

• **Mail:** Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:**

Mariangela Rosa, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 1-877-794-7395 or e-mail [SSA.504@ssa.gov](mailto:SSA.504@ssa.gov). For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

Dated: October 17, 2011.

**Michael J. Astrue,**

*Commissioner of Social Security*

[FR Doc. 2011-27353 Filed 10-21-11; 8:45 am]

**BILLING CODE 4191-02-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Application of Friendship Airways, Inc. d/b/a Yellow Air Taxi for Commuter Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2011-10-9), Docket DOT-OST-2005-21533.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should revoke the Commuter Air Carrier Authorization issued to Friendship Airways, Inc. d/b/a Yellow Air Taxi and deny its application to resume commuter operations, pursuant to 49 U.S.C. 40109(f) and 14 CFR part 298.

**DATES:** Persons wishing to file objections should do so no later than November 1, 2011.

**ADDRESSES:** Objections and answers to objections should be filed in Docket DOT-OST-2005-21533 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room W12-140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:**

Catherine J. O'Toole, Air Carrier Fitness Division (X-56, Room W86-489), U.S. Department of Transportation, 1200

New Jersey Avenue, SE., Washington, DC 20590, (202) 366-9721.

Dated: October 18, 2011.

**Susan L. Kurland,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 2011-27455 Filed 10-21-11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Airport Improvement Program: Modifications to Benefit Cost Analysis (BCA) Threshold

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

**ACTION:** Notice of changes; comments and responses.

**SUMMARY:** This document announces the publication of the final policy changes to the Federal Aviation Administration's policy requiring a benefit cost analysis (BCA) for capacity projects funded by Airport Improvement Program (AIP) discretionary funds. On December 16, 2010, the FAA issued a *Notice of Availability of Draft Guidance and Request for Comments* with regard to the modification of its policy requiring benefit cost analyses (BCA) for capacity projects, which was published in the **Federal Register**. (78 FR 78798-02, December 16, 2010). The FAA now is (1) Issuing the final policy modifying the threshold at which BCAs are required from \$5 million to \$10 million in Airport Improvement Program (AIP) Discretionary funds, and (2) responding to comments requested in the Notice on December 16, 2010.

**DATES:** Effective date of the modified policy October 24, 2011.

**ADDRESSES:** Copies of the final guidance to begin the implementation of the policy for conducting BCAs can be obtained from the Federal Aviation Administration, Office of Airport Planning and Programming, Airports Financial Assistance Division (APP-500), 800 Independence Avenue, SW., Washington, DC 20591. An electronic copy of the guidance will be posted on the FAA's Airport's Division Web site at [http://www.faa.gov/airports/aip/bc\\_analysis](http://www.faa.gov/airports/aip/bc_analysis) within 7 days of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Frank San Martin, Manager, Financial Assistance Division (APP-500), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3831.

**SUPPLEMENTARY INFORMATION:**

### A. Background

#### Policy History

In 1994, the FAA established its policy on Benefit Cost Analysis (BCA) requirements for airport capacity projects. Factors leading to these requirements included:

1. The need to improve the effectiveness of federal airport infrastructure investments in light of a decline in federal AIP budgets;
2. Issuance of Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 59 FR 4233, Jan. 26, 1994;
3. Guidance from Congress citing the need for economic airport investment criteria; and
4. Statutory language from 1994 included in Title 49 U.S.C. 47115 (d) specifying that, in selecting projects for discretionary grants to preserve and enhance capacity at airports, the Secretary shall consider the benefits and costs of the projects.

The FAA implemented BCA requirements for capacity projects at all categories of airports in order to limit the FAA's risks when investing large amounts of discretionary funds. The FAA uses the conclusions reached in the BCA review to make policy and funding decisions on possible future federal investments.

In 1997, a new FAA policy transferred responsibility for preparing BCAs from the FAA to the sponsor. In addition, the policy lowered the projected cost threshold from \$10 million in AIP discretionary funds (established in 1994) to \$5 million.

The \$5 million threshold change was made policy in 1997 and formalized in a 1999 **Federal Register** notice, *Federal Aviation Administration Policy and Final Guidance Regarding Benefit Cost Analysis (BCA) on Airport Capacity Projects for FAA Decisions on Airport Improvement Program (AIP) Discretionary Grants and Letters of Intent (LOI)*, 64 FR 70107 (Dec. 15, 1999).

Since 1997, sponsors have been required to conduct BCAs for capacity projects for which more than \$5 million in AIP discretionary funding will be requested. In developing the new draft guidance increasing the threshold, the FAA reviewed the reasons for lowering the BCA threshold amount in 1997 and concluded that those reasons do not present sufficient basis to warrant maintaining the \$5 million level threshold today.

The FAA has gained valuable experience assessing the implementation of the policy and the need to further clarify the threshold

requirements for BCA. The \$5 million threshold has remained unchanged for over 13 years while costs of construction have risen significantly. Using a construction cost index that approximates heavy civil infrastructure costs and is maintained by the Bureau of Labor and Statistics, construction costs of \$5 million in 1997 are equivalent to costs of \$9.6 million in July 2011. FAA's use of BLS construction cost data is explained later in Section C. b. "Setting of the New Threshold Level."

Based on the increase in construction costs, the FAA has concluded that \$10 million in AIP Discretionary funds is the appropriate threshold for Fiscal Year 2012 and beyond. Though the BCA threshold is being increased, the FAA retains the right to require a BCA for any capacity project in order to evaluate the reasonableness of project costs relative to project benefits.

#### *Procedural History*

On December 16, 2010, the FAA published in the Federal Register a *Notice of Availability of Draft Guidance and Request for Comments* regarding the modification of its policy requiring benefit cost analyses (BCA) for capacity projects (78 FR 78798–02, December 16, 2010). This Notice requested comments on AIP grant and LOI cost threshold, above which BCAs must be performed; a total of three commenters responded to this request. Two commenters, the Airports Council International (ACI) and Mr. Joseph M. Polk of the Memphis-Shelby County Airport Authority, expressed support for the draft guidance, stating that it will reduce the need for potentially costly and time-consuming BCAs where limited AIP discretionary funds are involved. A third commenter, the Air Transport Association (ATA), expressed a series of questions and concerns about the draft guidance. The FAA has reviewed and addressed these comments below, consolidating and arranging them in a manner that enables us to best respond.

#### **B. Modifications to Policy**

The previous AIP grant policy, issued June 24, 1997 and commencing in Fiscal Year 1998, stated that airport sponsors seeking \$5 million or more in AIP discretionary funds for capacity projects were required to provide a completed BCA with the grant application. The Letters Of Intent (LOI) policy stated that a BCA was required for any LOI request to be issued in Fiscal Year 1997 or thereafter. In 1999, federal policy exempted certain reconstruction projects from the BCA requirement.

The FAA will be issuing a companion Program Guidance Letter (PGL) 12–01 titled "Revised BCA Guidance" on the date of publication in the **Federal Register** which incorporates the BCA requirement threshold modification from \$5 million to \$10 million in requested AIP Discretionary funds. This revised guidance is based on the report titled "Benefit Cost Analysis Threshold Evaluation" which assessed the technical feasibility for raising the threshold to \$10 million. A discussion of the evaluation and results is included in the PGL to inform FAA staff, airport sponsors, consultants and the public about the basis for this decision.

#### **C. Discussion of Comments and Responses**

On December 16, 2010, the FAA established a docket and invited airport sponsors and other interested parties to comment on the BCA requirement cost threshold for AIP grants and LOIs. The docket was open for about six weeks and closed on January 31, 2011. As stated above, this summary and discussion of comments reflects the major issues raised.

##### *Comments From ACI and Mr. Polk*

Both the Airports Council International (ACI) and Mr. Joseph Polk of the Memphis-Shelby County Airport Authority expressed support for the draft guidance. Mr. Polk cited economic inflation as resulting in grants below the \$10 million mark being "relatively small" for "most commercial airports." Mr. Polk also stated that this change "reduces bureaucracy and returns funding applications to a level that worked in the mid-90s." Similarly, ACI expressed support and stated that the new policy will reduce the need for "potentially costly and time-consuming BCAs when limited AIP discretionary funds are involved." The FAA agrees with these commenters as to the advantages of offsetting cost inflation and the resource conservation advantages of this new policy for all involved in the grant making process.

##### *Comments From ATA*

##### **a. Cost/Benefit Statutory Requirement**

*ATA Comments:* ATA stated that "FAA fails to recognize or give effect to the statutory requirement that the Secretary of Transportation must consider the benefits and costs of projects selected for discretionary grants. FAA does not even attempt to demonstrate that raising the threshold will not compromise the Secretary's ability to do so."

*FAA Response:* The FAA disagrees with the comment. The FAA does not require BCAs for all AIP projects, though the benefits and costs of all projects are thoroughly considered. The authorizing statute exempts certain projects from the BCA process where the underlying value of the type of project has already been subject to economic evaluations through regulation, advisory circulars, or an amendment process. In addition, to be eligible for federal funds AIP projects must comply with applicable federal regulations, including 14 CFR part 139, 49 CFR part 1542, and related FAA standards and policies. While the FAA relies on the BCA results, among other considerations, in making discretionary funding decisions for certain capacity projects, the BCA requirement is not imposed on all projects and BCA results are not the ultimate arbiter in determining grant decisions. Rather, the FAA pursues a balanced approach in applying the BCA policy to evaluate more expensive projects in order to protect the federal investment. The increase of the threshold amount from \$5 million to \$10 million does not change any other provisions related to the Secretary of Transportation's consideration of benefit and cost.

The FAA believes that the balancing of the benefits and costs of projects evaluated for analysis under this approach does not compromise but rather assists the Secretary in exercising this consideration. It is particularly important to note that the revised guidance still allows the FAA to require BCAs where the project costs fall below the threshold when such review is warranted by specific circumstances in consideration of all relevant factors.

##### **b. Setting of the New Threshold Level**

*ATA Comments:* ATA stated, "[t]he Notice first points out that a construction cost of \$5 million in 1997 was equivalent to \$9.8 million in July 2008, and then asserts that '[t]he \$5 million threshold has required both FAA and sponsors of non-primary and non-hub airports to devote substantial financial and staff resources in preparing and evaluating BCAs for relatively small projects with readily apparent capacity benefits.' However, the connection between the two statements is not supported by either the Notice or the draft [PGL] cited therein, and the conclusion that \$10 million is the appropriate threshold for determining whether a BCA is required is arbitrary."

*FAA Response:* The FAA disagrees with the comment. The FAA's decision to raise the BCA threshold to \$10

million in 2011 is based mainly on increases in construction costs from 1997 to present. When the original BCA threshold of \$10 million was established in 1994, FAA policy exempted projects undertaken solely or principally with the objectives of safety, security, conformance with FAA standards, or environmental mitigation. In addition, the FAA considered the potential expenses and time needed to assess individual capacity projects. At that time, the threshold was based on applying the policy to cover a select number of more expensive and higher risk projects, and this reasoning still applies. In reevaluating this balance, the FAA compared current construction costs with costs from 1997, when the threshold was lowered to \$5 million.

The FAA was most interested in the value of construction costs, especially costs for material such as steel, concrete, and asphalt, because those costs have risen faster than the general rate of inflation. Since we were unable to locate construction cost data specific to airport construction, we relied upon highway and street construction data collected by the Bureau of Labor and Statistics (BLS). These data were collected through 2010 and have since been replaced by the new BONS index, which measures material and supply inputs for new nonresidential construction. For more information about the BONS Index, see U.S. Department of Labor Bureau of Labor and Statistics, *PPI Detailed Report Data for July 2010*, Vol. 14 No. 7, 6–7 (2010). These data provide a reasonable approximation of heavy civil infrastructure costs in general, and therefore best capture the dynamics of construction cost increases.

Based on the latest BLS data from July 2011, construction costs of \$5 million in 1997 are equivalent to \$9.6 million today. As calculated, the costs of construction have risen significantly over the last 13 years, but there has not been a corresponding increase in the BCA threshold. The FAA does note that construction costs that were previously at the \$5 million level have not fully escalated to the \$10 million level; nevertheless, a threshold increase to \$10 million should negate the need to revisit the threshold issue again for a number of years.

#### c. Airport Project Construction Costs

*ATA Comments:* ATA stated “While construction costs in general have indeed increased since 1997, FAA has not relied on actual costs of airport projects funded with AIP discretionary grants during that time period, despite the potential benefit of reviewing that

data. (FAA notes in the PGL that ‘we were unable to locate construction cost data specific to airport construction,’ but does not explain why that data would not be readily available to the grant-maker.). Instead FAA has chosen to rely on highway and street construction data, which indicates that a \$5 million project would cost about \$8.6 million today, a decrease from the \$9.8 million in 2008 cited in the Notice. As the table appended to the PGL illustrates, construction costs, while exhibiting an overall upward trend, fluctuate both seasonally and from year to year. To suggest, as FAA does by increasing the threshold for BCAs from \$5 to \$10 million, that project construction costs have doubled since 1997 is simply not accurate.”

*FAA Response:* The FAA agrees with the comment that it has access to FAA grant funding data, but these data have limited application since they are focused on federal grant program administration requirements. The grant data make up only a percentage of the project costs and the percentages vary by airport size and project type. The data are not meant to provide detailed cost statistics for airport construction projects and are not available in a way that allows tracking of the unit costs of construction items over time. More importantly, the funding amounts are based on general project descriptions, which make it difficult to assess changes in costs per work unit. The FAA lacks the resources to compile and analyze bid tabulations from the several thousand projects funded annually through AIP.

The FAA currently uses, and will continue to use, the readily available construction cost data from the Bureau of Labor and Statistics because these cost indices are objective, accepted, and used industry wide. In addition, the BLS data allows for a comparison between a set of construction unit costs from 1997 to that same set of costs in the current time period, data that the FAA does not collect as part of the Airport Improvement Program (AIP) grant making process. The FAA collects data on total eligible AIP costs, but the level of detail is not sufficient to provide a statistical comparison of airport construction unit costs between 1997 and 2010. Collection of such information by the FAA would require significant resources, would take years to compile, and would create a new index of construction costs that is duplicative of the data provided by the BLS.

The FAA notes that the comment is correct that the most recent data indicate that construction costs have not

fully doubled.<sup>1</sup> The FAA would like to stress, however, that construction costs have risen significantly over the last 13 years and there has not been any corresponding increase in the BCA threshold. It is important that the FAA provides a well-justified threshold level that does not fluctuate at short intervals in order for airport sponsors to plan and develop projects in an efficient manner. Accordingly, as previously stated, although the escalation of costs has not yet reached the \$10 million level, a threshold increase to \$10 million should negate the need to revisit the threshold issue again for a number of years.

#### d. Capacity Benefits of Small Projects

*ATA Comments:* ATA stated “Even if the highway construction cost index is relevant, and even if one accepts FAA’s ‘rounding up’ of the numbers to support a threshold of \$10 million, it does not follow that raising the threshold would merely exempt ‘relatively small projects with readily apparent capacity benefits’ at non-primary and non-hub primary airports, as the Notice implies. Again, FAA has access to data that could support—or refute—this point. How many of the BCAs prepared or reviewed by FAA in the past five or ten years fall into this category? How many of those projects would come under \$10 million when adjusted for inflation? Are there any examples of projects in the \$5–10 million range where the capacity benefits were not ‘readily apparent’? And even if some capacity benefits are apparent, is it always the case that those benefits exceed the \$5–10 million cost?”

*FAA response:* The FAA disagrees with the comment. The FAA is not proposing to exempt “‘relatively small projects with readily apparent capacity benefits’ at non-primary and non-hub primary airports” from a thorough planning process, including an assessment of project benefits, by increasing the threshold to \$10 million. Rather, in these instances the FAA will rely on the traditional master planning, regional metropolitan planning, or statewide planning processes to sufficiently study and analyze the capacity benefits of a project instead of requiring a separate BCA for such projects.

In addressing this comment, the FAA reviewed 117 BCAs for capacity projects since the year 2000. Of those, only 12 projects had construction costs totaling less than \$10 million. If the threshold had increased to keep up with construction cost inflation, only one of

<sup>1</sup> The most current data (through July 2011) indicate a \$5 million project would cost about \$9.6 million today.

the 12 projects with costs under \$10 million would have avoided the BCA requirement. Based on the data in FAA's National Plan of Integrated Airport Systems, retaining the \$5 million threshold is likely to create an unnecessary resource burden in coming years. In the next five years alone there are more than 150 projects with capacity codes and/or project descriptions that appear to be capacity-related. Of these, 79 have total eligible project costs greater than \$10 million which typically coincide with discretionary requests in excess of \$5 million. This would likely result in project delays and corresponding increases in capital costs. By raising the threshold to \$10 million, the number of projects that may require a BCA will increase at a significantly slower rate. The FAA believes this would preserve a prudent balance between analysis and expenditure of AIP funds, particularly since the planning process itself requires an assessment of the capacity benefits of such projects.

e. Staff and Sponsor Resource Conservation

*ATA Comments:* ATA stated, "FAA cites staff and sponsor resources as a motivating factor in raising the threshold, but once again offers no evidence to support the conclusion that doing so will conserve these resources. It would be helpful to know how many projects FAA expects will be newly exempt from the BCA requirement in coming years, based on past experience with grant requests. Furthermore, when the threshold was lowered from \$10 million to \$5 million in 1997, it was done in conjunction with a shift of the responsibility for preparing a BCA from the FAA to the project sponsor. How much of the anticipated savings in staff resources will accrue to FAA, and how much to airport sponsors? ATA has a direct interest in this, since costs attributable to preparing BCAs are considered allowable airport planning costs, and, to the extent not covered by an AIP grant, may get passed back to airline tenants through inclusion in the rate base."

*FAA Response:* The FAA's main justification in increasing the threshold from \$5 million to \$10 million is to keep pace with the impact of inflation on construction costs. Consistent with the original BCA policy, in increasing this threshold the FAA seeks to balance oversight of expensive, high risk projects with limited time and monetary resources. Based on the data presented above there is strong evidence to suggest that retaining the existing threshold would significantly increase the number

of small capacity projects requiring formal BCA reviews. This would create additional project costs, lengthen the time required to implement a project, and create additional and duplicative levels of review by the FAA, airport staff, and airport users. Instead, the FAA will rely on existing master planning, metropolitan area planning, and statewide system planning to adequately address the capacity benefits of such projects. Anticipated savings will accrue to sponsors, airline tenants and the FAA, though the FAA is not currently able to directly quantify these savings.

g. Full Justification of Projects

*ATA Comments:* ATA stated "ATA recognizes that FAA's constrained resources may make the prospect of fewer BCAs to prepare or review appealing, but we must point out that in an era of limited funding it is all the more important that projects be fully justified in terms of benefits relative to costs. While BCAs may not be the only means to do this, FAA should ensure that it will not lose sight of this principle before it raises the threshold."

*FAA Response:* The FAA agrees with the comment that all projects must be fully justified in terms of benefits to the traveling public, aviation system users, and neighboring communities. However, not all projects that compete for limited AIP discretionary funds are subject to the BCA requirement. Instead, the BCA process is one of many tools the FAA uses to determine the capacity benefits of potential projects. The FAA relies on existing master planning, metropolitan area planning, and statewide system planning processes to adequately analyze and address the capacity benefits of such projects. As circumstances warrant, the FAA also requests BCAs or other economic evaluations be done for projects under the threshold.

Accordingly, after review of the public comments, the FAA has determined that the policy proposing to increase the BCA threshold from \$5 million to \$10 million in AIP Discretionary funds should be adopted now.

Issued in Washington, DC, on October 17, 2011.

**Benito DeLeon,**

*Director, Office of Airport Planning and Programming.*

[FR Doc. 2011-27364 Filed 10-21-11; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2011-48]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before November 14, 2011.

**ADDRESSES:** You may send comments identified by Docket Number *FAA-2011-1029* using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to