

shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by docket number FRA-2007-27599 and may be submitted by one of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic site;

- *Fax:* 202-493-2251;

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001; or

• *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.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 9, 2007.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E7-7059 Filed 4-12-07; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2007-27418]

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket Number FRA-2007-27418

*Applicants:* CSX Transportation, Incorporated, Mr. C.M. King, Chief Engineer, Communications and Signals, 500 Water Street, SC J-350, Jacksonville, Florida 32202.

Four Rivers Transportation, Mr. A.V. Reck, President, 1500 Kentucky Avenue, Paducah, Kentucky 42003.

CSX Transportation, Incorporated (CSXT) and Four Rivers Transportation jointly seeks approval of the proposed modification of the signal system, on the single main track and siding, between Berkeley Run Jct., milepost BUC 0.0, near Grafton, West Virginia, and Hampton Jct., milepost BUC 41.9, near Adrian, West Virginia, on CSXT's Huntington Division East, Cowen Subdivision. The proposed changes consist of the conversion of the existing traffic control system to an automatic block signal (ABS) system; conversion of all power-operated switches to hand operation; and conversion of the method of operation to TWC-DCS authority, supplemented by signal indications of the ABS system.

The reason given for the proposed changes is that the current traffic density does not warrant retention of this type of signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by docket number FRA-2007-27418 and may be submitted by one of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic site;

- *Fax:* 202-493-2251;

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001; or

• *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.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 9, 2007.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E7-7060 Filed 4-12-07; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket Number: FTA-2005-23227]

#### Notice of Final Title VI Circular

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

**ACTION:** Notice of Final Title VI and Title VI-Dependent Guidelines for

## Federal Transit Administration Recipients.

**SUMMARY:** The Federal Transit Administration (FTA) has revised its Title VI Circular 4702.1 and is publishing a new Circular 4702.1A, "Title VI and Title VI—Dependent Guidelines for Federal Transit Administration Recipients." The purpose of this circular is to provide recipients and subrecipients of Federal Transit Administration (FTA) financial assistance with guidance and instructions necessary to carry out the U.S. Department of Transportation's ("DOT" or the "Department") Title VI regulations (49 CFR part 21) and to integrate into their programs and activities considerations expressed in the Department's Order on Environmental Justice (Order 5610.2), and Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient ("LEP") Persons (70 FR 74087, December 14, 2005). Circular 4702.1A includes requirements and procedures which, if followed, will ensure that no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from FTA.

**DATES:** This guidance becomes effective May 14, 2007. This circular supersedes Title VI Circular 4702.1, "Title VI Program Guidelines for Urban Mass Transit Administration Recipients."

### SUPPLEMENTARY INFORMATION:

#### Availability of Final Circulars

You may download the circular from the Department's Docket Management System (<http://dms.dot.gov>) by entering docket number 23227 in the search field, and then clicking on "reverse order." The circular is the most recently posted document. You may also download an electronic copy of the circular from FTA's Web site, at <http://www.fta.dot.gov>. Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk, at 202-366-4865.

#### I. Why Has FTA Revised This Circular?

Prior to this notice, FTA's Title VI Circular had not been revised since May 26, 1988. In the ensuing 18 years, much of the guidance in Circular 4702.1 has become outdated. Circular 4702.1A has been updated to incorporate developments in legislation, Executive Orders, DOT directives, and court cases that have transformed transportation policy and affected the rights and responsibilities of recipients and

beneficiaries. These directives include the Intermodal Surface Transportation Equity Act (ISTEA), enacted in 1991; the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted in 2005; Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (issued in 1994); the DOT Order on Environmental Justice 5610.2 (issued in 1997); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (issued in 2000); and DOT's "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons" (referred to as the "DOT LEP Guidance") issued in 2001 and reissued in 2005.

In addition, Circular 4702.1 needed to be updated 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."

In the process of revising this circular, FTA took the following factors into consideration: The requirements of the DOT Title VI regulations at 49 CFR part 21; external Title VI guidance, including the Department of Justice's (DOJ's) Title VI Legal Manual and the Council on Environmental Quality's "Environmental Justice Guidance Under the National Environmental Policy Act"; the outcomes of Title VI administrative complaints and lawsuits generated since the circular's last revision; the recommendations of the Government Accountability Office (GAO) in its November 2005 report on limited English proficiency (see GAO report, "Transportation Services: Better Dissemination and Oversight of DOT's Guidance Could Lead to Improved Access for Limited English-Proficient Populations," GAO-06-52); changes in industry practices since the circular's last revision; and results of FTA Title VI oversight reviews. The **Federal Register** Notice accompanying FTA's draft Title VI Circular **Federal Register**, Vol. 71, No. 135, July 14, 2006) contains a detailed description of how these factors were taken into account during the circular's revision process.

This document does not include the final circular; electronic versions of the circulars may be found on the docket, at <http://dms.dot.gov>, or on FTA's Web site, at <http://www.fta.dot.gov>. Paper copies of the circulars may be obtained by contacting FTA's Administrative Services Help Desk, at 202-366-4865.

#### II. How Does the Final Circular Differ From the Proposed Circular?

While much of the content of the final circular is identical to the proposed version, the final circular includes the following comprehensive changes made in response to comments received during FTA's July 14 to September 14, 2006, public comment period:

- The title of the final circular has been changed from "Title VI Guidelines for FTA Recipients" to "Title VI and Title VI—Dependent Guidelines for Federal Transit Administration Recipients" and provisions of the final circular have been modified to clarify that the document outlines requirements pursuant to the DOT Title VI regulations; and guidance pursuant to the DOT Order 5610.2 on Environmental Justice and the DOT LEP Guidance located at 70 FR 74087 (December 14, 2005). The revised circular covers recipients' and subrecipients' responsibilities to ensure nondiscrimination on the basis of race, color, or national origin pursuant to the DOT Title VI regulations. Pursuant to Executive Order 12898 and the Department of Transportation Order on Environmental Justice, FTA has advised its grantees to ensure that the interests and well-being of low-income populations are considered and addressed during transportation decisionmaking.

- The proposed circular included requirements that FTA recipients and subrecipients must abide by and recommended procedures that agencies can follow to meet the requirements. The final circular more clearly delineates what actions are required and what actions are merely encouraged or recommended.

- The final circular provides recipients and subrecipients with greater flexibility to meet FTA requirements. While the proposed circular recommended a single strategy to comply with Title VI, the final circular in many cases allows recipients and subrecipients to choose from a menu of options in order to meet certain requirements and more clearly states that recipients and subrecipients can, in some cases, develop their own procedures for meeting the requirements in the DOT regulations and this circular.

- The final circular references, on a more consistent basis, terminology that is already in use in existing FTA or DOT regulations and directives. Terms of art are used consistently throughout the document.

- The final circular includes updated appendices to assist recipients and subrecipients with compliance.

### III. How Did FTA Involve the Public in the Circular Revision?

FTA has responded to feedback received during two public comment periods. During the first comment period, which occurred between December 15, 2005 and January 17, 2006, FTA invited the public to comment on Circular 4702.1 and sought input from interested parties on any problems with compliance, best practices for compliance, and proposals for changes to this Circular (see **Federal Register**, Vol. 70, No. 240, December 15, 2005). FTA received comments from 23 individuals or organizations in response to this notice and request for comment. A summary of these comments as well as how they were incorporated into the proposed Title VI Circular is included in FTA's July 14, 2006, **Federal Register** Notice and Request for Comment.

On July 14, 2006, FTA published a notice of its proposed circular in the **Federal Register**. The comment period lasted until September 14, 2006. During this period, FTA staff responded to questions from the public on the proposed circular and also invited stakeholder groups to submit comments to the docket. A summary of the outreach conducted and responses to questions received is included in the docket.

In response to the July 14, 2006, notice and request for comment, FTA received comments from 17 transit agencies, four non-profit organizations, three metropolitan planning organizations (MPOs), one State DOT, one individual, and one county government. A total of 27 entities submitted comments to the docket. We received diverse and even opposing comments.

### IV. How Has FTA Responded to Comments Received?

The remainder of this notice summarizes the specific comments received pursuant to FTA's July 14, 2006, notice and describes FTA's response.

#### *Positive Feedback*

*Comments:* Five organizations provided general positive feedback on the proposed circular, including that the circular seems reasonable in its approaches, that the proposed circular's elimination of outdated requirements is an improvement over the existing circular, that the guidance in general represents a great improvement over the 1988 Circular, that consolidation and consistency among the provisions will clarify FTA's compliance requirements, and that citizens will benefit from equal

and fair access to Federally-funded transit systems.

#### *The Relationship Between the Circular's Requirements and Recommendations*

*Comments:* Five organizations requested that the final circular clarify what actions recipients are required to take and what actions are merely encouraged or recommended. One commenter stated that FTA should avoid giving recommendations as opposed to issuing defined standards; another commenter suggested that FTA issue a summary matrix differentiating between requirements and recommendations. A third commenter requested that the circular clarify references to "shall" and "should" throughout the document. Another commenter stated that the proposed circular's mix of requirements and recommendations creates requirements without offering fixed standards for compliance.

*FTA Response:* The final circular distinguishes between requirements, flowing from the DOT Title VI regulations, and guidance, based on the DOT Order on Environmental Justice and the DOT LEP Guidance. In several instances, the final circular also allows agencies to meet the requirements by adopting procedures that would not be overly burdensome and best fit with their existing business practices. The final circular in some instances allows recipients and subrecipients to choose from a menu of options or effective practices in order to comply with many of the requirements listed in Chapter IV and Chapter V. In some instances, recipients have the option of developing their own procedure to comply with a specific requirement. In cases where a recipient develops its own procedure for compliance, FTA will review the procedure, which should be included as part of the recipients' Title VI submission, to confirm that it meets the expectation of the relevant circular provision and the DOT Title VI regulations. The final circular's Chapter I, parts 1(c)(1) and 1(d)(1) clarify where the circular's requirements end and guidance begins.

#### *The Circular's Administrative Burden on Grantees*

*Comments:* Four organizations commented that the proposed circular would impose administrative burdens on FTA grantees. One commenter stated that many of the proposed changes to the circular would have an adverse impact on the agency's ability to provide its required level and quality of service and would be unduly burdensome. A second commenter

stated that the process of preparing and submitting Title VI reports detracts from their ability to provide public transportation and that the list of new and expanded recordkeeping and reporting requirements establish a substantial burden on FTA grantees. A third commenter suggested that agencies serving areas with under 200,000 people should only be required to file a Title VI report with FTA if there has been a complaint filed with the agency. A fourth commenter estimated that a threefold increase in resources over what the agency currently spends on Title VI administration would be needed in response to the proposed circular, but stated that the benefits of Title VI compliance outweigh the increased costs. This commenter also recommended that the final circular include a directive to appropriate sufficient resources to facilitate administration of the new circular.

*FTA Response:* The final circular modifies the administrative and reporting requirements found in Circular 4702.1. In some instances FTA has added administrative and reporting requirements. In other instances FTA has removed administrative and reporting requirements. Under circular 4702.1A, all recipients and subrecipients, not just those transit agencies serving areas of 200,000 persons or more, are responsible for administering their public involvement activities in a non-discriminatory manner and submitting a summary of these activities to the FTA or to their direct recipient. Also under circular 4702.1A, all recipients and subrecipients must take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP). The final circular gives recipients and subrecipients great latitude to determine what specific actions are necessary to fulfill these requirements.

Circular 4702.1A removes the old requirement that all recipients and subrecipients submit FTA and DOT Title VI assurances that are separate from FTA's annual list of certifications and assurances. The revised circular also eliminates the requirement under Circular 4702.1 that recipients report the grants that they receive from the FTA and that they re-submit in their Title VI compliance report copies of environmental analyses that had been previously submitted to FTA. Also removed in the final circular is the requirement that all recipients who provide transportation service conduct level and quality of service monitoring

and report their results to FTA. This requirement is reserved for transit agencies serving areas with populations of 200,000 persons or greater.

Circular 4702.1A would further reduce administrative burdens by giving recipients and subrecipients greater flexibility to meet requirements through procedures that best match their resources, needs, and standard practices. For example, Chapter V, part 2 of the proposed circular required recipients providing transit service to geographic areas of 200,000 people or greater to monitor the service that they provide in order to ensure that the end result of policies and decisionmaking is equitable service. The proposed circular required that recipients fulfill this requirement by implementing level of service and quality of service monitoring procedures and analyzing the results of customer surveys. Chapter V, part 5 of the final circular continues to require that recipients monitor the service that they provide to ensure equitable service, but gives recipients the option of fulfilling this requirement by implementing either the level of service monitoring procedures, or the quality of service monitoring procedures, or the analysis of customer surveys, or developing their own monitoring procedures. Recipients may choose the option that would enable them to most efficiently meet these requirements. This approach, which is a departure from the format of Circular 4702.1 and the proposed Title VI Circular, should allow recipients and subrecipients to reduce the amount of time and resources that would be devoted to Title VI compliance while still ensuring that FTA funds are being administered without regard to race, color, or national origin.

Finally, FTA will be conducting regional training in Calendar Year 2007 to inform recipients and subrecipients of the final circular's requirements and to discuss effective practices for compliance. FTA also has plans to develop an automated system where grantees can submit an electronic Title VI report. These training and electronic reporting activities should reduce the administrative burden associated with submitting Title VI reports.

The final circular does not direct agencies to commit a certain level of resources towards Title VI compliance, because FTA does not generally dictate the internal resource allocation decisions of its grantees.

#### *The Relationship Between Title VI and Environmental Justice*

Five organizations commented on the proposed circular's treatment of

environmental justice principles and policies. One commenter stated that minority and low-income persons are an important category of individuals to which FTA should devote attention. Another commenter stated that the proposed circular fails to effectively differentiate between the requirements of Title VI and Executive Order 12898. A third commenter suggested that the proposed circular more consistently incorporate definitions and concepts from the DOT Order on Environmental Justice. Another commenter stated that by combining Title VI nondiscrimination law with the internal Federal agency policy for data collection and analysis required by the DOT Order on Environmental Justice, the proposed circular would create unfunded mandates, and a statutorily unrecognized protected class of low-income people.

*FTA Response:* The final circular fulfills the purpose of DOT Order 5610.2, which states that each operating administration in DOT integrates the considerations of Executive Order 12898 into the programs, policies, and activities that they administer or implement. Order 5610.2 is not solely internal to DOT and, in that FTA has integrated environmental justice considerations into its general grant program. The reformatted circular's guidance to recipients to identify and address, as appropriate, adverse and disproportionately high effects of their policies, programs, and activities on low-income populations as well as minority populations does not introduce low-income people as a protected class under Title VI. The final circular's reference to environmental justice principles and concepts reinforces considerations already embodied in Title VI and NEPA and does not create new mandates.

#### *Subrecipient Compliance*

*Comments:* Two organizations commented on the proposed circular's requirements for subrecipient compliance with Title VI in Chapter IV. One commenter sought clarification as to whether Section 5316 and 5317 grantees and subrecipients would also be required to comply with the circular. The commenter also stated that FTA cannot reach around its grantees to force reports and documents from subrecipients and that passing on specific compliance requirements to subrecipients risks forcing subrecipients to prepare multiple, conflicting reports to comply with the multiple Federal agencies that extend financial assistance. Another commenter stated that the circular's new requirements for

subrecipients equate to significant administrative expenses and recommended that subrecipients receiving under \$150,000 be exempt from the public involvement and language access requirements in Chapter IV of the proposed circular.

*FTA Response:* The final circular clarifies that Section 5316 and 5317 grantees are to follow the requirements for all recipients and subrecipients listed in Chapter IV. This notice clarifies that FTA can require recipients to pass forward Title VI requirements to their subrecipients, consistent with the final circular's guidance in Chapter IV. In addition, Chapter V of the final circular provides guidelines to designated recipients in large urbanized areas, so that these recipients can ensure that they are apportioning Job Access and Reverse Commute (JARC) and New Freedom funds to subrecipients without regard to race, color, or national origin.

In response to the commenter's concern that subrecipients will be subject to conflicting methodologies for civil rights compliance stemming from multiple Federal agencies, FTA notes that its circular is designed in part to clarify the DOT Title VI regulations. These regulations, as well as those issued by other Federal agencies, are modeled after Title VI regulations developed by DOJ. Because multiple Federal agencies have adopted nearly identical Title VI regulatory language, the risk that a transit provider receiving funds from many Federal sources will be subject to conflicting or diverging requirements is small. However, if a transit provider has reason to believe that one or more of the requirements in Chapter IV of the final Title VI Circular conflicts with a Title VI data collection or reporting requirement requested by another Federal agency, the provider should contact their direct recipient or FTA to discuss a strategy to resolve the conflict.

Chapter IV Section 3 of the final circular coiffers guidance that subrecipients seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities; however, this section states that recipients and subrecipients have wide latitude to determine how, when, and how often specific public involvement measures should take place, and what specific measures are most appropriate. Subrecipients can take the resources available to their agency into account when determining the appropriate public involvement steps. Chapter IV Section 4 of the final circular requires that all subrecipients take reasonable

steps to ensure meaningful access to their programs and activities by people with limited English proficiency; however, the final circular clarifies that certain FTA recipients or subrecipients, such as those serving very few LEP people or those with very limited resources may choose not to develop a written LEP plan as recommended in the DOT LEP Guidance.

#### *Data Collection Methodology*

**Comments:** Three organizations commented on the data collection and analysis methodology in the proposed circular. One commenter requested that FTA restore the definition of "minority transit route" contained in Circular 4702.1. A second commenter requested that the proposed circular reinsert a modified definition of "minority transit route" as "a route that has at least 40 percent of its total route mileage in Census tracts or traffic analysis zones with a percentage of minority population greater than the percentage of the minority population in the transit service area," and that agencies use this definition to assess the demographics of transit routes where no demographics on ridership based on customer survey data are available. A third commenter suggested that the circular define a "minority transit route" as a route where more than one-third of a route's passenger boardings are in minority areas or a route where more than one third of the stops are located in minority areas.

**FTA Response:** The final circular does not include a definition of "minority route" in part because comments received during the December 15, 2005 to January 17, 2006, comment period questioned the usefulness of this definition and in part because FTA wants to ensure that recipients have the option of using methodology that best fits their needs. If recipients choose to develop their own procedures in order to evaluate the impacts of service reductions, as is an option in Chapter V, part 1b, or if recipients choose to develop their own procedures to monitor transit service for equity concerns, as is an option in Chapter V, part 1d, they have the option to incorporate the old circular's definition of "minority transit route" or their own definition of a "minority transit route" into their locally developed procedures.

#### *Title VI Requirements for Paratransit Service*

**Comments:** Two organizations commented on the proposed circular's treatment of paratransit service. One commenter requested that agencies that provide only paratransit service not be

required to submit a Title VI report. A second commenter asked that FTA clarify the reporting requirements of agencies that provide only paratransit services.

**FTA Response:** The final circular does not provide guidance or requirements for agencies that provide Americans with Disabilities Act (ADA) complementary paratransit service. Title VI guidance for this mode of transportation was not included in part because of concerns that Title VI requirements might conflict with the detailed requirements for ADA complementary paratransit contained in the DOT regulations implementing Titles II and III of the ADA (49 CFR part 37). In addition, FTA has not, in recent years, received complaints that ADA complementary paratransit providers were discriminating on the basis of race, color, or national origin, nor have we received requests for guidance in this area. If FTA receives specific complaints that ADA complementary paratransit providers are engaging in disparate treatment or disparate impact discrimination, we will investigate such complaints and work with the transit provider to ensure that paratransit service is being administered consistent with Title VI.

The general requirements presented in Chapter IV of the circular, including the reporting requirements, would apply to agencies that provide demand-response transportation that is available to the general public or, in the case of services funded under FTA's Section 5310 program, is open to eligible older adults and individuals with disabilities. The requirements of this chapter also apply to providers of fixed-route transportation.

#### *Minority Representation on Decision Making Bodies*

**Comments:** One organization noted that the proposed circular eliminated a provision in Circular 4702.1 that recipients provide a racial breakdown of their nonelected boards, advisory councils, or committees and provide a description of the efforts made to encourage minorities to participate on such boards, councils, or committees. The organization recommended that FTA require transit agencies and MPOs to report on how affected communities of color are represented on decision making bodies.

**FTA Response:** In the course of its Title VI oversight activities, FTA determined that most transit agencies could not meet the original circular's requirement to encourage minority participation on their decision-making bodies because transit boards of

directors are generally appointed by the local political leadership and agency staff believed it would be inappropriate to interject themselves into this appointment process. FTA considered including in its final circular a provision that would instruct agencies to analyze whether jurisdictions with concentrations of minority and/or low-income people were adequately represented on transit agency or metropolitan planning boards. The final circular does not include such a provision because, regardless of the results of such analyses, agency staff would still not have the authority to influence the composition of their boards of directors.

#### *Nondiscrimination in Emergency Preparedness*

**Comments:** One organization recommended that the final circular include language requiring FTA grantees to provide assistance to transit dependent populations in emergencies.

**FTA Response:** FTA is working to ensure that its grantees consider civil rights issues in the course of developing and implementing emergency preparedness, disaster response, and disaster recovery plans so that race, color, and national origin, including LEP status, do not impede access to information, evacuation, and relief services that are provided by FTA grantees. Appendix D of the final circular includes a reference to FTA's Disaster Response and Recovery Resource for Transit Agencies which can be found at <http://transit-safety.volpe.dot.gov/Publications/order/singledoc.asp?docid=437>. This resource provides local transit agencies and transportation providers with useful information and best practices in emergency preparedness and disaster response and recovery, including information on how to respond to the unique needs of low-income people, limited English proficient people, people with disabilities, and older adults.

#### *The Circular Revision Process*

**Comments:** Three organizations commented on the process FTA is using to revise its Title VI Circular. One commenter asked if FTA plans to allow for additional input on the document. Another commenter noted that with many open dockets for comments, it is hard to be able to comment while maintaining business functions, and the agency often does not have time to evaluate and respond to all issues. Two commenters stated that, to avoid inconsistencies, the proposed circular should reference and adopt language

from the regulation on planning as well as the upcoming rulemaking to implement coordinated public transit-human services and the rulemaking for emergency preparedness for public transportation systems.

*FTA Response:* As of the date of this publication, Circular 4702.1A is a final document; however, FTA will consider making changes to the circular if it receives comments from the public and determines that clarification to Circular 4702.1A is required. The provisions in this circular are consistent with the planning regulations at 23 CFR part 450 as well as FTA's proposed Elderly Individuals and Individuals with Disabilities, Job Access and Reverse Commute, and New Freedom programs Circulars.

## V. Section-by-Section Discussion

FTA received comments from 27 entities on specific sections of the proposed circular. This section summarizes the provisions that were subject to comment, the nature of the comment, and FTA's response.

### *Objectives of the Title VI Circular*

Chapter II, part 1 of the proposed circular described the document's objectives, stating, in part, that the guidance and procedures will allow FTA recipients to "ensure that the level and quality of transportation service is provided equitably and without regard to race, color, national origin, or income" (Chapter II, part 1a) and to "avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations" (Chapter II, part 1b).

*Comments:* FTA received comments on this section from two organizations. One commenter suggested that the language in Chapter II, part 1a inappropriately mixed Title VI and environmental justice concepts and would result in a requirement to distribute government resources equitably rather than ensuring a straightforward ban on discrimination against protected classes. A second commenter requested that the reference at Chapter II, part 1b to "disproportionately high" effects be changed to "disproportionate" effects to eliminate confusion over what constitutes a "high" effect and to clarify that the circular should have the effect of eliminating any disproportionate effect on minority and low-income populations.

*FTA Response:* FTA has revised the "Objectives" section to state that the

guidance and procedures in the circular will allow FTA recipients and subrecipients to "ensure that the level and quality of transportation service is provided without regard to race, color, or national origin." (Circular 4702.1A, Chapter II, part 1a). This modified language clarifies that one of the objectives of the circular is to ensure nondiscrimination under Title VI. The final circular retains the reference to "disproportionately high" effects because this term is consistent with the terms used in the DOT Order on Environmental Justice.

### *Definitions*

Chapter II, part 6 of the proposed circular included a section defining terms that appear elsewhere in the document.

*Comments:* Six entities commented on the proposed circular's definition of "adverse effect," listed at Chapter II, part 6a. One commenter noted that the distinction between an "adverse effect" and "disparate effect" is confusing. Two commenters requested that the proposed circular use the definition of "adverse effect" found in the DOT Order on Environmental Justice. Another commenter stated that the proposed definition is too broad and impractical for purposes of evaluating projects; however, the problem could be alleviated if the recipient has discretion to decide which effects need to be evaluated based on the given project. Another commenter stated that the definition should be amended to take into account adverse effects that can be mitigated. Another commenter stated that the proposed definition extends the Federal reach into areas of traditional State and local purview.

*FTA Response:* The final circular retains the definition of "adverse effect" in the proposed circular because it is the definition used in the DOT Order on Environmental Justice. Although the definition of "adverse effect" in the DOT Order and the circular includes a wide range of possible effects, recipients have discretion to decide which effects need to be evaluated in detail based on the nature of the proposed project and the characteristics of the physical and natural environment where the project is located. Recipients can also receive approval from FTA after demonstrating that the adverse effects identified will be avoided, minimized, or mitigated. NEPA's scoping process is used to determine which specific adverse effects need to be addressed. Circular 4702.1A reinforces DOT's longstanding position that attention to any disproportionately high and adverse effects to minority and low-income communities should be

incorporated into the NEPA process, but it does not alter the NEPA requirements at 23 CFR part 117 or extend the Federal reach into areas of traditional State and local purview. The final circular also includes DOJ's definition of "disparate impact," to resolve confusion over the two terms.

*Comments:* One entity commented on the proposed circular's definition of "compliance" and "deficient" listed at Section 6(c) and 6(e), respectively. One commenter stated that the definitions of these terms are inconsistent with how they are used in Section 5 of Chapter II.

*FTA Response:* The final circular includes a definition of "deficiency" and uses this term consistently.

*Comments:* Two organizations commented on the proposed circular's definition of "discrimination" listed at Section 6d. One commenter suggested that the definition of discrimination be modified to include any intentional or unintentional "act" as well as "pattern or practice," because the prohibition on discrimination at 49 CFR Section 21.5 includes a reference to actions of discrimination. A second commenter requested that "discrimination" be defined in terms of "disproportionate effects" as opposed to the proposed definition of an act that subjects a person to "unequal treatment."

*FTA Response:* The final circular adopts the definition of "discrimination" based on the definition used in the FHWA Title VI complaint manual. Under this definition, "discrimination" refers to "any act or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contractor that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin." The final circular also includes definitions for "disparate treatment" and "disparate impact" that are incorporated from the FHWA manual.

*Comments:* Five entities commented on the proposed circular's definition of "disproportionate effect" listed at Section 6f. Two commenters requested that FTA replace this definition with the definition of an "adverse and disproportionately high effect" contained in the DOT Order on Environmental Justice. A third commenter stated that the different subdefinitions of the term are confusing and that the subdefinition at 6f(2) was more commonly used than the one at 6f(3). A fourth commenter requested that the reference to the term "predominantly" in the language on "effects predominantly borne by

members of a minority race, color or national origin population \* \* \* at Section 6(f)(1) be replaced by the word “disproportionately” and that the word “significantly” at 6(f)(3) be deleted. Another commenter suggested that FTA amend the definition reference “adverse” effects that are predominantly borne by minority and low-income populations and that the definition to take into account adverse effects that can be mitigated.

**FTA Response:** The final circular adopts the definition of “disproportionately high and adverse effect” used in the DOT Order on Environmental Justice in place of the “disproportionate effect” definition used in the proposed circular.

**Comments:** One entity commented on the proposed circular’s definition of “fixed guideway” listed at Section 6h. The commenter requested that FTA interpret this definition to exclude commuter rail lines with shared rights of way.

**FTA Response:** The definition of “fixed guideway” in the final circular is taken, word-for-word, from FTA’s authorizing legislation, which defines the term “fixed guideway” at 49 U.S.C. 5302(a)(4). FTA interprets “fixed guideways” to include commuter lines with shared rights of way.

**Comments:** Four entities commented on the proposed circular’s definition of “low-income person” listed at Section 6l. Three commenters requested that this definition be modified to allow agencies to develop local definitions of “low-income.” Two commenters requested that this definition be consistent with the definition in the U.S. Census.

**FTA Response:** The final circular keeps the draft circular’s definition of “low-income” because this term is adopted from the DOT Order on Environmental Justice. Although this definition references the Department of Health and Human Services’ (HHS) poverty guidelines, it should be noted that HHS develops this level based on poverty data collected from the U.S. Census. FTA recipients can use Census data to determine the number and proportion of low-income people located in their service area.

While the circular does not require that recipients identify low-income populations using any definition other than the one adopted in the final circular, it does give recipients flexibility to collect demographic information on their beneficiaries using locally developed methods (see Chapter V, Section 1c). Grantees could adopt a locally developed definition of “low-income,” such as any household with

an income of 25 to 50 percent of the metropolitan area’s median household income.

**Comments:** One organization commented on the proposed circular’s definition of “low-income population” listed at Section 6m and “minority population” listed at Section 6o. The commenter stated that these definitions are impractical as they fail to set a standard for determining whether a group is “readily identifiable.”

**FTA Response:** The final circular retains the definitions of “minority population” and “low-income population,” which are adopted from the DOT Order on Environmental Justice. This notice clarifies that a “readily identifiable” population is one that can be identified using data from the U.S. Census.

**Comments:** Four entities commented on the proposed circular’s definition of a “predominantly minority area” in Section 6r and a “predominantly low-income area” in Section 6s. One commenter requested that the circular delete the reference to “predominantly” minority or low-income areas. A second commenter requested that the definition be over-inclusive and that the document should be modified to define “predominantly minority” and “predominantly low-income” areas as areas where the minority population and low-income population proportion is two times or greater the proportion of these populations in the transit service area. A third commenter requested that the definition’s reference to “traffic analysis zone” be deleted. A fourth commenter requested that the definition be used consistently throughout the circular.

**FTA Response:** The final circular retains the definition of “predominantly minority area” as “a geographic area, such as a neighborhood, Census tract, or traffic analysis zone, where the proportion of minority people residing in that area exceeds the average proportion of minority people in the recipient’s service area.” The revised circular also retains the definition of a “predominantly low-income area” as “a geographic area, such as a neighborhood, Census tract, or traffic analysis zone, where the proportion of low-income people residing in that area exceeds the average proportion of low-income people in the recipient’s service area.” Pursuant to Chapter V, Section 1c, recipients have flexibility to collect demographic information on their beneficiaries using thresholds for “predominantly minority” and “predominantly low-income” areas that are different from the terms as defined in Chapter II, Sections 6v and 6w of the

final circular. For example, under the guidance offered in Chapter V, Section 1c, a recipient could implement a map-making procedure in order to highlight those Census tracts where the minority or low-income population was twice the average of the service area. This modification might be useful for recipients that serve regions with high overall minority or low-income populations and who wanted to ensure that their service was reaching areas where minority and low-income people were highly concentrated. In addition, the guidance at Chapter V, Section 1c of the final circular gives recipients the flexibility to prepare maps based on either Census tracts or traffic analysis zones. The final circular uses the terms “predominantly minority” and “predominantly low-income” consistently throughout the document.

#### *Title VI Requirements for Applicants*

Chapter III of the proposed circular describes the procedures that all applicants for FTA financial assistance, including those entities applying for FTA assistance for the first time, should follow to comply with the DOT Title VI regulations.

**Comments:** FTA received one comment on this chapter. The commenter noted that the Web link to the text of FTA’s annual certifications and assurances no longer exists. The commenter also remarked that the circular offers no provisions to ensure that first-time applicants for Federal financial assistance have complied with Title VI.

**FTA Response:** The final circular does not include a specific Web link for FTA’s annual certifications and assurances because the exact link may change over time. However, applicants should be aware that the text of these certifications and assurances will generally be posted on FTA’s Web site, <http://www.fta.dot.gov>. The circular does not offer provisions to ensure that applicants who have never before received Federal financial assistance have complied with Title VI because Title VI does not apply to entities that do not receive financial assistance from the Federal government.

#### *General Reporting Requirements*

Chapter IV of the proposed circular describes the procedures that all FTA recipients and subrecipients shall follow to ensure that their activities comply with the DOT Title VI regulations and/or the DOT Order on Environmental Justice and the DOT LEP Guidance.

**Comments:** FTA received comments from one organization on the purpose of



this chapter. The commenter stressed that Title VI analyses should be done and provided to communities prior to asking for community input on alternatives, the development of alternatives should be informed by community participation, and obtaining input from minority and low-income communities on their transit needs should be the starting place, not a validation of decisions already made.

**FTA Response:** The final circular states that an environmental justice analyses of construction projects should be incorporated into the agency's NEPA compliance (see Chapter IV, Section 2 of Circular 4702.1A). NEPA and the DOT NEPA regulations require early and continuous public involvement in the identification of social, economic, and environmental impacts related to proposed projects. In addition, the public participation requirement for all recipients and subrecipients at Chapter IV, Section 3 of Circular 4702.1A includes language stating, "An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions."

#### *Environmental Justice Analysis of Construction Projects*

Chapter IV, Section 2 of the proposed circular required recipients and subrecipients to include an environmental justice analysis in their applications for a documented Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statements (EISs) that precede construction projects. This section also recommended information that should be included in the recipient's or subrecipient's environmental justice analysis.

**Comments:** FTA received six comments on this provision. One commenter noted that portions of this section refer to minority and low-income "populations" while other portions refer to minority and low-income "communities" and minority and low-income "neighborhoods" and that the varying terms are confusing. Three commenters suggested either that agencies should not have to conduct a separate environmental justice analysis for projects subject to a Class II(d) CE or that decisions as to when such analyses are performed should be left to FTA's legal counsel. A third commenter requested that FTA modify its reference to major renovation or rehabilitation projects so that construction projects that do not increase a facility's space or use should be exempted from an

environmental justice analysis. Other commenters sought clarification on the information that should be collected as part of the environmental justice analysis.

**FTA Response:** The environmental justice analysis of construction projects in the final circular eliminates confusing references to "communities, neighborhoods, and populations" with a consistent reference to minority and low-income populations within the study area of the project. Recipients and subrecipients do not have to perform an environmental justice analysis for any construction, renovation, or rehabilitation project that is not already subject to FTA's NEPA documentation requirements. However, if a recipient is required to submit an EIS, EA, or application for a CE, an environmental justice analysis should be part of the documentation that FTA already requires. The final circular recommends what information should be collected as part of an agency's environmental justice analysis.

#### *Inclusive Public Involvement*

Chapter IV, Section 3 of the proposed circular required recipients and subrecipients to seek out and consider the viewpoints of minority and low-income populations in the course of conducting public outreach and involvement activities. This section also provided examples of public involvement measures targeted to overcome linguistic, institutional, cultural, economic, historical, or other barriers to participation.

**Comments:** FTA received four comments on this provision of the proposed circular. One commenter suggested that FTA clarify it is the recipients' obligation to seek out and ensure participation by minority and low-income populations and include additional examples of effective information gathering in minority and low-income areas. The commenter suggested that the circular include examples of community-based strategies, where agencies have taken the initiative to seek input from transit-dependant people in their communities. The commenter stated that this section should also address variations in learning and communication styles and that the circular should state the importance of face-to-face contact and direct, easy-to-understand communication. A second commenter suggested that this section be retitled "public participation" to be consistent with terms used in SAFETEA-LU. A third commenter noted that this section does not propose a minimum standard of how, when, or how often public

involvement should take place. A fourth commenter stated that the section's reference to accessibility for people with disabilities repeats requirements found in other laws and regulations and is confusing.

**FTA Response:** This section of the final circular is now titled "Guidance on Promoting Inclusive Public Participation," and Appendix D to the final circular includes references to documents that feature additional examples of public involvement that are community based and that address variations in learning and communication styles. On the issue of standards for how, when, or how often public involvement should take place, it should be noted that the DOT NEPA regulations contain specific requirements for public notification and public hearings in conjunction with proposed transportation projects subject to EAs and EISs, and Section 5307 of the Federal Transit Laws requires that grantees must have a locally developed process to solicit and consider public comment before raising fares or carrying out a major reduction of transportation. (FTA also requires that this process offer the opportunity for a public hearing or public meeting.) These requirements notwithstanding, FTA does not find it appropriate to set sweeping standards for such factors as the time of day that public hearings should be held, where meetings should be located, or how often the public should be consulted, as these process decisions are most widely accepted when the recipient or subrecipient, in consultation with the public in its jurisdiction, develops a local approach. The guidance in this section and the references in Appendix D are designed to offer effective practices that can be used as local circumstances warrant.

The final circular eliminates the preexisting reference to providing assistance to people with disabilities in the course of public involvement only because the final circular is designed to offer guidance pursuant to the DOT Title VI regulations and the DOT Order on Environmental Justice, which do not explicitly cover disability. However, this modification to the circular does not alter the obligation of grantees under the DOT ADA regulations at 49 CFR parts 27, 37, and 38 and Section 504 of the Rehabilitation Act to ensure that their activities are accessible for people with disabilities.

#### *Language Access*

Chapter IV, Section 4 of the proposed circular required recipients and subrecipients to administer programs and activities consistent with the DOT



LEP Guidance. This policy guidance describes recipients' obligations to provide language services and recommends that recipients prepare language access implementation plans describing how reasonable steps will be taken to ensure meaningful access by LEP people to recipients' programs and activities.

*Comments:* FTA received seven comments on this provision. Two commenters stated that it would be unduly burdensome to require their agencies to prepare a language assistance plan. The first commenter suggested that operators with less than 100 buses should be exempt from developing a language implementation plan and the second suggested that agencies be encouraged but not required to follow the DOT LEP Guidance.

Another commenter requested that FTA clarify how agencies can apply the DOT LEP Guidance to LEP people who have low literacy in their native language or who have a disability that contributes to their limited English proficiency.

Another commenter requested that the entire text of the DOT LEP Guidance be incorporated into the Title VI Circular.

Another commenter noted that the circular's treatment of the DOT LEP Guidance does not establish standards, but instead merely lists the components that a plan should have. Another commenter questioned the appropriateness of carrying forward a legal interpretation of national origin discrimination that was not present at the passage of the Civil Rights Act of 1964. Another commenter recommended that the DOT LEP Guidance be updated to modify the document's "safe harbor" provisions and that FTA work with the Census Bureau to develop data that would assist transit providers in meeting the DOT LEP guidance.

*FTA Response:* Title VI and its implementing regulations require that FTA recipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP). The Final Circular provides recipients and subrecipients with guidance on how to meet this requirement. In general, agencies should demonstrate that they have taken responsible steps to provide language assistance by developing and implementing a language assistance plan according to the recommendations in the DOT LEP Guidance. The final circular clarifies that certain FTA recipients or subrecipients, such as those serving very few LEP people or

those with very limited resources may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP people to the benefits, services, information, and other important portions of their programs and activities. Appropriate language assistance should be based on the recipient's analysis of the number or proportion of LEP people eligible to be served or likely to be encountered by a program, activity, or service; the frequency with which those people come into contact with the program; the nature and importance of the program, activity, or service to people with LEP; the resources available to the agency, and the cost of providing language assistance.

Recipients whose LEP population includes members with low literacy in their native language or people with disabilities that contribute to language barriers should consider using symbol signs, pictograms, and oral translation or providing accessible features consistent with DOT's requirements under Section 504 of the Rehabilitation Act, the ADA, and the ADAAG.

The final circular does not include the text of the entire DOT LEP Guidance because merging this guidance into the circular would make the document much longer and less usable by grantees. A link to the DOT LEP Guidance can be found at FTA's Title VI Web site, [http://www.fta.dot.gov/civilrights/civil\\_rights\\_5088.html](http://www.fta.dot.gov/civilrights/civil_rights_5088.html). The circular does not modify any provisions of the DOT LEP guidance, as this directive is under the purview of the Office of the Secretary of Transportation.

#### *Title VI Complaint Procedures*

Chapter IV, Section 5 of the proposed circular instructed recipients and subrecipients to develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public upon request.

*Comments:* One organization commented on this provision. The commenter noted that there is no requirement for recipients and subrecipients to develop procedures for investigating and tracking environmental justice and limited English proficiency complaints, to notify the public on how to file an environmental justice or LEP complaint, or to include a list of such complaints in its report to FTA.

*FTA Response:* Recipients and subrecipients who receive complaints

that beneficiaries were denied the benefits of, excluded from participation in, or subject to discrimination due to the beneficiaries' limited English proficiency should treat these complaints as complaints of national origin discrimination under Title VI and do not need to establish separate procedures for investigating complaints based on limited English proficiency. Recipients may wish to track such complaints as "Title VI/LEP" complaints if such a tracking system assists the organization in processing and resolving complaints. Recipients and subrecipients who receive complaints filed by members of minority and low-income populations can also investigate these complaints under Title VI's prohibition of discrimination on the basis of race and may wish to track such complaints as "Title VI/EJ" complaints. Recipients should not investigate complaints filed under Title VI alleging discrimination solely on the basis of socioeconomic status (e.g., income), as this is not a protected class under Title VI and DOT Order 5610.2 does not establish a requirement to investigate complaints filed on the basis of income or social class.

#### *Record of Title VI Complaints, Investigations, and Lawsuits*

Chapter IV, Section 6 of the proposed circular instructed recipients and subrecipients to prepare and maintain a list of any active investigations, lawsuits, or complaints naming the recipient and/or subrecipient that allege discrimination on the basis of race, color, or national origin.

*Comments:* One organization commented on this provision. The commenter stated that the circular offers no objective criteria for the contents of the required log of complaints, investigations, and lawsuits.

*FTA Response:* This section of the final circular states that the record of complaints, lawsuits, or investigations "shall include the date the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient or subrecipient in response to the investigation, lawsuit, or complaint" (see Chapter IV, Section 6). This language establishes an objective criterion for the contents of the log.

#### *Notifying Beneficiaries of Protection under Title VI*

Chapter IV, Section 7 of the proposed circular instructed recipients and subrecipients to provide information to beneficiaries regarding their agencies'

Title VI obligations and apprise beneficiaries of protections against discrimination afforded to them by Title VI.

*Comments:* One entity commented on this provision. The organization stated that the section's guidance and reference to disability, age, and gender discrimination repeats requirements found in other regulations and is confusing.

*FTA Response:* FTA acknowledges that this guidance overlaps with other civil rights requirements, but the final circular retains the suggestion that recipients and subrecipients publish a single, consolidated notice of their nondiscrimination obligations rather than separate notices that pertain to race, disability, age, gender, etc. (see Chapter IV, Section 7 of Circular 4702.1A). The public is well served when grantees provide a simple, comprehensive notice of all pertinent nondiscrimination obligations.

#### *Additional Information*

Chapter IV, Section 8 of the proposed circular states that, at the discretion of FTA, information other than that required by this circular may be requested in writing from a recipient or subrecipient to resolve compliance questions with Title VI and that failure to provide this information may result in a finding of noncompliance.

*Comments:* One organization commented on this provision, stating that the paragraph inappropriately creates a carte blanche ability within FTA to create reporting requirements and that this section would render compliance a "moving target."

*FTA Response:* Chapter IV Section 6 of the final circular retains FTA's right to request information other than that specifically required by the circular in order to resolve Title VI compliance concerns. This provision is necessary to ensure that FTA fulfills Section 21.11(c) of the DOT Title VI regulations. This section states that "the Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part." In most cases, FTA should be able to resolve allegations of discrimination by requesting and reviewing the specific information required in Circular 4702.1A. On an infrequent basis, FTA

may request additional information in order to ensure that pertinent practices and policies of the recipient are reviewed. This flexibility to request additional information does not alter how FTA will determine whether a recipient is noncompliant with Title VI (discussed in Chapter II, Section 5 of the final circular) or the procedures for effecting compliance that FTA will take to ensure compliance (discussed in Chapter X of the final circular).

#### *Program-Specific Guidance for Recipients Serving Large Urbanized Areas*

Chapter V of the proposed circular provided program-specific guidance for recipients providing service to urbanized areas of 200,000 persons or more under 49 U.S.C. 5307.

*Comments:* Two organizations commented on the scope of this chapter. One commenter asked whether this chapter's requirements apply to transit providers that provide service within an urbanized area of 200,000 people or greater but whose service area (as defined by the population residing within a three-fourth mile boundary of the system's transit routes) is under 200,000. Another commenter stated that under the proposed circular, the agency would need to respond to the general reporting requirements since the majority of its service area lies within an urbanized area with a population over 200,000; however, the agency, which has a total of 32 busses and 2,100 daily boardings, lacks the resources to prepare the same level of analysis required of large transit operators.

*FTA Response:* The final circular clarifies that the program-specific requirements in Chapter V apply to those entities that are authorized to provide transit service to jurisdiction(s) where the total population of the jurisdiction(s) is 200,000 or greater. For example, a recipient with a charter to provide transit service to a specific city that happens to have a population of 50,000 would not need to comply with the requirements of this chapter even if the city is located within an urbanized area with a total population of 200,000 people or more. Alternatively, a recipient that is chartered to provide service to a county with a total population of 250,000 would be required to comply with the requirements of this chapter even if the total population residing within a certain distance of the recipient's existing fixed routes is less than 200,000.

#### *Data Collection and Policy Setting Requirements*

Chapter V, Section 1a of the proposed circular required agencies to which this chapter applies to prepare demographic service profile maps and charts that will help the recipient determine whether transit service is available to all segments of a recipient's population. Subsequent sections recommended how these maps and charts should be prepared.

*Comments:* Three organizations commented on this provision. One commenter stated that the circular should clarify that maps should identify areas where the percentage of the total minority or low-income population exceeds the average minority or low-income population. Another commenter asked FTA to clarify that producing maps alone does not demonstrate compliance with Title VI. A third commenter applauded the language in this provision that recommended but did not require that maps and overlays be prepared using Geographic Information System (GIS) technology.

*FTA Response:* Chapter V, Section 1a(2) of the final circular clarifies that transit agencies may produce maps that highlight areas where the percentage of minority and/or low-income people exceeds the average proportion for the recipient's service area. The final version retains language that does not require that maps be prepared using GIS. The proposed circular would allow recipients to prepare demographic maps and overlays in order to demonstrate that they are in compliance with the requirement at 49 CFR Section 21.9(b) that recipients have available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. Recipients can also choose to fulfill this obligation by implementing the options for collecting demographic information at Chapter V, Sections 1b, or 1c of the final circular.

Section 1(a)(1) of the proposed circular recommended that agencies prepare a base map of their transit service area that includes fixed transit facilities, major activity centers, and trip generators and that this map should highlight those facilities that were recently modernized or are scheduled for modernization in the next five years.

*Comments:* Three entities commented on this provision. One commenter asked for clarification on the provision's reference to "transit service area," asking whether the agencies should map their service area or the urbanized area in which their service is located.

Another commenter suggested that recipients reference the financial cost of facilities as well as mapping them, to present a spatial distribution of the agency's investments and ensure that investments can be proportionately distributed among all service areas. Another commenter stated that the circular should define facility "modernization." Two commenters stated that this section be amended to clarify that only transit facilities subject to modernization should be mapped.

**FTA response:** The final circular clarifies that transit agencies should prepare maps of the jurisdiction(s) where they are authorized to provide service as opposed to the urbanized area where the service is located and that the maps should identify those transit facilities subject to modernization. The final circular does not require that recipients identify the financial cost of the facilities that would be modernized because FTA does not want to imply that, in order to comply with Title VI, recipients must invest equal amounts of money in facilities that were located in or would serve different demographic groups.

Section 1(a)(2) of the proposed circular recommended that agencies prepare a demographic map that plots the information in Section 1(a)(1) and also shades those Census tracts or traffic analysis zones where the percentage of the total minority and low-income population residing in these areas exceeds the average minority and low-income population for the service area as a whole.

**Comments:** One organization commented on this provision, stating that the proposed inclusion of low-income populations in demographic maps complicates the analysis and is not required under Title VI.

**FTA response:** The final circular retains the recommendation to identify areas with predominantly low-income populations, as this guidance is consistent with DOT Order 5610.2's instructions to obtain information on the race, color, national origin, and income level of the population served and/or affected by a DOT component (see Order 5610.2, Section 7b).

Chapter V, Section 1b of the proposed circular instructed agencies to which this chapter applies to collect information on the race, color, national origin, income, and travel patterns of their riders necessary to identify any disparate effects of proposed service and fare changes and to assess the level and quality of service provided to minority, low-income, and LEP people.

**Comments:** Seven entities commented on this provision of the proposed

circular. Three transit agencies expressed reluctance to asking questions about the race, national origin, or income of their riders and stated that including this information in customer surveys would make the surveys more difficult to administer. Two commenters suggested that agencies collect demographic information on beneficiaries through Census data as opposed to on-board surveys. Another commenter stated that it would not be feasible to administer survey information at the route level and the sample size required to produce a statistically significant sample would be burdensome. This commenter noted that surveys conducted at the modal level might be feasible. Another commenter stated that this provision's guidance to administer surveys in multiple languages could be costly for large agencies in particular. Other commenters asked that the circular define or modify terms such as "travel patterns" and "transportation options" that FTA recommends be included in the agency's customer surveys and that the circular include a recommendation for how often recipients shall be required to collect survey data.

**FTA response:** The final circular offers recipients the option of collecting demographic information on their customers by using ridership surveys but does not require that recipients take this step. In lieu of collecting demographic information through ridership surveys, recipients can prepare demographic maps and overlays pursuant to Chapter V, Section 1a or implement an independent, locally developed procedure, pursuant to Chapter V, Section 1c. Those recipients that do choose to incorporate requests for demographic information into their customer surveys are not required to conduct surveys on a route-by-route basis. Administering surveys in multiple languages may be an effective way for the agency to ensure that their surveys present an accurate snapshot of their ridership. The final circular has modified the references to "travel patterns" and "transportation options" consistent with the comments received.

#### *Service Standards and Policies*

Chapter V, Section 1c instructs recipients to which this chapter applies to adopt system-wide service standards necessary to guard against arbitrary or discriminatory service design or operational decisions. This section also recommends that agencies adopt some specific service standards or policies, which are described in Section c (1) through c (7).

**Comments:** Seven organizations commented on this provision of the proposed circular. One commenter requested that the circular clarify that the service standards and policies in this section might not be applicable to ADA complementary paratransit service providers. Another commenter asked that the final circular distinguish between system-wide service "standards," which are defined by quantitative thresholds, and system-wide service "policies" and noted that the proposed service standards for vehicle assignment and transit security are difficult to associate with a measurable standard. Another commenter stated that this section would require grantees to adopt undefined service standards or define a metric for a standard that is recommended. Another commenter asked FTA to clarify whether the standards listed in the proposed circular are required or optional. A final commenter stated that this section imposes heavy and detailed requirements for what have been traditionally local decisions. A final commenter approved of the proposed circular's language that allowed grantees to define their own service standards.

**FTA response:** The final circular requires that recipients adopt quantitative system-wide service standards and that recipients also adopt system-wide policies. System-wide policies differ from service standards in that they are not necessarily based on a quantitative threshold. What specific standards and policies are adopted, as well as how standards and policies are defined, remain local decisions. The final circular offers some examples of standards and policies that recipients could adopt but clarifies that recipients can choose to set standards and policies for other indicators. Providers of ADA complementary paratransit are not required to adopt service standards under Chapter V, Section 2. The DOT ADA complementary paratransit regulations at 49 CFR Section 37.131 provide service criteria for providers of ADA complementary paratransit.

Section 1(c)(1) suggests that recipients adopt a system-wide standard for vehicle load, which the circular describes as a ratio of passengers to the number of seats on a vehicle.

**Comments:** One organization commented on this provision of the circular. The commenter suggested that this section define how vehicle load should be measured, including how agencies should select the location along a route for measurement. The commenter also stated that agencies should have the flexibility to define

vehicle load in terms of passengers per vehicle at its maximum load point as opposed to a ratio between passengers and the number of seats on a vehicle.

**FTA Response:** The final circular states that vehicle load can be expressed as the ratio of passengers per vehicle or the ratio of passengers to the number of seats on a vehicle during a vehicle's maximum load point. Agencies have flexibility to measure vehicle load using locally developed procedures.

Section 1(c)(2) suggests that agencies adopt a system-wide standard for vehicle assignment, which is described in the circular as the process by which transit vehicles are placed into service in depots and routes through the recipient's system.

**Comments:** Two organizations commented on this provision of the circular. One commenter asked whether FTA expects agencies to set vehicle assignment standards at the route level, and noted that it would not be practical for the agency to equalize the age of vehicles on all routes. The commenter also asked for guidance to clarify what types of vehicles qualify as "clean fuel" vehicles and suggested that FTA not create a hierarchy of clean fuel vehicles. Another commenter suggested that the circular include a measurement standard to be used to evaluate clean fuel vehicle deployment.

**FTA response:** The final circular gives recipients the discretion to set vehicle assignment policies at the route or at the system level but does not require that the age of vehicles on all routes be equal. Rather than defining "clean fuel vehicles" the revised section includes references to vehicles equipped with technology designed to reduce emissions. The policy gives an example of a measurement standard that recipients could use to evaluate the deployment of such vehicles.

Section 1(c)(4) suggests that agencies adopt system-wide standards for on-time performance, described as a measure of the percentage of runs completed as scheduled.

**Comments:** Two organizations commented on this provision. The commenters stated that on-time performance is not a reasonable measurement for Title VI evaluations and that too many factors influence whether vehicles arrive on time.

**FTA Response:** The final circular includes a service standard for on-time performance as an example of a system-wide standard that could be adopted. Recipients can decline to adopt this standard if they do not consider it a useful performance indicator.

Section 1(c)(5) suggests that agencies adopt system-wide standards for the

distribution of transit amenities, described as items of comfort and convenience available to the general riding public.

**Comments:** Five organizations commented on this provision. Two commenters agreed with the section's guidance that transit agencies should not set standards for amenities, such as bus shelters, which are solely installed and maintained by a separate jurisdiction. Another two commenters requested that the circular encourage agencies to survey and account for bus shelters and stops provided by third parties or local municipalities. Another commenter suggested that agencies set standards for distributing amenities within transit modes but that the standard for distributing amenities be allowed to vary between modes.

**FTA response:** The final circular does not modify the proposed circular's language on the distribution of transit amenities. Agencies are not required to survey or account for bus shelters and stops provided by parties not under their control; however, agencies may do so if they determine that such action would assist them in complying with Title VI or provide better customer service in general.

Section 1(c)(6) suggests that recipients set system-wide standards for service availability, described as a general measure of the distribution of routes within a transit district.

**Comments:** Two organizations commented on this provision. One commenter sought clarification on whether the reference to a "transit district" refers to an agency's service area or the urbanized area where the agency is providing service. Another commenter noted that this section offers the same guidance as the "transit access" provision in Circular 4702.1.

**FTA response:** Chapter V, Section 2a(4) of the final circular references the recipient's "service area" as defined in Chapter II, Section 6 of the final circular. This notice confirms that this provision is comparable to the "transit access" service standard in Circular 4702.1.

Section 1(c)(7) suggests that recipients set system-wide standards for transit security, described as measures taken to protect a recipient's employees and the public against any intentional act or threat of violence or personal harm, either from a criminal or terrorist act.

**Comments:** Five organizations commented on this provision. One commenter applauded FTA for including this standard. Another asked FTA to consider providing more specific guidance on how to eliminate racial profiling in the context of transit

security. Another commenter stated that this standard should only be required when the transit agency, as opposed to local law enforcement agencies, is responsible for providing security on its system. A fourth commenter stated that this standard would mean that local law enforcement activities would come under Federal review. A fifth commenter noted that without the proper risk and vulnerability assessments conducted and supported by FTA, a local authority would be forming its own standard in a vacuum. The commenter stated that a clear national standard and process will guarantee individual liberties while protecting transit infrastructure.

**FTA response:** Appendix D includes a reference to DOT's policy statement, "Carrying Out Transportation Inspection and Safety Responsibilities in a Nondiscriminatory Manner," which can be found at <http://airconsumer.ost.dot.gov/rules/20011012.htm>. This statement is a reminder to DOT employees and those carrying out transportation inspection and enforcement responsibilities with DOT financial support of longstanding DOT policy prohibiting unlawful discrimination against individuals because of their race, color, religion, ethnicity, or national origin. As was referenced in this notice's discussion of standards for the distribution of transit amenities, a recipient should only set system-wide policies for those aspects of transit security that it has the authority to implement. As with the other service standards, system-wide security policies will be set at the local level and FTA will not dictate what a recipient's policies should be. The circular's reference to transit security does not conflict with prior FTA directives to conduct risk and vulnerability assessments and to develop consistent policies.

#### *Equity Analysis of Service and Fare Changes*

Chapter V, Section 1d of the proposed circular instructed recipients to which this chapter applies to evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact.

**Comments:** Four organizations commented on this provision. Two commenters stated that the circular should provide direction for evaluating service restructuring and improvements as well as reductions in transit service. One commenter suggested that the circular clarify that Title VI evaluations be done at the same time that options

are being proposed. Another commenter suggested that the circular adopt their agency's definition of a "major service reduction." Another commenter expressed concern that their agency would need to evaluate service changes that had already gone into effect using the updated guidance.

**FTA response:** The final circular requires that recipients to which this chapter applies shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact. For service changes, this requirement applies to "major service changes" only. The recipient should have established guidelines or thresholds for what it considers a "major" change to be. Often, this is defined as a numerical standard, such as a change that affects 25 percent of service hours of a route. FTA recommends that recipients evaluate the impacts of their service and/or fare changes using one of two options (see Circular 4702.1A, Chapter V, Section 4). The final version of this provision continues to state that the recipient's evaluation should occur at the planning and programming stages. Recipients will not be required to include in their compliance reports to FTA an analysis of service changes that went into effect before the final circular was published. The final circular does not adopt a specific definition for a major service reduction to ensure that recipients can establish their own guidelines or thresholds for what they consider major service changes to be.

Section 1(d)(1)(a) of the proposed circular recommended that recipients evaluate the effects of proposed route eliminations on minority and low-income populations by mapping the routes that would be eliminated overlaid on a demographic map that highlights those Census tracts where the minority and low-income population exceeds the service area average.

**Comments:** Three organizations commented on this provision. One commenter stated that the circular should clarify that data from ridership surveys as well as maps should be used to evaluate the impacts of route eliminations. In contrast, another agency stated that customer survey data is not extensive enough to support an analysis of the effects of eliminating individual routes. Another agency stated that requiring a new map for each proposed service change would be burdensome and that agencies should be encouraged to use the evaluation methods that are most effective.

**FTA response:** The final circular gives agencies the option of evaluating service and fare changes according to the procedures in Chapter V, Section 4a. Agencies also have the option to prepare an evaluation based on a modified version of these procedures or to develop their own methodology in order to determine whether system-wide service and fare changes would have adverse and disproportionately high effects. Chapter V, Section 4b states that any locally developed alternative shall include a description of the methodology used to determine the impact of the service and fare change, a determination as to whether the proposed change would have discriminatory impacts, and a description of what, if any, action was taken by the agency in response to the analysis conducted.

Section 1(d)(3) of the proposed circular recommended that agencies consider, as part of their evaluation of the impacts of service changes on protected groups, actions that the agency would take to minimize, mitigate, or offset any adverse effects of fare and service changes on minority and low-income populations.

**Comments:** One organization commented on this provision. The commenter stated that this section could result in the requirement for non-minority passengers to subsidize fare increases for minority passengers.

**FTA response:** The final circular retains the recommendation that agencies take minimizing, mitigating, and offsetting actions into account when analyzing the effects of their service or fare changes. This provision is consistent with the considerations expressed in the DOT Order on Environmental Justice to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and provide offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities (see DOT Order 5610.2, Section 7(c)(2)).

Section 1(d)(4) of the proposed circular recommended that agencies determine which, if any, of the service or fare change proposals under consideration would disproportionately affect minority and low-income riders. The section advised recipients that they can implement a fare increase or major service reduction that would have disproportionate effects if the recipient demonstrates that the action meets a substantial need that is in the public interest and that alternatives would

have more severe adverse effects than the preferred alternative.

**Comments:** Two entities commented on this provision. One commenter suggested that the circular clarify that an analysis of disproportionate effects would require a comparison of the effects of the change on minority versus non-minority riders. Another commenter stated that this section would mistakenly transform the internal data collection and analysis guidelines contained in the DOT Order on Environmental Justice into requirements for grantees to use in distributing transit resources and, as such, would severely impact State and local decisions on how to spend State and local tax and bond revenues.

**FTA response:** Chapter V, Section 4a(4) of the final circular recommends that, as part of their evaluation of service and fare changes, recipients should determine which, if any, of the proposals under consideration would have a disproportionately high and adverse effect (as defined in Chapter II, Section 6) on minority and low-income riders. Because the DOT Order 5610.2 applies to policies, programs, and other activities undertaken, funded, or approved by FTA, including policy decisions and systems planning, the circular's guidance that recipients identify and address the impacts of service and fare change proposals on minority and low-income populations is appropriate. This guidance does not mean that FTA will dictate or even recommend what specific service or fare changes the agency should ultimately adopt. Pursuant to 49 U.S.C. Section 5334(11)(b)(1), FTA is prohibited from regulating operations and charges. The provisions in the final circular are included to ensure that recipients take proactive action to ensure that no person is excluded from participation in or denied the benefits of programs or activities on the grounds of race, color, and national origin (pursuant to 49 CFR Section 21.5(b)(7)) and to ensure that planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment include explicit consideration of the effects on minority populations and low-income populations, (pursuant to DOT Order 5610.2 Section 4b(1)).

#### *Monitoring Requirements*

Chapter V, Section 2 of the proposed circular instructed recipients to monitor the level and quality of the transit service they provide to ensure that service is being provided on an equitable basis. This section also

recommended specific methodologies that recipients could use to monitor the level and quality of service.

*Comments:* Two organizations commented on this provision. One commenter suggested that the circular require that agencies take corrective action if monitoring confirms disparities in the level and quality of transit service. A second commenter stated that the proposed methodology for analyzing results of customer surveys at Chapter V, Section 2c of the proposed circular is inconsistent with the quality of service methodology at Chapter V, Section 2b of the proposed circular, even though both methodologies seek to determine whether there are significant differences in the quality of service being provided to different demographic groups.

*FTA response:* Chapter V, Section 5 of the final circular states that if recipient monitoring determines that prior decisions have resulted in disparate impacts, agencies shall take corrective action to remedy the disparities. The final circular eliminates the inconsistency between the recommended customer survey monitoring procedures in Chapter V, Section 1b and the customer surveying procedures in Chapter V, Section 5c.

#### *Preparing and Submitting a Title VI Report*

Chapter V, Section 3 instructs recipients to which this chapter applies to prepare and submit a Title VI report that documents their compliance with the requirements of Chapter V as well as with the requirements for all recipients listed in Chapter IV.

*Comments:* Two organizations commented on this provision. One commenter stated that the terms used to describe the list of items that should be submitted to FTA should reference the terms used earlier in the chapter. A second commenter said that FTA should set time frames for its review and approval of the Title VI submittals required in this section.

*FTA response:* The final circular uses terms consistently throughout the document. The guidance on reporting does not include a set time frame for when FTA will approve or disapprove a submission; however, FTA's Office of Civil Rights strives to provide a prompt response to the submittals. FTA is exploring the option of allowing grantees to submit their reports via FTA's Transportation Electronic Award Management System (TEAM-Web), which should expedite the submission and review of these reports.

#### *Statewide Transportation Planning Activities*

Chapter VI, Section 1 of the proposed circular instructed State DOTs to have an analytic basis in place for certifying their compliance with Title VI.

*Comments:* Three organizations commented on this provision. Two organizations suggested that, prior to certifying compliance with Title VI, State DOTs be required to develop and conduct specific statewide analytical processes to meet this requirement. One commenter stated that such disparity studies should include comparisons of investment and spending in different urban areas within the state. The commenter said that State DOTs need to undertake their own analytical process rather than compiling the analytical efforts conducted by the MPOs in the state. A second commenter stated that there is no requirement for corrective action should the analytical process disclose disparities.

*FTA response:* The final circular offers guidance that State Departments of Transportation integrate, into statewide planning activities, considerations expressed in the DOT Order on Environmental Justice, by having an analytic basis in place for certifying compliance with Title VI. This analysis should evaluate the state's own planning activities and should not consist of a summary of the analysis conducted by MPOs. State DOTs can compare investments and spending in different urban areas within the state as part of their efforts to meet this requirement. If, after conducting a State Management Review, Compliance Review, or investigation in response to a discrimination complaint, FTA determines that a state has taken action that is inconsistent with the DOT Title VI regulations in the context of transportation planning, FTA will require the State DOT to take corrective action.

#### *Program Administration*

Chapter VI, Section 2 of the proposed circular instructed State DOTs or other State administering agencies to document that they pass through Federal funds to subrecipients without regard to race, color, and national origin.

*Comments:* Two organizations commented on this provision. One commenter stated that FTA should ensure that this section is consistent with FTA's proposed guidance for public transit-human services coordination. A second commenter stated that the criteria that States may use to determine whether a subrecipient

provides transit service to a predominantly minority and low-income population (included in Section 2b) is inconsistent with the definitions section in Chapter II.

*FTA response:* FTA has determined that the language in the final circular is consistent with the language in FTA's proposed circulars for the Job Access and Reverse Commute (JARC) program, the New Freedom program, and the Elderly Individuals and Individuals with Disabilities program. The terms used in this chapter are consistent with the definitions in Chapter II.

#### *Metropolitan Transportation Planning Requirements*

Chapter VII of the proposed circular instructed MPOs to have an analytic basis in place for certifying their compliance with Title VI.

*Comments:* One organization commented on this provision. The commenter stated that the proposed circular does not require MPOs take corrective action should their analytical process disclose disparities. The commenter also suggested that FTA acknowledge that not all MPOs are subrecipients of State DOTs and those that are not should not be required to report through the State DOT.

*FTA response:* The proposed and the final circular both included language recommending that MPOs have an analytical process in place for addressing as well as identifying imbalances in transportation to different demographic groups if such imbalances are identified (see Circular 4702.1A, Chapter VII, Section 1c). The final circular also clarifies that those MPOs that receive funds directly from FTA should report to FTA (Circular 4702.1A, Chapter VII, Section 2).

#### *Compliance Reviews*

Chapter VIII of the proposed circular described the review process that FTA will follow when determining a recipient's or subrecipient's compliance after the award of Federal financial assistance and what information and actions are expected from recipients and subrecipients that are subject to these reviews.

*Comments:* Two organizations commented on provisions in this chapter. Both commenters stated that FTA should create an objective, non-exhaustive list of factors for determining which recipients will be selected for compliance reviews and that the compliance review procedures could be clarified by use of a flow chart or description of a sample review.

*FTA response:* Chapter VIII, Section 2 of the final circular issues an objective

criteria for which recipients will be selected for a post-award compliance review. This chapter also includes a flow chart of the compliance review process.

#### Complaints

Chapter IX of the proposed circular described how FTA will respond to complaints of discrimination under Title VI that are filed with FTA against a recipient or subrecipient of FTA funds.

**Comments:** Four organizations commented on the provisions in this chapter. Two commenters asked for more information on when and in what format FTA will notify the public of its procedures for accepting and investigating Title VI complaints. Another commenter stated that FTA should require that recipients have free and fair access to complaints filed against them and that FTA have a standard to determine when a complaint is timely and that grant recipients have sufficient time to respond to the complaint. Another commenter stated that favorable reviews of recipients' Title VI programs should have some bearing in expediting FTA action on Title VI complaints.

**FTA response:** FTA's Office of Civil Rights handles Title VI complaints pursuant to the regulations at 49 CFR Section 21.11 and using guidance contained in the "Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes." This manual was published by DOJ's Civil Rights Division and can be found at <http://www.usdoj.gov/crt/cor/coord/invmanual.htm>. In addition, DOT's Office of Civil Rights is developing an External Civil Rights Complaint Processing Manual that contains guidance modeled after the DOJ manual. Once this document is finalized FTA will investigate discrimination complaints based on the procedures contained therein. In general, and pursuant to the guidance in the DOJ manual, timely complaints are those filed within 180 days of the occurrence of the alleged discrimination. FTA strives to balance the need to promptly investigate and resolve discrimination complaints with the need to give recipients adequate time to respond to allegations of discrimination. In practice, FTA's Office of Civil Rights typically asks recipients to respond to a complaint within 30 to 60 days of the date of the request.

In addition, the final circular has been modified to state that once the complainant agrees to release the

complaint to the recipient or subrecipient, FTA will provide the agency with the complaint. If the complainant does not agree to release the complaint to the recipient or subrecipient, FTA may administratively close the complaint (see Chapter IX, Section 2).

#### Effecting Compliance

Chapter X of the proposed circular outlined FTA's procedures for effecting compliance when it determines that a grantee is in noncompliance with Title VI.

**Comments:** Two entities commented on the provisions in this chapter. The commenters stated that FTA should identify in this chapter or elsewhere its own commitment to Title VI and provide a benchmark for grantees and the public as to what they can expect regarding diligent enforcement. The commenters also stated that relevant parts of the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), be discussed in the circular. In this decision, the Supreme Court foreclosed a private right of action to enforce DOJ and DOT regulations. The commenters stated that, given the outcome of this decision, FTA should verify if there are limitations to the "Judicial Review" procedures discussed in Chapter X, Section 3.

**FTA response:** Both the proposed circular and the final circular contain detailed guidelines as to when and under what circumstances FTA will initiate proceedings. The guidance in this Chapter is consistent with the requirement at 49 CFR Section 21.9(a) that the primary means of effecting compliance with Title VI is through voluntary compliance agreements with the recipients and that fund suspension or termination or referrals to DOJ are means of last resort. These guidelines should also allow FTA to balance its duty to permit informal resolution of findings of noncompliance against its duty to effectuate, without undue delay, the prohibition of continued assistance to programs or activities that discriminate.

The final circular does not incorporate language from the *Sandoval* decision; however, FTA is aware that, pursuant to this decision, filing an administrative complaint with a recipient or with FTA is the only recourse for individuals alleging that a recipient has engaged in disparate impact discrimination in violation of the 49 CFR Section 21.5(b)(2). FTA takes seriously its obligation to provide due process to parties involved in such complaints as well as its obligation to set clear expectations for recipients on

how to avoid disparate impact discrimination.

#### Appendices

The proposed circular included three checklists that listed the reporting requirements that should be prepared and submitted to FTA.

**Comments:** Four entities commented on these appendices. Two commenters stated that the checklists were beneficial tools and that it would be helpful to add to the charts a column that referenced the specific sections of the regulations that the reporting requirements apply to. Another commenter stated that Appendix A should identify the FTA Office to which a recipient or subrecipient should submit the information and another commenter stated that it would be helpful to add an index.

**FTA response:** The final circular includes appendices that have been modified consistent with these comments (see Circular 4702.1A, Appendices A, B, and C) and includes an index.

Issued in Washington, DC, this 6th day of April 2007.

**James S. Simpson,**  
Administrator.

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**BILLING CODE 4910-57-P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 9, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

**Dates:** Written comments should be received on or before May 14, 2007 to be assured of consideration.

### Alcohol and Tobacco Tax and Trade Bureau (TTB)

**OMB Number:** 1513-XXXX.

**Type of Review:** Existing collection in use without an OMB Control Number.

**Title:** Distilled Spirits Bond.

**Form:** TTB 5110.56.