

representative may discuss issues separately with each party, suggest bases for settlement in an effort to resolve the dispute, and respond to requests for technical assistance. If the parties do not reach an agreement and the Department must make a determination of the terms and conditions upon which a certification will be based, the standard for communications with the parties shifts to a more formal process, where outstanding issues are specified and schedules for briefs and counterbriefs are committed to written instructions. No exploration of options or issues occurs at this time absent the initiation or consent of the other party.

Under the guidelines, the Department will take steps pursuant to § 215.3(e)(5) to assure the parties' access to the final decisions it renders on disputed issues. The Department will continue to send copies of its final decisions to the FTA and the affected applicant and labor organizations. Similarly, the guidelines address the matter of access to Departmental decisions by making available the Department's final determinations on disputed issues. In fact, during efforts to facilitate agreement, these decisions are regularly provided to parties involved in negotiations when their negotiations have addressed related subjects.

The parties will continue to be able to rely on previously issued determinations to the extent that circumstances are similar to those in the prior determinations. Certifications will continue to be developed on a case by case basis to ensure that protections are statutorily sufficient in the circumstances presented by the specific project and under any applicable state law.

In establishing "fair and equitable" protections under the statute in those circumstances where the parties are unable to reach agreement, the Department provides the underlying rationale for the terms and conditions upon which certification is based. The Department will continue to provide the rationale in these cases to explain the basis of its decisions to the parties and to facilitate other parties' efforts to reach agreement in cases where the circumstances are comparable. In addition, judicial review of the Department's certification is available to the parties. See, e.g., *Amalgamated Transit Union v. Donovan*, 767 F.2d 939 (D.C. Cir. 1985).

4. One comment indicated that the guidelines do not define whether the "days" referred to in the various deadlines means calendar or business days. The Department intends for the

term "days" to refer to calendar days. When a deadline expires on a date that is not a business day, the deadline will then be considered to be the next business day.

5. One comment suggests that, to minimize legal expenses, the briefing schedule, if one is adopted, should be shortened and a one-step process instituted rather than requiring reply briefs. The guidelines at § 215.3(e)(3) provide for some flexibility in determining the briefing schedule. In the past, the Department has typically provided up to 30 days for briefs and for reply briefs, which were routinely required, up to 10 days. The proposed guidelines specify "*no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial.*" (Emphasis added.) The guidelines, therefore, already provide for an expedited process which the Department can accelerate when appropriate. The guidelines balance the need for an expedited process with the need for a full disclosure of pertinent information to facilitate the determination process.

6. One comment requested that the Department address the procedures for processing claims determinations under the statute. This is not an appropriate issue to be addressed under these guidelines. These are procedural guidelines and thus not the appropriate forum for resolution of such issues.

III. Administrative Notices

A. Executive Order 12866

These guidelines have been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that these guidelines are not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Signed at Washington, DC this _____ day of _____, 1995.

Charles L. Smith,
Deputy Assistant Secretary.

Accordingly, 29 CFR Chapter II is amended by revising Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.

215.1 Purpose.

215.2 General.

215.3 Employees represented by a labor organization.

215.4 Employees not represented by a labor organization.

215.5 Processing of amendatory applications.

215.6 The Model Agreement.

215.7 The Speciality Warranty.

215.8 Department of Labor contact.

Authority: Secretary's Order No. 2-93, 58 FR 42578, August 10, 1993.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323 (a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.