

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.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before October 19, 2010.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–0446 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 <http://www.regulations.gov> at any time or 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.

**FOR FURTHER INFORMATION CONTACT:** Michael Menkin, ANM–113, Federal Aviation Administration, Transport Airplane Directorate, 1601 Lind Ave., SW, Renton, WA 98057; 425–227–2793; or Katherine Haley, ARM–203, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW.; Washington, DC 20591; (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 24, 2010.

**Pamela Hamilton-Powell,**  
*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA–2010–0446.

*Petitioner:* Gulfstream Aerospace Corporation (GAC).

*Section of 14 CFR Affected:* 14 CFR 25.813(e).

*Description of Relief Sought:* To allow the installation of doors between passenger seats, occupiable for taxi, take off and landing, and a passenger emergency exit for the Gulfstream GVI airplane. GAC intends to operate the airplane under part 135.

[FR Doc. 2010–24368 Filed 9–28–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of priorities for consideration of applications.

**SUMMARY:** Under this notice, FRA is providing the basis for its consideration of potential applications for financial assistance under the RRIF Program authorized by 45 U.S.C. 821 *et seq.*

**DATES:** This notice is effective for all applications received by FRA after October 29, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Amani, Chief of the Credit Programs Division, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493–6051; *fax:* (202) 493–6333; and *e-mail:* [Barbara.Amani@dot.gov](mailto:Barbara.Amani@dot.gov)); or Casey Symington, Attorney Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493–6349; *fax:* (202) 493–6068; and *e-mail:* [Casey.Symington@dot.gov](mailto:Casey.Symington@dot.gov)).

**SUPPLEMENTARY INFORMATION:** Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210 (1976), authorized a program of financial assistance necessary to furnish assistance to

railroads for facilities maintenance, rehabilitation, improvements and acquisitions. FRA used this financial assistance program to provide financial assistance to portions of the then-fiscally challenged rail industry. The program was most active during the four years following the enactment of the statute. The improving financial condition of the rail industry subsequent to enactment of the Staggers Rail Act of 1980 and the partial economic deregulation of the rail industry helped improve the larger railroads' access to private capital, reducing interest in the program.

The Federal Credit Reform Act of 1990 resulted in fundamental changes in all federal credit programs, by requiring that the subsidy cost of any federal credit assistance be reserved prior to the credit assistance being made available. Although the subsidy cost required an appropriation, FRA's subsequent annual appropriations acts contained a specific prohibition on the use of FRA's funds for this purpose. As a result, use of the Title V program was limited to projects specifically authorized by Congress.

A secondary impact of the Staggers Rail Act of 1980 was a more liberalized approach to restructuring railroads, which led to the growth in the number and importance of short line and regional railroads (also known as Class III and Class II railroads). A number of studies conducted during the 1980s and 1990s concluded that significant portions of the short line and regional railroad industry were challenged by deferred maintenance and a lack of access to the private capital markets at rates and terms comparable to debt financing opportunities available to the larger, Class I railroads.

In 1998, Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 was amended by the Transportation Equity Act for the 21st Century of 1998, Public Law 105–178 (1998) (TEA–21) to establish the RRIF Program. TEA–21 authorized a program of financial assistance to the rail industry in the form of loans and loan guarantees and other financial instruments. The program was subsequently amended and expanded in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59 (2005) (SAFETEA–LU) and the Rail Safety Improvement Act of 2008 (RSIA), Division A of Public Law 110–432.

TEA–21 addressed capital needs by providing a program of loans and loan guarantees for rail investment purposes. A combined total of \$3.5 billion in direct loans and loan guarantees was

authorized to be outstanding at any one time. One billion dollars were specifically reserved for non-Class I railroads. The financial terms available for such loans were significantly better than those available to Class III and Class II railroads in private markets. Those terms included a term up to 25 years and an interest rate equal to the treasury rate for similar-term securities. Most importantly, the TEA-21 amendments provided that non-Federal sources could pay the subsidy cost of the loan (referred to in the RRIF Program as the Credit Risk Premium) on behalf of an eligible applicant. Thus, FRA through the RRIF Program could provide financial assistance without the need for an appropriation or any other specific act by Congress.

SAFETEA-LU amended the RRIF Program to, among other things, increase the amount of financial assistance available from \$3.5 billion to \$35 billion, and to increase the amount reserved for other than Class I railroads from \$1 billion to \$7 billion. SAFETEA-LU also repealed, by statute, certain regulatory provisions. The RRIF program was further amended in the RSIA to extend the maximum term of a loan under the RRIF program from 25 years to 35 years. A total of 22 loans in an aggregate initial principal amount of \$779 million have been made under the RRIF Program since TEA-21 was enacted. Of these, a total of 3 loans in an aggregate initial principal amount of \$381 million have been repaid.

This notice supplements the existing notice of evaluation criteria for the RRIF Program published in the **Federal Register** on September 26, 2005 (70 FR 56207) and provides policy guidance.

The public has an interest in how federal funds are allocated, including use of federal loans. To provide sound stewardship of federal funds, the Secretary of Transportation has authority and discretion in approving loan applications. That authority has been delegated to the Administrator of the Federal Railroad Administration (49 CFR 1.49(t)). In exercising discretion to evaluate the merits of proposed loans, the Administrator may consider public policy priorities and federal credit policies as outlined in the Office of Management and Budget Circular A-129, Revised, November 2000. FRA will perform a cost-benefit analysis of each loan or loan guarantee application and examine public benefits derived from the loan relative to the amount of financial assistance committed to achieve those public benefits. Proposals generating public benefits using limited federal financial assistance to achieve policy goals will be viewed more

favorably than proposals generating limited public benefits with significant federal RRIF assistance. Please note that the collection of information associated with the RRIF Program is currently approved under OMB No. 2130-0580. This approval expires on January 31, 2013.

*Priority Projects:* Selection of projects falls into eight priorities for RRIF financial assistance as described in 45 U.S.C. 822(c). These priorities are restated below with clarifying language (where appropriate) and consistent with DOT's Strategic Plan FY 2010-FY 2015 "Transportation for a New Generation" (draft).

FRA will give priority to projects that—

(1) *Enhance public safety.* This is DOT's highest programmatic priority. FRA will prioritize projects that ensure safe and efficient transportation choices. DOT's goal is to improve public health and safety by reducing transportation-related fatalities and injuries and improving the safety experience for all transportation system users, including passengers, employees, pedestrians and motorists. In determining which projects best enhance public safety, FRA will pay particular attention to projects that do the following: Address specific chronic safety concerns, including those identified during periodic inspections by FRA's Office of Railroad Safety; facilitate implementation of enhancements of signal and train control systems; reduce or eliminate the potential for accidents at highway-rail at-grade crossings; limit the access to rail infrastructure by trespassers and other unauthorized persons; lead to a sustained improvement in the class of track as defined by FRA's safety regulations; and/or lead to the operation of safer railroad equipment.

(2) *Enhance the environment.* FRA prioritizes projects that promote environmental sustainability of transportation through investments that focus on energy efficiency and environmental quality. DOT pursues transportation policies and investments that reduce carbon emissions and protect the human and natural environment. In determining which projects best further those goals, FRA will give priority to investments that do the following: Reduce the consumption of fossil fuels and otherwise improve energy efficiency of rail operations; reduce air pollutant emissions from rail equipment and facilities, including acquisition of locomotives meeting the U.S. Environmental Protection Agency's locomotive emissions standards; facilitate the development of intercity and commuter rail public transportation

alternatives to single occupant motor vehicle transportation; reduce the levels of noise emitted from rail operations, including reductions of noise experienced by on-board personnel; and/or reduce the contribution of pollutants into the Nation's waterways. It is important to note that applications for financial assistance under the RRIF Program will require environmental review in compliance with the National Environmental Policy Act (NEPA).

(3) *Promote economic development, and (4) Enable United States companies to be more competitive in international markets.* FRA will prioritize projects that build a foundation for economic competitiveness. DOT fosters transportation policies and investments that serve the travelling public and freight movement to bring lasting economic and social benefit to the Nation. DOT seeks to encourage the expansion and development of domestic manufacturing of transportation systems and equipment in a manner consistent with law. In determining which projects best promote economic development and enable American companies to be more competitive in international markets, FRA will pay particular attention to projects that do the following: Lead to the construction, reconstruction or improvement of infrastructure or the acquisition of equipment or other capital assets on both freight and passenger (including commuter) rail corridors and related intermodal and multi-modal facilities that address capacity constraints in the Nation's transportation system and deliver integrated transportation system improvements, while spurring domestic employment in both the short-term and long-term; facilitate the development of new industries and businesses' access to the Nation's transportation system; and/or improve the efficiency and reduce the cost of freight movements of domestic products into global commerce. To further address these priorities, FRA will expect recipients of direct loans or loan guarantees under the RRIF Program to agree to use funds provided to them under the RRIF Program to purchase steel, iron and other manufactured goods produced in the United States for the project. Mitigating factors include but are not limited to limitations on sufficient quantity, availability and quality; inability to purchase and have delivered rolling stock or power train equipment within a reasonable time; and whether including domestic material would increase the cost of the overall project by more than 25 percent.

(5) *Are endorsed by the plans prepared under 23 U.S.C. 135 by the*

*State or States in which they are located.*

(6) *Preserve or enhance rail or intermodal service to small communities or rural areas, and (7) Enhance service and capacity in the national rail system.* FRA will prioritize projects that support the development of interconnected, livable communities. DOT promotes place-based policies that provide transportation choices and improve the quality of life for all Americans. In determining which projects will best preserve or enhance rail or intermodal service to small communities or rural areas and enhance service and capacity in the national rail system, FRA will pay particular attention to projects that do the following: Preserve access for small communities and rural America to the Nation's rail system; facilitate the development of rail and rail-related intermodal facilities that encourage the reduction of highway freight transportation in urban areas; facilitate the development of rail-related intermodal passenger facilities that improve the operation of and expand the public's access to public transportation; and/or provide investments that expand the access to intercity passenger and commuter rail transportation by persons with disabilities.

(8) *Materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.* FRA will prioritize projects promoting a state of good repair for transportation assets to ensure a reliable and safe rail system. In determining which projects best enhance service and capacity in the national rail system, alleviate rail capacity problems which degrade the provision of service to shippers and fulfill a need in the national transportation system, FRA will give priority to projects that do the following: Assure sustained performance of rail and rail-related intermodal infrastructure and equipment in a safe, reliable and efficient manner, including the replacement of capital assets before they reach the end of their economic and useful life; permit rail infrastructure to accommodate safe operation of 286,000 pound rail cars; and/or incorporate into the rail infrastructure innovative design and construction procedures, innovative quality assurance practices, and/or innovative materials to extend the useful life of assets and reduce onsite repairs, rehabilitation and reconstruction.

*Eligible Purposes:* A list of eligible purposes is provided in 45 U.S.C 822(b).

Although that section permits RRIF financial assistance for certain categories of refinancing, FRA believes the greatest benefit to the public of providing financial assistance under the RRIF Program occurs when that assistance is used to directly fund capital improvements. In particular, the RRIF Program has its most positive impact by directly financing those improvements that would not otherwise be undertaken, or whose undertaking would be substantially delayed without RRIF assistance. Thus, in considering whether to approve a loan or loan guarantee under the RRIF Program, FRA will give more weight to those projects that need the type of financial assistance provided by the RRIF Program to be financially feasible. FRA is mindful that Congress at times imposes statutory mandates on the rail industry that require certain specific investments by specified times. In order to meet those statutory requirements, some eligible applicants may be required to divert available fiscal resources away from other investment needs, including investment needs that align with DOT's strategic goals. In those circumstances, such statutory mandates will also be afforded greater weight, to the extent that the applicant can demonstrate the adverse impact on its investment plan if RRIF financial assistance were not made available. FRA will also consider the applicant's use of other forms of federal assistance and subsidies including tax credits and grant programs in its financing plan.

FRA will also consider applications for RRIF financial assistance for projects that the applicant would and could undertake without such assistance. It will be the obligation of the applicant to identify with specificity how the public's interest would benefit from RRIF financial assistance when compared to use of conventional funding. It is the difference between the two scenarios that can be viewed as the net benefit to the public of providing financial assistance under the RRIF Program. FRA will evaluate this net benefit in comparison to the amount of financial assistance required to achieve this benefit. FRA intends to include requirements in its RRIF loan documents to ensure that the net financial benefit made available through the RRIF financial assistance results in increased public benefits.

The refinancing of eligible capital investments poses similar issues. In a refinancing, RRIF financial assistance is not required to achieve the benefits of the project being refinanced. Thus, when reviewing RRIF applications for refinancing, FRA will expect that the

financial resources made available by refinancing at the favorable rates under RRIF be used by the applicant to achieve public benefits. However, proposals to use RRIF funds directly for capital improvements will be given preference over those that include refinancing. FRA will evaluate those benefits against the cost of the financial assistance in order to assess the overall benefit of the application. Examples of preferred uses from the decreased cost of capital from a RRIF loan are: Improving cash flow to implement a demonstrably expanded capital improvement program, preserving the viability of a rail service, or lowering the debt service obligation burden of States and public agencies. In considering requests for RRIF loans to refinance debt, FRA will evaluate the borrower's ability to efficiently access private sector capital. FRA will request that prospective borrowers describe the terms of equivalent debt that they believe would be available from private sector sources and the amount they anticipate to save should a RRIF loan be approved. As described above, FRA intends to protect the public benefits of a RRIF loan through binding covenants in its loan documents when appropriate.

Requests to refinance debt incurred to finance the acquisition of a railroad by an equity owner raise different considerations. Under the statute, FRA may refinance debt that was originally incurred for any eligible purpose stated in 45 U.S.C. 822(b)(1)(A). Under the statute, RRIF loans may not be incurred to refinance outstanding debt incurred for purposes other than the acquisition, improvement or rehabilitation of eligible rail equipment or facilities. Since RRIF loans may not be used to refinance outstanding debt incurred to acquire, for example, goodwill or intangibles, FRA's ability to refinance acquisition debt is limited. The value of railroad property, like the value of any other asset, is normally set by the market. FRA is concerned that the potential for long-term, low-cost federal refinancing of short-term, high-cost acquisition debt might skew the true value of the assets being acquired, and perhaps even have an inflationary impact in the rail industry as a whole. RRIF financial assistance for refinancing the acquisition of eligible railroad property might encourage transactions that otherwise would not be made or transactions by entities that might lack the full knowledge of the rail industry that will be needed to assure the sustainability of the railroad. In considering proposed financing or refinancing debt, in particular short-

term debt, used for the acquisition of a significant amount of rail assets, FRA will require the applicant to demonstrate significantly more than minimal public benefit from the transaction. Circumstances where the acquisition is required to preserve essential rail service or where a public agency is acquiring a rail property for direct public benefit (e.g. use for public transportation) are more favorably considered.

**Applicants:** A list of eligible applicants is provided in 45 U.S.C. 822(a). The RRIF Program was originally established as a means to provide access to capital for critical infrastructure improvements by the Class III and Class II railroads. Although the RRIF program has changed since its creation, FRA views the original purpose as one of the highest priorities for the use of RRIF financial assistance.

In recent months, FRA has seen increased interest for RRIF financing by public authorities and publicly owned and/or controlled railroads providing passenger service. The public interest in using federal credit is easier to identify in situations where the credit program preserves or expands transportation services used by the public or where the credit reduces the burden on public agencies and federal or State taxpayers to provide such services. The challenge in considering public transportation for credit financing comes from the fact that few, if any, of these systems generate sufficient revenues to cover all of their costs. Indeed, public policy frequently finds sufficient value in the non-monetary benefits of increasing the utilization of such systems to justify the use of public funds to keep fares low. FRA as a potential lender will look to other revenue sources for assured repayment.

Some public transportation entities have access to relatively reliable long-term sources of revenue (e.g. a sales tax or access to a dedicated revenue stream) or can offer the full faith and credit of their States as a guarantee that the RRIF loan will be repaid. In such cases, FRA's ability to make findings on the likelihood of repayment is easier than for applications that can only be repaid through ongoing actions by future Congresses or State legislatures. Solely relying on future appropriations for repayment may not be optimal and could result in a 100% credit risk premium. However, FRA will consider appropriations as a repayment source if it is part of an overall financing package that uses other revenue streams to service the debt. Among the factors that FRA will consider, in addition to the public benefits derived from the

financing, will be the history of support for the public transportation entity in the past and the extent that the total amount of debt service, including the RRIF financing, falls within the historic range of debt service obligations of the entity that has been publicly funded.

**Loan Amount:** Pursuant to 45 U.S.C. 822(d), the RRIF Program is authorized to provide up to \$35 billion in direct loans and loan guarantees at any one time. The RRIF Program is subject to authority provided in annual appropriations. Appropriations are not required to pay for the credit risk premium, but merely grant FRA the authority to obligate the remaining balance of the \$35 billion authorized. The balance currently available is approximately \$34.6 billion. The timing and sequencing of this volume of credit assistance could, under some circumstances, create dislocations in the rail industry, which could create inflationary pressures and lead to inefficient practices, particularly in light of other federally sponsored rail investments occurring over the next several years. FRA sees the need to balance the volume of RRIF-financed work at any one time with a need to timely realize the Department's strategic goals. FRA will not set an arbitrary limit on the size of an application or the total dollar value of applications under consideration at any one time. FRA will periodically, however, assess whether the volume of RRIF-assisted rail capital improvements is continuing to have a positive impact on rail investment in the U.S.

**Ability To Repay:** Pursuant to 45 U.S.C. 822(g), and as a prerequisite to making loans or loan guarantees, the FRA must make a number of findings including the finding that "the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government \* \* \*." To this end, FRA will evaluate the credit risk of the application including the financial strength of the applicant or of the project and the potential recovery in the event of default including the nature and value of collateral if offered.

Additionally, pursuant to 45 U.S.C. 823(a), FRA is permitted to establish terms and conditions for loans and loan guarantees made under 45 U.S.C. 822. To this end, FRA will continue to require terms and conditions in its RRIF loan documents sufficient to ensure that applicants will repay their loans with interest within the term of the loan.

**Pre-Application Discussions:** The application process can involve a substantial amount of work and expense

for potential applicants, particularly for smaller railroads or entities proposing larger projects that might require additional levels of review, such as projects requiring an environmental impact statement to comply with NEPA. Regulations governing the RRIF Program have always included provisions for pre-application discussions, which provide a foundation to better address expectations about both the timing and ultimate outcome of the process. FRA will use the pre-application meetings and requests for clarification to develop a project outline, including a preliminary analysis of the benefits of the proposed financing.

**Evaluation Charge:** Demand for funding under the RRIF Program has increased significantly in the past two years. In addition to the increased volume of applications, FRA has noted a significant increase in the size and complexity of the proposed transactions.

FRA has typically staffed RRIF transactions solely with FRA attorneys and not employed outside counsel. As a result, while we are permitted to pass on the cost of outside counsel as an evaluation charge under 45 U.S.C. 823(k), we have not had a need to do so. Given the increased demand for RRIF loans and the increasing size and complexity of the transactions submitted for our consideration, we expect to employ outside counsel more frequently in the future. We believe that employing outside counsel will both enhance our ability to structure and document our transactions in a way that best protects the taxpayers' investment and helps us manage the increased volume of complex financing proposals more quickly and efficiently.

While we may include the cost of outside counsel in our evaluation charges, the total evaluation charges for a given transaction will not exceed one-half of 1 percent of the principal amount of our loan, as provided in the statute. We do not expect that we will employ outside counsel for traditional RRIF loans to Class III applicants, unless the loan contains complicated structuring or documentation issues.

Issued in Washington, DC, on September 24, 2010.

**Joseph C. Szabo,**  
Administrator.

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