

**FEDERAL ELECTION COMMISSION****11 CFR Part 111****[Notice 2011–15]****Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel****AGENCY:** Federal Election Commission.**ACTION:** Notice of agency procedure.

**SUMMARY:** The Federal Election Commission is establishing an agency procedure to formalize the agency's practice in the latter stages of Probable Cause process in enforcement matters brought under the Federal Election Campaign Act of 1971, as amended (FECA).

**DATES:** Effective October 28, 2011.**FOR FURTHER INFORMATION CONTACT:**

Kathleen Guith, Acting Associate General Counsel, or Joshua Smith, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Federal Election Commission (Commission) is establishing an agency procedure to formalize the agency's practice in the latter stages of the Probable Cause process when, pursuant to 11 CFR 111.16(d) of the Commission's regulations, the Office of General Counsel (OGC) advises the Commission in writing as to whether or not it intends to proceed with a Probable Cause recommendation.

In matters that proceed beyond the stage in which the Commission has determined there is reason to believe that a violation has occurred or is about to occur, and after the completion of any investigation, both the FECA, 2 U.S.C. 437g(a)(3), and the Commission's regulations, 11 CFR 111.16(a), require OGC to make a recommendation to the Commission on whether or not to find probable cause to believe that a violation has occurred or is about to occur.

When OGC makes its recommendation on whether or not the Commission should find probable cause, such recommendation is accompanied by a brief (Probable Cause Brief) supporting the recommendation. A copy of the Probable Cause Brief is provided to each respondent. 11 CFR 111.16(b). The Probable Cause Brief must comport with the disclosure procedures adopted by the Commission on June 2, 2011. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 FR 34986 (June 15, 2011).

Once the Probable Cause Brief is received by a respondent, the respondent has the opportunity to file, within 15 days, a brief (Reply Brief) responding to the Probable Cause Brief. 11 CFR 111.16(c). Additionally, pursuant to a procedural rule adopted by the Commission in 2007, a respondent may, as part of the Reply Brief, request a probable cause hearing (Probable Cause Hearing) before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007). The Commission will grant a request for a Probable Cause Hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts.

Following the filing of the Reply Brief and the Probable Cause Hearing, if there is one, OGC must, pursuant to 11 CFR 111.16(d), then advise the Commission, by a written notice (OGC Notice), as to whether OGC intends to proceed with its recommendation or to withdraw the recommendation from Commission consideration.

The Commission hereby adopts the following procedures with respect to the following issues: (a) Whether or not OGC must provide a copy of the OGC Notice to the respondent and (b) if the OGC Notice contains any new argument, statement, or facts, or contains new replies to all or any of the arguments contained in the Reply Brief, and, if a Probable Cause Hearing was conducted, those occurring at the hearing, whether the respondent should have an opportunity to reply.

**II. Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel**

1. The OGC Notice provided to the Commission by OGC following the Reply Brief (or if there was a Probable Cause Hearing, following the hearing), *see* 11 CFR 111.16(d), shall contemporaneously be provided to the respondent.

2. The OGC Notice may include information that replies to, or argues facts or law in response to, the respondent's Reply Brief, or arising out of the Probable Cause Hearing, if any.

3. If the OGC Notice contains new facts or new legal arguments raised by OGC and not contained in the Probable Cause Brief, or raised at the Probable Cause Hearing, if any, the respondent may submit a written request to address the new points raised by OGC. Any such written request must specify the new points that the respondent seeks to address and must be submitted to the Secretary of the Commission within five

business days of the respondent's receipt of the OGC Notice.

4. Within five business days of receipt of a written request from a respondent, the Commission may, in its sole discretion, exercised by four affirmative votes, allow the respondent to address in writing the new points raised by the OGC Notice. If the Commission approves the request, the Commission shall provide the respondent with a date by which the Supplemental Reply Brief must be filed, which shall in no event exceed 10 calendar days from notification to the respondent of the Commission's approval. Where necessary, the Commission reserves the right to request from a Respondent an agreement tolling any deadline, including any statutory or other deadline found in 11 CFR part 111. Any request that is not approved by the Commission within five business days of the Commission's receipt of the request shall be deemed denied without further action by the Commission.

5. All requests and Supplemental Reply Briefs should be directed to the Commission Secretary via e-mail ([secretary@fec.gov](mailto:secretary@fec.gov)) or fax (202–208–3333). Upon receipt of a request, the Commission Secretary shall forward the request or brief to each Commissioner and the General Counsel. Absent good cause, to be determined at the sole discretion of the Commission, exercised by four affirmative votes, late requests will not be accepted.

**III. Conclusion**

Failure to adhere to this procedure does not create a jurisdictional bar for the Commission to pursue all remedies to correct or prevent a violation of the Act.

This notice establishes agency practices or procedures. This procedure sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that sole discretion and may or may not exercise it as appropriate with respect to the facts and circumstances of each enforcement matter it considers, with or without notice. Consequently, this procedure does not bind the Commission or any member of the general public, nor does it create any rights for respondents or third parties. As such, this notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay of effective date under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and

comment are required by the APA or another statute, are not applicable.

Dated: October 6, 2011.

On behalf of the Commission.

**Cynthia L. Bauerly,**

*Chair, Federal Election Commission.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-0199; Directorate Identifier 2011-CE-005-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Eclipse Aerospace, Inc. Airplanes Equipped With Pratt & Whitney Canada, Corp. PW610F-A Engines**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise an existing airworthiness directive (AD) that applies to all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F-A engines. The existing AD currently requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the airplane flight manual (AFM). Since we issued that AD, P&WC has developed a design change for the combustion chamber liner assembly. This proposed AD would retain the requirements of the current AD, clarify the engine applicability, and allow the option of incorporating the design change to terminate the current operating limitation and restore the original certificated maximum operating altitude of 41,000 feet. We are proposing this AD to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by November 28, 2011.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor,

Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pratt & Whitney Canada, 1000 Marie-Victorin Blvd., Longueuil, Quebec, J4G 1A1 Canada; *telephone:* (800) 268-8000; *Internet:* <http://www.P&WC.ca>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Eric Kinney, Aerospace Engineer, FAA, Fort Worth Aircraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* (817) 222-5459; *fax:* (817) 222-5960; *e-mail:* [eric.kinney@faa.gov](mailto:eric.kinney@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2011-0199; Directorate Identifier 2011-CE-005-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### **Discussion**

On March 3, 2011, we issued AD 2011-06-06, amendment 39-16631 (76 FR 13078, March 10, 2011), for all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F-A engines. That AD superseded AD 2008-24-07, amendment 39-15747 (73 FR 70866, November 24, 2008) and requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the AFM. That AD resulted from several incidents of engine surge due to hard carbon build up blocking the static vanes at maximum operating altitude of 37,000 feet. We issued that AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

#### **Actions Since Existing AD Was Issued**

Since we issued AD 2011-06-06, amendment 39-16631 (76 FR 13078, March 10, 2011), P&WC has issued a new service bulletin that incorporates a design change to the combustion chamber liner assembly. The current design of the combustion chamber liner assembly is a one-piece configuration. The new design change involves replacing the combustion chamber liner assembly with one that has inner and outer liner assemblies that are held by cast heat shields.

Upon replacing the combustion chamber liner assembly on both engines with the new design combustion chamber assemblies, the operating limits of the airplane can be restored to the original certificated maximum operating altitude of 41,000 feet.

We have been informed that all new P&WC Model PW610F-A engines manufactured for new production Eclipse Aerospace, Inc. Model EA500 airplanes will incorporate the new combustion chamber liner assembly. The serial numbers for these new engines will start after PCE-LA0583. Therefore, to make it clear that this proposed AD will not be applicable to the new production airplanes, we need to clarify the engine applicability to include an end serial number.

#### **Relevant Service Information**

We reviewed Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011. The service information describes procedures for