Estimated Total Burden on Respondents: 221 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on June 27, 2003.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 03–16974 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.OST–2003–15511]

Request for Comments

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Request for comments.

SUMMARY: Under part 375 of the Department's regulations, which covers commercial aviation operations other than common carriage, persons seeking to operate foreign civil aircraft within the United States involving the carriage of persons, property or mail ''for remuneration or hire'' must obtain a permit from the Department of Transportation. The National Business Aviation Association (NBAA) has written to the Department requesting a policy determination that certain types of operations that companies it represents might perform (such as carriage of a company's own officials and guests, or aircraft time sharing, interchange, or joint ownership arrangements between companies) do not, in fact, constitute operations ''for remuneration or hire''. A favorable Department response would eliminate the need for the companies involved to secure a permit for such operations.

The Department of Transportation is soliciting comments from interested parties regarding the NBAA request for a policy determination. The Department intends to consider any such comments in developing a response to the NBAA. The text of the NBAA letter is attached to this notice, and copies of other recent correspondence between the NBAA and the Department regarding part 375 have been placed in the docket.

DATES: Comments to the proposal should be filed on or before July 28, 2003.

ADDRESSES: Comments should be filed in Docket OST–2003–15511 and sent:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001;

(2) By hand delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329; or

(3) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: George Wellington, Chief of U.S. and Foreign Carrier Licensing Division, Office of International Aviation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2391.

Dated: June 27, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

BILLING CODE 4910–62–P

NATIONAL BUSINESS AVIATION ASSOCIATION, INC.

1200 EIGHTEENTH STREET NW, SUITE 400
WASHINGTON, DC 20036-2527
TEL: (202) 783-9000 • FAX: (202) 331-8364
E-MAIL: info@nbaa.org • WEB: www.nbaa.org

May 16, 2003

The Honorable Read Van de Water
Assistant Secretary for Aviation
And International Affairs
U.S. Department of Transportation
400 Seventh Street, S.W., Suite 10232
Washington, DC 20590

Re: **Business Aviation**
Part 375 Policy

Dear Secretary Van de Water:

Thank you for convening the meeting on Wednesday to enable us to elaborate upon the non-commercial nature of business aviation generally with specific reference to Part 375. Given the global nature of business aviation today, the Department's interpretation of Part 375 has had, and will continue to have, a significant impact on a segment of our membership. Your March 20 interpretation represents a willingness on the part of the Department to address the dilemma posed by Part 375 for business aviation. We applaud that decision and would like to build on it in accordance with the proposal discussed at Wednesday's meeting.

NBAA's proposal would permit operations with *U.S. registered* aircraft conducted under Subpart F to Part 91 (Section 91.501 et seq.) – which are deemed non-commercial by FAA and "exempt" from FAA certification – to be deemed "non-commercial" by the Department for Part 375 purposes. As a result, the reimbursement of expenses permitted by Section 91.501(b) would not constitute "remuneration or hire" within the meaning of Part 375.

Your March 20, 2003 interpretation permits cost reimbursable or "chargeback" operations conducted by a parent for its wholly-owned subsidiary to be treated as non-commercial – *i.e.*, such operations may be performed under Section 375.30 without the need for additional economic authority from the Department. These operations are also permitted by FAA under Section 91.501(b)(5). In this regard, the Department is building on its 1986 interpretation which permitted demonstration flights performed on a chargeback basis to be considered "non-commercial" – the same way that FAA treats these flights under Section 91.501(b)(3).

NBAA views its proposal (summarized above) as the logical "next step" to extend the Department's earlier interpretations beyond demonstration flights and parent/wholly-owned subsidiary operations to include other related business aviation activities – namely time sharing, interchange and joint ownership operations, and the *full scope* of intra-corporate family operations – which, for over 30 years, the FAA has permitted to operate under FAR Part 91 as "non-commercial."

During Wednesday's meeting, we were asked to describe in more detail the FAA's Subpart F options which are incorporated into our proposal. In reviewing this description, please bear in mind that all of these options are "fenced in" to ensure their non-commercial status. By way of illustration, only companies whose aircraft operations are "incidental" to the primary business of these companies are eligible to engage in intra-corporate family, time sharing, interchange, and joint ownership operations under Section 91.501(b).[1] Eligibility is also limited to operations of N-registered aircraft[2] which are not engaged in "common carriage." The latter restriction ensures that a company does not lose sight of the main purpose of business aviation, namely to support the company's overall business, as opposed to the company's aircraft activity becoming a business in and of itself.

With the above in mind, we are providing the following overview of the Subpart F non-commercial options upon which we are relying:

1. Intra-Corporate Family Operations (Section 91.501(b)(5)

This is perhaps the most widely utilized Subpart F option which permits the company that is furnishing and operating the airplane to carry its own officials and guests as well as carry the officials and guests of its subsidiary(ies), its parent company, and the subsidiary(ies) of its parent on a fully-allocated cost reimbursable basis. Again we would emphasize that the company's aviation activities must be secondary to the overall business of the company to avail itself of this option.

As we discussed Wednesday, "company" would, in our view, include a corporation, LLC, and similar legal structures. What constitutes a "subsidiary" would be interpreted in accordance with the law of the state of incorporation. The consensus yesterday was that 51% ownership in general would be sufficient to establish a parent – "subsidiary" – relationship.

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[1] Accordingly, if Company XYZ is engaged in the manufacture of widgets and uses the company jet to carry its officers and guests, XYZ's aircraft operations satisfy this incidental business test, and XYZ is eligible to perform the types of cost-reimbursable operations permitted by Subpart F without these operations being considered "commercial" and without the need for FAA Part 121 or Part 135 certification.

[2] The regulation itself is limited to large and multi-engine turbojet-powered airplanes (regardless of weight). However, by long-standing exemption, FAA has permitted NBAA members operating small airplanes and helicopters to avail themselves of the Subpart F non-commercial options. Individual companies would also be eligible to obtain their own exemptions and several have done so.

While your March 20, 2003 interpretation would be inclusive of the type of operations permitted by FAA as non-commercial under Section 91.501(b)(5), we believe that the limitation to a "wholly-owned subsidiary" is unnecessarily restrictive to ensure the non-commercial status of these aviation activities and does not take into account that corporate structures today involve "subsidiaries" which are less than 100% owned by the parent.

Interchange Arrangement (Section 91.501(b)(6) and (c)(2)

This is another way to spread the costs of operating a company airplane through what is essentially a barter arrangement where Company A swaps time on its airplane for *equal time* on Company B's airplane. Under an interchange arrangement, the company operating the more expensive airplane can be reimbursed for the difference between the fully-allocated costs attributable to the airplanes being swapped on an equal time basis.

Interchanging is a useful business aviation tool to permit each party to the interchange agreement to maximize the utilization of its own aircraft and gain access to the other party's aircraft when needed. As examples: Company A's aircraft may be "in maintenance;" Company A may require additional "lift" during peak periods to accommodate its business travel needs; or Company B's airplane may be more suitable in terms of capacity, range, and cost for a particular flight proposed by Company A. If Company A has an interchange agreement with Company B, and Company B's aircraft is available, Company B can provide its airplane to Company A and recover the fully-allocated cost of such operations through the "barter" and "boot" features of the interchange concept.

2. Joint Ownership (Section 91.501(b)(6) and (c)(3))

Yet another way for a company to spread costs while retaining its non-commercial status in the FAA eyes is through joint ownership. This is a form of co-ownership involving an *operating joint owner* (the owner furnishing the crew) and one (or more) *non-operating joint owners* (the owners being transported) each of which must appear as a "registered owner" on the FAA certificate of registration. Under this arrangement the operating joint owner can carry the officials and guests of the non-operating joint owner on a fully-allocated cost recovery basis.

Joint ownership has also benefited business aviation by enabling companies which, individually, cannot afford to own and operate an airplane, to join forces and share the substantial capital costs of acquiring the airplane. One of the joint owners would then be

designated as the flight department manager to operate the airplane for each of the joint owners, again on a cost-sharing basis.

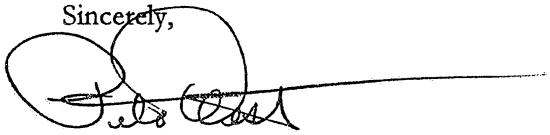
3. Time Sharing (Section 91.501(b)(6), (c)(1) and (d))

This is an arrangement whereby a company can use its airplane to carry other persons on *a limited* cost reimbursable basis. The charges that may be recovered are essentially limited to the out-of-pocket expenses associated with the particular flight plus an additional charge equal to 100% of the fuel.[3] Even with this add-on the company will generally *not* recover the fully-allocated cost of a particular flight.

In the context of business aviation, companies utilize time sharing arrangements to carry executive officers traveling on personal business where the company requires payment, or the officers insist on paying, for the transportation to the extent permitted by FAA rules. Again, as noted above, the FAA permits these operations only when *"common carriage is not involved"* so as a legal matter – as well as for practical business considerations – companies only allow a few executives to utilize the company airplane on a time sharing basis.

Thanks again for the opportunity to address the Part 375 of concern to our membership. If you have any questions regarding the NBAA proposal or the FAA Subpart F options incorporated therein, please feel free to contact me at (202) 783-9262 or NBAA's regulatory counsel Gary B. Garofalo at (202) 776-3970 and Frank Costello (202) 298-8660.

Sincerely,



Pete West
Senior Vice President
Government & Public Affairs

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[3] This is also the measure of cost recovery for demonstration flights under Section 91.501(b)(3) which DOT, by virtue of its 1986 interpretation, views as non-commercial for purposes of Part 375.

[FR Doc. 03–16973 Filed 7–3–03; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for North-South Rail Link in Boston, MA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of EIS cancellation.

SUMMARY: Notice is hereby given that the Federal Transit Administration (FTA) is canceling its preparation of an Environmental Impact Statement (EIS) for a rail-in-tunnel connection between North and South Stations in downtown