

DEPARTMENT OF LABOR**Office of Labor-Management Programs****29 CFR Part 215**

RIN 1294-AA14

Guidelines, Section 5333(b), Federal Transit Law

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Final guidelines.

SUMMARY: The Federal Transit law, Title 49 U.S.C., Chapter 53, provides, in general, at Section 5333(b) (commonly referred to as "Section 13(c)", that, as a condition of certain Federal financial assistance by the Department of Transportation's Federal Transit Administration (FTA) in financing mass transportation systems, fair and equitable arrangements must be made, as determined by the Department of Labor (the Department), to protect the interests of employees affected by such assistance. In conjunction with the Department's role in making such determinations, the Department is providing information concerning its procedures for processing applications for assistance under the Federal Transit Law, and certification by the Department of acceptable protective arrangements.

DATES: These Guidelines become effective January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5411, Washington, DC 20210, (202) 219-4473.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 5333(b) of the Federal Transit law requires that arrangements be made to protect certain rights of mass transit employees affected by grants of Federal funds for the acquisition, improvement, or operation of a transit system. These rights include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. In administering this program, the Department notifies relevant unions, if any, in the area of the proposed project and provides the grant

applicant and the affected union(s) an opportunity to develop the terms and conditions of the protections. The Department provides technical and mediation assistance to the parties during the negotiations. These new guidelines replace guidelines which have been in effect since May 1, 1978.

The Department's Office of Labor-Management Programs' Notice of Proposed Rulemaking (NPRM), issued June 29, 1995 (FR Vol. 60, No. 125, pg. 34072), proposed to change the procedures for certifying employee protective arrangements which are required as a condition of assistance under the Federal Transit law, in order to expedite the process and make it more predictable to the parties.

Approximately 85% of the Department's certifications in the past five years have been issued within 90 days of the date they were received from FTA. The processing time for the remaining 15%, however, has been less predictable. The Department's objective in revising its procedures is to enhance the efficiency and predictability of the certification process for *all* transit grant applications while assuring that the required employee protections are in place. Where comments were submitted which supported this objective, the guidelines have been revised, as appropriate, to reflect the comments, and are discussed under Section II, Summary and Discussion of Comments.

Numerous comments were submitted which relate in a general way to the Department's administration of this employee protection program. The guidelines were said to contain loopholes which would undermine the effort to establish and meet deadlines for certification, create new legal standards resulting in a more arbitrary and time-consuming process, and establish protections and confer authority on the Department which exceed the statute.

The Department has carefully reviewed the new guidelines with these comments very much in mind to assure that its appropriate statutory mandate will be fulfilled, without creating unnecessary "loopholes" or legal standards which would result in a more arbitrary or time consuming process. Because the statute itself requires the Department to exercise discretion and flexibility in determining what is fair and equitable, the guidelines must also provide an appropriate level of flexibility. Where appropriate, the guidelines have been changed to reflect these concerns and in other instances, where no change was deemed necessary, the specific points raised are

also discussed in Section II, Summary and Discussion of Comments.

The Department has also made a minor adjustment of a technical nature to § 215.2. This section, which addresses the required documentation to be included in the grant application, has been modified to reflect that the content of the grant application is as determined by the FTA. The Department is not requesting any information for processing of the grant that is not required by the FTA.

The new guidelines differ from the previous guidelines and the Department's practice by establishing strict time frames for the certification of protections in a more expeditious and predictable manner. The procedures established by these guidelines will assure that the required protections can be certified, within sixty days after the initiation of processing by the Department, permitting the release of the Federal transit grant funds.

The new guidelines continue to encourage local negotiations or discussions for the development of employee protection terms. The guidelines, in recognition of the fact that there are some states where bargaining is prohibited for public employees, allow for "discussion" where necessary to satisfy the Federal Transit law in a manner that does not violate state or local law.

The guidelines also eliminate referral of applications when the grant is for routine replacement of equipment and/or facilities of like kind and character. In cases where referral to the unions is appropriate, the referral will include the intended terms of certification. The parties will be given 15 days from the date of the referral to submit objections, if any, to the referral terms. The Department will determine within 10 days thereafter whether objections are sufficient. Should the Department find that the objections are not sufficient, the Department will issue its certification on the terms specified in the referral. When objections are found to be sufficient, negotiations may proceed and the Department may provide technical and mediatory assistance where appropriate. In the event the protections cannot be agreed to within 60 days from the original referral date, the Department will issue an interim certification, permitting the release of Federal transit grant funds. In the event that the parties are still not able to resolve their differences within 60 days after the Department has issued the interim certification, the Department will set forth the protective terms in a final certification.