



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 No. FTA-2011-0055

Dear Docket Clerk:

On behalf of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration's (FTA) notice of availability of proposed circular and request for comments on Environmental Justice (EJ); Proposed Circular, published September 29, 2011 at 76 FR 60590.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comments

APTA applauds the FTA for their outstanding outreach and education efforts on the proposed EJ Circular. The final circular will be a valuable reference guide on best practices for transit and other entities.

APTA Has Some General Concerns

The draft, in various places, appears to blur the line between requirements and suggestions. There are a number of instances where the word "should" is used, contributing to this uncertainty. Our understanding is that FTA's intent is to provide a list of best practices, and the suggestions are not intended to be requirements. Because oversight consultants sometimes interpret "should" as "must" we ask FTA to clarify they are providing options for compliance, eschewing use of the word "should."

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Chapter 1

While the draft provides that EJ analysis is required when activities may affect either a low income or minority population, there is no guidance on what level of activity might trigger that analysis. While substantial or programmatic activities – construction, major service cuts or fare increases– would require analysis, FTA should provide agencies with flexibility to determine what types of more routine service changes would require EJ analysis.

Chapter 2

The process of determining whether an EJ community exists is a substantially subjective one. We appreciate that FTA has noted definitions of terms such as “meaningful greater” and “affected area” might vary by community and believe FTA should also affirmatively state that transit agency determinations in these matters will not be disturbed if reasonable. FTA and its regional staffs should not substitute its judgment for those of local authorities and this step would go far to assure those local authorities that their considered determinations will not easily be disturbed.

In preparing residential demographic profiles, FTA should recognize public transportation agencies often possess substantial demographic information. FTA should note this and allow agencies to make use of reliable existing data in lieu of reference to outside sources each time analysis is required.

The use of GIS data should not be required. Despite availability of the TIGER/Line files noted by FTA, GIS analysis is a potentially expensive undertaking that may not be appropriate for some agencies or activities. Moreover, the MPO is not always best suited to undertake the necessary analysis. FTA should recognize this and make clear that, where appropriate, individual transit agencies may be designated to take a lead role in the analytic process. Throughout crafting this and other guidance, FTA must remain cognizant of the widely divergent situations and agencies such guidance will apply to.

The Proposed EJ Circular provides that “minority populations will always be ‘meaningfully greater’” when the percentage of minorities exceeds 50 percent, regardless of what the percentage of minority populations is in the comparison geographic unit.

The proposed EJ 50 percent threshold for minority and low-income populations conflicts with the standard “average percentage of the minority population in the service area” used for Title VI. This will result in over-counting minorities and severely undercounting low-income groups in some areas. We suggest that FTA use the standard outlined in the Title VI circular, which allows for more meaningful analysis, which we believe is the intent of the circular.

Chapter 3

Our general comments on the use of the term “should” applies particularly to this portion of the draft. FTA’s emphasis on tailoring efforts is particularly appropriate in discussing public engagement. As above, we believe FTA should commit to accepting local outreach practices. As FTA acknowledges in the draft circular, a one-size-fits-all approach to outreach is not appropriate and transit agencies are best positioned to determine what type of outreach is most appropriate for each type of project or service change. Outreach and hearings conducted for individual capital projects or for localized service changes can be targeted to affected EJ communities relatively easily, and these types of changes lend themselves to two-way communication in an informal setting. It is significantly more challenging to have a productive dialogue with customers or hold targeted meetings for agency-wide fare increases, service cuts, or for full capital programs, particularly for transit agencies that cover very large service areas and/or operate in dense urban areas where most people pay close attention to transit fares and service. There may not be adequately-sized venues in certain EJ communities, or venues may be difficult to schedule or prohibitively expensive. Consequentially, FTA must recognize the need for grantees to use discretion in how they conduct outreach.

It is also important that FTA continue to balance the need to consider input from EJ communities with operational and financial issues. As the FTA is aware, EJ is usually a consideration before an agency even identifies a capital project, but there are instances, particularly in older systems, where facilities were sited 100 years ago in locations that made sense from an operational standpoint and that at the time may not have been EJ communities. The cost to entirely relocate a facility like this would be prohibitive and the new location could be an EJ community in 20 years. We encourage the FTA to continue to recognize these practical considerations and continue to take this common-sense approach.

Grantees must have the flexibility to tailor their efforts without fear of ‘second guessing’ by oversight authorities. As an example, some rural EJ communities may not have the access to the digital media discussed in the draft and a grantee may determine that use of digital media would not be as effective as other methods in a given situation.

Chapter 4

Once again, this portion of the draft includes a number of recommendations and suggestions that, while illustrative, could prove counter-productive if later seen as requirements. We suggest clear demarcation between requirements and recommendations, suggestions, and best practices.

As discussed above, the 50 percent threshold for minority and low-income populations conflicts with the standard in the Title VI Circular and will not allow for meaningful analysis in some regions. FTA should use the methodology outlined in the Title VI Circular that considers the demographic profile of the area surrounding the proposed project.

The comments above pertaining to outreach conducted by transit agencies are also relevant for MPOs.

Incorporating EJ into a local transportation agency's long-planning may not be feasible in all cases. In large metropolitan areas, the demographics of communities change often and what may be an EJ community today will not be one five or ten years in the future. Further, an agency's long term planning goals do not come into fruition until funds are dedicated to the program. FTA should remain flexible as to when EJ should be considered when local transportation agencies assess their long term needs.

Appendix

The definition of "Black or African American Populations," taken in conjunction with that of "Hispanic or Latino Populations," appears to not account for people of Caribbean, Central American or Brazilian ancestry other than Puerto Rican or Cuban. This and other definitions, to the extent practical, should match other programs and particularly the final Title VI circular.

We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

Michael P. Melaniphy
President & CEO

MPM/jpl/jr