



Tuesday
March 30, 1999

Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 215
Amendment to Section 5333 (b)
Guidelines to Carry Out New Programs
Authorized by the Transportation Equity
Act for the 21st Century (TEA 21);
Proposed Rule

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

RIN 1215-AB25

Amendment to Section 5333(b) Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA 21)

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (DOL) is providing notice of an amendment to its procedural Guidelines for certification of certain Federal Transit Administration (FTA) projects in satisfaction of the requirements of Title 49 U.S.C., Chapter 53, Section 5333(b) (commonly referred to as "Section 13(c)"). This notice is necessitated by the introduction of three new programs under the Transportation Equity Act for the 21st Century (TEA-21), and the need to identify appropriate procedures for DOL's required certification of employee protections in connection with these projects.

DATES: Comments must be submitted by April 29, 1999.

ADDRESSES: Comments should be submitted to Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5603, Washington, DC 20210. Comments may also be submitted by facsimile to (202) 693-1342 or by e-mail to: kandrews@fenix2.dol-esa.gov.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, (202) 693-0126.

SUPPLEMENTARY INFORMATION:**I. Background**

The Transportation Equity Act for the 21st Century (TEA-21), signed into law by President Clinton on June 9, 1998, provides for three new transportation programs which require employee protection under section 5333(b). These are the Job Access and Reverse Commute Program (section 3037), the Over-the-Road Bus Accessibility Program (section 3038), and the State Infrastructure Bank Program (section 1511). Pursuant to section 5333(b), DOL must certify, when Federal funds are used to acquire, improve, or operate a transit system, that the requisite transit employee protective arrangements are in place protecting certain rights of mass transit employees affected by such

assistance, as a condition of release of assistance by the Federal Transit Administration (FTA). 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.

For most programs funded by the FTA, DOL currently processes the employee protection certifications required under section 5333(b) in accordance with procedural Guidelines published at 29 CFR 215.3. DOL applies these procedures to the processing of all grants except section 5310, Elderly and Handicapped grants which do not require section 5333(b) certification, and section 5311 Non-Urban formula grants which are specifically exempted from processing under the Guidelines. Grants under section 5311 are automatically certified through the application of a warranty, while other grants are certified following referral procedures which afford the interested parties an opportunity to provide their views on substantive protections. The purpose of this notice is to amend the Guidelines to identify the certification processes which will be applicable for the Job Access and Reverse Commute Program, the Over-the-Road Bus Accessibility Program, and the State Infrastructure Bank Program. To accomplish this, DOL proposes to insert a new paragraph at § 215.3(a)(4) to identify programs and activities within programs which will not be subject to processing under the Guidelines. In addition, the last sentence of § 215.3(a)(3) will be omitted as extraneous. Finally, § 215.8 will be modified to update the room number and phone number of the Statutory Programs office.

II. Processing of Grants for New Programs

The Job Access and Reverse Commute Program provides funding to establish a regional approach to job access challenges and supports the implementation of a variety of transportation services that may be needed to connect welfare recipients to jobs and related employment activities. Metropolitan Planning Organizations will select applicants in areas serving populations of 200,000 or greater, and the states will select applicants in areas with populations under 200,000. The nature of recipients and the types of grants anticipated for applicants serving

populations under 200,000 are similar to the small urban and rural program under section 5311. Although traditional transportation providers are eligible recipients under the program, it will probably have the most impact on existing transit employees where applicants are serving populations of 200,000 or more. See Federal Transit Administration, Job Access and Reverse Commute Competitive Grants; Notice, 63 FR 60168 (November 6, 1998). Accordingly, DOL intends to establish procedures similar to those for section 5311(f) for applicants serving populations under 200,000, and to apply the existing Guidelines procedures for applicants serving populations of 200,000 or more. This necessitates that DOL amend the Guidelines to exclude Job Access and Reverse Commute grants for applicants serving populations under 200,000 from coverage under the Guidelines.

The Over-the-Road Bus Accessibility Program provides funding to assist in financing the incremental capital and training costs associated with the Department of Transportation's implementation of its Final Rule on accessibility requirements for Over-The-Road-Buses (OTRB). DOL intends to follow existing referral procedures under the Guidelines for processing employee protection certifications for this program. Thus, amendment of the Guidelines is not necessary to address Over-the-Road Bus Accessibility grants.

The State Infrastructure Bank (SIB) Program provides for a revised pilot program without limitation on the amount of funds that may be used to capitalize the bank. SIBs do not make grants, but can provide assistance in a variety of ways, including loans and advances for projects with a repayment provision, subsidizing interest rates, and providing bond or other debt financing security. DOL will certify initial capitalization grants made by FTA to the SIBs by applying standard protections and specifying that the SIB may not release funds absent subsequent certifications for specific projects. When specific projects are identified, certification of labor protections for each project funded by the SIB transit account will be processed in accordance with DOL's Guidelines, thus permitting the interested parties an opportunity to provide their views on the protective arrangements proposed for application to the specific projects. This necessitates that DOL amend the Guidelines to exclude from coverage grants for the initial capitalization of SIBs.

III. Public Consultation

In establishing the process for certification of protections applicable for the Job Access and Reverse Commute Program, the Over-the-Road Bus Accessibility Program, and the State Infrastructure Bank Program, DOL herein seeks the views of stakeholders in the transportation industry including transportation providers, transit employee unions, and potentially affected transit employees. Although we will not be able to respond directly to individual comments, we will address comments collectively when we issue the final rule with respect to this proposed amendment to the Guidelines.

IV. Regulatory Procedures:

Regulatory Flexibility Act

This proposed rule addresses the procedural steps for obtaining the Department's certification that employee protection arrangements under the Federal Transit law are in place as required for three new programs funded under TEA-21. 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 to this effect 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 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.

Accordingly, it is proposed that Chapter II of Title 29 of the *Code of Federal Regulations* be amended as follows.

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

1. The authority citation for Part 215 continues to read as follows:

Authority: Secretary's Order 5-96, 62 FR 107, January 2, 1997.

2. Section 215.3 is amended by removing the last sentence in paragraph (a)(3) and by adding new paragraph (a)(4) to read as follows:

§ 215.3 Employees represented by a labor organization.

* * * * *

(a) * * *

(4) These procedures are not applicable to grants under section 5311; 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.

3. Section 215.8 is revised to read as follows:

§ 215.8 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Director, Statutory Programs, U.S. Department of Labor, Suite N5603, 200 Constitution Avenue, NW, Washington, DC 20210; phone number 202-693-0126.

Signed at Washington, DC this 24th day of March, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

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