

west side of the I-15 freeway corridor and cross at Oakey Boulevard to the east to join the Union Pacific railroad corridor to Bonneville Street.

**Scoping and Comments:** FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for identifiable significant impacts. FRA invites and welcomes public agencies, communities and members of the public to advise the FRA of their environmental concerns, and to comment on the scope and content of the environmental information regarding the proposed project. Persons interested in providing comments on the scope of the EIS should send them to Mr. David Valenstein at the FRA address identified above by August 15, 2006.

Issued in Washington, DC, on July 11, 2006.

**Mark E. Yachmetz,**

*Associate Administrator for Railroad Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Number: FTA-2005-23227]

#### Notice of Proposed Title VI Circular

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed revisions and request for comment.

**SUMMARY:** The Federal Transit Administration (FTA) is revising and updating its Circular 4702.1, "Title VI Program Guidelines for Urban Mass Transit Administration Recipients." FTA is issuing a proposed Title VI Circular and seeks input from interested parties on this document. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the Circular as a result of comments received. The proposed Circular is available in Docket Number: 23227 at <http://dms.dot.gov>.

**DATES:** Comments must be received by August 14, 2006. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FTA-05-23227 by any of the following methods: Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site; Fax: 202-493-2251; Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001; Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name (Federal Transit Administration) and the docket number (FTA-05-23227). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Note that all comments received will be posted without change to the Department's Docket Management System (DMS) website located at <http://dms.dot.gov>. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

#### FOR FURTHER INFORMATION CONTACT:

David Schneider, Office of Civil Rights, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4018 or at [David.Schneider@fta.dot.gov](mailto:David.Schneider@fta.dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The authority for FTA's Title VI Circular derives from Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq*, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Section 601 of this Title provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance," (42 U.S.C 2000d). Section 602 authorizes Federal agencies "to effectuate the provisions of [Section 601] \* \* \* by issuing rules, regulations or orders of general applicability," (42 U.S.C. 2000d-1). The U.S. Department of Transportation (DOT), in an exercise of

this authority, promulgated regulations, contained in 49 CFR Part 21 that effectuate the provisions of Section 601 and Title VI in general.

FTA Circular 4702.1, titled "Title VI Program Guidelines for Urban Mass Transit Administration Recipients," provides information on how FTA will enforce the Department of Transportation's Title VI regulations at 49 CFR Part 21. The Circular includes information, guidance, and instructions on the objectives of Title VI, information on specific grant programs covered by Title VI, a description of FTA data collection and reporting requirements, a summary of FTA Title VI compliance review procedures, a description of FTA process for implementing remedial and enforcement actions, information on how FTA will respond to Title VI complaints, and public information requirements. Circular 4702.1 was last updated on May 26, 1988.

The proposed circular would make reference to and in some instances would summarize the text of other FTA guidance, regulations, and other documents. Many of the documents referred to will undergo revision during the life of the proposed circular. In all cases, the most current guidance document, regulation, etc will supercede any preceding information provided. FTA reserves the right to make page changes to proposed and final circulars regarding updates to other provisions, without subjecting the entire circular to public comment.

**Comments Related to Reporting Requirements:** In addition to general comments concerning the draft Title VI Circular, FTA is seeking comments from its recipients and subrecipients concerning the costs and benefits associated with meeting the proposed Circular's guidance. Recipients and subrecipients are encouraged to comment on the number of hours and/or financial cost associated with implementing the Circular's guidance as well as the extent to which following the guidance will assist the recipient and subrecipient in achieving its organizational objectives.

#### I. Why is FTA revising its Title VI Circular?

The DOT Title VI regulations and FTA Circular 4702.1 attempt to transform the broad antidiscrimination ideals set forth in Section 601 of Title VI into reality. In the 18 years since FTA last revised its Title VI Circular, much of FTA's guidance has become outdated. Over those years, legislation, Executive Orders, and court cases have transformed transportation policy and affected Title VI rights and

responsibilities of recipients and beneficiaries. These laws, executive orders, DOT directives, and legal decisions include:

- The Intermodal Surface Transportation Equity Act (ISTEA), enacted in 1991; the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998; and the Safe Accountable, Flexible and Efficient Transportation Equity Act, a Legacy for Users (SAFETEA-LU), enacted in 2005. These reauthorizations created many programs and activities. While these new programs are bound by Title VI's prohibition on discrimination, Circular 4702.1 does not provide specific guidance that would help FTA recipients funded by these programs to comply with Title VI.
- Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (issued in 1994) and the DOT Order on Environmental Justice 5610.2 (enacted in 1997). This Executive Order clarified and reaffirmed Federal agencies' Title VI responsibilities and addressed the effects of Federally-funded activities on low-income populations. The Executive Order contains three fundamental principles: (1) To avoid, minimize, and mitigate disproportionately high and adverse human health and environmental impacts, including social and economic effects, on minority and low-income populations; (2) to ensure full and fair participation by all potentially affected communities in the agency's decision-making process and; (3) to prevent denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

In 1997, DOT issued the U.S. DOT Order on Environmental Justice, which states that DOT will continually monitor its programs, policies, and activities to ensure that they conform with environmental justice provisions. The DOT Order applies to all policies, programs, and other activities that are undertaken, funded, or approved by FTA, including policy decisions, systems planning, metropolitan and statewide planning, project development and environmental review under the National Environmental Policy Act (NEPA), construction, and operations and maintenance. FTA recipients and subrecipients who perform these activities would benefit from guidance that describes how to administer programs and activities in a manner that is consistent with DOT Order 5610.2.

- Executive Order 13166, "Improving Access to Services for Persons with

Limited English Proficiency" (issued in 2000) and the "Department of Transportation Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons" (DOT LEP Guidance) issued in 2001 and revised and reissued in 2005 (See 70 FR 74087). Executive Order 13166 requires Federal agencies and their recipients and subrecipients to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so that people with LEP can have meaningful access to them. The Executive Order is designed to reinforce and implement the prohibition against national origin discrimination of Title VI. Under the Executive Order, each recipient and subrecipient of Federal financial assistance must take reasonable steps to provide meaningful access for people with LEP.

In 2005, DOT issued policy guidance to clarify the responsibilities of recipients and subrecipients of Federal financial assistance from DOT and assist them in fulfilling their responsibilities to people with LEP. The guidance reiterates DOT's longstanding position that in order to avoid national origin discrimination, recipients and subrecipients must take reasonable steps to ensure that such people have meaningful access, free of charge, to their programs, services, and information. Circular 4702.1 already includes requirements for people with LEP, but falls short of the more nuanced and comprehensive instructions in the DOT LEP Guidance. The proposed circular will clarify the connection between language assistance and Title VI compliance.

- The Supreme Court ruling in *Alexander v. Sandoval*, 532 U.S. 275 (2001). In this decision, the Supreme Court noted that U.S. Department of Justice (DOJ) and DOT regulations proscribing activities that have a disparate impact on people or organizations based on race are valid. At the same time, the decision foreclosed a private right of action to enforce these regulations. As a result of this decision, individuals and organizations seeking redress from disparate impact discrimination under Title VI are limited to filing administrative complaints with the DOT and its modal administrations requesting that their recipients or subrecipients comply with disparate impact prohibitions. The result is that *Sandoval* increases the likelihood that DOT, its modal administrations, and its recipients and subrecipients will be subjected to administrative complaints.

In order to resolve such complaints, recipients of FTA funds and the general public would benefit from guidance clarifying what steps they should take to demonstrate that their programs, policies, and activities do not result in disparate impact on the basis of race, color, or national origin.

Additionally, FTA is revising the Title VI Circular to eliminate outdated nomenclature, such as references to FTA as the "Urban Mass Transit Administration" and to statutes such as the "Urban Mass Transit Act" and the "Federal Aid Urban System Program."

## II. What Factors Informed FTA's Revisions to the Title VI Circular?

Before revising and updating the Title VI Circular, FTA took into consideration the following information:

### *DOT Title VI Regulations at 49 CFR Part 21*

The primary objective of the Title VI Circular is to provide guidance and instructions to ensure that recipients of FTA funding comply with DOT Title VI regulations. To this end, FTA reviewed the regulations at 49 CFR part 21 for ambiguous or open-ended provisions. For example, 49 CFR 21.5(b)(7) states that " \* \* \* even in the absence of prior discriminatory practice or usage, a recipient \* \* \* is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin." However, neither the regulations nor the appendix specify what types of actions would meet the expectations of this provision. Likewise, the broader provision at 49 CFR 21.5(b)(2) that prohibits recipients from "utilizing criteria or methods of administration which have the effect of subjecting people to discrimination on the basis of their race, color, or national origin \* \* \*" is silent on procedures that recipients should use to identify and guard against discriminatory effects. Recipients would benefit from clear expectations on how to respond even to the relatively narrow requirement at 49 CFR 21.9(b) that " \* \* \* recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance." The proposed circular would provide guidance and procedures for these provisions to assist compliance with the specific provisions in the DOT Title VI regulations.

### *Title VI Guidance External to the Department of Transportation*

Prior to revising the Title VI Circular, FTA reviewed guidance from the DOJ's "Civil Rights Division Legal Manual on Title VI," the DOJ "Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Non-Discrimination Statutes," and the Council on Environmental Quality (CEQ)'s "Environmental Justice Guidance under the National Environmental Policy Act." The proposed Circular is consistent with the legal principles and procedures described in those manuals. The Circular's guidance on integrating Title VI and environmental justice analysis into recipients' NEPA documents is consistent with the CEQ guidance.

### *Concurrent Rulemaking Processes*

FTA and the Federal Highway Administration (FHWA) are in the process of revising the planning regulations for State Departments of Transportation (State DOTs) and Metropolitan Planning Organizations (MPOs) at 23 CFR part 450. Since these regulations inform State DOTs and MPOs on how to comply with Title VI, the proposed Circular would suspend issuing detailed Title VI guidance for these recipients and subrecipients of FTA funding. FTA will provide more detailed guidance after the final planning regulations are issued in 2007.

### *Complaints and Lawsuits Generated Since the Circular's Last Revision*

One of the objectives of the Title VI Circular is to provide guidance that, if implemented, would reduce the risk that grantees would be subjected to Title VI administrative complaints or to litigation. To this end, FTA reviewed past Title VI administrative complaints filed with FTA and Title VI lawsuits, including cases summarized in *The Impact of Civil Rights Litigation Under Title VI and Related Laws on Transit Decision-Making* (Transit Cooperative Research Program Legal Research Digest, June 7, 1997).

Title VI complaints filed with FTA since 1995 include allegations that:

- Recipients provided a lower level and quality of service to minority riders using recipients' bus services than to white riders using recipients' rail services;
- Service and fare changes implemented by recipients had adverse and disproportionate impacts on minority populations; and
- Recipients disproportionately sited disruptive or polluting facilities such as

busways, rail lines, and bus depots in predominantly minority and low-income communities, and sited clean fuel vehicles and facilities in predominantly white or more affluent communities; and recipients did not offer people with LEP the opportunity for involvement in decision-making.

Title VI litigation filed against transit agencies or MPOs include allegations that:

- Recipients favored the construction of roads and highways over the provision of public bus transportation;
- Recipients required primarily minority passengers to pay toward the operation of the commuter rail system;
- Recipients increased fares and eliminated passes for bus riders who are predominantly minority and poor, while allocating funds to construct rail lines designed to serve a predominantly white and relatively affluent community; and
- Recipients funded transit service serving predominantly white and relatively affluent communities to a greater extent than transit service provided to predominantly minority and low-income communities.

FTA determined that administrative complaints and litigation were filed in response to how recipients had allocated or structured their service and fares. The proposed Circular would include nondiscrimination guidance on these matters.

### *Recommendations of the Government Accountability Office (GAO)*

The proposed Circular would respond to the recommendations of a recent GAO report that analyzed how DOT and its recipients were providing language access to people with LEP. On November 2, 2005, GAO issued "Better Dissemination and Oversight of DOT's Guidance Could Lead to Improved Access for Limited English-Proficient Populations." GAO was charged with investigating: (1) The language access services that transit agencies and MPOs have provided, and the effects and costs of these services; (2) how DOT assists its grantees in providing language access services; and (3) how DOT monitors its grantees' provision of these services.

The GAO report recommended that the Secretary of DOT: (1) Ensure that DOT's revised LEP Guidance is distributed to all DOT grantees; (2) consider providing additional technical assistance to grantees in providing language access; and (3) more fully incorporate the revised guidance in current review processes, and establish consistent norms for what constitutes a language access deficiency.

In response to the report's third recommendation, the proposed Circular would reference the DOT LEP Guidance. It would instruct all recipients and subrecipients to follow the procedures in that document. Title VI compliance reviews conducted after the proposed Circular is issued will assess whether or not recipients and subrecipients have followed the DOT LEP Guidance.

### *Changes in Industry Practices Since the Circular's Last Revision*

Prior to issuing the proposed Circular, FTA reviewed changes in industry practices since the Circular was last updated in 1988. FTA intends to ensure that recipients can comply with revised guidance using policies and procedures that are already incorporated into their business practices. The use of Geographic Information Systems (GIS) by transportation providers is an example of a recently-adopted industry practice that can assist recipients in complying with Title VI. According to the Transportation Cooperative Research Program Synthesis, GIS Options in Transit (Transit Cooperative Research Project, December 2004), close to 80% of transit agencies surveyed used GIS technology in 2003. Agencies used GIS frequently for Title VI activities. Several provisions of the proposed Circular would allow a recipient or subrecipient to demonstrate compliance with Title VI by overlaying their services on a demographic map of their service area. Using these maps, recipients can determine if resources are distributed equitably to minority, low-income, and LEP populations.

FTA also reviewed changes in industry practices to ensure that administrative activities widely adopted since 1988 would not disparately impact groups based on race, color, or national origin. Changes in industry practice with Title VI implications include measures to promote transit security and the development of intelligent transportation systems (ITS). In recent years, transit agencies have increased their security preparedness. Transit agencies, in cooperation with and supported by FTA have conducted risk and vulnerability assessments, created emergency preparedness plans, implemented safety and security awareness programs designed to encourage the active participation of transit passengers and employees in maintaining a safe transit environment, and conducted employee education and training, among other important measures. In a few metropolitan regions, primarily in New York City, officials have begun random screenings of passengers entering transit systems.

FTA seeks to ensure that these and other security activities are carried out based on objective criteria and are implemented without regard to race, color, or national origin. The proposed Circular would recommend that recipients serving urbanized areas of 200,000 persons or greater establish system-wide service standards for transit security and ensure that they are implemented in a nondiscriminatory way.

In addition, ITS technology such as vehicle arrival information systems, automatic stop announcement systems, and electronic fare payment are being implemented by many transit providers and should also be provided without regard to race, color, or national origin. Other technology such as passenger counters and automatic vehicle locators can assist the recipient in ensuring that their level and quality of service is provided equitably. The proposed Circular would include provisions to ensure the equitable distribution of ITS and allow recipients to use ITS to comply with Title VI.

#### *Results of FTA Title VI Oversight*

The proposed Circular would incorporate lessons learned from triennial reviews and discretionary Title VI compliance reviews conducted over the past three years. FTA reviewed the results of its 25 discretionary compliance reviews of transit agencies, MPOs and State DOTs conducted since 2002. It also reviewed Title VI portions of triennial reviews conducted since 2002.

In these reviews, FTA found the greatest number of deficiencies in the following areas:

- Failure to submit Title VI information to FTA;
- Failure to develop internal procedures and guidelines for monitoring compliance with Title VI; and
- Failure to conduct level and quality of service monitoring.

In some cases, recipients failed because they found provisions in the existing Circular to be ambiguous or difficult to implement.

The proposed Circular would clarify what Title VI information should be reported to FTA. The final Circular would also include examples of effective compliance practices.

#### *Public Comments to the Docket*

The proposed Circular would incorporate comments received in response to FTA's notice and request for comments, published in the **Federal Register** on December 15, 2005 (70 FR 74422). In this notice, FTA sought input

from interested parties on the existing Circular, including examples of problems with compliance, best practices for compliance, and proposals for changes.

To date FTA has received 24 comments on the notice from transit agencies, MPOs, State DOTs, trade associations, and individuals. Commenters expressed views on the following provisions of the existing Circular:

#### 1. Objectives of the Title VI Circular

Four individuals or organizations commented on the objectives of the existing Circular, which are included in Chapter I of Circular 4702.1. One commenter stated that the revised Circular should include a more detailed discussion of Title VI and specify that the implementation and administration of Title VI is a prime organizational responsibility. This commenter stated that the revised Circular should clarify the distinction between Title VI and Title VII and that the Circular should discuss the importance of providing equitable customer service and how doing so positively impacts the achievement of a recipient's organizational objectives.

Another commenter stated that the Circular's objective of comparing transit services in minority versus nonminority communities insufficiently evaluates how a transit agency distributes its resources, and that transit resources should be distributed according to transit propensity—the likelihood of an area to utilize transit services. The commenter suggested that transit agencies be given the chance to explain the factors (such as car ownership, income, and density) that dictate how they distribute resources, and then compare the level and quality of services provided to minority and nonminority areas.

A third commenter stated that the existing Circular lacks sufficient procedural guidelines for implementing agencies.

Another commenter suggested that “zero car populations” should be allowed to benefit from FTA assistance.

In response to these comments, the proposed Circular would include a description of the Title VI regulations at 49 CFR Part 21. The proposed Circular would also provide more detailed procedural guidelines in both the “General Guidance” and “Program Specific Guidance” chapters relating to recipients' larger organizational objectives. It would allow recipients to describe how their resources are distributed on the basis of race-neutral

factors such as population density and expressed need for transit services.

The proposed Circular would not specifically require recipients to provide benefits to “zero car populations.” However, the Circular's guidance, once implemented, would help recipients ensure equitable service to predominantly minority, low-income, and LEP populations, i.e., insofar as these populations are disproportionately without vehicles, the Circular should help ensure that they are equitably served by grant recipients.

#### 2. Definitions

Eight individuals or organizations commented on the list of defined terms in the existing Circular (Chapter I, Part 3 of Circular 4702.1). One commenter stated that the Circular's definition of “minority or minority group persons” was out of date, per the United States Census' new definition of race. Another commenter remarked that the race categories could lead a person to be counted twice, specifically in the categories of two or more races. Other commenters suggested that the Circular's definition of travel time be made consistent with the definition used by FTA under DOT's ADA regulations—pointing to terms in the “Definitions” section that were not included in the body of the Circular. Another commenter suggested new definitions for the terms “recipient” and “subrecipient.”

Another commentator noted that the existing Circular does not define “discrimination” and suggested that revised definitions of discrimination be categorical (i.e., intentional and unintentional forms that result in disparate impact or inequitable treatment of organizational customers) and race neutral (i.e., show how an organization that focuses on delivering quality service to all customers consequently removes discriminatory impediments).

Several commenters stated that the existing Circular's definition of “minority transit route,” which is defined as “a route that has at least 1/3 of its total route mileage in a Census tract or traffic analysis zone with a percentage of minority population greater than the percentage of the minority population in the transit service area” may not accurately reflect the demographics of the populations that use or are served by those routes. Commenters proposed modifying this definition to one based on the route's actual ridership or a more precise analysis of the areas served by the route.

In response to these comments, the proposed Circular would adopt a

definition of "minority persons" using the race categories as defined by the 2000 Census. Under the proposed circular's definition of "minority persons," some people may be counted twice; however, provided that the recipient analyzes all of its service area according to the new definition of "minority persons," the recipient should arrive at consistent results.

The proposed Circular would define only those terms and concepts that are included in the document's ensuing chapters. If a term is not included in the definitions section, recipients and subrecipients should rely on common usage or industry standards to define the term. For example, the existing Circular's definition of "travel time," which is used to evaluate the quality of a recipient's service to minority and non-minority areas, requires all recipients to calculate travel time using a riding speed of 25 mph. The new Circular would not provide a standard calculation for travel time, but would instead allow recipients to base this calculation on their knowledge of their system and local factors.

Likewise, the proposed Circular would not include a definition for "minority transit route." It would advise recipients to determine the effects of programs, policies, and activities on minority (and low-income) groups using demographic information in ridership surveys and the U.S. Census, as circumstances warrant. For example, a recipient that proposes fare increases on its bus and rail service might review the results of ridership surveys to determine whether minority or low-income people are disproportionately represented on any one mode of transit service. A recipient or subrecipient proposing to eliminate transit routes would examine ridership surveys, but also review Census information on the areas served by these routes to understand the demographics of the communities that would lose service. A recipient studying alternatives for constructing a new transit route would review Census data for the areas that would be served by the project and also those areas bisected by the project to better understand the benefits and burdens of the project for specific groups.

The proposed Circular would include a definition of "recipient," "subrecipient," and "discrimination" that are consistent with these terms as defined by statute.

### 3. Title VI Assurances

The existing Circular requires applicants, recipients, and subrecipients to submit a signed civil rights assurance and a signed DOT Title VI assurance

that all records and other information required by the Circular have been and would be completed by the applicant, recipient, or subrecipient (Chapter III, Parts 2(d) and 2(e) of Circular 4702.1).

Two individuals or organizations commented on this provision. One commenter noted that since 1995, FTA has used one form that compiles all certifications and assurances of compliance with applicable Federal requirements and that this form is completed by grantees and submitted on an annual basis.

Another commenter suggested that FTA clarify that recipients submit a Title VI assurance each time there is a change in the recipient's leadership.

In response to these comments, the proposed Circular would allow applicants to submit the annual standard assurance form that compiles all certifications and assurances in lieu of submitting specific Title VI assurance forms. This annual submittal would ensure that an applicant's new leadership would certify compliance with Title VI as well as other FTA requirements.

### 4. Fixed Facility Impact Analysis

The existing Circular requires all applicants, recipients, and subrecipients to conduct a fixed facility impact analysis to assess the effects of construction projects on minority communities and specifies the information to be collected for this analysis. If this information has been prepared as part of an Environmental Assessment (EA) or Environmental Impact Statement (EIS), the applicant, recipient, or subrecipient should refer to the relevant information (Chapter III, Part 2(f) of Circular 4702.1).

Three individuals or organizations commented on this provision. One commenter recommended that FTA incorporate guidance that fixed facility impact analyses also be conducted for those construction projects subject to documented Categorical Exclusions under parts (b) and (d) of DOT NEPA regulations at 23 CFR 771.117. (This guidance was previously provided to the commenter during a prior Title VI compliance review.)

Another commenter suggested that recipients conduct fixed facility impact analyses for those construction projects not subject to an EA and EIS and that local communities be given the opportunity to verify or rebut information provided on these construction projects. The commenter also suggested that data requirements regarding fixed facilities may be different for passenger facilities compared to administrative and/or

maintenance facilities and relevant reporting requirements should be tailored to the impact on the residents and transit providers.

A third commenter asked whether the existing Circular's references to an EA or EIS are equated to the physical environment or equated to environmental justice communities.

In response to these comments, the proposed Circular would clarify that recipients should assess the impacts to minority and low-income populations of construction projects subject to a Categorical Exclusion type (d) ("a documented categorical exclusion"), Environmental Assessment, or Environmental Impact Statement. Recipients may fulfill this requirement by including the steps described in the environmental justice analysis section of the proposed circular section in their NEPA process and documentation, and submitting the appropriate section of the Environmental Impact Statement, Environmental Assessment, or application for a Documented Categorical Exclusion to FTA.

The NEPA regulations at 23 CFR 771.117(d) state that, for certain projects, applicants shall submit documentation that demonstrates that criteria for these Categorical Exclusions are satisfied, and that significant environmental effects would not result. Examples of these projects, as cited in the regulations, include construction of new bus storage and maintenance facilities in areas used predominantly for industrial and transportation purposes, rehabilitation or reconstruction of existing rail and bus buildings where only minor amounts of additional land are required and there is not a substantial increase in the number of users, and construction of bus transfer facilities when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic. Under the proposed Circular, recipients planning these and other projects that fall within 23 CFR 771.117(d) would submit, as part of their documentation to receive a Categorical Exclusion, an assessment of the project's impacts on minority and low-income communities.

Under the proposed Circular, recipients and subrecipients would not be required to assess the impacts on minority and low-income communities of those construction projects listed at 23 CFR 771.117(c). These projects do not require any NEPA approvals by FTA. They include approval of utility installations along or across a transportation facility, the installation of noise barriers, landscaping, acquisition of scenic easements, and other projects

enumerated in this provision of the NEPA regulations.

Also under the proposed Circular, recipients and subrecipients would not be required to assess the impacts on minority and low-income populations of those construction projects that do not significantly change the use, design, scale, or footprint of the facility.

The proposed Circular would not establish different procedures for analyzing the effects on minority and low-income populations of passenger facilities compared to administrative and/or maintenance facilities, nor would the proposed Circular alter recipient's existing public participation obligations under NEPA.

#### 5. Program Specific Reporting Requirements

The existing Circular provides program-specific requirements for applicants, recipients, and subrecipients that provide public transit service primarily in service areas with populations over 200,000, as well as for State DOTs and MPOs (Chapter III, of Circular 4702.1).

One organization commented on this framework. The organization suggested that FTA consider reduced reporting requirements for recipients/public transit service providers that have a significant minority population. The commenter also recommended that FTA reduce the data collection and reporting burden on public transit service providers that they determine to be "low risk."

The proposed Circular would not take the approach suggested in this comment. Recipients serving areas with significant minority populations could be more sensitive to issues of discrimination on the basis of race, color, and national origin, and, therefore, less likely to violate Title VI, but the results of triennial reviews and Title VI compliance reviews conducted since 2002 demonstrate no relationship between the size or proportion of a recipient's minority population and the number of Title VI deficiencies found.

#### 6. Demographic and Service Profile Maps, Overlays, and Charts

The existing Circular requires transit providers serving areas with populations over 200,000 to prepare demographic and service profile maps, overlays, and charts detailing the recipient's service area and overlaying the transit service provided and the location of concentrations of minority people within the service area (Chapter III, Part 3(a)(1) of Circular 4702.1).

Two individuals or organizations commented on this provision. One

commenter stated that the Circular's existing requirement to prepare a base map showing major activity centers or transit trip generators, such as the central business district, outlying high employment areas, schools, and hospitals, might not accurately capture other major activity centers. Stores and childcare facilities may also be appropriate to include as additional locales. The commenter also asked how paratransit availability and usage fit in to reporting requirements.

The second commenter suggested that in addition to preparing maps, overlays, and charts, recipients also should provide the following information: A comparison of the demographics of minority and nonminority riders using different modes, information on trip purposes by minority riders during peak and off-peak times, the percentage of system-wide trips taken by minority riders, the percentage of minority riders who are transit dependent and the overall percentage of system-wide trips made by people who are transit dependent, the percentage of system-wide trips made by bus versus rail, and a comparison of minority and nonminority opinions concerning system performance, overall satisfaction, willingness to recommend transit to others, product awareness, and value for fare paid.

In response to these comments, the proposed Circular would retain the requirement to map major activity centers and transit trip generators. However, the Circular specifies that this list should be locally determined and can include, but need not be limited to, the central business district, outlying high employment areas, schools, and hospitals.

The proposed Circular would also recommend that recipients who meet the program-specific threshold collect information on the race, color, national origin, and income, and travel pattern of its riders (consistent with the specific information requests proposed by the commenter). This information can be integrated into customer surveys routinely performed by transit agencies.

#### 7. Service Standards and Policies

The existing Circular requires transit providers that serve areas with populations over 200,000 to establish system-wide service policies and standards related to Title VI (Chapter III, Part 3(a)(2) of Circular 4702.1).

Three individuals or organizations commented on this provision. One commenter requested that the revised Circular provide guidance on how to develop service standards for transit access, vehicle assignment, and level of

service for commuter rail, and clarify how to determine maximum load points for fixed route bus service. Another commenter stressed that recipients should be required to establish a service standard only for those transit amenities that are under the direct responsibility of the recipient. A third commenter suggested that some measure of transit affordability should be added to the indicators identified under service standards and policies.

In response, the proposed Circular's discussion of service standards and policies would provide guidance that would enable recipients operating commuter rail service to set system-wide standards for transit access and vehicle assignment. The revised guidance would discuss how recipients can determine maximum load points for vehicle load. The revised Circular would also specify that transit amenities not directly under the control of the recipient, such as bus stops and shelters that are established and maintained by a local municipality, would not be subject to a service standard by the recipient.

The proposed Circular would not include a service standard for transit affordability, but would not prevent recipients from setting such a standard if they consider it appropriate. For example, recipients could price their fares so that the total cost to the rider of using the system on a frequent basis does not exceed a certain percentage of the average household income in the service area. However, this standard could mean that recipients would need to raise and lower fares as new information about household income or expenses is published, and such a policy would likely collide with a recipient's other strategic, financial, or functional objectives.

The revised Circular would require recipients serving urbanized areas with populations of 200,000 or greater to identify and address, as appropriate, disproportionate and adverse impacts of proposed fare increases on minority and low-income people and attempt to minimize or mitigate the effects of proposals by which price-sensitive consumers would bear the brunt of a fare increase.

#### 8. Assessment of Compliance by Grantees

The existing Circular requires that transit systems serving areas with populations over 200,000 develop procedures and guidelines for monitoring compliance with Title VI. (Chapter III Part 3(a)(3) of Circular 4702.1).

One organization commented on this provision. The commenter recommended that transit providers be instructed to undertake Title VI compliance assessments on an ongoing basis as policies change, so that transportation providers assess policies as they are being developed, and well in advance of implementation. The commenter also noted that the existing Circular provides no threshold definition for a system-wide service change or a disproportionate impact. Transportation properties would benefit from specific guidelines about thresholds.

In response to this comment, the proposed Circular would ask recipients to evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether the overall benefits and costs of such changes are distributed equally, and are not discriminatory. In addition, the environmental justice analysis of construction projects requested by the proposed Circular and typically prepared as part of the NEPA process would be prepared and submitted to FTA well in advance of project construction.

The proposed Circular would not set a single threshold for the magnitude of a service change that would trigger recipients to study the impacts of the change. However, it would advise recipients to establish guidelines or thresholds for what they consider a "major" change to be. Often, this is defined as a numerical standard, such as a change that impacts 25% of the service hours of a route.

#### 9. Information Dissemination

The existing Circular requires transit systems that serve areas with populations over 200,000 to describe the methods used to inform minority communities of service changes related to transit service and improvements (Chapter III, Part 3(a)(4)(b) of Circular 4702.1).

Two individuals or organizations commented on this provision. One commenter remarked that transportation properties would benefit from hearing from other transportation properties that employ non-traditional methods to engage communities of color in the decision-making process. The second commenter remarked that the existing Circular establishes no set thresholds for information dissemination.

In response to these comments, FTA will consider including in the final draft of the Title VI Circular a list of effective practices used by recipients to engage minority, low-income, and LEP

populations in decision-making processes. The proposed Circular would also include examples of measures targeted to overcome linguistic, institutional, cultural, economic, historical, or other barriers that may prevent minority and low-income individuals and populations from effectively participating in a recipient's decision-making process.

The proposed Circular would not set a threshold for what type or magnitude of service changes would require the agency to disseminate information or involve the public (including minority, low-income, and LEP populations); however, the proposed Circular would cite examples of activities where public involvement is required or frequently conducted.

#### 10. Minority Representation on Decision-Making Bodies

The existing Circular requires transit systems that serve areas with populations over 200,000 to provide a racial breakdown of transit-related non-elected boards, advisory councils, or committees, and to describe efforts made to encourage minority participation (See Chapter III, Part 3(a)(4)(c) of Circular 4702.1).

Three individuals or organizations commented on this provision. One commenter stated that the existing Circular does not ask whether the racial composition of non-elected boards, advisory councils, or committees benefits minority and low-income communities. A second commenter stated that racial diversity among board members does not guarantee representation of an affected communities' issues. The commenter suggested that transportation properties might provide information regarding each members' networks and relationships with affiliated communities. A third commenter suggested that FTA establish a threshold for representation on boards. For example, if a minority population represents 51% of the customer base, then a member of this population should be allocated a board seat.

The proposed Circular would not set quotas for membership on recipients' boards, advisory councils, or committees because the process for selecting members to these committees is a local prerogative. The proposed Circular would also contain general guidance on the obligations of State DOTs and MPOs to engage minority and low-income communities in the planning process. FTA remains interested in efforts undertaken by recipients to encourage minority participation on its boards, advisory

councils, and committees. FTA's Equal Employment Opportunity Circular, which is currently being revised and updated, may consider guidance on this provision.

#### 11. Multilingual Facilities

The existing Circular requires transit systems that serve areas with populations over 200,000 to provide a description of the extent to which bilingual speakers or materials are or would be used to assist non-English speaking people who want to use the transit system (See Chapter III, Part 3(a)(4)(d) of Circular 4702.1).

Four individuals or organizations commented on this provision. All commenters stated that the DOT LEP Guidance should be incorporated into the revised Circular. One commenter also suggested that the revised Circular include strategies to overcome cultural barriers related to LEP.

In response to these comments, the proposed Circular would request that all recipients and subrecipients follow the instructions in the DOT LEP guidance. The proposed Circular would also include examples of measures to overcome institutional, cultural, economic, historical, or other barriers that may prevent LEP populations from participating in a recipient's public involvement process. FTA will consider including in the final draft of the Circular a list of effective practices used by recipients to address cultural barriers related to LEP.

#### 12. Requirements for Metropolitan Planning Organizations

The existing Circular requires MPOs to undertake data collection and reporting requirements to ensure compliance with Title VI (Chapter III, Part 3(b) of Circular 4702.1).

Two individuals or organizations commented on this provision. One commenter suggested that the MPO provisions of the existing Circular be reviewed. A second commenter stated that it would be helpful to have guidance on what the Executive Order on Environmental Justice requires from the MPO planning process. The Circular could provide useful guidance on effective methodologies, the frequency and means of analysis, and the reporting principles required of grantees for the triennial Title VI reports.

FTA intends to work with the Federal Highway Administration (FHWA) to issue more specific guidance on the incorporation of Title VI and environmental justice principles into the metropolitan and statewide planning processes after FHWA has issued revisions to its planning



regulations at 23 CFR 450 (the rulemaking process for these regulations is currently underway and DOT expects to issue a final rule in 2007). In order to avoid conflicts between the guidance for MPOs in the revised Circular and in the revised planning rule, the proposed Circular would issue general interim guidance on how MPOs should comply with Title VI.

#### 13. Requirements for State DOTs

The existing Circular contains program-specific requirements for State agencies administering transit programs for elderly individuals, individuals with disabilities, and individuals living in rural and small urban areas. State agencies are required to ensure that their subrecipients are in compliance with Title VI requirements and demonstrate that subrecipients were selected for funding in a non-discriminatory manner (Chapter III, Part 3(c) and 3(d) of Circular 4702.1).

Two individuals or organizations commented on these provisions. One commenter asked whether transit activities administered by State DOTs and funded with monies transferred from the FHWA will be subject to Title VI requirements. The commenter also noted that the existing Circular does not cover programs funded through the Job Access Reverse Commute grant program or the New Freedom grant program.

The second commenter recommended that FTA consider providing conditional approvals for Title VI submissions from State DOTs while these submissions are being reviewed and approved by the FHWA. The commenter also suggested that FTA and FHWA work together to assist State DOTs to eliminate the problem of having FTA suspend a grant while FHWA reviews the recipient's Title VI submission.

In response to these comments, the proposed Circular would clarify that any recipient or subrecipient of funds administered by FTA shall comply with the Title VI guidance contained in this Circular. The proposed Circular would also require State DOTs to submit directly to FTA all Title VI information related to programs funded by FTA and administered by the State DOT (such as transportation grants for seniors and people with disabilities and grants for rural transportation). This information would no longer be reviewed and approved by a representative from FHWA.

The proposed Circular also would include general interim guidance for statewide planning. In order to avoid conflicts between the guidance in this area in the revised Circular and the revised planning rule, the proposed

Circular issues general interim guidance on how the Statewide planning process should comply with Title VI.

#### 14. Level and Quality of Service Monitoring

The existing Circular requires all grantees that provide public transit service to develop and implement procedures to monitor compliance with Title VI (Chapter IV Part (2) of Circular 4702.1).

Three individuals or organizations commented on this provision. One commenter noted that any level and quality of service methodology should analyze a numerically sufficient and demographically different number of Census tracts or traffic analysis zones. Monitoring procedures that require recipients to compare travel times from different areas to frequently traveled destinations should not identify solely those travel destinations used for work-related purposes.

A second commenter suggested that FTA provide templates, samples, or models to assist recipients with a consistent way to report information such as monitoring levels and quality of service and compliance assessment.

In response to these comments, the proposed Circular would request that recipients subject to level and quality of service monitoring identify the most frequently traveled destinations for riders using the recipient's service and, for each of these destinations, compare the average peak hour travel time to destination, average non-peak hour travel time to destination, number of transfers required to reach the destination, total cost of trip to the destination, and cost per mile of trip to the destination for people beginning the trip in the selected Census tracts or traffic analysis zones. The most frequently traveled destinations could include, but need not be limited to, destinations that are work-related. The proposed Circular would also encourage recipients to conduct statistical tests for significance on the results of their level and quality of service monitoring.

In addition, FTA will consider including in the final draft of the Circular a list of effective practices used by recipients to monitor level and quality of service.

#### 15. Compliance Reviews

Chapter V of the existing Circular describes how FTA monitors compliance of applicants, recipients, and subrecipients with Title VI. This chapter includes descriptions of the type of compliance reviews FTA will conduct. It also includes FTA's criteria

and procedures to determine compliance with Title VI.

Three individuals or organizations commented on the provisions in this chapter. One commenter requested that FTA provide clear, specific guidance about the compliance review process, including information on types of reviews, remedial actions, and appeals. They recommended that flow charts would help illustrate FTA's expectations in these areas.

A second commenter stated that triennial reviews are too infrequent to monitor recipients' compliance with the Title VI Circular. The commenter also recommended that FTA complete a review of a recipient's process. Another commenter suggested that Title VI reviews should be conducted by staff from FTA regional offices, rather than by national consultants who are not familiar with local issues, cultures, or populations. The commenter suggested that if consultants are used, they should have experience with the program areas that they are reviewing. Consultants who specialize in transportation in large metropolitan areas should not conduct reviews of transit service provided to rural areas. The commenter additionally stated that compliance reviews should be conducted so that all State DOTs are reviewed periodically rather than having one State DOT reviewed multiple times, and FTA's investigative reports should also be subject to a specific timeline. The commenter also suggested that FTA provide examples of best practices from State DOT review forms for local providers.

In response to these comments, the proposed Circular would provide information on the criteria for selecting recipients and subrecipients for compliance reviews and the process recipients should follow to correct deficiencies identified in the reviews. The proposed Circular would provide information on remedial actions and appeals in its section on enforcement procedures.

FTA reiterates its flexibility to determine, on a case-by-case basis, whether a Title VI desk audit or on-site review is warranted; whether the review should be conducted via consultants, FTA regional staff, or headquarters staff; what recipients and subrecipients should be subject to a review; and the timing of the release of the draft and final reports. As such, the proposed Circular will not include specific procedures in these areas.

Nothing in this Circular would authorize FTA to alter the triennial review structure, which is mandated by Federal law. However, recipients may be subject to a discretionary Title VI



review in the years in between their triennial reviews.

#### 16. Enforcement Procedures

Chapter VI of the existing Circular describes the procedures and requirements for initiating remedial actions in cases of noncompliance and probable noncompliance with Title VI and summarizes FTA's enforcement procedures when a grant applicant, recipient, or subrecipient refuses or fails to comply voluntarily with remedial measures.

Four individuals or organizations commented on the provisions in this chapter. One commenter questioned whether the guidance contained in the Title VI Circular is binding on recipients and requested that FTA clarify the existing and revised Circular's actual enforceability. The commenter also noted that clarity on the enforcement of the Title VI Circular is particularly critical in light of the Supreme Court's decision in *Alexander v. Sandoval*, which held that there is no private right of action to enforce the disparate impact regulations promulgated under Title VI. The commenter stated that the existing Circular's provisions relating to enforcement, oversight, or decisions made by the Secretary of Transportation do not appear to be followed with any regularity.

Other commenters suggested that FTA update its enforcement procedures so that applicants or recipients have 90 days to correct deficiencies, and stated that there should be more clearly defined procedures for identifying violations of Title VI compliance and taking preventive measures.

Another commenter suggested that FTA clarify whether the Secretary can disagree with the results of an enforcement hearing and what procedure would be followed under that scenario.

In response to these comments, the proposed Circular would clarify that FTA would view recipients or subrecipients' failure to comply with one or more portions of the Circular's guidance would be a failure to comply with DOT Title VI regulations. For example, the Title VI Regulations at 49 CFR 21.9(b) require recipients to have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. In order for recipients serving populations of 200,000 people or greater to fulfill the requirement at section 21.9(b), the Circular would instruct these recipients to prepare and submit demographic service maps and overlays and

demographic information obtained from ridership surveys. If the recipient does not prepare and submit this information, it would be considered deficient in its compliance with 49 CFR 21.9(b) unless the recipient could provide FTA with an adequate justification.

FTA will consider a grantee to be non-compliant with the DOT Title VI regulations if, after an investigation of a recipient or subrecipients' practices, FTA determines that the entity has engaged in a pattern or practice of activities that have had the purpose or effect of denying people the benefits of, excluding them from participation in, or subjecting people to discrimination under the recipients' program or activity on the basis of race, color or national origin.

In addition, the proposed Circular would clarify the timelines that would be used for correcting deficiencies and implementing protective measures.

#### 17. Complaint Procedures

Chapter VII of the existing Circular provides information on FTA procedures for filing complaints alleging discrimination on the basis of race, color, or national origin. Six individuals or organizations commented on the provisions of this chapter. One commenter remarked that recipients are not following the existing Circular's complaint procedures, and that the revised Circular should identify an appeals process that an aggrieved individual or complainant can follow.

A second commenter suggested that the complaint provisions be updated to better define the responsibility of State DOTs to process Title VI complaints. Another commenter suggested that FTA provide timely notification to a recipient who has been the subject of a complaint, and provide the recipient with a copy of the complaint so that it may respond. Another commenter noted that there is little public awareness of the Circular's policy that recipients must advertise its complaint procedures to the public.

Other commenters suggested that only those complaints with adequate information should be accepted for investigation, and FTA should clarify the amount of time allowed between FTA's acceptance of a complaint and the submission of the investigative report. Another commenter stated that the revised Circular should require recipients to designate a Title VI coordinator to respond to complaints, conduct training, perform internal compliance reviews, and handle administrative tasks. Further, the commenter suggested that Title VI

complaints should be regarded as violations in the quality of service that programs, activities, or services give to customers who are internal or external to the organization.

Because the proposed Circular is intended to be used by FTA grantees, the Circular's chapter on complaint procedures focuses on how FTA will interact with a recipient or subrecipient that has been subject to a Title VI complaint. FTA will engage in a separate effort to inform the public of its procedures for accepting and investigating Title VI complaints.

The procedures in the proposed Circular would specify an appeals process, provide timely notice to complainants and recipients that FTA has accepted a complaint for investigation, and would allow recipients to receive a copy of the complaint, unless the complainant wishes FTA to withhold specific information from the recipient.

Because Title VI complaints vary widely in their complexity and the length of time required to complete a thorough investigation, the proposed Circular would not include a specific timeframe for resolving all complaints. However, FTA is required by 49 CFR 21.11 to make a prompt investigation whenever information suggests a possible failure to comply with the regulations. The proposed circular would state that FTA strives to complete its investigation of complaints (either through administrative close or by issuing letters of resolution or finding) within 180 days of the date that FTA accepts a complaint for investigation.

Comments related to notifying the public of their right to file a Title VI complaint are addressed in the "General Reporting Requirements" in Chapter IV of the proposed Circular.

#### 18. Miscellaneous Comments

In addition to commenting on specific provisions of the existing Title VI Circular, commenters expressed opinions on the following matters related to Title VI:

##### A. Environmental Justice

Five individuals or organizations commented on the relationship between Title VI and the Executive Order and DOT Order on Environmental Justice. All commenters recommended that FTA integrate environmental justice principles and requirements into the revised Circular. In response to these comments, the proposed Circular would contain guidance and procedures that recipients and subrecipients are required to follow to identify and address adverse and disproportionate

impacts of their programs, policies, and activities on minority and low-income populations within their jurisdictions.

#### B. Reporting Requirements

Five individuals or organizations commented on the reporting requirements of the Title VI Circular. One commenter urged that FTA make a concerted effort to minimize the record keeping and reporting burdens associated with its Title VI requirements, and that FTA seek to avoid redundancy within specific requirements as well as between Title VI and other oversight programs. FTA's Title VI requirements for transit agencies should dovetail with State-mandated recordkeeping and reporting requirements.

Another commenter noted that the updated Circular should incorporate changes with the Paperwork Reduction Act of 1995. Another commenter suggested that the Title VI reporting cycle should be moved to a four-year cycle to be consistent with the MPO cycle specified under SAFETEA-LU. A third commenter asked whether recipients' triennial Title VI submissions are due three years after the earlier submission date or three years after the date the previous plan was approved.

Commenters also requested that FTA provide training and technical assistance to help recipients complete the reporting requirements and provide guidance on how to respond to the Title VI questions in the triennial review.

The proposed Circular would reduce record keeping and reporting requirements by allowing recipients to submit the standard annual certification and assurance in lieu of separate FTA and DOT Title VI assurances. It would eliminate the existing Circular's requirement that recipients provide FTA with a list of existing and pending grant applications. Recipients and subrecipients could collect Census data on the demographics of households affected by construction projects in lieu of submitting a detailed list of minority households and businesses (per the fixed facility impact analysis requirement of the existing Circular). The Circular would eliminate the redundant requirements in the provision to provide an assessment of Title VI compliance by grantees (in Chapter III Part 3(a)(3) of Circular 4702.1). It would require that recipients include in their triennial Title VI reports to FTA only information that has changed or been updated since the prior submittal (the proposed Circular would also clarify that these submittals are due three years after the due date of the

previous submittal). Additional changes to reporting requirements will be considered pursuant to comments received in this comment period.

The proposed Circular would not convert the Title VI reporting requirements to a four-year cycle because FTA has an interest in coordinating recipients' Title VI submittals with its triennial review process.

FTA will consider including in the final draft of the Circular a list of effective practices used to assist recipients in responding to the reporting requirements, as well as a list of people to contact for technical assistance.

In addition, those grantees that are allowed to use a portion of the funds that they receive from FTA for planning and administrative purposes can use these funds to support their Title VI monitoring and reporting activities.

#### C. The Process for Revising the Title VI Circular

Three individuals or organizations commented on the process of revising the Title VI Circular. One commenter suggested that FTA undertake a 60-day comment period to allow interested parties to review the draft Circular and that FTA engage compliance officers from a broad swath of the industry in tailoring requirements. Other commenters stated that FTA should seek public input on the draft circulars and address the concerns and needs of transit providers that use this guidance.

This notice begins a 60-day comment period on the draft circular. During this comment period, FTA will make a concerted effort to notify stakeholders of the opportunity to comment on the draft document.

#### D. Comments Unrelated to the Notice and Request for Comment

FTA received comments concerning the relative lack of attention and resources devoted by FTA's Office of Civil Rights to Title VI, compared to the Americans with Disabilities Act of 1990. It also received comments related to information posted on its Title VI website and to recent power point presentations made on Title VI. FTA regards all civil rights as important and strives to allocate resources accordingly. This notice does not provide a specific response to these comments as they are outside the scope of the December 15, 2005 notice and request for comment.

Issued on July 10, 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34844; STB Finance Docket No. 34890]

#### **Pycos Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co.; Pycos Industries, Inc.—Feeder Line Application—Lines Of South Plains Switching, Ltd. Co.<sup>1</sup>**

In a decision in STB Finance Docket No. 34844 served on June 2, 2006, the Director of the Office of Proceedings (the Director) rejected as incomplete the application of PYCO Industries, Inc. (PYCO), under the feeder line provisions of 49 U.S.C. 10907 and 49 CFR part 1151, to acquire all of the rail lines of South Plains Switching, Ltd. Co. (SAW), in Lubbock, TX (the "All-SAW option"). The Director also rejected as incomplete PYCO's alternative request to acquire a portion of SAW's rail lines to allow PYCO to provide rail service to itself and to two other shippers located in close proximity to one of PYCO's two plants in Lubbock, TX ("Alternative Two").<sup>2</sup> The rejections were without prejudice to PYCO's filing a new application.

Track 5, SAW yard, .....	2,400 feet;
(continued * * *) .....	
(* * * continued) .....	
Track 1, SAW yard, .....	2,100 feet;
Track 9200, .....	3,900 feet;
Track 9298, east of BNSF main, .....	4,320 feet;
Track lead to PYCO plant 2 to 50th St., .....	6,280 feet;
Track 231 lead to 9200/9298, .....	960 feet;
Track 310 through Farmers 1, .....	5,600 feet
Total: .....	25,560 feet

In addition, PYCO seeks to acquire all of Track No. 6 from the western end of SAW yard to the western clearpoint of the easternmost switch of the "wye" track connecting to Track No. 6 from the south, and also the western branch of said "wye" from its southern clearpoint north to and including its connection with Track No. 6, estimated to be 1,100 feet. Also, PYCO would acquire a crossing right as follows: Crossing right Track 9298 to and through SAW yard, 5,000 feet.

On June 12, 2006, PYCO appealed the Director's decision and petitioned to

<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative convenience. For the same reason, the Board, rather than the Director of the Office of Proceedings, is deciding whether to accept or reject the new feeder line application submitted in STB Finance Docket No. 34890.

<sup>2</sup> PYCO describes the rail lines it seeks to acquire under Alternative Two as follows: (See reference above.)