§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 94–NM–189–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41039 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator and aileron disconnect handles, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, perform an inspection to determine if a travel stop (screw) is installed at the flight control assembly, in accordance with Jetstream Service Bulletin J41–27–036, dated September 2, 1994.

(1) If no travel stop is found to be installed, prior to further flight, install a new travel stop in accordance with the service bulletin. After installation, accomplish paragraph (a)(2) of this AD.

(2) If such a travel stop is installed, prior to further flight, perform a rotation to determine the security of the travel stop, in accordance with the service bulletin.

(i) If the travel stop is found to be properly secured, no further action is required by paragraph (a) of this AD.

(ii) If the travel stop is found to be loose, prior to further flight, remove it and perform an inspection to detect damage in accordance with the service bulletin. If any damage is found, replace the travel stop with a new travel stop, in accordance with the service bulletin. After replacement, repeat the requirements of paragraph (a)(2) of this AD.

(b) After accomplishment of paragraph (a) of this AD, prior to further flight, accomplish paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with Jetstream Service Bulletin J41–27–036, dated September 2, 1994.

(1) Apply Loctite Superfast 290 to the travel stop;

(2) Permanently mark the flight control assembly; and

(3) Perform a functional test of the aileron and elevator disconnect systems and set them to the locked position.

Note 2: Procedures for installing a protective spiral wrap cover are contained in Jetstream Service Bulletin J41–27–036, dated September 2, 1994. This installation is recommended, but is not required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 13, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4003 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–U

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 94–30]

RIN 2125–AD40

Federal-Aid Project Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulation on Federal-aid program approval and project authorization. In light of changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) in the area of statewide planning, and the joint FHWA/Federal Transit Administration (FTA) regulations implementing those changes, this NPRM proposes to remove all other project programming provisions from the FHWA's regulations. This NPRM would also provide more flexible funding arrangements and make the Federal-aid authorization process more flexible. Changes contained in related laws are included.

DATES: Written comments are due on or before April 18, 1995. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Federal Highway Administration, Office of the Chief Counsel, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Jerry L. Poston, Office of Engineering, 202–366–0450, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The initiation of work for transportation projects funded under the Federal-aid highway program is a two-step process. First, the State, in cooperation and consultation with local officials, as appropriate, through the metropolitan and statewide planning process, determines activities which will be advanced with Federal funds made available under title 23, United States Code, and the Federal Transit Act (49 U.S.C. 5301–5338) and develops a statewide program of projects for these activities. Prior to passage of the ISTEA, the requirements for developing the program of projects were found in 23 U.S.C. 105 and the implementing regulations in 23 CFR 630, subpart A. With passage of the ISTEA, title 23, U.S.C., was modified and the new requirements concerning development of a program of projects, now referred to as the Statewide transportation improvement program, are contained in 23 U.S.C. 135. The implementing regulation for this section are at 23 CFR 450 and were initiated through previous rulemaking actions.

Accordingly, those requirements pertaining to a program of projects in 23 CFR 630, subpart A, no longer need to be retained. The FHWA therefore proposes to eliminate §§ 630.106, 630.108, 630.110 and 630.112 along with inappropriate programming references from the existing regulation.

The second step in initiation of work is the project authorization process. The State highway agency (SHA) requests FHWA authorization to proceed with a proposed Federal-aid highway project.

The FHWA authorization commits the Federal Government to participate in the funding of a project, except in those instances where the State requests FHWA authorization without the commitment of Federal funds. In addition, FHWA authorization also establishes a point in time after which costs incurred on a project are eligible for Federal participation. Requirements covering project authorization are also contained in 23 CFR 630, subpart A. The FHWA proposes to modify certain of these requirements, both for clarification and to provide the SHA a greater degree of flexibility on certain funding arrangements. These modifications are discussed in the following section-by-section analysis.

Section-By-Section Analysis

Section 630.102 Purpose

The statement of purpose would be revised to eliminate the reference to programming of projects since this activity would be eliminated from this subpart.

Section 630.104 Applicability

The existing § 630.104, Definitions, would be replaced with a new section to identify the types of projects that are covered by this subpart. FHWA planning and research funds, as defined in 23 CFR 420.103, are authorized using the procedures in the regulations dealing specifically with these types of projects. At times, certain special funding categories may have unique authorization requirements and these types of projects are authorized as set out in implementing instructions or regulations.

Section 630.106 Authorization to Proceed

Current § 630.106, Policy, would be removed. A new § 630.106, Authorization to proceed, would be redesignated from current § 630.114 covering the authorization process. It retains many of the basic principles set forth in existing § 630.114. However, there are modifications to provide greater flexibility in some funding areas and additions for clarification. The following discussion covers proposed § 630.106 by individual paragraph.

Paragraph (a) would retain the requirement that FHWA authorization to proceed with a Federal-aid project will only be given in response to a request from the SHA, and then only if the applicable requirements in law have been satisfied for the project.

Paragraph (b) would retain the longstanding requirement that Federal-aid funds will only participate in costs incurred after the date the FHWA has authorized the State to proceed with the project. However, exceptions to this requirement have been allowed under a process set forth in 23 CFR 1.9(b). For informational purposes, wording has been included in paragraph (b) to identify and cross reference the exception process.

Paragraphs (c), (d) and (e) would retain the requirement that at the time a Federal-aid project is authorized, the appropriate Federal funds for this project must be available. Five general categories for exceptions to this rule are presented, these being the same five categories that are in the existing regulation.

Paragraph (f) is new and would be added for purposes of clarification. The FHWA authorization represents a contractual action by the FHWA and the Federal share of eligible costs must be agreed upon when the authorization occurs. The Federal share may be in the form of a specified percentage of eligible costs or a lump sum amount. Use of the lump sum share is a relatively new concept and is introduced to accommodate those instances where there is a desire to commit a fixed amount of Federal funds to a project. The lump sum amount may not exceed the legal pro rata share for the Federal funds involved. This may require downward adjustment of the lump sum amount when costs of eligible work on a project are less than the initial estimates at the time of FHWA authorization.

The Federal share agreed to at FHWA authorization would continue through the life of the project. Manipulation of funding levels of individual projects to accommodate program funding changes or needs would not be allowed. However, adjustments to the Federal share would be permitted for projects in situations where bid prices are significantly different from the estimates at the time of FHWA authorization.

Paragraph (g) is new and would incorporate the cost sharing principles of title 23, U.S.C., into the regulation. For Federal-aid projects, the Federal share of eligible costs incurred by the State cannot exceed the maximum share permitted by legislation. There is an agreed to Federal share of eligible costs and the non-Federal share of eligible costs must come from State funds (State match). Local government funds are considered to be State funds. Thus, local government funds can be combined with SHA funds to cover the required State match of eligible costs.

Cash contributions from private sources are a different matter. FHWA participates in costs incurred on Federal-aid projects. Donations of private cash contributions for a specific Federal-aid project reduce the cost incurred; therefore, the private funds cannot be used to reduce the required State match. Private cash contributions can be applied to either eligible or ineligible items of work. However, when a private cash contribution is applied to costs eligible for Federal participation, the private cash contribution is considered to have reduced the cost of the project and thus reduced the cost incurred by the State.

On the other hand, if a private cash contribution is made to a State or local government with no designation to a specific project, then the private cash contribution can be treated as funds of the State or local government and may be used in any way State or local funds are authorized to be used, including providing State match on Federal-aid projects.

Contributions of funds from other Federal agencies to a specific project are for the most part treated similarly to private cash donations. These other Federal agency funds may not be used to provide the required State match on a Federal-aid project but, instead, are viewed as having reduced the cost incurred by the State on the project. The only exception is in those cases where the other Federal agency has specific legislative authority to use its funds to match other Federal funds.

Paragraph (h) is new and would require that all contributions to a project be accounted for and properly credited to the project. The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

Paragraph (i) is new and would incorporate into the regulation the provision in 23 U.S.C. 120(i) that allows the State to contribute more than the normal State match on a Federal-aid project. This provision has been interpreted to mean that a State may overmatch without being tied to a mandatory Federal share. However, token financing, such as when the Federal share represents only a minor percentage of eligible work or when large contributions are applied to the project to reduce the total cost, would not be permitted. As a general rule of thumb, it would be expected that the amount of Federal funds requested will represent at least 50 percent of eligible project costs. Exceptions to the 50 percent level should be based on sound project development or management reasons.

The following table is provided to assist the user in locating regulatory

paragraph changes proposed by this rulemaking:

Old Section	New section
630.102	630.102
630.104	Removed
None	630.104
630.106	Removed
630.108	Removed
630.110	Removed
630.112	Removed
630.114(b)	630.106(a)
630.114(g)	630.106(b)
630.114(h)	630.106(c)
630.114(h)(3)	630.106(d)
630.114(h)(3)	630.106(e)
None	630.106(f) through (i)

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because the proposed amendments would update the Federal-aid project authorization regulation to conform to recent laws, regulations, and to clarify existing policies.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would only clarify or simplify procedures used by SHA's in accordance with existing laws, regulations, or guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising Part 630, subpart A to read as set forth below.

Issued on: February 10, 1995.

Rodney E. Slater,

Federal Highway Administrator.

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Federal-Aid Project Authorization

Sec.

Authority: 23 U.S.C. 106, 118, 120, and 315; 49 CFR 1.48(b).

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects.

§ 630.104 Applicability.

(a) This subpart is applicable to all Federal-aid projects unless specifically exempted.

(b) Projects financed with FHWA planning and research funds, as defined in 23 CFR 420.103 are not covered by this subpart. These projects are to be handled in accordance with 23 CFR parts 420 and 450.

(c) Other projects which involve special procedures shall be authorized as set out in the implementing instructions.

§ 630.106 Authorization to proceed.

(a) The FHWA issuance of an authorization to proceed with a Federal-aid project shall be in response to a written request from the State highway agency (SHA). Authorization can be given only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied.

(b) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed except as provided by 23 CFR 1.9(b).

(c) Authorization to proceed shall be deemed a contractual obligation of the Federal Government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the agreed Federal share, either pro rata or lump sum, of the cost of eligible work to be incurred by the State except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Bond issue projects authorized under 23 U.S.C. 122.

(3) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(4) Projects for ROW acquisition in hardship and protective buying

situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 712.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(3) through (c)(5) shall contain the following statement: ''Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for that portion of the undertaking not fully funded herein.''

(e) When a project has received an authorization under 23 CFR 630.106 (c)(3) and (c)(4), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(g) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation. Any private cash contributions to the project must be credited to, and thereby such contributions reduce, the total project cost and are not considered to be costs incurred by the State. Private cash contributions may be applied to participating or nonparticipating work. Cash contributions provided by a local government are considered the same as State funds.

(h) The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

(i) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. However, proposals resulting in token Federal financing of a Federal-aid project shall not be approved.

[FR Doc. 95–4029 Filed 2–16–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–62–94]

RIN 1545–AT15

Continuity of Interest in Transfer of Target Assets After Qualified Stock Purchase of Target

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the income tax treatment of the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) after a qualified stock purchase (QSP) of target stock, if a section 338 election is not made. These regulations provide guidance to parties to such transfers and their shareholders. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 7, 1995, must be received by May 19, 1995.

ADDRESSES: Send submissions to: CC:CORP:T:R (CO–62–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:CORP:T:R (CO–62–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Alexander, (202) 622–7780; concerning the submissions and requests for a hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes guidance as to the treatment of transfers of target assets to another corporation after a qualified stock purchase of target stock, if a section 338 election is not made for the target. It addresses the effect of section 338 on the result in *Yoc Heating v. Commissioner* and similar cases.

Under § 1.368–1(b), for a transfer of assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization.

In *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973), a corporation bought 85 percent of a target corporation's stock for cash and notes. As part of the same plan, the target subsequently transferred its assets to a newly formed subsidiary of the purchaser and dissolved. The purchaser received additional stock of its subsidiary in exchange for the purchaser's target stock and the minority shareholders received cash in exchange for their target stock.

The Tax Court, viewing the stock purchase and asset acquisition as an integrated transaction in which the purchaser acquired all of the target's assets for cash and notes, held there was insufficient continuity of interest to qualify the asset transfer as a reorganization under section 368 because the shareholders of the target before the stock purchase received no stock in the acquiring entity. As a result, the subsidiary received a cost basis in the target's assets.

In addition to *Yoc Heating*, there are other cases in which courts have denied reorganization treatment and have given the transferee a stepped-up basis in the target's assets following the purchase of the target's stock and the merger of the target into the purchaser or a related corporation. See, e.g., *Russell v. Commissioner*, 832 F.2d 349 (6th Cir. 1987), *aff'g Cannonsburg Skiing Corp. v. Commissioner*, T.C. Memo 1986–150 (corporation purchased target stock and then target merged into purchaser); *Security Industrial Insurance Co. v. United States*, 702 F.2d 1234 (5th Cir. 1983) (corporation purchased stock of targets and then targets merged into purchaser, which then transferred the target assets to a subsidiary of the purchaser); *South Bay Corporation v. Commissioner*, 345 F.2d 698 (2d Cir. 1965) (individual purchased stock in two targets and then targets merged into a third corporation owned by the individual); *Superior Coach of Florida*