



December 2, 2011

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

Re: DOCKET # FTA-2011-0055 (Proposed Environmental Justice (EJ) Circular)

To Whom It May Concern,

On behalf of the more than 300 member organizations of the California Association for Coordinated Transportation (CalACT), I am writing to provide comments on the notice by the Federal Transit Administration (FTA) of their proposed Circular and request for comments regarding Environmental Justice (EJ), published September 29, 2011. CalACT is a statewide, professional association of transit managers, planners and suppliers. Our members include many of the organizations that transport the general public, seniors and persons with disabilities throughout California, and the agencies that fund these services. Our members also include non-profit agencies that provide an additional safety net of transportation services.

CalACT, therefore, is a diverse group of transportation providers, managers, planners and suppliers committed to providing coordinated transportation, and meeting the needs of small urban, rural and specialized transportation systems and users.

CalACT and our members sincerely appreciate the efforts by FTA to update and clarify the requirements and recommendations that are intended to ensure that service to all segments of the community is provided in an equitable and non-discriminatory manner. It is in that spirit that the following comments, questions, and suggestions are offered.

General Comments about Both the Title VI and EJ Circulars

In general, the proposed circulars appear to be aimed at urban and fixed-route transit systems. FTA needs to be more attentive to the nuances of rural systems, and of systems such as "dial-a-ride" which serve the general public in a demand-responsive

mode, where the operating characteristics are very different. FTA clearly has good intentions in these new circulars, and they are a helpful improvement over the existing document, but FTA should be much more cognizant of the limited resources, both personnel and financial, of small and rural systems. The costs required to ensure compliance with FTA requirements should not be excessive compared to the benefits of the grant program(s) involved, and should not detract from providing the actual service that is so needed by the individuals and groups whose rights are being protected.

In a “majority minority” state such as California, standard federal definitions may have the unintended consequence of including “too broad” of the population within protected categories, while perhaps disenfranchising non-majority Caucasian populations. FTA should caution and protect against avoiding such outcomes. We are encouraged that the FTA Office of Civil Rights has broadened its attention from previous years and is taking steps to ensure that all people’s civil rights are protected. We applaud those efforts.

FTA should provide clearer guidance as to how the impacts of cumulative effects and/or changes should be included in any analyses. Also, where state environmental law and regulations such as CEQA (the California Environmental Quality Act) provides stronger environmental protections and/or restrictions than NEPA, the state-level analysis should suffice.

When the current Title VI circular was adopted, the Federal Register material indicated that FTA did not want to cause “confusion” with regard to the Americans with Disabilities Act (ADA), and implied that Title VI did not apply to ADA services. This has since been replaced by a single “Q+A” on the FTA website. FTA should clarify the relationship between all of the civil rights statutes and directives, especially with regard to provision of ADA “complementary paratransit” services.

Particularly in rural communities, many transit providers have staff who are bilingual or multilingual, at least at a practical (rather than academic) level. This common-sense means of compliance with LEP requirements should be encouraged and allowed wherever practicable.

MPOs need to be held more clearly responsible for the effects of their planning and funding decisions, no matter what the fund source(s). In California, “unmet transit needs” often suffer when road and highway interests are held to be more important locally, and the transit systems have little recourse, often resulting in diminished service to all parts of the community. Further, any “delegation” or “designation” of MPO responsibilities should be allowed only with the voluntary agreement of the transit agency.

Our members have expressed concerns as to whether FTA has sufficient personnel and other resources to review and enforce the proposed new requirements. If approvals are not received in a timely fashion, or if questions are delayed in receiving responses, it will

detract from our ability to provide service. We urge caution to FTA to avoid having these very good intentions be spoiled by a lack of bureaucratic resources.

Comments Specific to the Draft Environmental Justice (EJ) Circular #C 4703.1

Our comments regarding the Title VI Circular explain the need to distinguish a service “contractor” from a subrecipient. We suggest a clarifying definition for contractor such as “an entity which provides services under the direction and oversight of, and in the name of, a public transit agency” (to distinguish from a subrecipient which usually involves a specific grant under its own name). The one responsibility for which a contractor generally seems to have the most autonomy is the location and operation of its maintenance/fueling yard(s). This can have an EJ impact especially with diesel vehicles if a residential community is nearby. Public agencies should consider including a policy statement to avoid adverse effects in their EJ program and in contract language.

While EJ is considered less “enforceable” than Title VI, because it is based on Executive Order rather than statute, FTA should make clear how violations will be determined, and what sorts of sanctions may be imposed, under what circumstances.

Again, CalACT hopes that these comments will be useful in providing transit systems and local communities with improved tools and methods to ensure that all transit customers are served equitably. We also continue to wish that there were enough funding to serve everyone adequately.

If you have any questions or desire further information regarding these requests and recommendations, please do not hesitate to contact me at 916-920-8018 or via email at jacklyn@calact.org.

Sincerely,

Jacklyn Montgomery
CalACT, Executive Director