

Rural Transportation Employee Protection Guidebook

**U.S. Department of Labor
Labor-Management Services Administration
Division of Employee Protections
September 1979**

Material contained in this publication is in the public domain and may be reproduced, full or partially, without permission of the Federal government Source credit is requested but not required. Permission is required only to reproduce any copyright material contained herein.

Rural Transportation Employee Protection Guidebook



Contents and Use of the
Special Section 13(c) Warranty
for Application to the
Public Transportation Assistance
for Nonurbanized Areas Program

U.S. Department of Labor
Labor-Management Services Administration
Division of Employee Protections
September 1979

This *Guidebook* was prepared under the general direction of James Perlmutter of the Division of Employee Protections. Edward Weiss performed the principal staff development work for its contents. Also contributing to this effort were Karen Carmichael, Jay Flanagan, Lynn Franks, Ann Gailliot, Dorothy Hodge, Serita Jamison, Annie Jackson, Irene Jones, Wilhemina Kinard, Eugenie Lafranchise, Alan Nartic, and Grig Wysong.

TABLE OF CONTENTS

	page
I. INTRODUCTION	1-2
II. SPECIAL SECTION 13(c) WARRANTY OVERVIEW	3
III. EXPLANATORY COMMENTS	4-12
IV. INSTRUCTIONS FOR UTILIZATION OF WARRANTY	13-19
A. Warranty	13
B. Alternative Comparable Arrangements	13-14
C. Waiver	14-19
V. FURTHER INFORMATION	20
VI. APPENDICES	21-52
<u>Appendix A</u> : Special Section 13(c) Warranty	21-27
<u>Appendix B</u> : Sample Certification by Public Body	28-29
<u>Appendix C</u> : Provisions of the National Model	30-38
Agreement for Incorporation in the Warranty	
<u>Appendix D</u> : Section 13(c) Guidelines	39-41
<u>Appendix E</u> : Section 13(c) and 18 of the Urban	42-48
Mass Transportation Act of 1964, as Amended, and Other Pertinent Legislation	
<u>Appendix F</u> : Notice of Receipt of Federal	49
Assistance and Acceptance of Section 13(c) Warranty	
<u>Appendix G</u> : Sample Request to Become Party	50
to the Special Section 13(c) Warranty	
<u>Appendix H</u> : Notice of Proposed Waiver	51-52

I. Introduction

Section 313 of the Surface Transportation Assistance Act of 1978 added a new Section 18 "Public Transportation for Non-urbanized Areas" Program to the Urban Mass Transportation Act of 1964, as amended.

Section 18(f) of the Urban Mass Transportation Act of 1964, as amended, makes Sections 3(e)⁴ and 13(c) of that Act applicable to assistance authorized under Section 18. Sections 3(e)⁴ and 13(c) of the Urban Mass Transportation Act provide, in general, that it shall be a condition of any Federal assistance by the Department of Transportation to state or other public bodies in financing mass transportation, that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees who may be affected by such assistance.

Section 13(c) of the Act reads as follows:

It shall be a condition of any assistance under section 3¹ of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their employment; (4) assurances of employment

1/Section 13(c) is also applicable to assistance granted under Sections 5, 6, 16(b)(1), 17 and 18(f) of the Urban Mass Transportation Act of 1964, as amended. The provisions of Sections 3(e) and 13(c) of the Act are also applicable to Sections 103 and 142 (23 U.S.C 103 and 142) of the Federal Aid Highway Act of 1973, and Section 130(a) of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (11 USC 663).

to employees of acquired mass transportation systems and priority of re-employment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

As part of the implementation of the Section 18 Non-urbanized Areas Program the Departments of Labor and Transportation have developed special procedures for the application of the statutorily mandated Section 13(c) labor protective provisions to the Section 18 Program. In an effort to eliminate the administrative unwieldiness of case by case processing, a Special Warranty arrangement has been developed for exclusive application to the Section 18 program. The Special Section 13(c) Warranty is contained in Appendix A. The Warranty is specially designed to meet rural program needs while affording the employee protections required under the UMT Act.

An explanation of the Special Section 13(c) Warranty and the procedures for its implementation developed by the Department of Labor and the Department of Transportation are set forth below.

Training sessions to assist in the implementation of the Section 18 program are being planned throughout the country at which joint DOL/DOT teams will explain the new Warranty procedures and be available to provide "hands on" assistance to interested parties.

II. Special Section 13(c) Warranty Overview

The Special Section 13(c) Warranty is designed to be included in the Federal grant contract between the United States Department of Transportation and the designated State agency/Public Body charged with the allocation and administration of Section 18 funds in each State. The flow of Section 18 funds for a particular Project will be permitted when the Public Body charged with the allocation and administration of funds certifies to the Department of Labor that each Recipient designated to receive transportation assistance for that Project or alternatively the legally responsible party designated by the Public Body, has indicated written acceptance of the terms and conditions of the Warranty, in the absence of a finding of non-compliance.

The Warranty provides that the Public Body agrees, that, absent a waiver, the terms and conditions of the Warranty shall apply for the protection of the transportation related employees of any Recipient and the transportation related employees of any other surface public transportation providers in the transportation service area of the Project.

The Warranty obliges the Public Body to assure that each Project Recipient in the State agrees to be bound by certain specified terms and conditions of the National (Model) Agreement executed July 23, 1975, which are incorporated into the Warranty by reference. Alternative arrangements comparable to those in the Model Agreement terms and conditions incorporated into the Special Warranty by reference may also be utilized if approved and certified by the Secretary of Labor for inclusion in the Warranty.

The Warranty also provides that the Recipient or other legally responsible party designated by the Public Body may request in writing from the Secretary of Labor a waiver of the statutorily required protections. The Secretary can waive these protections only where it is clear that there are no employees of the Recipient or of any other surface public transportation provider in the transportation service area who could be potentially affected by the Project. In order for an individual to be potentially affected, it is not necessary that the anticipated effects upon his or her interests be adverse. The procedures for Department of Labor processing of waiver requests are set forth in detail below.

III. Explanatory Comments

The following comments are designed to provide an explanation of the contents of the Special Section 13(c) Warranty on a section by section basis. The Warranty is set forth in its entirety in Appendix A.

A. General Application

This Section states that the designated State agency agrees that, unless the Department of Labor grants a waiver of employee protections for the Project, the terms and conditions in paragraphs (1) through (10) will apply for the protection of employees of any Project Recipient and the employees of any other surface public transportation provider in the transportation service area of the Project. Protected employees are employees involved in providing transportation and related services for any Recipients and any other surface public transportation providers in the transportation service area of the Project.

The term "surface public transportation provider" means a mass transportation operation engaged in the provision of surface transportation services to the public. The term "surface public transportation provider" is meant to include "mass transportation" services as defined by the Urban Mass Transportation Act.

The term "public transportation" means "any transportation by bus or rail or other conveyance, either publicly or privately owned, which provides to the public general or special service on a regular and continuing basis." Public transportation does not include the following: (1) school bus, charter or sightseeing service; (2) exclusive ride taxi service; (3) and service to individuals or groups which excludes use by the general public.

The term "transportation service area of the Project" is intended to include the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. If a Project in one county draws passengers away from a system in an adjacent county, and employees of that adjacent county system are affected because of such reduction, that would be considered as included within the scope

of the transportation service area of the Project. Also, if a carrier operates service which passes through the service area of a particular Project and employees of the carrier which passes through the Project area are affected by the Project-assisted services, that would be considered as included within the transportation service area of the Project.

This section also states that the Public Body will provide to DOL and keep up to date during the Project a complete listing of all existing transportation providers which are eligible Recipients of Section 18 assistance in the transportation service area of the Project and any labor organizations representing the employees of the eligible Recipients. The term "eligible Recipients" includes those providers designated to receive Section 18 assistance as well as other surface public transportation providers who are also qualified for grants.

The flow of Section 18 funds will be permitted when the Public Body certifies to the Department of Labor that the Recipients designated to receive Section 18 assistance (or legally responsible party designated by the Public Body) have agreed to the Warranty in writing. Upon receipt of a letter of certification from the Public Body to the Department of Labor (a SAMPLE CERTIFICATION is attached as Appendix B), the Department of Labor will acknowledge to the responsible FHWA Division Office its receipt of the certification. This acknowledgement by the Department of Labor, which may be made by phone to expedite approval, will serve to indicate completion of the certification responsibility under the Warranty and permit the release of Section 18 funding. The Department of Labor will acknowledge the receipt of the certification by letter to the Public Body (designated State agency).

As shown in Appendix B, the required listing of all existing transportation providers, those designated as Recipients, and labor organizations referred to above should accompany the Public Body's letter of certification to the Department of Labor.

B. Standard Terms and Conditions

(1) The first two sentences of this section express the general requirement that employee rights and interests be protected from effects of a Project. Initially, this means

that Recipients and any other legally responsible party in designing and implementing a Project must consider the effects a Project may have on employees and attempt to minimize any adverse effects. If objectives can be met without adversely affecting employees it is expected that adverse effects will be avoided. In the context of particular Project events, this paragraph is to be read in conjunction with other provisions of the Warranty. It thereby serves to emphasize the specific statutory requirements that employees be protected against a worsening of their employment conditions, and receive offsetting benefits to make them "whole" when unavoidable impacts occur.

This paragraph also indicates that the term "Project" as used in the Warranty includes more than just the particular physical items assisted by the Section 18 grants. In other words, reductions in service or other changes in operations which are a result of the Federal assistance would be included within the scope of the term "Project." Additionally, this paragraph defines the phrase "as a result of the project" and indicates that Project related events that occur before, during, and after the Project are included within that definition. As an example, if an employee were laid off prior to the actual start-up of a Project but for reasons of the Project, the impacted employee could successfully claim coverage and benefits.

In order for any individual to successfully claim monetary allowances under the Warranty, his or her employment conditions must be worsened "as a result of the project." Changes which are not caused by the Project such as seasonal fluctuations in employment, downturns in business, or dismissals for cause would not give rise to a claim for worsening under the Warranty protections. Additionally, the Warranty is not intended to apply to any employee whose dismissal, displacement or worsened position results solely from the termination of the Project or its funding. In other words, if an employee were affected as a result of the exhaustion of funding for a particular Project, that employee would not be able to successfully claim monetary allowances under the Warranty. Additionally, if, for example, a CETA employee were affected by CETA program standards, that would not of itself give rise to claims under the Warranty.

2 (a)

The purpose of this paragraph is to assure that Project assisted services provided by each Recipient are provided

under and in accordance with any collective bargaining agreements that apply to the Recipient's workforce. This paragraph is not intended to limit the provision of transportation services assisted by the Project to a single provider.

2 (b)

This paragraph makes the Recipient or alternative legally responsible party responsible for providing notice to employees who are going to be impacted by intended action which may cause downgrading of jobs, layoffs, or rearrangements of working forces. A notice of 60 days is to be given to employees who are going to be impacted in such a manner. The notice should be posted in a place commonly frequented by employees and where it can be easily seen (e.g., a dispatching area, bulletin board, recreation room).

The notice should include a full explanation of the proposed changes, an estimate of the number of employees who may be affected and the number and job classifications of any vacancies in the Recipient's employment available to be filled.

Where affected employees are represented by a union, the notice is to be sent by certified mail to an appropriate representative of the union.

The notice procedures of this paragraph are not intended to apply to changes which occur as a result of the normal exercise of seniority rights or regular schedule changes.

2 (c)

The purpose of this paragraph is to afford a procedure for the negotiation of the implementation of the Warranty where the notice procedures apply to employees represented by a union. Such negotiations, if invoked, should address, for example, the order and manner of offering employment to employees who stand to be dismissed as a result of an intended action.

This provision sets forth a procedure which calls for the immediate start of negotiations at the request of either the Recipient or the union representative(s). If the parties are not able to reach an agreement within twenty (20) days, either party to the dispute may submit the matter to the dispute settlement procedure of paragraph (4) of the Warranty (See explanation of paragraph (4) below). Under this subparagraph, the intended change which may result in displacements, dismissals, or rearrangements is not to begin until the notice procedure, if invoked, is concluded.

The provisions incorporated by reference as part of this Special Warranty under paragraph (3) are contained in Appendix C. The incorporation of these provisions does not make the Recipient or legally responsible party designated by the Public Body a signatory or party to the National (Model) Agreement of July 23, 1975. It does incorporate certain provisions of that agreement into this Special Warranty.

If a Recipient or legally responsible party designated by the Public Body desires to seek alternative arrangements, which must be comparable to those included in Appendix C, it should write to the Office of Labor-Management Relations Services, Room N-5653, U.S. Department of Labor, Washington, D.C., 20210, Attn: Division of Employee Protections. This letter should be accompanied by two (2) copies of the grant application and should describe the circumstances which support amendment or modification to the Special Warranty to substitute alternate comparable provisions.

Upon receipt of requests for substitute comparable arrangements, the Department of Labor will process such requests on a case by case basis in accordance with its Section 13(c) guidelines, 29 CFR Chapter II, Part 215 (see Appendix D).

The footnote to paragraph (3) quotes two sentences from Section 13(c) of the Urban Mass Transportation Act. The complete Section 13(c) is contained at Appendix E, together with other relevant statutory references.

Paragraph (4) is the disputes resolution clause of the Special Warranty. It is intended to serve as a self-governing mechanism under which parties can obtain final and binding resolution to any dispute arising under the terms of the Special Warranty over which they cannot reach agreement.

The paragraph provides that any dispute or controversy arising regarding the application, interpretation, or enforcement of the Special Warranty is subject to this dispute resolution procedure.

If a dispute is not resolved within thirty (30) days after it first arises, then either party may refer such dispute to a final and binding settlement procedure. If the parties can agree upon such a procedure (e.g., an existing arbitration provision), then that agreed upon procedure is to be used. If the parties cannot agree, then either party may contact the Department of Labor, which will itself review the dispute and issue a determination to resolve it or will designate an impartial third party to hear the dispute and issue a final and binding determination.

In the event a party to a dispute wants to contact the Department of Labor, it should write a letter to the Office of Labor-Management Relations Services, Room N-5653, U.S. Department of Labor, Washington, D.C., 20210, Attn: Division of Employee Protections. The letter should specify the nature of the dispute, identify the parties, and describe the procedural steps already taken by the parties to resolve the dispute. Copies of the letter should be provided to all parties to the dispute.

The burden of proof clause which appears at the end of the paragraph (4) recognizes that individual employees will not have access to information required to establish whether a particular effect upon the employee was "as a result of the Project". Thus, in cases where there is a dispute as to whether or not an employee was affected by the Project, the employee must explain how he or she has been affected and how he or she attributes that effect to the Project. The burden of proof then is placed on the Recipient or the legally responsible party under the arrangements, to show that factors other than the Project affected the employee. An employee shall be considered affected by the Project if it is established that the Project had an effect upon the employee, even if other factors may have also affected the employee.

5

Paragraph (5) states that the Recipient shall be financially responsible for the application of the terms and conditions of the Special Warranty. However, it permits the Public Body to designate an alternative legally responsible party, which could be the Public Body itself. For example, if a Project Recipient were a non-profit organization, the legally responsible party for the application of the protections might be that non-profit organization, the City or

County in which it operated, the local major public transportation provider, or the State agency charged with allocating and administering the nonurbanized areas program.

When the Public Body is not designated as the legally responsible party under the Special Warranty, then the Public Body assumes no special obligations under the Special Warranty that are not otherwise part of its normal obligations as a grant administering agency. In such a case the Public Body's status and responsibilities with respect to employee protections are not any different than its status and responsibilities with respect to all other grant requirements.

6

This provision is for the purpose of assuring that any rights and benefits which employees may have under existing agreements or provisions of law are not taken away or in any way waived by the terms and conditions of the Warranty. If an employee has any rights or is entitled to benefits under another protective agreement, collective bargaining agreement or law, this Warranty is not meant to interfere with or take away any of those rights or benefits.

7

The purpose of this paragraph is to afford employees who are laid off as a result of the Project a priority in hiring for any vacant position under the Recipient's control for which the employee is qualified or for which the employee can become qualified through a reasonable training period. Where training is required, it is to be at no cost to the employee. Under this provision the Recipient is afforded wide latitude in absorbing employees laid off as a result of the Project, as vacancies which may be filled include those in areas both within the Recipient's transit operation as well as other departments or places of employment under the control of the Recipient. A dismissed employee who, without good cause, refuses to accept an offer of a comparable job forfeits entitlements to a dismissal allowance.

This provision affords the Recipient an opportunity to reduce potential liabilities for dismissed employees if vacancies should exist within its control and at the same time, affords dismissed employees an opportunity to secure alternative employment.

The purpose of this provision is to afford notice to employees covered by the Warranty of their rights and responsibilities under that arrangement. The notice should be posted in a place where employees normally assemble and should be easily visible. It should indicate the Recipient's receipt of Federal assistance and agreement to comply with Section 13(c). A copy of the Warranty conditions should be attached to the notice. A copy of a sample notice is attached as Appendix F.

All pertinent information and records necessary to carrying out the Warranty including the determination of claims are required to be maintained and kept on file by the Recipient. This recognizes that in a claims proceeding the employee would not normally have access to information necessary to establishing his or her claim. It would be expected that these be routine records such as payroll, employment data, job classification, etc.

The intent of this paragraph is to afford any labor organization which represents employees covered by the Warranty an opportunity to become a party to the arrangement. Notice of such an interest should be submitted in writing to both the Recipient and the Department of Labor. A sample request to become party to the Warranty is attached as Appendix G.

The Department of Labor will acknowledge the labor organization's request and, by copies to the Public Body and Recipient, indicate that unless objections are received within (30) days of the date of its letter, DOL will consider the labor organization a party to the Warranty. If DOL receives an objection to a requesting union's eligibility to become a party to the Warranty, it will review the objection and take appropriate action to resolve the dispute.

This paragraph assures that the Warranty will be separately enforceable (e.g., through filing a court suit) by parties to the grant contract and by any covered employee or his representative. The Warranty is binding upon such parties.

C. Waiver

This Section permits the Recipient, or other legally responsible party designated by the Public Body to request in writing from the Secretary of Labor a waiver of the required Section 13(c) protections. The waiver may be requested either independent of accepting the Warranty or once it has been accepted. However, where the Recipient has not agreed to the Special Warranty, no funds can be released. The Secretary can issue a waiver only where he determines that, at the time of the requested waiver, there are no existing transportation related employees of the Recipient or of any other surface public transportation provider in the transportation service area of the Project who could potentially be affected by the Project. In order for such employees to be affected, it is not necessary that the anticipated effect upon their interests be adverse. Procedures on how to request a waiver are set forth below.

IV. Instructions for Utilization of Warranty

How to Permit Flow of Section 18 Funds Under Warranty

In order to permit the release of Section 18 funds for a Project under the Special Warranty, the Public Body must certify to the Department of Labor that each Recipient designated to receive transportation assistance under the Project has indicated in writing acceptance of the terms and conditions of the Warranty. The letter of certification should be accompanied by a listing of the Recipients designated to receive transportation assistance, the eligible Recipients of transportation assistance in the transportation service area and union representatives, if any, of employees of such providers. A sample certification by a State designated agency with the accompanying listing is set forth in Appendix B. The certification should be addressed to the Office of Labor-Management Relations Services, United States Department of Labor, Attn: Division of Employee Protections, 200 Constitution Avenue, NW, Room N-5653, Washington, D.C., 20210.

DOL Acknowledgement of Receipt of Certification

Upon receipt of a letter of certification from the Public Body to the Department of Labor, the Department of Labor will acknowledge to the responsible FHWA Division Office its receipt of the certification. This acknowledgement by the Department of Labor, which may be made by phone to expedite approval, will serve to indicate completion of the certification responsibility under the Warranty and permit the release of Section 18 funding. The Department of Labor will subsequently acknowledge the receipt of the certification by letter to the Public Body.

How to Request Alternative Arrangements Comparable to those in Appendix C

Paragraph (3) of the Special Warranty allows for substitute or comparable arrangements for inclusion in the Warranty, if approved and certified by the Secretary of Labor.

If a Recipient or other legally responsible party designated by the Public Body desires to seek alternative arrangements, which must be comparable to those included in Appendix C, it should write to the Office of Labor-Management Relations Services, Room N-5653, United States Department of Labor, Washington, D.C. 20210, Attn: Division of Employee Protections. The letter should be accompanied by two (2) copies of the grant application and should describe the circumstances which support amendment or modification to the Special Warranty to substitute alternate comparable provisions.

DOL Processing of Substitute Comparable Arrangements

Upon receipt of requests for substitute comparable arrangements, the Department of Labor will process such requests on a case by case basis in accordance with its Section 13(c) guidelines, 29 CFR Chapter II, Part 215 (contained in Appendix D.)

How to Request a Waiver

The Warranty provides that either the Recipient or other legally responsible party designated by the Public Body may request a waiver of the protections set forth in the Warranty. In requesting a waiver, the Recipient or other legally responsible party should write a dated letter signed by a responsible official to the designated state agency who shall verify the data and forward it to the FHWA Division Office. The FHWA Division Office shall likewise verify the data before forwarding it to the Department of Labor for processing. The letter should be accompanied by a complete copy of the Project application (which should contain the information required by DOL for processing a waiver request application), indicate a return address and include a telephone number of an appropriate contact person.

The request for waiver should assert that there are no existing employees of the Recipient or of any other transportation service provider eligible for funding in the transportation service area of the Project as of the date of the requested waiver, or that employees of eligible transportation service providers cannot be potentially affected by the Federal assistance. In the latter cases, the waiver

requesting party must explain why employees cannot be potentially affected. In order for such employees to be affected, it is not necessary that the anticipated effect upon their interests be adverse.

Applications should include the following information in cases of waiver requests:

1. The name of the eligible providers in the transportation service area of the Project;
2. A description of the nature of the transportation services provided in the area including the populations served;
3. The frequency of the services;
4. A description of the vehicles used in providing the services;
5. The geographical service areas of the services;
6. The fare structures of the services;
7. The number of employees involved in providing the services;
8. Any labor organization representing such employees;
9. Previous Federal assistance received from the Department of Transportation by any of the providers;
10. Revenue figures, where available, for the previous year attributable to the various categories of transportation services performed by the providers.
11. Names and mailing addresses of any transportation regulatory body in the transportation service area.
12. The name, address and telephone number of a contact person from the waiver requesting party who could respond to questions concerning the information supplied.

The following chart is a recommended format of the reporting of this information.

INFORMATION TO BE INCLUDED IN GRANT APPLICATION FOR WAIVER REQUESTS

Providers	Description of Services	Frequency	Vehicle	Geographical Service Area	Fare
<p>e.g., Faith, Hope and Charity Social Services, Inc.</p>	<p>e.g., Medical and shopping Trips for Elderly Dial-a-ride for the general public</p>	<p>e.g., Monday- Friday 9:00 a.m. to 6:00 p.m.</p>	<p>e.g., 7 passen- ger van (1)</p>	<p>e.g., Simpson County</p>	<p>e.g., 75¢ per round trip</p>
<p>Franklin Trailways, Inc.</p>	<p>East-West Intercity Service</p>	<p>Monday- Friday with an 11:30 a.m. de- parture East, and a 6:20 p.m. departure West</p>	<p>48-passenger coach</p>	<p>Arrivals and departures from Sevierston, with closed door operation, along I-42 through remaining Jackson County</p>	<p>Variable with destination East (Lake City) \$5.60. Nearest destination West (Cottonwood) \$3.10</p>

Number of Employees	Labor Organization	Previous Fed. Assistance	Revenue Figures	Regulatory Bodies	Provider Contact Person
e.g., 2 drivers, 1 clerk/ dispatcher	e.g., none	e.g., 147 Grant to purchase Van in 1975	e.g., \$6,000-FY 78 (Fares) \$2,000-State Subsidy in FY 78 Tot Rev: \$8,000	e.g., NA	e.g., Jill Jeed (717) 777-7777
Franklin Trailways has 28 full-time drivers and 112 full-and part-time support staff statewide. Locally, all clerk, ticketing and package handling is contracted with Walker's I-42 Texaco which has two full-time and one part-time employees.	Franklin Trailways ATU Walker's Texaco None	None	FY 78 total statewide revenues \$7.8 million FY 78 state subsidy \$48,200	State Department of Highways and Transportation	James Reed Associate Director for Operations (919) 999-9999

DOL Processing of Requests for Waiver

The Department of Labor will expeditiously process all applications for waivers or substitute arrangements under the Section 18 program. Special handling procedures have been formulated that will expedite the processing of these types of applications, particularly where necessary information accompanies the waiver request. DOL recognizes the special and distinct nature of many small urban and rural transportation services and will attempt to process requests with due consideration to these special characteristics.

Waiver requests will be presumably based on an assertion that there are no existing providers of transportation in the transportation service area or, in cases where there are existing providers, an assertion that there are no existing employees who could be potentially affected. In such situations, it is not necessary that the anticipated effect upon individuals be adverse for them to be considered potentially affected.

Where DOL determines that there are no employees in the transportation service area who could potentially be affected by the Project, it will publish a notice of proposed waiver in the Federal Register and simultaneously publish notification in local general circulation newspapers in the transportation service area. If no objections are received during the 30-day notice period, the waiver will be granted at the end of the notice period. If, however, timely objections are received, the Department of Labor will review the objections and determine whether a waiver should be granted or denied.

Upon completion of the 30-day notice period and review of any timely objections, DOL will inform by telephone the waiver requesting party, the Federal Highway Administration, and affected parties, if any, of DOL's findings. DOL will then issue its written decision granting or denying the request for waiver to the waiver requesting party, the FHWA, and any other involved parties.

The format to be used by DOL for publication of a notice of proposed waiver in the Federal Register and local general circulation newspapers is contained in Appendix H.

Objections should specify the name of the object-
ing party, a complete return address, the names of any
transit providers in the Project area, the nature of
transit services (e.g., service to elderly and handicapped),
the number of employees of the providers, if known, the
name(s) of any labor organization(s) representing such
employees and an explanation of how the Project will
affect the rights and interests of employees. The objec-
tions should be submitted in writing to the Office of
Labor-Management Relations Services, Room N-5653,
Attn: Division of Employee Protections, 200 Constitution
Avenue, NW, Washington, D.C. 20210. If objections are
filed within the 30 day notice period, the Department
of Labor will review them to determine whether a waiver
will be granted. If no objections are received, the
waiver will become final at the end of the 30 day notice
period.

V. Further Information

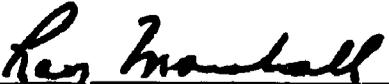
Questions concerning the subject matter covered by these instructions should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5653, 200 Constitution Avenue, N.W., Washington, D.C. 20216; Attn: Division of Employee Protections (Telephone: 202/357-0473).

SPECIAL SECTION 13(c) WARRANTY FOR
APPLICATION TO THE SMALL URBAN AND RURAL PROGRAM

The attached Special Warranty and the procedures incorporated therein represent the understandings of the Department of Labor and the Department of Transportation with respect to the "Formula Grant Program for Areas Other Than Urbanized Areas" (Section 18 of the Urban Mass Transportation Act of 1964, as amended).

The Department of Transportation will make this Special Warranty a part of the contract of assistance between the U.S. Department of Transportation and each state agency designated to receive and administer funds under Section 18 of the Urban Mass Transportation Act of 1964, as amended.

The Secretary of Labor has found that the terms and conditions of the Special Warranty meet the requirements of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. Accordingly, the Secretary of Labor hereby makes the certification that inclusion of these terms and conditions in formula grant contracts for small urban and rural program grants meets the requirements of Section 18(f) of the Urban Mass Transportation Act of 1964, as amended.



Secretary of Labor



Secretary of Transportation

Date: MAY 31 1979

Date: _____

Special Section 13(c) Warranty
for Application to the Small Urban
and Rural Program

The following language shall be made part of the contract of assistance with the State or other public body charged with allocation and administration of funds provided under Section 18 of the Act:

A. General Application

The Public Body (" ") agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project ("Recipient"), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Body shall provide to the Department of Labor and maintain at all times during the Project an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by the Public Body to the Department of Labor that the designated Recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of Section 18 funding in the absence of a finding of non-compliance by the Department of Labor.

B. Standard Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient and any other legally responsible party designated by the Public Body to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights

and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of the Model agreement or applicable provisions of substitute comparable arrangements.

(2) (a) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect.

(2) (b) The Recipient or legally responsible party shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces. In the case of employees represented by a union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs in the Recipient's employment available to be filled by such affected employees.

(2) (c) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (4) of this warranty. The foregoing procedures shall be complied with and carried out prior to the institution of the intended action.

(3) For the purpose of providing the statutory required protections including those specifically mandated by Section 13(c) of the Act¹, the Public Body will assure as a condition of the release of funds that the Recipient agrees to be bound by the terms and conditions of the National (Model) Section 13(c) Agreement executed July 23, 1975, identified below², provided that other comparable arrangements may be substituted therefor, if approved by the Secretary of Labor and certified for inclusion in these conditions.

1/ Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training and retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to Section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended.

2/ For purposes of this warranty arrangement, paragraphs (1); (2); (5); (15); (22); (23); (24); (26); (27); (28); and (29) of the Model Section 13(c) Agreement, executed July 23, 1975 are to be omitted.

(4) Any dispute or controversy arising regarding the application, interpretation, or enforcement of any of the provisions of this arrangement which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for final and binding determination. The compensation and expenses of the impartial third party, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of either the Recipient or other party legally responsible for the application of these conditions to prove that factors other than the Project affected the employees. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

(5) The Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by these arrangements, or the union representative of such employee, may file claim of violation of these arrangements with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim.

(6) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements, nor shall this arrangement be deemed a waiver of any rights of any union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(7) In the event any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period, can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient or other legally responsible party designated by the Public Body shall provide or provide for such training or retraining at no cost to the employee.

(8) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Urban Mass Transportation Act and has agreed to comply with the provisions of Section 13(c) of the Act. This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of these arrangements and to the proper determination of any claims arising thereunder.

(9) Any labor organization which is the collective bargaining representative of employees covered by these arrangements, may become a party to these arrangements by serving written notice of its desire to do so upon the Recipient and the Department of Labor. In the event of any disagreement that such labor organization represents covered employees, or is otherwise eligible to become a party to these arrangements, as applied to the Project, the dispute as to whether such organization shall participate shall be determined by the Secretary of Labor.

(10) In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Public Body or Recipient of federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

C. Waiver

As a part of the grant approval process, either the Recipient or other legally responsible party designated by the Public Body may in writing seek from the Secretary of Labor a waiver of the statutory required protections. The Secretary will waive these protections in cases, where at the time of the requested waiver, the Secretary determines that there are no employees of the Recipient or of any other surface public transportation providers in the transportation service area who could be potentially affected by the Project. A 30-day notice of proposed waiver will be given by the Department of Labor and in the absence of timely objection, the waiver will become final at the end of the 30-day notice period. In the event of timely objection, the Department of Labor will review the matter and determine whether a waiver shall be granted. In the absence of waiver, these protections shall apply to the Project.

Sample Certification by the Public Body

Director
Office of Labor-Management Relations Services
United States Department of Labor
200 Constitution Avenue, NW
Room N-5653
Att: Division of Employee Protections
Washington, D.C. 20210

Dear Director:

The Public Body (e.g., Connecticut DOT) has made application to the Federal Highway Administration, pursuant to Section 18 of the Urban Mass Transportation Act of 1964, as amended, for a mass transportation grant to assist in . . . (e.g., the reimbursement of operating expenses for the period covering January 1, 1979 - December 31, 1979).

The Public Body agrees that, in the absence of a waiver by the Department of Labor, the terms and conditions of the Special Section 13(c) Warranty shall apply for the protection of the employees of any employer providing transportation services assisted by the Project ("Recipient"), and the employees of any other surface public transportation providers in the transportation service area of the Project. The Warranty arrangement shall be made part of the contract of assistance and shall be binding and enforceable by and upon the parties thereto, by any covered employee or his representative.

The Public Body (e.g., Connecticut DOT) hereby certifies that the Recipients (any employer providing transportation services assisted by the Project) have indicated in writing acceptance of the terms and conditions of the Special Section 13(c) Warranty. Such acceptance will be sufficient to permit the release of Section 18 funding in the absence of a finding of non-compliance by the Department of Labor. The letters of acceptance are on file at the following address:

Connecticut Department of Transportation
24 Wolcott Hill Road
Wethersfield, Connecticut 06109
Contact Person: _____
Telephone: (203) 566-2600

Additionally, pursuant to Section (A) of the Special 13(c) Warranty, included with this submission is a listing of all transportation providers which are Recipients of transportation assistance funded by the Project, and a listing of other eligible transportation providers in the geographic area of each project, and any labor organizations representing the employees of such providers.

Signed by Public Body

Listing of Recipients, Eligible Surface Public Transportation Providers and Labor Representation

(1) Project	(2) Recipients	(3) Other Surface Public Transportation Providers	(4) Union Representation of Employees, if any
<p>Cite Project by Name, Description</p> <p>Application for Public Transportation funds under Section 18 Formula Grant Program for "Elton Dial-A-Ride" service into Elton business district and return. Contract purchase of service for carrying elderly to nutrition center. Service Area extends throughout Pearson County.</p>	<p>Identify Recipients of Transportation Assistance</p> <p>Pearson County Transportation Coalition, Inc.</p>	<p>Identify Other Eligible Surface Public Transportation Providers</p> <p>A) Western Trailways, Intercity Services. B) Elton Transit, Inc. City Public Transit and Weekend Charter Service</p>	<p>Key to Employees of Providers in Columns 1 and 2</p> <p>A) Elton Dial-A-Ride no union B) Western Trailways (ATU) C) Elton Transit, Inc. (Elton Transit Drivers Assoc.)</p>

Provisions of the National (Model) Agreement

for

Incorporation in the Special Warranty

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued: provided however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this agreement including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. * Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

*As an addendum to this agreement, there shall be attached where applicable the arbitration or other dispute settlement procedures or arrangements provided for in the existing collective bargaining agreements or any other existing agreements between the Recipient and the Union, subject to any changes in such agreements as may be agreed upon or determined by interest arbitration proceedings.

(6) (a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his seniority rights to secure another position to which he is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee"

and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed and shall continue during the protective period, as follows:

<u>Employee's length of service prior to adverse effect</u>	<u>Period of protection</u>
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than fifty per centum of each such months based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project, or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the Recipient to accept reasonably comparable employment for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him for which he is physically and mentally qualified and does not require a change in his place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of his allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his representative, or by final arbitration decision rendered in accordance with paragraph (15) of this agreement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this agreement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him and he shall be given additional service credits for each month in which he receives a dismissal or displacement allowance as if he were continuing to perform services in his former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, he could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during his protected period, of any rights, privileges, or benefits attaching to his employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with the Recipient in accordance with this agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the travelling expenses for himself and members of his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or his representatives.

(b) If any such employee is laid off within three (3) years after changing his point of employment in accordance with paragraph (a) hereof, and elects to move his place of residence back to his original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within ninety (90) days after the date on which the expenses were incurred.

(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence.

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Recipient for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Recipient shall protect him against loss under such contract, and in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Recipient shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient within one year after the effective date of the change in residence.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State or local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from his residence than was his former work location, or (B) is more than thirty (30) normal highway route miles from his residence and also farther from his residence than was his former work location.

(13) A dismissed employee entitled to protection under this agreement may, at his option within twenty-one (21) days of his dismissal, resign and (in lieu of all other benefits and protections provided in this agreement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>						<u>Separation Allowance</u>		
1	year	and	less	than	2 years	3	months'	pay
2	"	"	"	"	3	"	"	"
3	"	"	"	"	5	"	"	"
5	"	"	"	"	10	"	"	"
10	"	"	"	"	15	"	"	"
15	"	"	over					

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regular scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which he performed service, will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this agreement, the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of his dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period following the date he was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his employment prior to the date of his displacement or his dismissal.

(16) Nothing in this agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law where applicable, including P. L. 93-236, enacted January 2, 1974 provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under the agreement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit.

(17) The Recipient shall be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Recipient within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event; provided, further, that no benefits shall be payable for any period prior to six (6) months from the date of the filing of the claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to said claims. The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual material as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed to arbitration as hereinabove provided by paragraph (15). Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information denied in the pre-arbitration period which is relevant to the disposition of the claim.

Nothing included herein as an obligation of the Recipient shall be construed to relieve any other urban mass transportation employer of the employees covered hereby of any obligations which it has under existing collective bargaining agreements, including but not limited to obligations arising from the benefits referred to in paragraph (10) hereof, nor make any such employer a third-party beneficiary of the Recipient's obligations contained herein, nor deprive the Recipient of any right of subrogation.

(18) During the employee's protective period, a dismissed employee shall, if he so requests, in writing, be granted priority of employment to fill any vacant position within the jurisdiction and control of the Recipient, reasonably comparable to that which he held when dismissed, for which he is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid their salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this agreement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

(20) The employees covered by this agreement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(21) In the event any provision of this agreement is held to be invalid, or otherwise unenforceable under the federal, State, or local law, in the context of a particular Project, the remaining provisions of this agreement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested union representatives of the employees involved for purpose of adequate replacement under 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this agreement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this agreement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

13558

RULES AND REGULATIONS

[4510-23]

Title 29—Labor

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS, DEPARTMENT OF LABOR

PART 215—GUIDELINES, SECTION 13(c), URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

Procedures Followed By Secretary For Determining That Fair And Equitable Arrangements Have Been Made For Protection Of Employees Affected By Assistance Under Urban Mass Transportation Act.

AGENCY: Department of Labor.

ACTION: Final Statement of Policy and Procedures.

SUMMARY: The Urban Mass Transportation Act provides, in general, that it shall be a condition of any federal financial assistance by the Department of Transportation to states and local public bodies in financing mass transportation systems, that fair and equitable arrangements must be made, as determined by the Secretary of Labor, to protect the interests of employees affected by assistance. In conjunction with the Secretary of Labor's role in making such determinations, we are adding Part 215 to provide information concerning the Department of Labor's administrative procedure in processing applications for assistance under the Urban Mass Transportation Act, and certification by the Secretary of Labor of acceptable protective arrangements.

EFFECTIVE DATE: This part becomes effective May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Lary F. Yud, Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 300 Constitution Avenue NW., Washington, D.C. 20210; phone number 202-823-6495.

SUPPLEMENTARY INFORMATION: On January 18, 1977 there was published in the *FEDERAL REGISTER* (42 FR 3319) a notice of proposed guidelines with an amendment to 29 CFR Chapter II by adding a new Part 215. Corrections to the proposed guidelines were published on January 25, 1977 (42 FR 4492). All comments on the proposed guidelines were given due consideration.

DISCUSSION OF MAJOR COMMENTS

During the review of the comments received, certain key issues emerged and the decisions thereon and modifications, if any, to the proposed guidelines were as follows:

DEFINITIONS

A number of respondents recommended that definitions of such terms as "employees" be included in the guidelines. The purpose of the guidelines is to provide information concerning the Department of Labor's procedures in processing UMTA applications for employee protection purposes. As such, the Department has avoided to the extent possible including substantive provisions.

DOL REFERRAL PROCEDURE

A number of comments addressed the Department's practice of referring applications to the international offices of unions representing affected employees in individual project situations. It was proposed that the guidelines provide for referral of applications to local unions. It is a common practice of labor organizations in the transit industry to provide for centralized handling of employee protection arrangements at the international union level or by organizations which are affiliations of unions. Too, the constitutions of some unions require international approval of agreements. The Department of Labor believes that coordination of employee protection arrangements through international unions and affiliations of such unions greatly facilitates the orderly and expeditious processing of UMTA applications. No change has been made from the proposed version in the final guidelines.

PROTECTIVE ARRANGEMENTS WHEN STATE LAW PROHIBITS BARGAINING

Questions were raised concerning the effect of the procedure requiring the "negotiation" of protective arrangements in states where bargaining is prohibited for public employees. A number of respondents stated that under existing state law, they are unable to "bargain" protective terms and conditions and thus they feel they may be unable legally to comply with our guidelines. Although only a small number of applicants fall into this situation, we recognize potential conflict here. Special procedures have been followed in the past in these cases, such as the joint development of terms and conditions by the parties which are then incorporated into a resolution adopted by the appropriate public body. The intent of our guidelines is not to foreclose resort to such special procedures where they are necessary to satisfy the Federal statute in a manner that does not violate State

or local law. A new paragraph has been added to § 215.3 to accommodate this practice.

TIME LIMITS ON NEGOTIATIONS

The single provision which received the most comments was § 215.3(d), dealing with the setting of time limitations on negotiations by the Secretary of Labor. Comments received from applicants stressed the need to establish certain fixed time limits by which certification action would be final. Comments from union organizations stressed the strangulation such time limits would place on the negotiating process. The Department of Labor recognizes that the negotiation of employee protective arrangements can seem interminable if there is no effective procedure pressing for their conclusion or alternative action by the Secretary of Labor. At the same time, we are very fearful that a fixed time limit automatically applicable to every case would constrict negotiations and replace a procedure which emphasizes voluntary action by the parties with one dominated by government decision making. This becomes all the more troublesome with the realization that the establishment of fixed time limits would require the accompanying adoption of formal review standards which would delve into such questions as whether the parties had made a "good faith" attempt to reach an agreement during the time allotted. Upon review, and in the face of such concerns and all available evidence we have concluded that fixed time limits should not be adopted. The record of recent case handling does not support the need for a drastic change in current procedures. Therefore, § 215.3(d) of the guidelines as proposed has been rewritten.

As rewritten, § 215.3(d) provides for the establishment of time schedules in appropriate cases. Under this procedure, the Department of Labor will solicit from the Department of Transportation, at the time individual grant applications are referred for certification, information concerning the anticipated funding approval date for the subject project. As part of its initial review of an application, the Department of Labor will determine whether a time schedule should be established for the processing of the application for employee protective arrangement certification purposes. In situations where no action on a project is predictable by the Department of Transportation, it is expected that no specific time schedule will be set. However, when the Department of Transportation advises that it seeks to approve a project by a certain date and absent special circumstances, the Department of Labor will establish a time schedule which to the extent possible conforms to the projected grant

approval date. That time schedule will be included in the Department of Labor's referral letters to the parties or subsequent written communications. The parties will thereby be placed on notice of the Department of Labor's target date for the certification of the project. Prior to that date the Department of Labor will contact the parties to determine what progress is being made and to determine if the Department should become actively involved in the negotiations.

The time schedule will be continually subject to review and modification based on exigencies that arise during the processing. The parties can expect that the negotiating process must be pursued expeditiously and in good faith. If progress toward an agreement becomes stalled or irreconcilable issues are confronted, the Department of Labor will incorporate into the time schedule dates by which the Secretary of Labor will take alternative action, including action to certify or to deny certification of the application.

Section 215.3(f) has been rewritten to make it consistent with § 215.3(d) as rewritten.

AMENDATORY APPLICATIONS

The section of the proposed guidelines dealing with the processing of amendatory applications has been retained without modification. A number of comments were addressed to this section, including one which would have provided interested parties the opportunity to object to the Secretary of Labor's decision prior to its final implementation. We believe that our experience enables us to make the determinations called for in this section without review prior to issuance. The great majority of such cases involve straight-forward factors for review such as cost-overruns resulting from bids higher than anticipated. To open up such determinations to outside review is unnecessary and cumbersome. As we do now, all parties will be notified that we have made these decisions and furnished with copies thereof and the relevant material upon which those decisions were based.

CERTIFICATIONS OF RECURRING OPERATING GRANTS

In addition to the section of the guidelines on time limits, the section entitled "Recertifications based on existing agreements" received a great deal of attention in the comments. The purpose of this section as originally drafted was to provide some stability and longevity to protective arrangements developed for projects which were recurring in nature. Certain categories of such projects were listed and the proposed procedure would have had the Secretary of Labor reapply protective arrangements which existed in each category

unless it was determined that other action was more appropriate. A number of comments received raised questions about the specific categories of recurring grants set forth in the proposed guidelines. The existence of a "normal equipment replacement or maintenance cycle" was questioned. During our review it became obvious that the categorization of projects into easily usable groups was fraught with difficulty and conflict.

In an effort to determine the necessity for this proposed procedure, the Department of Labor has reviewed all certification activity for the twelve-month period, January through December, 1977. During that period of time, the Department of Labor issued 748 certification actions. Ninety-nine of those certifications involved non-union situations, where the Department sets forth in its letter of certification all protective terms and conditions that will apply. Another 147 cases involved situations where, after review, the Department on its own initiative determined that a previous certification could be applied to revised or amendatory applications. Another 222 actions involved utilization of the so-called model agreement for operating assistance grants. Of the remaining 280 certification actions, 172 were based on the voluntary agreement of involved parties to apply the terms and conditions of previously developed protective agreements to new projects (referred to as "piggybacking"). That leaves 108 cases, less than 15 percent, in which new agreements were developed. Included in these cases were many specialized projects, including some involving paratransit and cases under the Section 17 grant program.

Further in comments directed to the recurring grant section, a number of respondents recommended inclusion of operating assistance grants as a recurring grant category. Such grants are obviously recurring and further constitute a special case because of the existence of the so-called model agreement for application to operating assistance grants. Moreover, the model agreement has served as the basis for some 480 certification actions on operating assistance applications over the 24 month period from January, 1976 through December, 1977. In view of the statistics cited above and the comments, which provide no support for any major change in current procedures, and the many very valid questions of interpretation raised about the recurring grant categories in the proposed guidelines, this section has been rewritten. As rewritten, the specific categories of recurring grants have been deleted as well as the provision allowing for "other categories" to be determined by the Secretary and the special procedure adopted has been limited to general purpose operating assistance grants.

NEGATIVE DECLARATION

Four respondents recommended adoption of the so-called "negative declaration" procedure for general purpose operating assistance grants. Under this proposal, the applicant would merely warrant that the project would have no adverse impact on employees. This would be in lieu of specific protective terms and conditions. A savings clause would be included in the event of unanticipated effects. The Department of Labor has previously reviewed this proposed procedure in detail and in its view it is contrary to the statute.

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

- 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 Recurring Operating Grants and the Model Agreement.
- 215.7 Department of Labor contract.

AUTHORITY: Secretary's Order No. 11-72, May 12, 1972.

§ 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 Urban Mass Transportation Act of 1964, as amended (hereinafter "the Act").

(b) Section 13(c) of the Act reads as follows:

It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurance of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 523(f) of the Act of February 4, 1957 (34 Stat. 378), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

RULES AND REGULATIONS

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to section 13(c), 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 may be in either preliminary or final form. To facilitate review, the section of the application dealing with labor and relocation should estimate the effects on mass transportation employees of urban mass transportation carriers of the contemplated Federal assistance including possible impact of the assistance upon existing collective bargaining agreements, employment rights, privileges and benefits (including pensions) and the continuation of collective bargaining rights. The application should identify the labor organization, if any, representing employees of urban mass transit carriers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

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

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

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in §§ 215.5 and 215.6, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation.

(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 where appropriate. Absent special circumstances, the time schedule will be established in cases where funding approval is anticipated and will, to the extent possible, conform to the Department of Transportation's

projected time frame for funding. In situations where no action on a project by a specific time is predictable by the Department of Transportation, it is expected that no time schedule will be set by the Department of Labor. Any time schedule established by the Department of Labor will be specified in its referral letters under § 215.3(b) or subsequent written communications to the parties. The parties are thereby placed on notice of the Department's target date for the certification of the project. It is expected that negotiations will be pursued expeditiously and in good faith. The Secretary will monitor progress of negotiations and in cases where negotiations break down or irreconcilable issues are present, the Department will incorporate into the time schedule dates by which the Secretary will take alternative action.

(e) The Secretary of Labor will review negotiated protective arrangements. If an arrangement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the arrangement is not in conformity with the provisions of section 13(c), the Secretary may grant parties additional time to negotiate a satisfactory agreement, or he may set forth the provisions of the protective arrangement himself.

(f) If during the processing of an application the Secretary finds that the parties are unable to reach agreement, he will review the positions of the parties to determine appropriate action. Such action may include the Secretary's determination of the terms and conditions upon which he will base his certification or his refusal to certify for specified reasons.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.

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

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project, and absent unusual circumstances, the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as origi-

nally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 Recurring Operating Grants and the Model Agreement.

(a) In instances where the Department of Labor receives general purposes operating assistance grant applications and the parties have previously endorsed the Model 13(c) agreement (referred to also as the "National Agreement"), the Department will serve notice to the subject parties that it will certify the project on the basis of the Model Agreement unless informed within two weeks from the issuance of our letter of notice that special circumstances are presented by the project which require changes in the Model Agreement or supplemental arrangements as applied to the particular project involved. In the event the Secretary determines that changes in the Model Agreement or supplemental arrangements are required, the Secretary will direct the parties to negotiate such arrangements in accordance with the case processing procedure described in § 215.3 hereof. If the Secretary determines that no special circumstances exist, he will so advise the parties and certify the project on the basis of the Model Agreement.

(b) The Model (or National) Agreement mentioned in paragraph (a) of this section refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit 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 Secretary 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 Section 13(c).

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by these guidelines should be addressed to the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5641, 200 Constitution Avenue NW., Washington, D.C. 20210; phone number 202-523-6495. (Secretary's Order No. 11-72, May 12, 1972.)

FORMULA GRANT PROGRAM FOR NON-URBANIZED AREAS

Sec. 18. (a) The Secretary shall apportion for expenditure in each fiscal year the sum appropriated pursuant to section 4(e) of this Act. Such sums shall be made available for expenditure for public transportation projects in areas other than urbanized areas on the basis of a formula under which the Government of each State will be entitled to receive an amount equal to the total amount so apportioned, multiplied by the ratio which the population of areas other than urbanized areas in such State, as designated by the Bureau of the Census, bears to the total population of areas other than urbanized areas. Appropriations pursuant to the authority of this section may be made in an appropriation Act for a fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

(b) Funds made available under this section may be used for public transportation projects which are included in a State program of projects for public transportation services in areas other than urbanized areas. Such program shall be submitted annually to the Secretary for his approval. The Secretary shall not approve the program unless he finds that it provides for a fair and equitable distribution of funds within the State, including Indian reservations within the State, and provides for the maximum feasible coordination of public transportation services assisted under this section with transportation services assisted by other Federal sources.

(c) Sums apportioned under this subsection shall be available for obligation by the Governor for a period of three years following the close of the fiscal year for which the sums are apportioned and any amounts remaining unobligated at the end of such period shall be reapportioned among the States for the succeeding fiscal year. States may utilize sums apportioned under this section for any projects eligible under this Act which are appropriate for areas other than urbanized areas, including purchase of service agreements with private providers of public transportation service, to provide local transportation service, as defined by the Secretary, in areas other than urbanized areas. Eligible recipients may include State agencies, local public bodies and agencies thereof, nonprofit organizations, and operators of public transportation services.

(d) The Secretary may permit an amount, not to exceed 15 per centum of the amount apportioned, to be used by each State for administering this section and for providing technical assistance to recipients of funds under this section. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs (public and private), and such research as the State may deem appropriate to promote effective means of delivering public transportation service in areas other than urbanized areas.

(e) The Federal share under this Act for any construction project under this section shall not exceed 80 per centum of the net cost of such construction project, as determined by the Secretary. The Federal share under this section for operating expenses, as defined by the Secretary, shall not exceed 50 per centum of the net cost of such operating expense project. At least 50 per centum of the remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement, or depreciation funds or reserves available in cash or new capital.

(f) Grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe. The provisions of sections 13(c) and 3(e)(4) of this Act shall apply in carrying out projects under this section. For the purposes of this section, the Secretary of Labor may waive any provisions of section 13(c) of this Act. Nothing under this subsection shall affect or discharge any responsibility of the Secretary under any other provision of Federal law.

(g) The Secretary shall, in cooperation with State regulatory commissions, make an evaluation of the escalation of insurance rates for operators of public transportation in rural areas and for providers of special transportation services for elderly and handicapped persons. The Secretary shall, not later than January 1, 1980, report to Congress the results of this evaluation together with his recommendations for necessary legislation.

URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

Section 13(c)

It shall be a condition of any assistance under Section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangement.

THE INTERSTATE COMMERCE ACT, AS AMENDED

Section 5(2)(f)

As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees. Such arrangements shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565).

RAIL PASSENGER SERVICE ACT OF 1970, AS AMENDED

Sec. 405. Protective Arrangements for Employees

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A discontinuance of intercity rail passenger service shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 305 and 402 of this Act pursuant to any modification or termination thereof or an assumption of operations by the Corporation.

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act. Any contract entered into pursuant to the provisions of this title shall specify the terms and conditions of such protective arrangements. No contract under section 401(a)(1) of this Act between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

(c) Upon commencement of operations in the basic system, the substantive requirements of subsections (a) and (b) of this section shall apply to the Corporation and its employees in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in this subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad. The Secretary of Labor shall certify that affected employees of the Corporation have been provided fair and equitable protection as required by this section within one hundred and eighty days after assumption of operations by the Corporation.

(d) The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

(e) The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service upon the date of enactment of this Act and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

(f) The Corporation shall take such action as may be necessary to assure that, to the maximum extent practicable, any railroad employee eligible to receive free or reduced-rate transportation by railroad on April 30, 1971, under the terms of any policy or agreement in effect on such date will be eligible to receive, provided space is available, free or reduced-rate transportation on any intercity rail passenger service provided by the Corporation under this Act, on terms similar to those available on such date to such railroad employee under such policy or agreement. However, the Corporation may apply to all railroad employees eligible to receive free or reduced-rate transportation under such policies or agreements, a single system-wide schedule of terms determined by the Corporation to reflect terms applicable to the majority of such employees under those policies or agreements in effect on April 30, 1971. The Corporation shall be reimbursed by the railroads by way of payment or offset for such costs as may be incurred in providing transportation services to railroad employees under any policy or agreement referred to in the first sentence of this subsection, including the costs of implementing and administering this section. Within ninety days after the enactment of this sentence, each railroad shall enter into an agreement with the Corporation for the payment of such expenses. If the Corporation and a railroad are unable to agree as to the amount of any payment owed by the railroad under this subsection, the matter shall be referred to the Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, and its decision shall be binding on both parties. If any railroad company which operates intercity passenger service not under contract with the Corporation notifies the Corporation and railroads which have entered into the agreement specified above that it will accept the terms of the system-wide schedule of terms and the compensation specified in the agreement, such railroad company shall be reimbursed for services to railroad employees in accordance with the agreements. As used in this subsection, the term 'railroad employee' means (1) an active full-time employee, including any such employee during a period of furlough or while on leave of absence, of a railroad or terminal company, (2) a retired employee of a railroad or terminal company, and (3) the dependents of any employee referred to in clause (1) or (2) of this sentence.

NOTICE OF RECEIPT OF FEDERAL ASSISTANCE
AND ACCEPTANCE OF SPECIAL 13(c) WARRANTY

Section 18 - Labor Protections

The name of (Recipient) is a recipient of Federal assistance under the Section 18 Formula Grant Program of the Urban Mass Transportation Act of 1964, as amended. As a condition of receipt of this assistance, the (Recipient) has agreed to be bound by the Special Section 13(c) Warranty for the Public Transportation for Nonurbanized Areas Program. These terms and conditions have been determined by the Secretary of Labor to be fair and equitable in order to protect the interests of employees who may be affected by the Project and are in satisfaction of the requirements of Section 13(c) of the Act. The terms and conditions of the Special 13(c) Warranty for the Nonurbanized and Rural Program have been incorporated into the Federal grant contract between the Federal Highway Administration and the (Public Body or/Recipient). A copy of the Special 13(c) Warranty is attached to this notice.

Paragraph 4 of the Special 13(c) Warranty provides for, among other things, a procedure to resolve disputes or controversies arising over the application, interpretation or enforcement of the Special 13(c) Warranty. In the event a party believes that he has been adversely affected as a result of the assistance and the dispute has not been resolved within 30 days after it first arises, then either party may refer such dispute to a final and binding settlement procedure. If the parties are able to agree upon a procedure, then that agreed upon procedure is to be used. If the parties cannot agree, then either party may contact the Department of Labor, which will itself review the dispute and issue a determination to resolve it or will designate an impartial third party to hear the dispute and issue a final and binding determination.

In the event a party to a dispute wants to contact the Department of Labor, the party should write a letter to the Office of Labor-Management Relations Services, Room N-5653, U. S. Department of Labor, Washington, D. C., 20210, Attn: Division of Employee Protections. The letter should specify the nature of the dispute, identify the parties and describe the steps already taken by the parties to resolve the dispute.

Sample Request for Becoming Party to
the Special Section 13(c) Warranty

Director
Office of Labor-Management Relations
Services
United States Department of Labor
200 Constitution Avenue, NW
Room N-5653
Washington, D.C. 20210

ATTN: Division of Employee Protections

Dear Director:

Pursuant to paragraph (9) of the Special Section 13(c) Warranty for application to the Nonurbanized and Rural Program, we hereby serve notice that we wish to become a party to the Special Section 13(c) Warranty which has been agreed to by (Public Body) for incorporation in the Federal grant contract for a project numbered _____.

We desire to become a party in behalf of our _____
Local, representing employees of (name of employer).

Sincerely,

cc: Recipient
Public Body

DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY FOR
LABOR-MANAGEMENT RELATIONS

DIVISION OF EMPLOYEE PROTECTIONS

Notice of Request for Waiver of Section 13(c)
Requirements for a Grant Under Section 18
of the Urban Mass Transportation Act

Notice is hereby given that (name of Recipient, Public Body or legally responsible party designated by the Public Body) has submitted information that no employees will be affected by a grant application request filed by (name of applicant) under Section 18 of the UMT Act and has requested in writing a waiver of the protections required under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. The proposed project is for the purpose of providing (brief description of the project).

Sections 3(e)(4) and 13(c) of the Urban Mass Transportation Act provide, in general, that it shall be a condition of any Federal assistance by the Department of Transportation, that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees who may be affected by such assistance. Such protections include, among other things, the preservation of rights, privileges and benefits including pension rights and collective bargaining rights. Employees may be eligible for monetary allowances if they have been dismissed, displaced or forced to relocate as a result of the Federal assistance. Employees who have been laid off as a result of the Federal assistance are also entitled to priority of reemployment or paid training programs.

Section 18 provides that the Secretary of Labor may waive the provisions of Section 13(c) in carrying out projects under this Section. The provisions of Section 13(c) will be waived only where, at the time of the requested waiver, the Secretary determines that there are no employees of the Recipient or of any other public transportation providers in the transportation service area of the Project who could be potentially affected. In order for an employee to be affected, it is not necessary that the anticipated effect upon his or her interests be adverse.

Page Two

The Department of Labor has conducted a preliminary investigation and, being aware of no employees who could be potentially affected, hereby serves notice of its intent to waive the provisions of Section 13(c) for the Project unless information to the contrary or objections are filed within 30 days of the date of this notice.

Any person having knowledge that any employees may be potentially affected by this Project should so advise the Department. The information should specify the name of the submitting party, a complete return address, the names of any transit providers in the Project area, the nature of transit services (e.g., service to elderly and handicapped), the number of employees of the providers, if known, the name(s) of any labor organization(s) representing such employees and an explanation of how the Project will affect the rights and privileges of the employees. The information should be submitted in writing to the Office of Labor-Management Relations Services, Room N5653, Attn: Division of Employee Protections, 200 Constitution Avenue, NW, Washington, D.C. 20210. If information on the subject or objections are filed within the 30 day notice period, the Department of Labor will review the information to determine whether a waiver will be granted. If such information is mailed within the last 10 days of the notice period, the submitting party is requested to contact the Division of Employee Protections by telephone ((202) 357-0473) on the day of the mailing so that receipt of the information can be anticipated.

If no showing is made that any employees may be potentially affected, the waiver will become final at the end of the notice procedure. If information is received that employees may be potentially affected by this Project, the Department of Labor will review it and determine whether a waiver will be granted or denied, and inform the interested parties of its determination.