the information available at the time of certification. Because the terms of an interim certification will meet all the requirements of the statute, the interim certification does not constitute a "conditional" certification.

Other comments suggested that the receipt of Federal funds may affect a transit system's ability to later challenge different certification arrangements if such are subsequently imposed on it by the Department or that a system may prefer not to accept an interim certification because different arrangements could later be imposed. In the Department's view, the vast majority of applicants will benefit from the expedited certification procedure. The interim certification allows the transit authority to execute its grant contract with the FTA, thus avoiding, in certain instances, a potential lapse of funds. Moreover, the applicants will be aware of the disputed issues and thus be able to judge any potential liability if a project is implemented and the Department imposes language in the final certification that differs from that in the interim certification. In any event, under the guidelines, final certification will be issued within 60 days of the interim certification, thus limiting any period of uncertainty for transit systems.

## *H. Time Limits Under* § *215.3(d)(1) for the Parties To Submit Objections*

Several comments indicated support for the Department's "progress towards procedural reform" and noted that strict time limits for processing and issuance of certifications "would truly expedite the grant application and approval process for many grantees. Still others commented that "the proposed changes are consistent with the basic purposes of 13(c)."

Comments also suggested that there should be consequences if the Department or the parties fail to act within established timeframes. The Department recognizes the need to ensure compliance with the deadlines established in these guidelines. Funding cannot be released in the absence of a certification that employee protections are in place since the statute mandates the Department's certification as a precondition to the release of Federal funds.

If objections by the parties are not timely, the Department will proceed with certification on the basis proposed in the referral. To accommodate objections from multiple parties, however, the Department has made a technical correction to § 215.3(d)(2) to indicate that a determination regarding the sufficiency of objections will be made within 10 days of the date for submitting objections.

I. Procedures Under § 215.3(b)(1) for Routine Replacement of Equipment and/or Facilities of Like Kind and Character Exempting These From Referral

Section 215.3(b)(1) of the proposed guidelines specifies that grants for routine replacement of equipment and/ or facilities of like kind and character will be certified without a referral to labor organizations absent a potentially material effect on employees. Several comments were made in support of this proposal. One comment indicated that eliminating the referral of applications for grants for routine replacement of equipment and/or facilities "would benefit our agency immediately if approved and implemented."

approved and implemented." One comment "strongly object[ed] to exempting capital grants for routine replacement of equipment of like kind and character and/or facilities of like kind and character from the modified procedural requirements." The comment requested that this exclusion be removed from the final guidelines and that routine replacement grants be processed under the modified grant procedures applicable to all other projects.

Three comments indicated that the proposed guidelines failed to establish a procedure for the parties to provide positions on the issue of "material effect on employees" to the Department and, also, that the proposed guidelines did not establish a time frame for the Department's determination of whether a referral would be made.

It is not necessary for labor organizations to receive referrals of grants for "routine replacement" projects. In instances where no referral is made, the Department will apply existing protective arrangements which have been deemed satisfactory for similar projects in the past. For new applicants seeking "routine replacement" capital items, the Department will apply protections based upon the Special Warranty. The Department will only proceed with a certification in such instances where all capital items are clearly "routine replacement" items of like kind and character. The Department will consult with the FTA if necessary to determine whether a grant includes only routine replacement items.

No opportunity has been provided in the guidelines for input from the parties with regard to any "potentially material effect" on employees. However, where there is routine replacement of capital items, which will be used in the same locations and in the same manner as the original capital items, it is unlikely that there will be an impact upon employees which would not be covered by the existing protective arrangements.

Routinely seeking input on this issue from the parties in advance of the Department's determination would require nearly as much time as a routine referral. Should the Department deem it necessary, however, the Department could seek the input of the parties on the issue of "potentially material effect."

It is not necessary for the guidelines to include a time frame for the Department's determination of whether a referral would be made. FTA is responsible for identifying in its transmittal to the Department that a grant application is for the purpose of purchasing routine replacement equipment and/or facilities of like kind and character. If the information in the grant application is sufficient for the Department to concur in this designation, the Department will promptly proceed with its certification, absent a finding of "potentially material effect" pursuant to § 215.3(b)(1). If the information in the grant application does not support a conclusion that the project is for routine replacement equipment and/or facilities of like kind and character, the Department will refer the project to the appropriate parties in accordance with the procedures in §215.3(b) within 5 days of receipt from the FTA.

For information purposes only, applications for "routine replacement" items will continue to be transmitted to the labor organizations representing employees in the service area of the projects.

## J. Procedures for Protective Arrangements as to States That Pass Through Funds to Subrecipients

Two comments indicate that the Department has previously introduced policies and procedures for processing of statewide grant applications which are not reflected in its earlier guidelines. They further suggest that procedures recently developed by the Department for processing of grants to States which pass through funds to subrecipients, particularly to small urban and rural recipients, be reflected in the new guidelines in a separate section. In response to these comments, the Department has determined that it would be appropriate to add a new §215.3(a)(3) to clarify that protections generally will be provided by the subrecipients which receive funds through a State administrative agency.