

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

RIN 1215-AB58

Amendment to Guidelines for Processing Applications for Assistance To Conform to Sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users and To Improve Processing for Administrative Efficiency**AGENCY:** Office of Labor-Management Standards, Department of Labor.**ACTION:** Proposed rule

SUMMARY: Pursuant to section 5333(b) of the Federal transit law, the Department of Labor (Department) must certify, as a condition of certain grants of Federal financial assistance, fair and equitable labor protective provisions to protect the interests of employees affected by such Federal assistance.¹ The Department administers this program through guidelines set forth at 29 CFR part 215. The Department's proposed changes conform the guidelines to recently enacted federal legislation, in particular, sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users. In addition to changes mandated by statute, the Department also proposes revisions to the guidelines that will enhance the speed and efficiency of the Department's processing of grant certifications. The proposed revisions to existing procedures for processing grant applications under the Federal transit law are intended to ensure timely certifications in a predictable manner, and remain consistent with the transit law's statutory objectives.

DATES: Comments on these proposed revisions to the guidelines must be received on or before October 15, 2007.

ADDRESSES: You may submit comments, identified by RIN 1215-AB58, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 693-1342.

Mail, Express Delivery, Hand Delivery, and Messenger Service: Mailed or delivered comments should be addressed to Ann Comer, Chief, Division of Statutory Programs, Office of Labor-Management Standards, Employment Standards Administration,

U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5112, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination of government mail, you should take this into consideration when submitting comments to ensure meeting submission deadlines. It is recommended that you confirm receipt of your comments by contacting (202) 693-0126 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD).

Docket Access: Electronic access to the docket and comments received is available through the Federal eRulemaking Portal

(www.regulations.gov). Comments will also be available for public inspection and copying during normal business hours in Room N-5112 at the address below.

The Department invites written comments on these proposed guidelines from members of the public. The proposed guidelines are available on the Federal eRulemaking Portal at www.regulations.gov and on the Web site maintained by the Office of Labor-Management Standards ("OLMS") at <http://www.olms.dol.gov>. Anyone who is unable to access this information on the Internet can obtain copies by contacting the Division of Statutory Programs, OLMS at OLMS-TransitGrant@dol.gov or by calling (202) 693-0126 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Ann Comer, Chief, Division of Statutory Programs, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, OLMS-TransitGrant@dol.gov, (202) 693-0126 (this is not a toll-free number), or (800) 877-8339 (TTY/TDD). Because comments sent to the docket are available for public inspection, the Department cautions commenters against including in their comments personal information such as social security numbers and birth dates.

SUPPLEMENTARY INFORMATION:**I. Background**

Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, the Department must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees. Federal law

requires such arrangements to be "fair and equitable," and the Department must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. These employee protective arrangements must include provisions that may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise; 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 transportation systems; assurances of priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs.

Federal transit grants requiring the Department's certification are processed in accordance with published guidelines, 29 CFR part 215. In most cases, the guidelines call for the Department to refer a pending grant application to interested parties—recipients and representatives of transit employees—to afford them an opportunity to provide their views on substantive employee protections. The parties may object to the proposed terms and conditions and, if the Department finds their objections to be sufficient, they will be afforded an opportunity to negotiate specified provisions. There are, however, exceptions to the general rule requiring the referral of grant applications to the parties for their consideration, and, as explained below, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109-59, 119 Stat. 1144 (2005)) (SAFETEA-LU) incorporates certain of those exceptions into the law.

SAFETEA-LU provides for the reauthorization of funds for Federal aid to highways, highway safety programs, transit programs, and other transportation-related programs and projects. In addition to the funding reauthorization, SAFETEA-LU modifies or clarifies statutory standards applicable to the Department's certification of employee protections associated with transit grants. Consequently, the Department proposes a number of revisions to its guidelines to conform to the requirements of the statute. First, section 3031 of SAFETEA-LU mandates that grant applications to purchase like-kind equipment or facilities shall not be referred to parties for review. Second, section 3031 similarly excepts from the Department's referral requirement grant

¹ See 49 U.S.C. 5333(b).

amendments that do not materially revise or amend existing assistance agreements. Third, section 3013(h) of SAFETEA-LU addresses the processing of grants under 49 U.S.C. 5311, which applies to formula grants for "Other Than Urbanized" transit operations.² Labor protections for "Other Than Urbanized" grants are currently approved through application of a certified Special Warranty without referral to the affected parties, and a transit grant recipient must accept the certified arrangement as a condition of the grant. SAFETEA-LU codifies this practice of non-referral.

Another important provision of SAFETEA-LU addresses substantive rights of parties should a dispute arise when a public transit authority replaces one private transit bus service contractor with another through competitive bidding. Section 3031 of SAFETEA-LU directs the Department to follow certain substantive principles enunciated in the Department's decisions for grant NV-90-X021 (decision of September 21, 1994, supplemented by decision of November 7, 1994, also called the "Las Vegas decisions") when making determinations involving assurances of employment when one private transit bus service contractor replaces another through competitive bidding. See 49 U.S.C. 5333(b)(5). SAFETEA-LU also specifies that, when making determinations regarding the sufficiency of objections, the principles enunciated in the Las Vegas decisions shall not serve as a basis for a party's objection to employee protective arrangements. The Las Vegas decisions involve a number of issues, but key to the new statutory provision are those portions of the decisions that address assurances of employment in the context of an acquisition. The decisions set forth criteria for determining whether an acquisition has occurred, and conclude that where an acquisition has occurred, only subsection 5333(b)(2)(D) provides for assurances of employment. In cases where no acquisition has occurred, subsections 5333(b)(2)(A) and (B) may provide the bases for providing assurances of employment, if a right to such employment is mandated by other sources, such as other laws, a collective bargaining agreement, a personnel manual, other protective agreements, or

past practice. Because the Department's Guidelines are procedural in nature, and do not encompass substantive principles governing the adjudication of rights of parties, this provision of SAFETEA-LU will not be reflected in the revisions of the Guidelines. Although not incorporated in the Guidelines, the Department, of course, will adhere to the statutory mandate of section 3031.

In addition to these statutorily mandated changes, the Department proposes to revise certain existing procedures to improve administrative efficiency and ensure that timely certifications are issued in a predictable manner while still adhering to statutory standards. First, the Department proposes the implementation of a Unified Protective Arrangement (UPA) for new grants for both operating and capital expenditures where the parties do not have a pre-existing negotiated protective agreement or certain other protections explained further below. Under the current guidelines, existing negotiated protective agreements are applied to new grants. Where, however, no such agreement exists, the Department proposes and certifies separate standardized arrangements depending on whether the grant is for operating or capital expenditures. This practice of implementing separate arrangements depending on the nature of the grant expenditure is not required by statute, and has led to a proliferation of protective arrangements. Under the Department's proposal, the Department will apply a Unified Protective Arrangement, which is derived primarily from the Department's current Capital Arrangement, to both capital and operating grants, with the exceptions explained below.

Second, the Department proposes to expedite processing of employee protection certifications by applying a warranty arrangement to grants for the Over-the-Road Bus Accessibility Program (OTRB).³ Presently, a warranty certification process is used only for "Other Than Urbanized" grants under the program established in 49 U.S.C. 5311, as noted above. The Department initially applied the more extensive referral procedure of 29 CFR 215.3(b) to

the OTRB grants program, which was established primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). However, this referral process was not required under the Federal transit law.⁴ Moreover, based on the Department's experience with the OTRB program, it is now clear that a warranty process, which applies certified protections without referral, is a suitable procedure for this program and will increase the timely processing of the Department's certifications. The Department is therefore proposing adoption of the warranty procedure for the OTRB program.

II. Revisions to Section 5333(b) Processing of Federal Transit Grants

A. Processing of Grant Applications To Replace Equipment or Facilities of "Like-Kind"

The Department proposes amending the guidelines to conform to section 3031 of SAFETEA-LU, which added a new subparagraph to section 5333(b) relating to grants for the purchase of like-kind equipment or facilities. Section 5333(b)(4) now explicitly requires that employee protective arrangements for grants requesting assistance to purchase like-kind equipment or facilities be certified by the Department without referral to the parties. The current guidelines, at section 215.3(b)(1), reflect this practice, except that this provision creates an exception to non-referral if the Department determines that the grant application has a potential material effect on employees. To conform the Guidelines to the statutory mandate, the proposed guidelines, at section 215.3(a)(4)(iii), provide that employee protections relating to grants funding equipment and/or facilities of like-kind shall be certified without a referral, and the "material effect" exception is deleted. Section 215.3(a)(4)(iii) further addresses the terms the Department will apply in like-kind grant applications. That section states that if the Department determines that changed circumstances, which may include negotiated revisions to previously certified agreements or modifications to State law, render the previously certified arrangement insufficient to satisfy the requirements of the statute, the Department will make minimally necessary modifications to the

² The "Other Than Urbanized" transit grant program authorized by 49 U.S.C. 5311 was previously known as the "small urban and rural program." For clarity and consistency, this program will generally be referred to throughout this document as the "Other Than Urbanized" program and not by its section number in Title 49 of the U.S. code.

³ The OTRB program was first established by Congress in section 3038 of TEA-21, Pub. L. No. 105-178, 112 Stat. 107 (1998). It has been amended a number of times, most recently by section 3039 of SAFETEA-LU. The authority for the program currently appears in the Historical and Statutory Notes to 49 U.S.C. 5310. For clarity and consistency, the OTRB program will be referred to as such throughout this document, and not by reference to either its public law number or to the historical note to section 5310 of title 49 of the U.S. code.

⁴ See original 49 U.S.C. 5310(f) in Historical and Statutory Notes following 49 U.S.C. 5310 (specifying that OTRB grants "shall be subject to all of the terms and conditions applicable to" grants under section 5311).

applicable protections to ensure statutory compliance.

B. Processing of Amendatory Grant Applications

The Department proposes amending section 215.5 of the guidelines to conform to section 3031 of SAFETEA-LU, which provides that "grant amendments which do not materially amend existing assistance agreements" will not be subject to the Department's referral procedures. The guidelines have been revised to reflect this requirement and to identify some types of grant amendments that will be certified without referral. These include (1) administrative amendments that modify or clarify in immaterial respects certain terms, conditions or provisions of a previously certified grant without changing the scope, amount or purpose of the grant; (2) grant amendments that do not include an increase of more than 20 percent of the previously certified total Federal grant amount, and do not add a new project activity; and (3) Full Funding Grant Agreement (FFGA) Amendments to grants that included the full budget and scope of activities for the project in a grant previously certified by the Department.

The Department will continue to refer grant amendments to the parties for review under the procedures set forth in section 215.3 in those cases in which applications materially amend or revise a grant. Finally, the Department's proposed guidelines include language addressing budget revisions. The Federal Transit Administration permits grant applicants to undertake certain limited changes without prior FTA approval. In those situations the Department's prior certification of the project funded under the existing assistance agreement will also be applicable to any budget revisions. See 29 CFR 215.5.

C. Special Warranty Procedures for Grant Applications for Other Than Urbanized Areas and Grant Applications for Over-the-Road Bus Accessibility Programs

For grant applications for "Other Than Urbanized" areas, SAFETEA-LU requires the use of a warranty as the sole mechanism for protections to be applied to the small urban and rural grant program and eliminates the Secretary of Labor's options to either waive the application of section 5333(b) or to apply alternative comparable arrangements. Section 3013(h) of SAFETEA-LU specifies that employee protections will apply only "if the Secretary of Labor utilizes a special warranty that provides a fair and

equitable arrangement to protect the interests of employees." The procedures in this section will also apply to Over-the-Road Bus grants, which are discussed in greater detail below in subsection E.

Prior to the enactment of SAFETEA-LU, the Department followed procedures contained in a "Guidebook" published in September 1979 governing the processing of small urban and rural grants. The Department is discontinuing use of the 1979 Guidebook, and has included in sections 215.3(a)(4)(i) and 215.7 several changes to the process established in its Guidebook for the application of a warranty without referral when processing small urban and rural grants. First, as required under SAFETEA-LU, the Department will eliminate waivers and procedures to request alternative comparable arrangements. Second, the Department will eliminate the requirement that States or other applicants provide the Department with letters of assurance indicating that grant subrecipients have signed the Special Section 13(c) Warranty, as was previously done for small urban and rural grants. Instead, the Department will include a requirement in the new Special Warranty Arrangement, which will be developed for application to the Other Than Urbanized and OTRB programs, that the protective arrangements are binding upon any subrecipients assisted under the grant. Third, the Department will eliminate any need for unions to request to become a party to the Special Warranty Arrangement in connection with a specific grant by specifying in the warranty that any labor organization representing transit employees in the service area of the grant recipient(s) will be deemed a party to the arrangement. Finally, the Department will no longer make findings of "non-compliance" for States or other applicants under the Other Than Urbanized program. The Special Warranty Arrangement will provide dispute resolution procedures for resolution of any disputes concerning the States' or other applicants' compliance with the requirements of the warranty.

In addition to the modifications noted above, the Department proposes in revised 215.7 to utilize the Special Warranty for grants under the OTRB program, in addition to its current utilization of the Special Warranty in the "Other Than Urbanized" program. The OTRB was established primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). As a result, grants under this program routinely involve

equipment adaptations or, in some cases, training, and the requests for funds have been very similar over time. Accordingly, because the grants are routine and relatively undifferentiated, standardized protections are more appropriate than project-specific protections. In utilizing the Special Warranty in the OTRB program, employee rights and interests will be continue to be protected, while at the same time permitting enhanced program efficiencies.

The Department also intends to revise its internal operating procedures when it utilizes the Special Warranty in both the OTRB and "Other Than Urbanized" programs. These new procedures require that the current version of the Special Warranty Arrangement be included in every contract of assistance between FTA and the applicant receiving assistance for "Other Than Urbanized" or OTRB programs. The FTA will notify the Department that it has funded "Other Than Urbanized" and OTRB grants by transmitting information copies of the grant applications to the Department upon award of the grant. The "Other Than Urbanized" applications will include information identifying labor organizations representing transit employees of each subrecipient, the unions representing employees of other transit providers in the service area, and a list of those other transit providers. To facilitate inclusion of this information in the grant application, a sample form will be posted on the OLMS Web site. The Department will work with FTA to utilize this information to inform labor organizations representing affected transportation employees of OTRB grants and their rights under the Special Warranty Arrangement. The OTRB applications will only need to include information identifying the labor organizations representing employees of the grant recipient(s). If necessary, the Department will use available information or may contact the applicant to identify labor organizations in the service area of OTRB grant recipients. These may include a broad range of unions where charter services that operate throughout the country receive assistance. These revised procedures will be implemented because the Department's prior procedures were not well understood by the regulated community, and permit a more streamlined and certain manner by which to notify the parties of their rights under the protective arrangement. The revised procedures will assure that appropriate, legally-binding and legally-sufficient protections are in place with

no diminution of statutory standards, while simultaneously advancing administrative efficiency.

The Department intends to modify the Special Warranty Arrangement to limit the Department's involvement as a claims arbitrator under the Other Than Urbanized and OTRB programs. The Special Warranty will now set out a process by which the parties will designate a neutral, third-party arbitrator to resolve claims involving employees represented by a union, in contrast to the current Special Section 13(c) Warranty that requires the Secretary of Labor to act as the arbitrator "in the event [the parties] cannot agree upon such procedure." Because revisions to the Special Warranty involve programmatic changes that are not within the scope of this NPRM, which deals solely with revisions to the Department's guidelines, specific revisions to the Special Warranty will not be set out in detail here. However, the Department intends to include in the Special Warranty an arbitration process similar to that set out in paragraph 15 of the National Model Agreement, which can be found on the Department's Web site at <http://www.dol.gov/esa/regs/compliance/olms/agreement.htm>. The Department recognizes that a dispute resolution mechanism, although not expressly required by the statute, is essential to a fair and equitable protective arrangement. Private arbitration of disputes over the interpretation, application and enforcement of protective agreements has historically been the preferred dispute resolution mechanism in protective arrangements, both in transit employee protection as well as under other statutes providing for rail labor protection. In addition, designation of a Cabinet-level official as the responsible arbitrator, which is unique in comparison to other statutory programs providing analogous employee protections, has created an excessive burden on Departmental resources during this period of increased fiscal restraint. For these reasons, the Department will remove the Secretary as "fallback" arbitrator for disputes arising under the Special Warranty and specify that parties to claims disputes should employ arbitration by a neutral third party to resolve those disputes.⁵

⁵ For similar reasons, the Department intends to modify its standard certification letter that currently provides that the Secretary will "designate a neutral third party or appoint a staff member to serve as arbitrator" to resolve disputes by service area employees over the interpretation, application and enforcement of the terms of protective arrangements. In the future, the Department's certification letters will reflect that in those cases

Employees not represented by a labor organization will still be able to request that the Department resolve claims involving the interpretation, application and enforcement of an arrangement.

The new Special Warranty Arrangement will also contain provisions to ensure that employees are provided with appropriate notice that the transit provider is the recipient of Federal transit assistance and has agreed to the requirements of the Special Warranty Arrangement. As with the revised Unified Protective Arrangement discussed below, the Special Warranty Arrangement will be included on the Department's Web site and may be updated from time to time to reflect developments in the employee protection program. The latest version will, in each instance, be incorporated by reference in the contract of assistance between the FTA and any grant recipient.

D. Unified Protective Arrangement

The Department is proposing to amend section 215.3(b)(2) and (3) of the guidelines to implement use of a unified protective arrangement (UPA) for both operating and capital grants where there is no existing appropriate negotiated protective agreement. The Department has determined that the requirements of the statute will be satisfied through the application of a single arrangement that applies for both operating and capital assistance grants. The principal difference between the current Operating and Capital Assistance Protective Arrangements is the "sole provider clause," which is currently included only in the Operating Arrangement. When the Department developed the Operating Arrangement, which was based on the National (Model) Agreement negotiated between transit unions and operators, it incorporated the sole-provider clause contained in the Model Agreement. The sole provider clause was not included in the Department's Capital Arrangement, because that arrangement was based on the Special Warranty, which did not include the clause. The Department's

in which service area employees are represented by a labor organization that is deemed to be a party to a protective arrangement, the dispute resolution mechanism of that arrangement will be applicable to those service area employees. In those cases in which service area employees are not party to the protective arrangement, the revised certification letter will now set out a process by which the grant recipient and the service area employees will designate a neutral, third-party arbitrator to resolve claims of service area employees. Finally, as to claims by service area employees not represented by a union, the certification letter will state, as is current practice, that the Secretary may designate a neutral third party or appoint a staff member to serve as arbitrator.

inclusion of the clause in its Operating Arrangement was not the product of negotiations between the transit unions and operators, and is not required in order to meet the requirements of the statute. Therefore, under this proposal, the UPA will not contain a sole provider clause. Moreover, application of a single unified document to future grants will simplify the preparation of referrals, expedite processing of grant applications, and continue to satisfy the requirements of the statute.

In lieu of the multiple Operating and Capital Arrangements certified since January 1996, a single UPA generally will be proposed when certifying future grants. This will prevent the proliferation of new protective arrangements each time a new union is recognized or service is expanded to areas involving additional unions. It will also provide administrative certainty for the applicant and union because, with the exception of existing negotiated agreements and certain arrangements which are the product of negotiations or determinations, only the Unified Protective Arrangement will be applied to any particular grant. The UPA certified for a grant will always reflect current program policies and statutory standards applicable to grants, and will be updated whenever necessary. This process remains consistent with the intent of the Department's 1996 guidelines to preserve existing negotiated protective agreements while providing a process in which arrangements can be put in place quickly for new applicants or subrecipients.

The Department proposes to revise section 215.3(b) to provide that a UPA will be proposed for the protection of transit employees represented by a union, except in those cases in which protective terms set by other instruments are appropriate to the grant. Under those exceptions, the Department will make a referral based on labor protective provisions contained in (1) a signed negotiated protective agreement or the National Model Agreement as subscribed to by unions and grant recipients; (2) agreed-upon terms adopted by a state or local government; (3) an arrangement that is based on an agreement by the parties that resolves issues not addressed by the UPA; or (4) a determination by the Department of disputed protections that are not otherwise addressed in the UPA. In those cases in which unions and grant recipients have previously agreed to modify a proposed protective arrangement or the Department resolved disputed issues in a proposed arrangement, and those same issues are

addressed in the UPA in a manner that is consistent with the prior agreed-upon or determined arrangement, the Department will propose application of the UPA to the project. If the parties' arrangement is inconsistent with the UPA, but continues to satisfy the requirements of the statute, the parties' arrangement will continue to be proposed for new projects.

For example, assume that an applicant has a pending project including both operating and capital assistance and is also a party to an executed agreement with a union dated September 30, 1985, and several Operating and Capital Assistance Protective Arrangements with various other unions dated between January 29, 1996, when the new process took effect, and September 30, 2005. Under the revised procedures, the Department will propose certification of the applicant's next pending grant on the basis of the September 30, 1985 Agreement for the union covered by that agreement; as to the other unions, however, the Department will propose certification on the basis of the current Unified Protective Arrangement instead of the provisions in the numerous Operating and Capital Arrangements dated between 1996 and 2005.

Protections that are the product of negotiations often contain provisions unique to the transit property involved. Such protections may also include a provision allowing an additional local union to become a party. Under the proposed procedures, the Department will accommodate the wishes of the parties to employ such an existing provision in its certification. As previously indicated, the Department will also continue to apply certain existing protective terms certified as a Departmental determination of issues in dispute where those issues are not otherwise addressed in the current Unified Protective Arrangement.

The UPA will be available on the OLMS Web site and may be updated from time to time to reflect developments in the employee protective program. The latest version will, in each instance, be incorporated by reference in the contract of assistance between the FTA and the grant applicant.

E. Exclusion of Over-the-Road Bus Accessibility Program From the Department's Referral Process

The Department is proposing to amend section 215.3(a)(4) of the guidelines to specify that OTRB grants will no longer be subject to its referral process. The OTRB program was established in 1998 by TEA-21, and

intended primarily to retrofit over-the-road buses to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* (ADA). Section 3038 of TEA-21 stated that OTRB grants "shall be subject to all of the terms and conditions applicable to subrecipients" of grants for the "Other Than Urbanized" program, which requires no referral process. Although TEA-21 did not require use of referral procedures for the certification of protections for Over-the-Road Bus grants, the Department applied the established referral procedure at the outset of the program. The Department's experience with this program now suggests that it is appropriate to apply a warranty arrangement, and eliminate the use of the referral process, as originally contemplated by TEA-21. The Department has included procedures for processing of OTRB grants in new section 215.7, which also provides procedures to be followed for the Other Than Urbanized program.

F. Administrative Changes

Several adjustments have been made to the guidelines to reflect current administrative practices. First, the Department has eliminated language contained in section 215.2 of the 1999 guidelines indicating that it will process applications that are in "preliminary" form. This section now requires that applications "be in final form," based on the Department's determination that its administrative processes not be engaged until the grant application reflects the actual project activities to be undertaken. Also, section 215.6 has been revised to further explain how interested parties may utilize the July 23, 1975 Model Agreement. In particular, section 215.6 now contains procedures, comparable to those in paragraphs 26, 27, and 28 of the Model Agreement itself, by which applicants and unions may become a party to or withdraw from the Model Agreement. In addition, section 215.8 will be modified to add an e-mail address and correct the room number of the Statutory Programs office. Finally, the text of section 5333(b) of the Federal transit law, which is set out in its entirety in section 215.1 of the current Guidelines, has been removed from that section in the proposed Guidelines so that modifications of the Guidelines will not be necessary each time statutory changes are enacted.

III. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with

Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this notice of proposed rulemaking is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has also determined that this notice of proposed rulemaking is not "economically significant" as defined in section 3(f)(1) of Executive Order 12866. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required.

Regulatory Flexibility Act

This proposed rule addresses the procedural steps for obtaining the Department's certification that employee protective arrangements under the Federal transit law are in place as required under SAFETEA-LU. The amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Assistant Secretary for Employment Standards has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of \$100 million or more, or in increased expenditures by the private sector of \$100 million or more.

Paperwork Reduction Act

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-

based companies in domestic and export markets.

List of Subjects in 29 CFR Part 215

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

In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards, hereby proposes to amend part 215 of title 29 of the Code of Federal Regulations as set forth below.

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

1. The authority citation for part 215 is revised to read as follows:

Authority: Secretary's Order No. 4–2007, 72 FR 26159, May 8, 2007.

2. Section 215.1 is revised to read as follows:

§ 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.

§ 215.2 [Amended]

3. Section 215.2 is amended by removing “may be in either preliminary or final form” and adding in its place “must be in final form”.

4. Section 215.3 is amended as follows:

a. Revise paragraphs (a)(3), (a)(4), (b) introductory text, (b)(1), and (2);

The revisions and additions read as follows:

§ 215.3 Employees represented by a labor organization.

(a) * * *

(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 SIB 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 any necessary modifications to the existing protections to ensure that the requirements of the statute are satisfied.

(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) The Department's referral will be based on a single Unified Protective Arrangement except in those cases in which the application involves an applicant or subrecipient that has protective terms and conditions, appropriate to the grant, 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 protective arrangement agreed to by the parties to resolve issues not otherwise addressed by the Unified Protective Arrangement; or

(iv) A determination of protective terms by the Department involving issues not otherwise addressed by the Unified Protective Arrangement.

Note to paragraphs (b)(1)(i) through (iv): In the above cases (i–iv), the Department's referral will incorporate such protections as appropriate.

(2) The terms and conditions of the Unified Protective Arrangement shall be similar to those contained in the Department's Capital Arrangement. The Capital Arrangement was derived from the Special Section 13(c) Warranty initially developed and certified for the small urban and rural program in 1979,

which incorporates provisions of the July 23, 1975 Model Agreement;

* * * * *

5. Section 215.5 is revised to read as follows:

§ 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 in immaterial respects 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. Grants that do not materially amend existing grants of assistance include but are not limited to:

(i) Administrative Amendments that modify or clarify in a purely immaterial manner terms, conditions or provisions of a previously certified grant;

(ii) Grant Amendments and Revised Grants that do not include a total budget increase of more than 20 percent of the previously certified Federal amount and do not add a new project activity; and

(iii) Full Funding Grant Agreement (FFGA) Amendments that included the full budget and scope of activities for the project in a grant previously certified by the Department.

(2) When an application amends a grant for which the Department has previously certified fair and equitable arrangements in a manner that materially changes or amends an existing grant of assistance, the Department will refer and/or process the labor certification provisions of the amended grant according to procedures specified under §§ 215.3 and 215.4, as appropriate.

(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.

6. Section 215.6 is amended as follows:

a. Designate the existing text as paragraph (a) and remove “(b)(3)(i)” and add in its place “(b)(2)”;

b. Add new paragraphs (b), (c), and (d) to read as follows:

§ 215.6 The Model Agreement.

(a) * * *

(b) A grant applicant that is an employer not initially a party to the Model Agreement but seeking to use the Model Agreement as the basis of the Department's certification may become party thereto by serving written notice of its desire to do so upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. In the event of any objection to the addition of such employer as a signatory, then the dispute as to whether such employer shall become a signatory shall be determined by the Secretary of Labor.

(c) A labor organization that is the collective bargaining representative of urban mass transportation employees in the service area of a grant recipient but not initially a party to the Model Agreement, and who may be affected by the assistance to the recipient, may become a party to the Model Agreement by serving written notice of its desire to do so upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. In the event of any disagreement that such labor organization should become a party to the Model Agreement, as applied to the Project, then the dispute as to whether such labor organization shall participate shall be determined by the Secretary of Labor.

(d) Any signatory employer may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the Secretary of Labor, the American Public Transit Association, or its designee, and the unions signatory to the Model Agreement, or their designee. Any labor organization may individually withdraw from the Model Agreement by serving written notice of its intention to withdraw upon the other union representatives of the employees affected by the project, the recipient, and the Secretary of Labor. Written notice to withdraw must be served one hundred twenty (120) days prior to October 1, which is the annual renewal date of the Model Agreement.

7. Section 215.7 is amended as follows:

a. Remove “(b)(3)(ii)” and add “(b)(2)” in its place;

b. Remove the phrase “small urban and rural program under section 5311 of

the Federal Transit Statute” and add in its place “Other Than Urbanized program”.

c. Designate the existing text as paragraph (a) and add two sentences to the end; and

d. Add new paragraphs (b) and (c).

The revisions and additions read as follows:

§ 215.7 The Special Warranty.

(a) * * * 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.

(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 transit employees of the recipient.

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

§ 215.8 [Amended]

8. Section 215.8 is amended as follows:

a. Remove “Director,” and add in its place “Chief, Division of”;

b. Remove “Suite N5603,”; and

c. Add the phrase “or e-mailed to *OLMS-TransitGrant@dol.gov*” at the end of the paragraph.

Victoria Lipnic,

Assistant Secretary for Employment Standards.

Donald Todd,

Deputy Assistant Secretary, Office of Labor-Management Standards.

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BILLING CODE 4510-CP-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210-AB21

Multi-Employer Pension Plan Information Made Available on Request

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that, upon adoption, would implement amendments to the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), requiring the administrator of a multi-employer plan to provide copies of certain actuarial and financial information about the plan to participants and others upon request. The amendments, enacted by the Pension Protection Act of 2006, added subsection (k) to section 101 of ERISA. The proposed regulation would affect plan administrators, participants and beneficiaries of multi-employer plans, as well as employee representatives of such participants and employers that have an obligation to contribute to such plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before October 15, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, the Department encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal at *www.regulations.gov* (follow