DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 771

49 CFR Parts 619 and 622

Federal Transit Administration

Policy Guidance Concerning Application of Title VI of the Civil Rights Act of 1964 to Metropolitan and Statewide Planning

AGENCIES: Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), DOT.

ACTION: Notice of policy.

SUMMARY: This document publishes guidance regarding the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) concerning nondiscrimination in federally assisted programs, in metropolitan and statewide planning. This guidance was previously issued on October 7, 1999, as a memorandum to FTA Regional Administrators and FHWA Division Administrators, and is printed in its entirety.

FOR FURTHER INFORMATION CONTACT: For application to metropolitan planning, Mr. Sheldon M. Edner, FHWA, (202) 366–4066 or Mr. Charles Goodman, FTA, (202) 366–1944. For application to statewide planning, Mr. Dee Spann, FHWA, (202) 366–4086 or Mr. Paul Verchinski, FTA, (202) 366–1626. All are located at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

(Authority: 23 U.S.C. 315; 49 CFR 1.48 and 1.51)

Issued on: May 9, 2000.

Nuria I. Fernandez,
Acting Administrator.

Kenneth R. Wykle,
Federal Highway Administrator.

The guidance memorandum reads as follows:

Date: October 7, 1999.
Subject: *ACTION:* Implementing Title VI Requirements in Metropolitan and Statewide Planning
From: Gordon J. Linton, Administrator, FTA
Kenneth R. Wykle, Administrator, FHWA
To: FTA Regional Administrators
FHWA Division Administrators

Background

The purpose of this memorandum is to issue clarification to you in implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d–1) and related regulations, The President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VI bars intentional discrimination as well as disparate impact discrimination (*i.e.*, a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law also applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI in the planning process is during the planning certification reviews conducted for Transportation Management Areas (TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

This memorandum serves as clarification pending issuance of revised planning and environmental regulations.

Requested Action

We request that during certification reviews you raise questions that serve to substantiate metropolitan planning organization (MPO) self-certification of Title VI compliance. Suggested questions are attached. Also attached are a series of actions that could be taken to support Title VI compliance and EJ goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Statewide planning is also subject to the same Title VI legislative requirements as the metropolitan planning process. The FHWA division offices, jointly with FTA regional offices, should review and document Title VI compliance when making the TEA–21 required finding that STIP development and the overall planning process is consistent with the planning requirements.

In part, the purpose of asking the questions attached to this memorandum is to review the basis upon which the annual self-certification of compliance with Title VI is made. The metropolitan planning certification reviews in TMAs and STIP findings offer an opportunity to FHWA and FTA staff to verify the procedures and analytical foundation upon which the self-certification is made. If it becomes evident that the self-certification was not adequately supported, a corrective action is to be included in their certification report to rectify the deficiency.

The FHWA's and FTA's Division and Regional Administrators should involve their respective civil rights staffs in the EJ and Title VI portions of the metropolitan planning certification reviews in TMAs and statewide planning findings.

Forthcoming Planning Regulations

As you know, FHWA and FTA are preparing to revise the planning (23 CFR 450 and 49 CFR 619) and environmental (23 CFR 771 and 49 CFR 622) regulations. In these rulemakings and subsequent documents, we will propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order on Environmental Justice. Specifically, the proposals will focus on

public involvement strategies for minority and low-income groups and assessment of the distribution of benefits and adverse environmental impacts at both the plan and project level.

If you have questions on metropolitan applications of this memorandum, please contact Sheldon M. Edner, Team Leader, Metropolitan Planning and Policies, FHWA, (202) 366–4066; or Charlie Goodman, Division Chief, Metropolitan Planning, FTA (202) 366–1944. On statewide applications, please contact Dee Spann, Team Leader, Statewide Planning, FHWA; (202) 366–4086; or Paul Verchinski, Chief, Statewide Planning, FTA, (202) 366–1626.

Assessing Title VI Capability—Review Questions

September 1999

Discussion of these important issues will be held as part of planning certification reviews, and the discussion will be held as part of statewide planning findings that are made as part of Statewide Transportation Improvement Program (STIP) approval. These questions are offered as an aid to reviewing and verifying compliance with Title VI requirements:

1. Overall Strategies and Goals

- What strategies and efforts has the planning process developed for ensuring, demonstrating, and substantiating compliance with Title VI? What measures have been used to verify that the multi-modal system access and mobility performance improvements included in the plan and Transportation Improvement Program (TIP) or STIP, and the underlying planning process, comply with Title VI?
- Has the planning process developed a demographic profile of the metropolitan planning area or State that includes identification of the locations of socio-economic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions?
- Does the planning process seek to identify the needs of low-income and minority populations? Does the planning process seek to utilize demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP (or STIP)? What methods are used to identify imbalances?

2. Service Equity

- Does the planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socio-economic groups? Does it have a data collection process to support the analysis effort? Does this analytical process seek to assess the benefit and impact distributions of the investments included in the plan and TIP (or STIP)?
- How does the planning process respond to the analyses produced? Imbalances identified?

3. Public Involvement

- Does the public involvement process have an identified strategy for engaging minority and low-income populations in transportation decisionmaking? What strategies, if any, have been implemented to reduce participation barriers for such populations? Has their effectiveness been evaluated?
- Has public involvement in the planning process been routinely evaluated as required by regulation? Have efforts been undertaken to improve performance, especially with regard to low-income and minority populations? Have organizations representing low-income and minority populations been consulted as part of this evaluation? Have their concerns been considered?
- What efforts have been made to engage low-income and minority populations in the certification review public outreach effort? Does the public outreach effort utilize media (such as print, television, radio, etc.) targeted to low-income or minority populations? What issues were raised, how are their concerns documented, and how do they reflect on the performance of the planning process in relation to Title VI requirements?
- What mechanisms are in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered in the decisionmaking process? Is there evidence that these concerns have been appropriately considered? Has the metropolitan planning organization (MPO) or State DOT made funds available to local organizations that represent low-income and minority populations to enable their participation in planning processes?

Guidance:

Assessing Title VI Capability—FTA/FHWA Actions

Environmental Justice in State Planning and Research (SPR) and Unified Planning Work Programs (UPWPs)

At a minimum, FHWA and FTA should review with States, MPOs, and transit operators how Title VI is addressed as part of their public involvement and plan development processes. Since there is likely to be the need for some upgrading of activity in this area, a work element to assess and develop improved strategies for reaching minority and low-income groups through public involvement efforts and to begin developing or enhancing analytical capability for assessing impact distributions should be considered in upcoming SPRs and UPWPs.

Review Public Involvement Efforts During Certification Reviews for Title VI Consistency

In many areas, room for improvement exists in public involvement processes regarding engagement of minority and low-income individuals. It is appropriate to review the extent to which MPOs and States have made proactive efforts to engage these groups through their public involvement programs. Further, FHWA and FTA should review the record of complaints or concerns raised regarding Title VI in the planning process under review. During the on-site element of the metropolitan certification review, the public involvement process, now required by statute, should make a special effort to engage and involve representatives of minority and low-income groups to hear their views regarding changes to and performance of the planning process.

Options for FHWA/FTA Metropolitan Certification Review Actions

(1) FHWA and FTA should seek to determine what, if any, processes are in place to assess the distribution of impacts on different socio-economic groups for the investments identified in the transportation plan and TIP. If the planning process has no such capability in place, there needs to be further investigation as to how the MPO is able to annually self-certify its compliance with the provisions of Title VI.

(2) If no documented process exists for assessing the distributional effects of the transportation investments in the region, the planning certification report should include a corrective action directing the development of a process for accomplishing this end. This will

serve to put the process on notice regarding existing requirements and prepare it for future regulatory requirements. If a minimal effort is in place, FHWA and FTA should encourage the planning process participants to become familiar with the provisions of the Executive Order on Environmental Justice and identify needed improvements based on the Order.

(3) If no formal evaluation of the public involvement process has been conducted per the requirement for periodic assessment (see 23 CFR 450.316(b)), a corrective action to conduct an evaluation should be included in the certification report. The formal evaluation should, at a minimum, assess the effectiveness of efforts to engage minority and low-income populations through the local public involvement process. If the MPO or State has conducted a public involvement evaluation, FHWA and FTA should determine whether the involvement of minorities and low-income individuals has been addressed and what strengths and deficiencies were identified. Recommended improvements or corrective actions for the certification report or STIP findings can be tied to the results of the MPO's or State's public involvement evaluation.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8885]

RIN 1545–AW55

The Solely for Voting Stock Requirement in Certain Corporate Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the solely for voting stock requirement in certain corporate reorganizations under section 368(a)(1)(C). The final regulations provide that a prior acquisition of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a ''C'' reorganization of the target corporation and the acquiring corporation from being satisfied. They affect persons engaging in certain transactions occurring after December 31, 1999.

DATES: *Effective Date:* These regulations are effective May 19, 2000.

Applicability Date: These regulations apply to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

FOR FURTHER INFORMATION CONTACT: Marnie Rapaport, (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1999, the IRS and Treasury issued a notice of proposed rulemaking in the **Federal Register** (64 FR 31770) setting forth rules relating to the solely for voting stock requirement in reorganizations under section 368(a)(1)(C). The proposed regulations provided that prior ownership of stock of a target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of a ''C'' reorganization from being satisfied. The regulations propose to reverse the IRS's previous position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free ''C'' reorganization. See Rev. Rul. 54–396 (1954–2 C.B. 147). This position subsequently was sustained in litigation in *Bausch & Lomb Optical Co.* v. *Commissioner*, 267 F.2d 75 (2d Cir.), *cert. denied*, 361 U.S. 835 (1959) (the *Bausch & Lomb* doctrine). A public hearing regarding these proposed regulations was held on October 5, 1999. Written comments to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The Applicability Date

The proposed regulations apply to transactions occurring after the date that a Treasury decision adopting the regulations is published in the **Federal Register**, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date that the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

A commentator requested that taxpayers be allowed to apply the proposed regulations to transactions occurring before the proposed regulations are published as final regulations.

The IRS and Treasury Department determined that the increased flexibility that results from the proposed regulations should be available to taxpayers in structuring transactions before their publication as final regulations. Accordingly, the IRS and the Treasury Department issued Notice 2000–1 (2000–2 I.R.B. 288), which changes the proposed effective date of the proposed regulations to apply to any transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement binding on that date. Notice 2000–1 further provides that the proposed regulations, when finalized, will adopt this effective date rule and that taxpayers may rely on Notice 2000–1 until final regulations are issued. Accordingly, the final regulations adopt this effective date rule.

Finally, Notice 2000–1 provides that taxpayers may request a private letter ruling permitting them to apply the final regulations to transactions occurring on or after June 11, 1999 (the date the proposed regulations were filed with the **Federal Register**) to which the final regulations would not otherwise apply, and for which there was not a written agreement (subject to customary conditions) binding on June 11, 1999 and at all times thereafter. The Notice cautions, however, that a private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes, with respect to the applicability of the final regulations to the transaction. Any such requests for a ruling will continue to be considered.

Extension of the Repeal of the Bausch & Lomb Doctrine to ''B'' Reorganizations

A comment was received requesting that the IRS reconsider its position in Rev. Rul. 69–294 (1969–1 C.B. 110), where the *Bausch & Lomb* doctrine was applied to disqualify a purported section 368(a)(1)(B) reorganization that followed a tax-free section 332 liquidation. In Rev. Rul. 69–294, X owned all of the stock of Y and Y owned 80 percent of the stock of Z. Y completely liquidated into X in a section 332 liquidation. As part of the plan, X (now owning 80 percent of the stock of Z) acquired the minority 20 percent stock interest in Z in exchange for X voting stock in a purported ''B'' reorganization. The ruling holds that the exchange with the 20 percent minority shareholders was not a ''B'' reorganization. The rationale is that although the acquisition from the