AD 2004–02–07), revise the AWL section of the Instructions for Continued Airworthiness of the maintenance requirements manual by incorporating the functional check of the PFS pilot input lever, Task R27–31-A024–01, as specified in Bombardier Temporary Revision (TR) 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' into the AWL section.

**New Requirements**

*New Repetitive Functional Tests and Corrective Actions*

(g) Before the accumulation of 4,000 total flight hours, or within 100 flight hours after the effective date of this AD, whichever occurs later: Do a functional test of the pilot input lever of the PFS units to determine if the lever is disconnected, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005. Repeat the test at intervals not to exceed 100 flight hours. Accomplishing the initial functional test terminates the requirements of paragraph (f) of this AD and the repetitive functional checks of the PFS pilot input lever, Task R27–31–A024–01, as specified in the AWL section of the Instructions for Continued Airworthiness of CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual.

(h) If any lever is found to be disconnected during any functional test required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005.

(1) Before further flight, replace the defective PFS with a serviceable PFS in accordance with the Accomplishment Instructions of the alert service bulletin; and

(2) Within 30 days after removing the defective PFS, submit a test report to the manufacturer in accordance with the Accomplishment Instructions of the alert service bulletin. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

*Previously Accomplished Actions*

(i) Actions done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–144, including Appendix A, dated September 15, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

*Alternative Methods of Compliance (AMOCs)*

(j)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

*Related Information*

(k) Canadian airworthiness directive CF–2005–41, dated December 22, 2005, also addresses the subject of this AD.

*Material Incorporated by Reference*

(l) You must use Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005; and Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations;'' as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On March 27, 2006 (71 FR 12277, March 10, 2006), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005.

(2) On February 13, 2004 (69 FR 4234, January 29, 2004), the Director of the Federal Register approved the incorporation by reference of Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.''

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 21, 2006.

**Kyle L. Olsen,**

*Acting Manager , Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 06–2981 Filed 3–23–06; 3:18 pm]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 14 CFR Part 375

**[Docket No. OST–2003–15511]**

**RIN 2105–AD39**

## Certain Business Aviation Activities Using U.S.-Registered Foreign Civil Aircraft

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final Rule.

**SUMMARY:** In response to a petition by the National Business Aircraft Association (NBAA), this final rule amends the requirements governing the licensing and operation in the United States of ''foreign civil aircraft'' which are not engaged in common carriage. The rule provides that certain types of operations by business aircraft operators using U.S.-registered foreign civil aircraft (such as carriage of a company's own officials and guests, or aircraft time-sharing, interchange or joint ownership arrangements between companies) do not constitute operations ''for remuneration or hire'' and, therefore, do not require a DOT permit. This document also dismisses, without prejudice, the request of NBAA that the regulation be amended so that reimbursement by political candidates carried on foreign civil aircraft is not considered ''remuneration or hire'' under the rule.

**DATES:** This final rule becomes effective April 27, 2006

**FOR FURTHER INFORMATION CONTACT:** David Modesitt, Chief, Europe Division, Office of International Aviation (X–40), U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–2384.

**SUPPLEMENTARY INFORMATION:**

### Background

*Notice of Proposed Rulemaking*

On February 7, 2005, OST published a notice of proposed rulemaking (NPRM) (70 FR 6382) that proposed to amend Part 375 to further delineate whether, and under what circumstances, companies operating U.S.-registered foreign civil aircraft are engaged in commercial air operations for remuneration or hire to, from, and within the United States and need specific authorization for each flight. Part 375 currently defines ''foreign civil aircraft'' as ''(a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-

registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States.'' Section 49 U.S.C. 40102(a)(15) of Title 49 of the U.S. Code defines ''citizen of the United States'' as, among other things, ''a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.''

''Commercial air operations'' are defined in Part 375 as operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations **for remuneration or hire to, from or within the United States** [emphasis added] including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under 49 U.S.C. 41301, exemptions, and all other operations in air transportation.

Thus, if a company that does not meet the definition of a citizen of the United States (for example, if its president is not a U.S. citizen) owns, directly or through a parent or subsidiary, a U.S.-registered corporate aircraft, that aircraft is considered to be a ''foreign civil aircraft'' under Part 375. In addition, if any funds are transferred to the company operating the foreign civil aircraft to cover the costs of the operation even by another company within the same corporate family as the operator, that transfer of funds, as ''remuneration'' under Part 375, would require a specific authorization for each such flight.

As explained in the NPRM, the Department addressed this issue in limited past situations, specifically as it pertains to demonstration flights performed on a chargeback basis related to the sale of aircraft or flight training indoctrination (see 14 CFR 375.31 and 375.34), and chargeback operations conducted by a parent for its wholly-owned subsidiary under circumstances where the management and/or board of directors and management of the corporation were not entirely composed of U.S. citizens (see Letter dated March 20, 2003, from then Assistant Secretary for Aviation and International Affairs Read Van de Water to Pete West, Senior Vice President, NBAA, in Docket OST–2003–15511). In these instances the Department indicated that such operations involving the transfer of funds, within the confines of the facts of those circumstances, did not constitute operations for remuneration or hire, and, therefore, a foreign aircraft permit would not be required under Part 375 of the Department's regulations.

In the NPRM, it was our tentative view that NBAA had made a persuasive case for the changes to Part 375 that it seeks, and we proposed to amend our regulations to effect those changes.

Under Part 375, U.S.-registered foreign civil aircraft may not perform these types of operations without prior Department approval for each individual flight. The kinds of intra-corporate, interchange, joint ownership, and time-sharing operations involving transfer of funds to reimburse costs that are the subject of this proceeding have become a more and more necessary part of global commerce involving U.S. business. The limitation on cost reimbursement for these operations, requiring individual permits, are problematic for companies operating U.S.-registered foreign civil aircraft, since these flights are often time-sensitive and involve a now common practice of cost reimbursement within a corporate organization. When there is a well-defined class of operations with a clear purpose in cost-only transfer of funds, there is not a significant potential for those operations to be considered common carriage operations for hire in the United States. It is in the public interest to accept cost reimbursement in these circumstances, without prejudice to any other interpretation of ''remuneration or hire,'' as has been done for demonstration flights and flight indoctrination, as not being within the purview of Part 375 as ''for remuneration or hire.''

As the U.S. economy has become increasingly global and businesses more multinational in character and structure, more and more companies operating U.S. registered business aircraft do not meet the statutory requirements of ''citizen of the United States'' for commercial air operations. These companies, because of their corporate structures, are thus hindered in conducting the range of business aviation activities that they otherwise could provide if their operations were not considered ''commercial air operations'' under Part 375. This situation, in our view, unnecessarily hampers the companies' flexibility in structuring their corporate organizations and relationships and limits global business operations to the detriment of U.S. interests. A company that might own a U.S.-registered business aircraft should be able to operate that corporate aircraft in the United States for certain business purposes and be reimbursed for costs by a subsidiary without specific flight approval by the Office of Secretary under Part 375.

We previously explained in the NPRM our belief, in the context of the limited business-related activities presented by NBAA, that public interest considerations warrant treating all companies operating U.S. registered aircraft the same way. Specifically, we believe that where a company operating a U.S.-registered foreign civil aircraft engages in the kinds of business air service transactions as defined below, reimbursement for certain expenses should not be considered remuneration or hire within the context of Part 375. The cost reimbursement under these conditions does not present a situation of operating an aircraft ''for hire,'' thereby allowing the potential for common carrier operations. The operations would now no longer require prior approval in the form of a foreign aircraft permit under Part 375. In this instance our decision to so amend our rule treats U.S.-registered foreign civil aircraft consistently throughout Department regulations.[1]

The NPRM proposed to implement these changes by adding a new section to Subpart D of Part 375. The new section, ''Certain business aviation activities using U.S.-registered foreign civil aircraft,'' would authorize those types of operations that NBAA requested be covered. We also proposed a minor technical amendment to the existing language in the statutory authority citation in § 375.1 to reflect the recodification of Title 49 of the U.S. Code, changing the current reference of ''section 402 of the Federal Aviation Act of 1958, as amended'' to ''49 U.S.C. 41301.''

[1] We note that the FAA in 14 CFR Part 91 authorizes similar reimbursements as non-commercial. We wish to make clear, however, as we did in the NPRM, that nothing in our proposed change to Part 375 would in any way serve to alter any orders, regulations, or requirements, or interpretations thereof, of the Federal Aviation Administration.

*Discussion of Comments*

On April 8, 2005, Carnival Corporation (Carnival Cruise Lines) submitted comments in response to the NPRM. Carnival indicated its support for the contemplated rule change, and proposed four technical changes to the proposed rule change to create greater clarity and meet the intent of the proposed rule change. First, Carnival proposes that the first sentence of proposed section 375.37, under the definition of ''company'' should be changed to also include a definition of ''person'' to read: * * * (''person'') is defined as an individual, firm, partnership, corporation, company, association, joint-stock association, or government entity.'' Second, Carnival proposes that the second sentence of proposed section 375.37 should be revised to read ''* * * when the carriage is, **in the case of intracorporate operations**, within the scope of, and, *in all cases*, incidental to the business of the company * * *'' [Carnival proposed change in bold]. Third, Carnival proposes that, in subsection (a) of proposed section 375.37, the word ''company'' should be deleted immediately preceding the semicolon at the end of the sentence; and that in subsection (d) of proposed section 375.37 the words ''another company'' should be deleted immediately preceding the semicolon and replace them with the words ''a person to the extent such time-sharing is authorized under 14 CFR 91.501 or any successor regulation.''

NBAA filed comments in response to the NPRM as well on April 8, 2005. NBAA supports the NPRM and proposed three technical changes to the proposed rule change to create greater clarity and meet the intent of the proposed rule change. In section 375.37(a), NBAA proposed replacing the words ''Intracorporate operations'' with ''Intracompany operations,'' adding the words ''or a subsidiary of its parent'' after the first use of the word ''parent,'' deleting the word ''corporate'' from the subsection, and changing the end of that subsection to read as follows ''* * * provided that the operator of the U.S.-registered foreign civil aircraft must hold majority ownership in, or have a common parent with, the company for which it provides operations.'' In section 375.37(b), it proposed replacing the word ''company'' with the word ''person'' in the two places where the word ''company'' appears; and, in section 375.37(d), replacing the word ''company'' with the word ''person'' in the first clause.

NBAA filed an additional comment on the text of the proposed rule change, suggesting an amendment of the NPRM to include newly proposed language to grant to foreign operators of business aircraft, under 14 CFR Part 375, the privileges given to U.S. operators under FAA FAR Part 91.321 relating to the carriage of elected officials. NBAA notes that this issue may not be properly within the scope of the instant rulemaking, and that it might be better for the Department to consider the request as an independent rulemaking, particularly if it would delay a final decision in this case.

A comment was filed by B. Sachau, expressing concern over the security implications of foreign aircraft being operated within the United States, stating that all foreign aircraft should be required to obtain permits to conduct such operations, and stating that management in companies operating aircraft in the United States should be U.S. citizens.

*Discussion of Final Rule*

This final rule adopts the amendments proposed in the NPRM with certain changes to reflect the suggestions proposed by interested parties in this proceeding, where those suggestions add to the clarity of the revised rule.

We are accepting NBAA's proposed changes in section 375.37(a) for clarity, as there is no change in the substance or intent of subsection (a). For clarity, we have amended the opening sentence in section 375.37 to define ''company'' as a ''person,'' which is defined in the statute, thereby eliminating the need for NBAA's changes in sections 375.37(b) and (d).

With respect to NBAA's request that we either amend this rulemaking proceeding, or consider another rulemaking to include as in 14 CFR Part 91 new provisions concerning business aircraft travel by political campaign travelers, we have decided that the issue of political campaign travel is too far removed from the issue being addressed here and that, in any event, consideration of campaign travel would unduly delay a final rule in this proceeding. We will therefore dismiss, without prejudice, this request by NBAA. Should NBAA wish to pursue this matter, it is free to file its request in a new and separate docket for our consideration.

Further, we do not believe that the changes proposed by Carnival add to the clarity of the rule or are otherwise warranted. Carnival seeks to expand the reach of the final rule in ways that go beyond business-aviation activities and would allow, in some cases, non-business-aviation entities to benefit from the revised rule's provisions. We are not persuaded that such changes are justified. The intent of NBAA's request, and of this proceeding, is to facilitate certain business aviation activities conducted with foreign civil aircraft, and we do not believe that the final rule should encompass operations or activities that are not clearly business-related. To consider such a change to scope of NBAA's request, and our NPRM, would, as with the political campaign travel issue discussed above, unnecessarily delay the issuance of this amended rule. To the extent that some past ad hoc Department grants of authority have, in Carnival's view, been more expansive, we remain prepared to look at these kinds of situations in the future on a case-by-case basis, under the existing prior approval provisions of Part 375.

With respect to the comment from B. Sachau, the authority of foreign civil aircraft to operate in the United States for certain purposes is authorized by statute, as is the authority of U.S.-registered aircraft to be owned by non-U.S. citizens (see 49 U.S.C. 41703 and 44102). These foreign civil aircraft are subject to regulation by the Federal Aviation Administration and by the Transportation Security Administration, Department of Homeland Security. Part 375 requires that commercial air operations by these aircraft be subject to the grant of economic authority in the form of a permit. The rule adopted in this rulemaking does not in any way affect FAA or TSA authority or regulation.

*International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that correspond to these amendments.

*Executive Order 12866 and DOT Regulatory Policies and Provisions*

This rule is not a significant regulation under Executive Order 12866 or DOT Regulatory Policies and Provisions, and was not reviewed by the Office of Management and Budget.

The economic impact of the implementation of the rule will be minimal. The rule will save certain companies the legal expenses and data-preparation expenses of submitting and

processing requests for DOT authority to conduct specified types of intracorporate flight operations. In turn, the Department will save expense by not having to process additional foreign air carrier permit applications. The rule will eliminate an unnecessary and burdensome requirement to obtain approval of the covered operations.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)) of 1996, requires an agency to review regulations to assess their impact on small businesses. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would almost exclusively affect only large corporations. In addition, we anticipate the rule would have little, if any, economic impact.

*Trade Impact Analysis*

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The Department has assessed the potential effect of this rulemaking and had determined that, as a result of reduced potential paperwork for certain companies, it will have only a positive effect on trade-sensitive activity.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Part 375 contains information collection requirements. However, information collected under Part 375 will not be affected by this change to the rule.

OST Form 4509 is a required Application for Foreign Aircraft Permit or Special Authorization under Part 375 filed with the Department prior to entities conducting certain operations in the United States with foreign civil aircraft. The Department grants or denies the authorization to the entity on a case-by-case basis. Entities file this form as often as necessary whenever they wish to conduct operations for which prior Department approval is required under the Part. This two page form does not require a significant amount of time to complete (the Department estimates one-half hour per application), and is not burdensome to complete. Other than general aviation knowledge and experience inherent with each applicant, no specialized training or education is required to complete the form. For calendar years 2005 and 2004, the Department received an average of 23 requests using the form.

As required by the Paperwork Reduction Act, the Department will submit this previously approved collection requirement to the Office of Information and Regulatory Affairs of the OMB for review, and reinstatement, without change.

*OMB Control Number:* 2106–0002.

*Title:* 14 CFR Part 375—Navigation of Foreign Civil Aircraft Within the United States.

*Burden hours:* 13 hours annually. (Average of 26 collections per year in recent years, and an estimated .5 hours to complete each Form 4509.)

*Affected public:* Operators of foreign civil aircraft within the United States.

*Cost:* There are no costs to the respondents as a result of this collection.

*Description of Paperwork:* OST Form 4509 ensures that the Department has sufficient information to judge the merits of applications for authority to operate foreign civil aircraft within the United States under Part 375. This form standardizes information requests, to the benefit of both the Department and applicants.

*Unfunded Mandates Reform Act*

This rule will not impose an unfunded mandate for the purposes of the Unfunded Mandates Reform Act of 1995.

*Executive Order 13132, Federalism*

The Department has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and we have determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The Department anticipates that any action taken will not preempt a State law or State regulation or affect the States' ability to discharge traditional State government functions.

**List of Subjects in 14 CFR Part 375**

Administrative practice and procedure, Aircraft, Foreign relations, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 375 as follows:

## PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

■ 1.The authority citation for 14 CFR part 375 is revised to read as follows:

**Authority:** 49 U.S.C. 40102, 40103, and 41703.

■ 2. In §375.1, the definition of ''Commercial air operations'' is revised to read as follows:

### § 375.1 Definitions.

* * * * *

*Commercial air operations* shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under 49 U.S.C. 41301, exemptions, and all other operations in air transportation.

* * * * *

■ 3. A new § 375.37 is added to read as follows:

### § 375.37 Certain business aviation activities using U.S.-registered foreign civil aircraft.

For purposes of this section, ''company'' is defined as a person that operates civil aircraft in furtherance of a business other than air transportation. U.S.-registered foreign civil aircraft that are not otherwise engaged in commercial air operations, or foreign air transportation, and which are operated by a company in the furtherance of a business other than transportation by air, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air), may be operated to, from, and within the United States as follows:

(a) *Intra-company operations.* A company operating a U.S.-registered foreign civil aircraft may conduct operations for a subsidiary or parent or

a subsidiary of its parent on a fully-allocated cost reimbursable basis; provided, that the operator of the U.S.-registered foreign civil aircraft must hold majority ownership in, be majority owned by, or have a common parent with, the company for which it provides operations;

(b) *Interchange operations.* A company may lease a U.S.-registered foreign civil aircraft to another company in exchange for equal time when needed on the other company's U.S. registered aircraft, where no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two aircraft;

(c) *Joint ownership operations.* A company that jointly owns a U.S.-registered foreign civil aircraft and furnishes the flight crew for that aircraft may collect from the other joint owners of that aircraft a share of the actual costs involved in the operation of the aircraft; and

(d) *Time-sharing operations.* A company may lease a U.S.-registered foreign civil aircraft, with crew, to another company; provided, that the operator may collect no charge for the operation of the aircraft except reimbursement for:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hanger and tie-down costs away from the aircraft's base of operations.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses for fuel, oil, lubricants, and other additives.

Issued under authority delegated in 49 CFR 1.56a in Washington, DC, on this 21st day of March, 2006.

**Michael W. Reynolds,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 06–2930 Filed 3–27–06; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 342

**[Docket No. RM05–22–000]**

## Five-Year Review of Oil Pipeline Pricing Index

Issued March 21, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order establishing index for oil price change ceiling levels.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing this final order concluding its second five-year review of the oil pricing index, established in Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993). After consideration of all the initial, reply and supplemental comments, the Commission has concluded that the PPI+1.3 index should be established for the five-year period commencing July 1, 2006. At the end of this period, in July 2011, the Commission will once again review the index to determine whether it continues to measure adequately the cost changes in the oil pipeline industry.

**DATES:** March 28, 2006.

**ADDRESSES:** Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Harris S. Wood (Legal Information), Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8224.

Robert W. Fulton (Technical Information), Office of Energy Markets and Reliability, 888 First Street, NE., Washington, DC 20426, (202) 502–8003.

**SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. On July 6, 2005, the Commission issued a Notice of Inquiry (NOI),[1] in which it proposed to continue using the Producer Price Index for Finished Goods (PPI or PPI–FG) for the next five-year period beginning July 1, 2006, to track oil pipeline industry cost changes. The Commission applies the index to oil pipeline transportation tariffs to establish rate ceiling levels for pipeline rate changes. The NOI invited interested persons to submit comments on the continued use of PPI and to propose, justify, and fully support, as an alternative, adjustments to PPI. Comments and reply comments were due September 13 and October 13, 2005, respectively.

2. Based on our review of the comments and reply comments received, and for the reasons discussed below, the Commission determines that the PPI plus one point three percent (PPI+1.3) should be established for the five-year period commencing July 1, 2006, and concludes that this index satisfies the mandates of the Energy Policy Act of 1992 (Energy Policy Act).[2]

### Background

3. Congress, in the Energy Policy Act, required the Commission to establish a ''simplified and generally applicable'' ratemaking methodology for oil pipelines, consistent with the just and reasonable standard of the Interstate Commerce Act (ICA).[3] On October 22, 1993, the Commission issued Order No. 561,[4] promulgating regulations pertaining to the Commission's jurisdiction over oil pipelines under the ICA, and to fulfill the requirements of the Energy Policy Act. In so doing, the Commission found that using an indexing methodology to regulate oil pipeline rate changes, accompanied with certain alternative rate-changing methodologies where either the pipeline or the shipper could justify departure from the indexing methodology, would satisfy both the mandate of Congress and comply with the requirements of the ICA. The Commission found that the indexing methodology adopted in the final rule would simplify, and thereby expedite, the process of changing rates by allowing, as a general rule, such changes to be made in accordance with a generally applicable index, and that it would ensure compliance with the just and reasonable standard of the ICA by subjecting the chosen index to periodic monitoring and, if necessary,

[1] Five-Year Review of Oil Pipeline Pricing Index, IV FERC Stats. & Regs. [Notices] ¶ 35,552 (2005)

[2] 42 U.S.C.A. 7172 note (West Supp. 1993). The Energy Policy Act's mandate of establishing a simplified and generally applicable method of regulating oil transportation rates specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into it.

[3] 49 U.S.C. app. 1 (1988).

[4] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993), 58 FR 58753 (Nov. 4, 1993); *order on reh'g*, Order No. 561–A, FERC Stats. & Regs. [Regs Preambles, 1991–1996] ¶ 31,000 (1994), 59 FR 40243 (Aug. 8, 1994), *aff'd., Association of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).