

**The original documents are located in Box 22, folder “Mass Transit - Labor Protective Agreements (5)” of the James M. Cannon Files at the Gerald R. Ford Presidential Library.**

### **Copyright Notice**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

THE WHITE HOUSE  
WASHINGTON

*File*  
*13c*

August 11, 1976

MEMORANDUM FOR: JIM CANNON

FROM:

DAVID LISSY *MEM for DHC*

I spoke to Mike Moskow again Wednesday night about Congressman McCollister's 13c problem. Moskow said he would arrange a meeting with McCollister.

I will keep on top of this but if you get a chance on Thursday or Friday while I am out of town a further call from you to Moskow emphasizing our interest would not hurt.

*Bill Usery*

*←*

cc: Judy Hope



13c

Thursday, August 12

Kris:

1. JMC left tonight, taking with him a memo to the President on 13(c). He probably took it to Connor's office. He signed it in his office, but did not let me take it out of his office after "signing". Therefore, I do not have a copy of it. Would you please call Connor's office and see if we can get a copy of it, and we should send copies to Lissy & Hope.

Attached is my first draft of this memo.

*Trudy is  
sending us  
a copy*



THE WHITE HOUSE

WASHINGTON

August 12, 1976

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON *J. Cannon*

SUBJECT:

Section 13(c) of the Urban Mass  
Transit Act of 1964

Secretary Usery informed me today that because he spent five full days on the rubber strike, he could not meet your deadline of August 16 with the report he and Secretary Coleman were to give you on the resolution of 13(c).

I will talk next week with Secretary Usery and Secretary Coleman and attempt to complete the resolution of the four basic points on which they felt they could agree.

I propose we give them an additional five days, that is, until Saturday, 21, 1976. Then if you approve, I will inform them that if it is not settled by that date, you will decide the issue.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Chow

THE WHITE HOUSE  
WASHINGTON

August 14, 1976

MEMORANDUM FOR THE HONORABLE WILLIAM T. COLEMAN  
SECRETARY OF THE DEPARTMENT OF  
TRANSPORTATION

THE HONORABLE WILLIAM J. USERY  
SECRETARY OF THE DEPARTMENT OF LABOR

FROM:

JIM CANNON *Jai*

SUBJECT:

Section 13(c) of the Urban Mass Transit  
Act

Because of the delay brought about by the resolution of the rubber strike, the President has agreed to extend the time of your memorandum on the resolution of 13(c) to Saturday, August 21, 1976. The President directed that these issues be resolved by that date:

- Set Time Limits
- Multi-Year Certifications
- Promulgate and Publish Regulations
- Granting a Single Certificate for a Single Federal Grant

With respect to the remaining issue, Negative Declaration, the President understands it will not be resolved until sometime in September after certain studies mentioned by Secretary Usery have been completed.

THE WHITE HOUSE

WASHINGTON

August 14, 1976

MEMORANDUM FOR THE HONORABLE WILLIAM T. COLEMAN  
SECRETARY OF THE DEPARTMENT OF  
TRANSPORTATION

THE HONORABLE WILLIAM J. USERY  
SECRETARY OF THE DEPARTMENT OF LABOR

FROM:

JIM CANNON *Jai*

SUBJECT:

Section 13(c) of the Urban Mass Transit  
Act

Because of the delay brought about by the resolution of the rubber strike, the President has agreed to extend the time of your memorandum on the resolution of 13(c) to Saturday, August 21, 1976. The President directed that these issues be resolved by that date:

- Set Time Limits
- Multi-Year Certifications
- Promulgate and Publish Regulations
- Granting a Single Certificate for a Single Federal Grant

With respect to the remaining issue, Negative Declaration, the President understands it will not be resolved until sometime in September after certain studies mentioned by Secretary Usery have been completed.

UMTA

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

August 24, 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
 Assistant to the President  
 for Domestic Affairs

FROM: W.J. USERY, JR. *[Signature]*  
 Secretary of Labor

SUBJECT: Section 13(c), URBAN MASS TRANSPORTATION ACT OF  
 1964, AS AMENDED

At our August 2, 1976 meeting, the President requested a memorandum setting forth the steps the Department of Labor planned to take in response to four of the proposals outlined in your memorandum of June 3, 1976. The President also directed that further consideration of any changes in existing certification practices to accommodate a "negative declaration" procedure be deferred. This matter would be taken up again when further information was available from several pending studies on the administration of Section 13(c).

One of the four proposals in your June 3 memorandum was the promulgation and publication of regulations on the administration of Section 13(c). DOL believes there is a need for public guidance on program administration, but we would prefer simple guidelines to a more formal, rigid set of regulations. DOT has no objection to this approach. Attached is a draft of interpretive guidelines which follow through in this vein.

These guidelines address the remaining three proposals in your June 3 memorandum, namely:

Single certification for single grant: Section V, page 4

Setting time limits on negotiations: Section III.D., page 2

Multi-year certifications: Section VI, page 4



The Department of Labor plans to consult initially on the guidelines with key interested parties, including the transit industry, transit labor, and organizations such as the National Association of Counties as expeditiously as possible. Upon completion of that consultation, we will finalize the guidelines for publication for comment in the Federal Register. Following review of any comments received, we would adopt and publish final guidelines.

These draft guidelines have been reviewed by the Department of Transportation. I understand that they have no substantial problems with the procedures outlined in the guidelines. However, they continue to object that the procedures do not contemplate a "negative declaration" approach.

cc: Honorable William T. Coleman  
Secretary of Transportation

Attachment



## SPECIFICATIONS

### PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

#### I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

#### II. DEFINITION OF KEY TERMS

##### A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

##### B. "Protective Period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

#### III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of collective bargaining, pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time period specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.
- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.



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

#### IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

A. Preservation of existing rights, privileges and benefits

All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

B. Continuation of collective bargaining rights

C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.

D. Assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority or reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.

E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at no cost to the employee.



F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:

1. Dismissal and displacement allowances
2. Separation allowances
3. Moving allowances and protection of losses incidental to moves
4. Protection of fringe benefits
5. Procedures for notice of changes arising as a result of project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration

G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's obligation to specify the pertinent facts of the project relied upon. It shall then be the applicants burden to prove that factors other than the project affected the employee.

V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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,

a. DOL 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 originally constituted. DOL processing of these applications will be expedited.

VI. RECERTIFICATIONS BASED ON EXISTING AGREEMENTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent



not in DOT

to certify the new project on the basis of the previously developed 13(c) arrangement unless within 30 days from that notification a party objects to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in future processing of the certification request. This procedure will apply to the following categories of grants:

- a. capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;
- b. capital grants for refurbishing of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;
- c. grants pursuant to specified multi-year programs of identifiable projects;
- d. operating assistance grants.

VII. OPERATING ASSISTANCE GRANTS

A. Model Agreement

An employee protection agreement for application to operating assistance grants was executed on July 23, 1975, by representatives of the American Public Transit Association and Amalgamated Transit Union and Transport Workers Union of America, and on July 31, 1975, by representatives of the Railway Labor Executives' Association, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and Brotherhood of Locomotive Engineers, and the International Association of Machinists and Aerospace Workers, together with a Side Letter of Understanding dated July 21, 1975, relating thereto, and a Memorandum to the Secretary of Labor dated July 18, 1975, provided to the Secretary in connection with the agreement. The Memorandum to the Secretary of Labor contains further understandings between the parties as to administrative use of the agreement. These documents are set forth below.

B. The Secretary of Labor encourages urban mass transportation employers and local representatives of affected employees to become party to the agreement as promptly as possible. Upon proper endorsement of the agreement by the local parties in interest as provided by Section 26 and 27 thereof, the agreement will serve as the basis for the Secretary of Labor's certification that the required employee protections have been provided.

*Winn  
Dun  
DOT  
Rope*



- C. In processing any cases involving non-signatory parties, or any capital, operating, or demonstration project otherwise excluded from coverage under the agreement, the Secretary of Labor will give consideration to the recommendations of the parties as to administrative use of their agreement as set forth in the Memorandum to the Secretary of Labor dated July 18, 1975.

#### VIII. DOL 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-5709, 200 Constitution Avenue, N. W., Washington, D. C. 20210; phone number (202) 523-5495.





THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

UMTA

AUG 24 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
Assistant to the President  
for Domestic Affairs

FROM: *William T. Coleman, Jr.*  
WILLIAM T. COLEMAN, JR.  
Secretary of Transportation

SUBJECT: Section 13(c)

In accordance with the President's intent, we have attempted to come to a resolution with the Department of Labor on the four agreed upon issues--time limits, multi-year certifications, publish regulations, and single certification. However, we were unable to do so because Secretary Utery wishes to propose guidelines which foreclose further consideration of the Negative Declaration procedure, the remaining issue. We do not agree with this approach, nor do we consider such a version of the guidelines responsive to the President's intent that the Negative Declaration issue be addressed separately in September, as Secretary Utery requested at our meeting.

I am therefore submitting for the Department of Transportation a draft of specifications for proposed interpretive guidelines which are written so as not to foreclose the Negative Declaration issue. They are limited to resolution of the four agreed upon issues, and can be said to express a common posture of the two Departments with respect to them. Language on negative declaration would have to be agreed to as part of the critical decision on that issue. I believe that no guidelines should be published until that decision is made.

Should the decision be in favor of a Negative Declaration procedure, it would be necessary to add a brief section on it to the guidelines. Such a section is appended to the guidelines I have enclosed.



If the decision were against such a procedure, the guidelines would have to be changed to include sections on operating assistance grants and the National Agreement, and to add operating assistance to the list of category grants for recertification under Section VI.

I am of the opinion that the President can make a decision on the Negative Declaration issue in September, and that the Department of Labor can publish specifications for guidelines immediately following the decision. The studies mentioned by Secretary Usery, of which we are cognizant, do not have significant bearing on the issue. Any remaining concerns which the Department of Labor may have on the legality of the Negative Declaration procedure can be resolved by seeking an opinion from the Department of Justice.

Enclosure

cc:  
Secretary Usery

bcc: Judith Hope



## SPECIFICATIONS

### PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

#### I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

#### II. DEFINITION OF KEY TERMS

##### A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

##### B. "Protective period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

#### III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements will be the product of collective bargaining pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of the referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, the parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time periods specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that



the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.

- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.
- H. If there is no labor organization representing employees, the Secretary will set forth the protective terms and conditions in his letter of certification.

#### IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

##### A. Preservation of existing rights, privileges and benefits

All rights, privileges and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

##### B. Continuation of collective bargaining rights

##### C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.



- D. Assurances of employment to employees of acquired mass transportation systems and priority of re-employment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority of reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.

- E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at not cost to the employee.

- F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:

1. Dismissal and displacement allowances
2. Separation allowances
3. Moving allowances and protection of losses incidental to moves
4. Protection of fringe benefits
5. Procedures for notice of changes arising as a result of the project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration

- G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's



## V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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, DOL 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 originally constituted. DOL processing of these applications will be expedited.

## VI. SPECIAL PROCEDURES FOR CATEGORY GRANTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent to certify the new project on the basis of the previously developed 13(c) arrangement unless within 30 days from that notification a party objects to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in further processing of the certification request.

This procedure will apply at least to the following categories of grants:

- a. capital grants for the purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;
- b. capital grants for rehabilitation of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;
- c. grants pursuant to specified multi-year programs of identifiable projects.



Page Six

VII. DOL CONTACT

Questions concerning the subject matter covered by these guidelines should be addressed to the Chief of the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5709, 200 Constitution Avenue, N.W., Washington, D.C. 20210; phone number (202) 523-6495.



Proposed addition to guidelines to effectuate  
Negative Declaration procedure. Would be  
added as Section V, with subsequent  
sections re-numbered

V. NEGATIVE DECLARATION FOR GENERAL PURPOSE OPERATING ASSISTANCE GRANTS. In the case of grants of operating assistance funds under Section 5, where such funds are provided in the nature of general purpose operating assistance or revenue sharing, and where the term "project" has no particular identity but is identified as a certain proportion of the total sum of money needed to operate an entire system, there is no likelihood of adverse impact on mass transportation employees as a result of such assistance. In such cases, the Secretary of Transportation may make grants without a 13(c) certification. However, the Secretary of Labor must concur that the proposed projects may be defined as being in such a category. Further, the Secretary of Transportation will require that there be included in UMTA operating assistance funding contracts a warranty by the grantee of no adverse impact, together with a commitment by such grantee to provide redress under Section 13(c) upon any subsequent showing of actual adverse impact.



THE WHITE HOUSE  
WASHINGTON

Mr. Cannon:

Art has asked David  
and Judy to prepare a memo  
on this by the end of  
Wednesday.

kb



cc: Hope  
Quern  
Lissy

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

August 24, 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
Assistant to the President  
for Domestic Affairs

FROM: W.J. USERY, JR.   
Secretary of Labor

SUBJECT: Section 13(c), URBAN MASS TRANSPORTATION ACT OF  
1964, AS AMENDED

At our August 2, 1976 meeting, the President requested a memorandum setting forth the steps the Department of Labor planned to take in response to four of the proposals outlined in your memorandum of June 3, 1976. The President also directed that further consideration of any changes in existing certification practices to accommodate a "negative declaration" procedure be deferred. This matter would be taken up again when further information was available from several pending studies on the administration of Section 13(c).

One of the four proposals in your June 3 memorandum was the promulgation and publication of regulations on the administration of Section 13(c). DOL believes there is a need for public guidance on program administration, but we would prefer simple guidelines to a more formal, rigid set of regulations. DOT has no objection to this approach. Attached is a draft of interpretive guidelines which follow through in this vein.

These guidelines address the remaining three proposals in your June 3 memorandum, namely:

Single certification for single grant: Section V, page 4

Setting time limits on negotiations: Section III.D., page 2

Multi-year certifications: Section VI, page 4

The Department of Labor plans to consult initially on the guidelines with key interested parties, including the transit industry, transit labor, and organizations such as the National Association of Counties as expeditiously as possible. Upon completion of that consultation, we will finalize the guidelines for publication for comment in the Federal Register. Following review of any comments received, we would adopt and publish final guidelines.

These draft guidelines have been reviewed by the Department of Transportation. I understand that they have no substantial problems with the procedures outlined in the guidelines. However, they continue to object that the procedures do not contemplate a "negative declaration" approach.

cc: Honorable William T. Coleman  
Secretary of Transportation

Attachment



## SPECIFICATIONS

PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

## I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

## II. DEFINITION OF KEY TERMS

## A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

## B. "Protective Period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

## III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of collective bargaining, pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time period specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.
- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.



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

IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

A. Preservation of existing rights, privileges and benefits

All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

B. Continuation of collective bargaining rights

C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.

D. Assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority or reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.



E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at no cost to the employee.

F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:

1. Dismissal and displacement allowances
2. Separation allowances
3. Moving allowances and protection of losses incidental to moves
4. Protection of fringe benefits
5. Procedures for notice of changes arising as a result of project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration

G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's obligation to specify the pertinent facts of the project relied upon. It shall then be the applicants burden to prove that factors other than the project affected the employee.

#### V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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,

DOL 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 originally constituted. DOL processing of these applications will be expedited.

#### VI. RECERTIFICATIONS BASED ON EXISTING AGREEMENTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent



to certify the new project on the basis of the previously developed 13(c) arrangement unless within 30 days from that notification a party objects to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in future processing of the certification request. This procedure will apply to the following categories of grants:

- a. capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;
- b. capital grants for refurbishing of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;
- c. grants pursuant to specified multi-year programs of identifiable projects;
- d. operating assistance grants.

## VII. OPERATING ASSISTANCE GRANTS

### A. Model Agreement

An employee protection agreement for application to operating assistance grants was executed on July 23, 1975, by representatives of the American Public Transit Association and Amalgamated Transit Union and Transport Workers Union of America, and on July 31, 1975, by representatives of the Railway Labor Executives' Association, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and Brotherhood of Locomotive Engineers, and the International Association of Machinists and Aerospace Workers, together with a Side Letter of Understanding dated July 21, 1975, relating thereto, and a Memorandum to the Secretary of Labor dated July 18, 1975, provided to the Secretary in connection with the agreement. The Memorandum to the Secretary of Labor contains further understandings between the parties as to administrative use of the agreement. These documents are set forth below.

- B. The Secretary of Labor encourages urban mass transportation employers and local representatives of affected employees to become party to the agreement as promptly as possible. Upon proper endorsement of the agreement by the local parties in interest as provided by Section 26 and 27 thereof, the agreement will serve as the basis for the Secretary of Labor's certification that the required employee protections have been provided.



- C. In processing any cases involving non-signatory parties, or any capital, operating, or demonstration project otherwise excluded from coverage under the agreement, the Secretary of Labor will give consideration to the recommendations of the parties as to administrative use of their agreement as set forth in the Memorandum to the Secretary of Labor dated July 18, 1975.

#### VIII. DOL 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-5709, 200 Constitution Avenue, N. W., Washington, D. C. 20210; phone number (202) 523-6495.





cc: Hope  
Quern  
Lissy

THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

AUG 24 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
Assistant to the President  
for Domestic Affairs

FROM: *William T. Coleman, Jr.*  
WILLIAM T. COLEMAN, JR.  
Secretary of Transportation

SUBJECT: Section 13(c)

In accordance with the President's intent, we have attempted to come to a resolution with the Department of Labor on the four agreed upon issues--time limits, multi-year certifications, publish regulations, and single certification. However, we were unable to do so because Secretary Uesery wishes to propose guidelines which foreclose further consideration of the Negative Declaration procedure, the remaining issue. We do not agree with this approach, nor do we consider such a version of the guidelines responsive to the President's intent that the Negative Declaration issue be addressed separately in September, as Secretary Uesery requested at our meeting.

I am therefore submitting for the Department of Transportation a draft of specifications for proposed interpretive guidelines which are written so as not to foreclose the Negative Declaration issue. They are limited to resolution of the four agreed upon issues, and can be said to express a common posture of the two Departments with respect to them. Language on negative declaration would have to be agreed to as part of the critical decision on that issue. I believe that no guidelines should be published until that decision is made.

Should the decision be in favor of a Negative Declaration procedure, it would be necessary to add a brief section on it to the guidelines. Such a section is appended to the guidelines I have enclosed.



If the decision were against such a procedure, the guidelines would have to be changed to include sections on operating assistance grants and the National Agreement, and to add operating assistance to the list of category grants for recertification under Section VI.

I am of the opinion that the President can make a decision on the Negative Declaration issue in September, and that the Department of Labor can publish specifications for guidelines immediately following the decision. The studies mentioned by Secretary Usery, of which we are cognizant, do not have significant bearing on the issue. Any remaining concerns which the Department of Labor may have on the legality of the Negative Declaration procedure can be resolved by seeking an opinion from the Department of Justice.

Enclosure

cc:  
Secretary Usery



## SPECIFICATIONS

### PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

#### I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

#### II. DEFINITION OF KEY TERMS

##### A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

##### B. "Protective period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

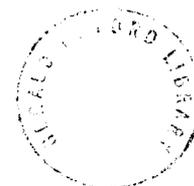
#### III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements will be the product of collective bargaining pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of the referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, the parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time periods specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that



the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.

- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.
- H. If there is no labor organization representing employees, the Secretary will set forth the protective terms and conditions in his letter of certification.

#### IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

##### A. Preservation of existing rights, privileges and benefits

All rights, privileges and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

##### B. Continuation of collective bargaining rights

##### C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.



- D. Assurances of employment to employees of acquired mass transportation systems and priority of re-employment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority of reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.

- E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at not cost to the employee.

- F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:

1. Dismissal and displacement allowances
2. Separation allowances
3. Moving allowances and protection of losses incidental to moves
4. Protection of fringe benefits
5. Procedures for notice of changes arising as a result of the project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration

- G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's obligation to specify the pertinent facts of the project relied upon.



#### V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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, DOL 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 originally constituted. DOL processing of these applications will be expedited.

#### VI. SPECIAL PROCEDURES FOR CATEGORY GRANTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent to certify the new project on the basis of the previously developed 13(c) arrangement unless within 30 days from that notification a party objects to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in further processing of the certification request.

This procedure will apply at least to the following categories of grants:

- a. capital grants for the purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;
- b. capital grants for rehabilitation of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;
- c. grants pursuant to specified multi-year programs of identifiable projects.



Page Six

VII. DOL CONTACT

Questions concerning the subject matter covered by these guidelines should be addressed to the Chief of the Division of Employee Protections, Labor-Management Services Administration, U.S. Department of Labor, Room N-5709, 200 Constitution Avenue, N.W., Washington, D.C. 20210; phone number (202) 523-6495.

Proposed addition to guidelines to effectuate  
Negative Declaration procedure. Would be  
added as Section V, with subsequent  
sections re-numbered

V. NEGATIVE DECLARATION FOR GENERAL PURPOSE OPERATING ASSISTANCE GRANTS. In the case of grants of operating assistance funds under Section 5, where such funds are provided in the nature of general purpose operating assistance or revenue sharing, and where the term "project" has no particular identity but is identified as a certain proportion of the total sum of money needed to operate an entire system, there is no likelihood of adverse impact on mass transportation employees as a result of such assistance. In such cases, the Secretary of Transportation may make grants without a 13(c) certification. However, the Secretary of Labor must concur that the proposed projects may be defined as being in such a category. Further, the Secretary of Transportation will require that there be included in UMTA operating assistance funding contracts a warranty by the grantee of no adverse impact, together with a commitment by such grantee to provide redress under Section 13(c) upon any subsequent showing of actual adverse impact.



U.S. DEPARTMENT OF LABOR  
OFFICE OF THE UNDER SECRETARY  
WASHINGTON, D.C. 20210



August 30, 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
Assistant to the President  
for Domestic Affairs

FROM: MICHAEL H. MOSKOW *MH Moskow*  
Acting Secretary of Labor

SUBJECT: Section 13(c), URBAN MASS TRANSPORTATION ACT  
OF 1964, AS AMENDED

Following up on our phone conversations this weekend, I have discussed the proposed interpretive guidelines on the administration of Section 13(c) further with Bob Patricelli. Attached is a proposed modification of those guidelines Bob and I discussed which I believe will be acceptable to both Departments. This modified proposal addresses each of the four issues on which the President directed the Departments to reach agreement at our August 2, 1976 meeting. You should recognize that further modifications to this document would be required when a final determination is reached on the negative declaration issue.

cc: Honorable William T. Coleman  
Secretary of Transportation

Attachment



## SPECIFICATIONS

PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

## I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

## II. DEFINITION OF KEY TERMS

## A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

## B. "Protective Period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

## III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of collective bargaining, pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time period specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.
- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.



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

IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

A. Preservation of existing rights, privileges and benefits

All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements, or otherwise shall be preserved and continued.

B. Continuation of collective bargaining rights

C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.

D. Assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority or reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.

E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at no cost to the employee.



- F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:
1. Dismissal and displacement allowances
  2. Separation allowances
  3. Moving allowances and protection of losses incidental to moves
  4. Protection of fringe benefits
  5. Procedures for notice of changes arising as a result of project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration
- G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's obligation to specify the pertinent facts of the project relied upon. It shall then be the applicants burden to prove that factors other than the project affected the employee.

V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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,

DOL 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 originally constituted. DOL processing of these applications will be expedited.

VI. RECERTIFICATIONS BASED ON EXISTING AGREEMENTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent



to certify the new project on the basis of the previously developed 13(c) arrangement unless within 30 days from that notification a party objects to certification on that basis. Upon receipt of any objection the Secretary of Labor will review the objection to determine appropriate action to take in future processing of the certification request. This procedure will apply to the following categories of grants:

- a. capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;
- b. capital grants for refurbishing of rights-of-way, buildings, or other real property where the activity is closely similar to that carried out over a period of years;
- c. grants pursuant to specified multi-year programs of identifiable projects;
- d. other categories to be determined by the Secretary of Labor.

#### VII. DOL 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, N. W., Washington, D. C. 20210; phone number (202) 523-6495.





THE ADMINISTRATOR

DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION  
WASHINGTON, D.C. 20590

cc-Hope  
Lissy  
Transp.  
13c

August 30, 1976

MEMORANDUM FOR: Honorable James Cannon  
Assistant to the President  
for Domestic Affairs

FROM: Robert E. Patricelli *R. Patricelli*

SUBJECT: Section 13(c)

This will confirm what Mike Moskow is reporting to you by separate memorandum--that the Department of Transportation and the Department of Labor have agreed on Interpretive Guidelines regarding four issues in the administration of Section 13(c).

As the Department of Labor's memorandum makes clear, this agreement does not encompass the issue of negative declarations for operating assistance grants. That subject is being dealt with separately.

cc: Hon. Michael Moskow





THE ADMINISTRATOR

DEPARTMENT OF TRANSPORTATION  
URBAN MASS TRANSPORTATION ADMINISTRATION  
WASHINGTON, D.C. 20590

cc-112P

13C

August 30, 1976

MEMORANDUM FOR: Honorable James Cannon  
Assistant to the President  
for Domestic Affairs

FROM: Robert E. Patrielli *R. Patrielli*

SUBJECT: Section 13(c)

This will confirm what Mike Moskow is reporting to you by separate memorandum--that the Department of Transportation and the Department of Labor have agreed on Interpretive Guidelines regarding four issues in the administration of Section 13(c).

As the Department of Labor's memorandum makes clear, this agreement does not encompass the issue of negative declarations for operating assistance grants. That subject is being dealt with separately.

cc: Hon. Michael Moskow



Hope  
Lissy

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE UNDER SECRETARY  
WASHINGTON, D.C. 20210



August 30, 1976

HAND DELIVERED

MEMORANDUM FOR: THE HONORABLE JAMES CANNON  
Assistant to the President  
for Domestic Affairs

FROM: MICHAEL H. MOSKOW  
Acting Secretary of Labor

s/M. H. Moskow

SUBJECT: Section 13(c), URBAN MASS TRANSPORTATION ACT  
OF 1964, AS AMENDED

Following up on our phone conversations this weekend, I have discussed the proposed interpretive guidelines on the administration of Section 13(c) further with Bob Patricelli. Attached is a proposed modification of those guidelines Bob and I discussed which I believe will be acceptable to both Departments. This modified proposal addresses each of the four issues on which the President directed the Departments to reach agreement at our August 2, 1976 meeting. You should recognize that further modifications to this document would be required when a final determination is reached on the negative declaration issue.

cc: Honorable William T. Coleman  
Secretary of Transportation

Attachment



8-30-70

## SPECIFICATIONS

### PROPOSED INTERPRETIVE GUIDELINES

Sections 3(e)(4) and 13(c), Urban Mass  
Transportation Act of 1964, as amended

#### I. PURPOSE STATEMENT

The purpose of these guidelines is to provide information concerning DOL's administrative procedures and interpretations in processing applications for assistance under the Urban Mass Transportation Act of 1964, as amended.

#### II. DEFINITION OF KEY TERMS

##### A. "Employees"

Individuals employed in the Urban Mass Transportation Industry not limited to those individuals employed by the particular entity receiving the assistance but including all mass transportation employees of urban mass transit systems who may be affected by the grant.

##### B. "Protective Period"

The period of time during which an affected employee is entitled to compensatory benefits. This period shall not be less than six years, except that with respect to an individual employee it can be limited to a shorter period of time equal to the period of his employment prior to his dismissal or displacement.

#### III. PROCEDURES FOR PROCESSING APPLICATIONS FOR FEDERAL ASSISTANCE

General: Upon receipt of copies of applications for Federal assistance subject to 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 employees 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 organizations, 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.

- A. If affected employees are represented by a labor organization it is expected that protective arrangements shall be the product of collective bargaining, pursuant to these guidelines.
- B. Upon receipt of an application involving affected employees represented by a labor organization, DOL will refer a copy of the application to that organization and notify the applicant of referral.
- C. Following referral and notification under B. above, and subject to the exceptions defined in V and VI below, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through collective bargaining.
- D. Provisions will be made for the setting of time limitations by the Secretary of Labor within which bargaining must be concluded. It is anticipated that time limits will be set, case by case, for all projects which the Secretary of Transportation indicates have a significant possibility of funding. Further, expedited processing will be given high priority projects, upon the Secretary of Labor's own initiative or on the request of the Secretary of Transportation.
- E. The Secretary of Labor will review negotiated protective arrangements. If the agreement meets the requirements of section 13(c), the Secretary will so certify to the Urban Mass Transportation Administrator. If the agreement 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 agreement himself.
- F. If the parties are unable to reach an agreement within the time period specified pursuant to D. above, the Secretary will review the positions of the parties to determine appropriate action. If it is determined that the parties cannot reach an agreement, he will advise them of the protective terms and conditions upon which he intends to base the certification. If the Secretary determines that the applicant has not made a good faith effort to bargain he will refuse to certify.
- G. The certification made by the Secretary will afford the same level of protection to those employees who are not represented by labor organizations.



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

IV. PROVISIONS TO BE INCLUDED IN PROTECTIVE ARRANGEMENTS

General: In order that the Secretary may make a determination that fair and equitable arrangements have been established for the protection of employees who may be affected by a particular project, acceptable protective arrangements must include, without being limited to, the following substantive provisions.

A. Preservation of existing rights, privileges and benefits

All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

B. Continuation of collective bargaining rights

C. Protection of individual employees against a worsening of their positions with respect to their employment

Protection must be afforded individual employees against a worsening of their position with respect to their employment as a result of the financial assistance. The applicant must afford protection to any employee who as a result of the project is laid off, transferred or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits or seniority or any privileges pertaining thereto.

D. Assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off.

The protective arrangement must afford assurances of employment to employees of acquired mass transportation systems as well as priority or reemployment to dismissed employees. A dismissed employee shall be granted priority of employment or reemployment to fill any vacant position on the system for which he is, or by training or retraining can become, qualified.

E. Paid training and retraining programs

In the event training or retraining is required by employment or reemployment such training or retraining shall be provided at no cost to the employee.



Page Four

F. Benefits must be included which are no less than those provided under Section 5(2)(f), Interstate Commerce Act, which benefits include:

1. Dismissal and displacement allowances
2. Separation allowances
3. Moving allowances and protection of losses incidental to moves
4. Protection of fringe benefits
5. Procedures for notice of changes arising as a result of project which will result in dismissals or displacements, opportunity to negotiate implementing agreements with submission of disputes to final and binding arbitration

G. Dispute resolution procedures

All protective arrangements must provide a means for the resolution of disputes which arise between the parties as to the appropriate interpretation, application or enforcement of the protective terms and conditions. With respect to any disputes which arise concerning whether a particular employee was affected by a project, it shall be the employee's obligation to specify the pertinent facts of the project relied upon. It shall then be the applicants burden to prove that factors other than the project affected the employee.

V. PROCESSING OF AMENDATORY APPLICATIONS

When an application is supplemental to or revises or amends in immaterial respects an application for which DOL 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,

DOL 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 originally constituted. DOL processing of these applications will be expedited.

VI. RECERTIFICATIONS BASED ON EXISTING AGREEMENTS

When the Department of Labor receives a certification request for a grant application which is identified as being in a category of recurring grants, as set forth below, and when the applicant has an existing 13(c) agreement for a previous grant in that category, the Department of Labor will notify the parties of its receipt of the application and its intent

