

## **PARTS 200-214 [RESERVED]**

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

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**AUTHORITY:** Secretary's Order No. 4-2007, 72 FR 26159, May 8, 2007.

**SOURCE:** 60 FR 62969, Dec. 7, 1995, unless otherwise noted.

#### **§ 215.1 Purpose.**

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.

[73 FR 47055, Aug. 13, 2008]

#### **§ 215.2 General.**

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which must be in final form. The Federal Transit Administration will provide the Department with the information necessary to enable the Department to certify the project.

[60 FR 62969, Dec. 7, 1995, as amended at 73 FR 47055, Aug. 13, 2008]

#### **§ 215.3 Employees represented by a labor organization.**

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation/discussion, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with em-

ployee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(3) If an application involves a grant to a state administrative agency or designated recipient that will pass assistance through to subrecipients, the Department will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency or designated recipient has previously provided employee protections on behalf of subrecipients in accordance with the terms of a negotiated agreement, the referral will be based on those terms and conditions.

(4) The referral procedures set forth in paragraphs (b) through (h) of this section are not applicable to the following grants:

(i) Grants to applicants for the Over-the-Road Bus Accessibility Program, and grant applications for the Other Than Urbanized Program; a special warranty will be applied to such grants under the procedures in § 215.7.

(ii) Grants to applicants serving populations under 200,000 under the Job Access and Reverse Commute Program or grants to capitalize State Infrastructure Bank accounts under the State Infrastructure Bank Program.

(iii) Grants involving only capital assistance for replacement of equipment and/or facilities of like-kind; these will be certified by the Department without referral on the basis of existing agreements or the Unified Protective Arrangement as referenced in paragraphs (b)(1) or (b)(2) of this section. Where application of the existing protective agreement(s) or the Unified Protective Arrangement would not satisfy the requirements of the statute in the circumstances presented, the Department will make necessary modifications to the existing protections to ensure that the requirements of the statute are satisfied.

(5) The Department will notify labor organizations representing potentially

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affected transit employees of the certification of grants without referral under paragraph (a)(4) of this section and inform them of their rights under the applicable protective arrangements.

(b) Upon receipt from the Federal Transit Administration of an application involving affected employees represented by a labor organization, the Department will refer a copy of the application and proposed terms for certification to that organization and to the applicant, and will also provide a copy to subrecipients with unions in their service area.

(1) For applicants with existing protections the Department's referral will be based on those protective terms and conditions that are appropriate to the grant and are set by:

(i) A signed negotiated agreement or formal acceptance of the July 23, 1975 National (Model) Agreement;

(ii) Agreed-upon terms adopted by a State or local government through a resolution or similar instrument;

(iii) A determination of protective terms by the Department that modifies in whole or in part negotiated or adopted protections; or

(iv) A protective arrangement that has been modified to include provisions that are more protective than the Unified Protective Arrangement referred to in paragraph (b)(2) of this section.

(2) For applicants without protective terms and conditions set by an arrangement described in paragraph (b)(1) of this section, the referral will be based on the terms and conditions of the Unified Protective Arrangement.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation/discussion within the timeframes designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under paragraph 215.3(b)

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or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations/discussions during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of the date for submitting objections, the Department of Labor will:

(i) Determine whether the objections raised are sufficient; and

(ii) Take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit Administration for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administration.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations/discussions, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate/discuss expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations/discussions if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation/discussion period, if all issues

have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administration within five (5) days after the end of the negotiation/discussion period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to § 215.3(b)(1).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administration pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing 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. In either event, the Department will issue a final certification to the Federal Transit Administration no later than

thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Department will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate/discuss over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Department.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administration.

(h) Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

[60 FR 62969, Dec. 7, 1995, as amended at 64 FR 40992, July 28, 1999; 73 FR 47055, Aug. 13, 2008]

#### **§ 215.4 Employees not represented by a labor organization.**

(a) The certification made by the Department of Labor will afford the same level of protection to those employees

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who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification.

### § 215.5 Processing of amendments.

(a) Grant modifications in the form of grant amendments will be transmitted by the Federal Transit Administration to the Department for review. Applications amending a grant for which the Department has already certified fair and equitable arrangements to protect the interests of transit employees affected by the project, will be processed by the Department following one of the two procedures described in paragraphs (a)(1) and (2) of this section.

(1) When an application amends a grant for which the Department has previously certified fair and equitable arrangements and the amendment makes changes to a project that may necessitate alternative employee protections, the Department will conclude that the amendment materially amends the existing assistance agreement. The Department will refer and/or process the labor certification provisions of such an amended grant according to procedures specified under §§ 215.3 and 215.4, as appropriate.

(2) When an application amends in a manner that is not material a grant for which the Department has already certified fair and equitable arrangements, the Department will, on its own initiative and without referral to the parties, certify the subject grant on the same terms and conditions as were certified for the project as originally constituted. The Department's processing of these applications will be expedited and copies will be forwarded to interested parties.

(b) Budget Revisions that make minor changes within the scope of the existing grant agreement and do not require a Federal Transit Administration grant amendment, as set forth in Federal Transit Administration guidance, will be covered under the Department's original certifications.

[73 FR 47056, Aug. 13, 2008]

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### § 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraphs (b)(1)(i) and (b)(2) of § 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association (now known as the American Public Transportation Association) and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

[60 FR 62969, Dec. 7, 1995, as amended at 73 FR 47056, Aug. 13, 2008]

### § 215.7 The Special Warranty.

(a) The Special Warranty mentioned in paragraph (b)(2) of § 215.3 refers to the protective arrangements developed for application to the Other Than Urbanized program. The warranty arrangement represents the understandings of the Department of Labor and the Department of Transportation, reached in May 1979, with respect to the protections to be applied for such grants. The Special Warranty provides fair and equitable arrangements to protect the interests of employees and meets the requirements of 49 U.S.C. 5333(b). The Special Warranty Arrangement applicable to OTRB and Other Than Urbanized grants will be derived from the terms and conditions of the May 1979 Special Section 13(c) Warranty, and the Department's subsequent experience under 49 U.S.C. 5333(b). From time to time, the Department may update this Special Warranty Arrangement to reflect developments in the employee protection program.

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(b) The requirements of 49 U.S.C. 5333(b) for OTRB and “Other Than Urbanized” grants are satisfied through application of a Special Warranty Arrangement certified by the Department of Labor; a copy of the current arrangement will be included on the OLMS *Web site*.

(c) The Federal Transit Administration will include the current version of the Special Warranty Arrangement, through reference in its Master Agreement, in each OTRB and Other Than Urbanized grant of assistance under the statute.

(1) The Federal Transit Administration will notify the Department that it is funding an OTRB or Other Than Urbanized grant by transmitting to the Department an information copy of each grant application upon approval of the grant.

(i) Each grant of assistance for an Other Than Urbanized program will contain a labor section identifying labor organizations representing transit employees of each subrecipient, the labor organizations representing employees of other transit providers in the service area, and a list of those transit providers. A sample format is

posted on the OLMS *Web site* to facilitate the inclusion of this information in the grant application.

(ii) OTRB grants of assistance will contain a labor section identifying labor organizations representing employees of the recipient.

(2) The Department will notify labor organizations representing potentially affected transit employees of the approval of Other Than Urbanized and OTRB grants and inform them of their rights under the Special Warranty Arrangement.

[60 FR 62969, Dec. 7, 1995, as amended at 73 FR 47056, Aug. 13, 2008]

**§ 215.8 Department of Labor contact.**

Questions concerning the subject matter covered by this part should be addressed to Chief, Division of Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; phone number 202-693-0126 or e-mailed to *OLMS-TransitGrant@dol.gov*.

[64 FR 40995, July 28, 1999, as amended at 73 FR 47057, Aug. 13, 2008]

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