing failure during engine ground runs on a BRR Model BR700-710A1-10 turbofan engine installed on a Gulfstream G-V model aircraft. Preliminary investigation indicates that the upper right compressor core fairing became detached and lodged in the engine bypass duct. The engine bypass duct was substantially damaged, resulting in engine removal. Following the event, additional in-field engine inspections of the compressor and combustion core fairings found some engine core fairing fasteners that were cracked, loose, not engaged, or no longer engageable.

The FAA received a comment to the Priority Letter AD recommending that

the language of Paragraph (a) in the compliance section be changed to clarify the intent. The commenter expressed concern that Paragraph (a) may be interpreted as requiring the removal and disassembly of the fairing and fasteners in order to visually inspect for cracks. The FAA disagrees. The language in Paragraph (a) is adequate without adding clarification. The intent of this paragraph not to remove or disassemble the fairings or fasteners but to visually inspect the fairings and fasteners for correct installation. Any damage or cracked hardware found during this visual inspection should be replaced.

Although the investigation continues, the FAA has determined that if this event occurred during flight, the damaged bypass duct could be potentially hazardous to the aircraft. This condition, if not corrected, could result in engine compressor or combustion core fairing detachment and damage to the engine bypass duct, resulting in engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of BRR Service Bulletin (SB) BR700-72-900062, Revision 2, dated November 3, 1998, that describes visual inspections to ensure proper installation of the engine compressor and combustion core fairings (also referred to as the engine core fairing) and increases the torque limits for the fairing fasteners.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 98-24-03 to prevent engine failure and damage to the aircraft. The AD requires, prior to further flight, and thereafter at 50 hours time in service (TIS) intervals, visual inspection of the fairing and fasteners for correct installation and for cracks and damage, and verification that the engine core fairing fasteners are torqued to the higher torque value. These actions are required to be accomplished in accordance with the SB described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 12, 1998, to all known U.S. owners and operators of BRR Models BR700-710A1-10 and BR700-710A2-20 turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation

Regulations (14 CFR part 39) to make it effective to all persons.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-74-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

#### 98-24-03 BMW Rolls-Royce GmbH:

Amendment 39-11050. Docket 98-ANE-74-AD.

**Applicability:** BMW Rolls-Royce GmbH (BRR) Model BR700-710A1-10 and BR700-710A2-20 turbofan engines installed on, but not limited to, Gulfstream Aerospace G-V and Bombardier BD-700-1A10 model aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent engine compressor and combustion core fairing detachment which could result in damage to the engine bypass duct, engine failure and damage to the aircraft, accomplish the following:

(a) Prior to further flight, visually inspect the engine compressor and combustion core

fairings and fasteners to ensure correct installation and for cracks or damage, and if cracked or damaged, replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR Service Bulletin (SB) BR700-72-900062, Revision 1, dated October 29, 1998, or Revision 2, dated November 3, 1998.

(b) Thereafter, at intervals not to exceed 50 hours time in service (TIS) since last inspection, visually inspect the engine compressor and combustion core fairings and

fasteners to ensure correct installation and for cracks or damage and, if cracked or damaged, replace with serviceable parts. Torque all the fasteners to the increased torque value, in accordance with BRR SB BR700-72-900062, Revision 2, dated November 3, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit

their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) The actions required by this AD shall be done in accordance with the following BRR SB:

Document No.	Pages	Revision	Date
BR700-72-900062 Total pages: 8.	1-8	2	November 3, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BMW Rolls-Royce GmbH, Eschenweg 11, D-15827 Dahlewitz, Germany; telephone 011-49-33-7086-1883; fax 011-49-33-7086-3276. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective March 11, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98-24-03, issued November 12, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on February 16, 1999.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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those appearing on articles authorized by the U.S. trademark owner for importation or sale in the U.S., and that thereby create a likelihood of consumer confusion, in circumstances where the gray market articles and those bearing the authorized U.S. trademark are physically and materially different.

These restrictions apply notwithstanding that the U.S. and foreign trademark owners are the same, are parent and subsidiary companies, or are otherwise subject to common ownership or control. The restrictions are not applicable if the otherwise restricted articles are labeled in accordance with a prescribed standard under the rule that eliminates consumer confusion.

In addition, the Customs Regulations are reorganized, with respect to importations bearing recorded trademarks or trade names, in order to clarify Customs enforcement of trademark rights as they relate to products bearing counterfeit, copying, or simulating marks and trade names, and to clarify Customs enforcement against gray market goods.

**EFFECTIVE DATE:** March 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** John F. Atwood, Intellectual Property Rights Branch, (202-927-2330).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 42 of the Lanham Act, 15 U.S.C. 1124, protects against consumer deception or confusion concerning an article's origin or sponsorship by restricting the importation of trademarked goods under certain circumstances. When an article is the domestic product of the U.S. trademark owner, that owner exercises control over the use of the trademark and the resulting goodwill. Similarly, Customs has taken the position that an article bearing an identical trademark and produced abroad by the U.S. trademark

owner, a parent or subsidiary of the U.S. trademark owner, or a party subject to common ownership or control with the U.S. trademark owner, would be under the constructive control of either the U.S. trademark owner or a party who owned or controlled the U.S. trademark owner.

Customs has long taken the position that enforcement of the distribution rights of a gray market article produced abroad by a party related to the U.S. trademark holder was a matter to be addressed through private remedies. This is known as the "affiliate exception" to Customs enforcement of restrictions under section 42 of the Lanham Act against the importation of gray market goods. Thus, Customs Regulations do not provide for restrictions on the importation of such gray market articles.

In this regard, "gray market" articles, in general, are articles that the U.S. trademark owner has not authorized for importation or domestic sale, although the articles in fact bear genuine trademarks that are identical to or substantially indistinguishable from those appearing on articles that the U.S. trademark owner has so authorized.

Until *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993) (*Lever*), the applicability of the affiliate exception depended simply on the presence of the genuine trademark and the existence of the relevant relationship between the companies, and was not contingent on whether the gray market articles were the same as, or different from, the articles that the U.S. trademark holder had authorized for importation or domestic sale.

In *Lever*, the court drew a distinction between identical goods produced abroad under the affiliate exception and goods produced abroad under the affiliate exception that were physically and materially different from the goods authorized by the U.S. trademark owner.

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 133**

[T.D. 99-21]

RIN 1515-AB49

**Gray Market Imports and Other Trademarked Goods**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations in light of *Lever Bros. Co. v. United States* (D.C. Cir. 1993). In line with that decision, the rule will, upon application by the U.S. trademark owner, restrict importation of certain gray market articles that bear genuine trademarks identical to or substantially indistinguishable from