

from Washington. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 12 mph.

*Matthew J. Konecki*

Mr. Konecki, 37, has had anisometropic amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/15–2 and in the left, 20/200. His ophthalmologist examined him in 2005 and noted, “It is my opinion that Mr. Konecki has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Konecki reported that he has driven straight trucks for 7 years, accumulating 91,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

*Rick P. Moreno*

Mr. Moreno, 42, has a macular hole in his right eye due to an injury he sustained in 1987. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2005, his optometrist noted, “In my medical opinion, I feel Rick has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Moreno reported that he has driven straight trucks for 1 year, accumulating 24,000 miles and tractor-trailer combinations for 3 years, accumulating 2.8 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

*Roy J. Oltman*

Mr. Oltman, 47, is blind in the left eye due to trauma he sustained at the age of 7. The best corrected visual acuity in his right eye is 20/20. His ophthalmologist examined him in 2005 and noted, “From a visual standpoint, I see no limitations for Mr. Oltman. As I explained to him, I do not know all activities needed for operating a commercial vehicle, but for a person with only one eye, his visual function is excellent in the right eye.” Mr. Oltman reported that he has driven straight trucks for 5 years, accumulating 10,000 miles and buses for 7 years, accumulating 10,500 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for a moving violation in a CMV.

*Monte L. Purciful*

Mr. Purciful, 53, has a cataract in his right eye due to a traumatic injury that occurred at age 11. The best corrected visual acuity in his right eye is hand motion and in the left, 20/20. His ophthalmologist examined him in 2005 and noted, “In my professional opinion, Mr. Purciful has adequate vision to safely operate a commercial vehicle.” Mr. Purciful reported that he has driven straight trucks for 36 years, accumulating 108,000 miles and tractor-trailer combinations for 2 years, accumulating 2,000 miles. He holds a Class C operator’s license from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

*Bernard J. Wood*

Mr. Wood, 59, has a prosthetic right eye due to a traumatic injury at age 2. The best corrected visual acuity in his left eye is 20/15–1. Following an examination in 2005, his ophthalmologist noted, “In my opinion, Mr. Wood is capable and qualified to operate a commercial vehicle for interstate travel.” Mr. Wood reported that he has driven straight trucks for 10 years, accumulating 400,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows one crash, for which he was not cited, for violating any traffic laws and no convictions for moving violations in a CMV.

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The agency will consider all comments received before the close of business March 2, 2006. Comments will be available for examination in the docket at the location listed under the ADDRESSES section of this notice. The agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 23, 2006.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA–2006–23511]

#### Joint Development Guidance

**AGENCY:** Federal Transit Administration, Department of Transportation.

**ACTION:** Notice of Guidance; request for comments.

**SUMMARY:** This guidance would implement additional authority provided in the Safe, Accountable, Flexible and Efficient Transportation Equity Act, a Legacy for Users (SAFETEA–LU) for public transportation agencies undertaking joint development projects. In addition, this notice seeks comment on two issues: a clarification of what is “physically or functionally related” to a transit project; and a proposed limitation on the amount of space that might be leased under “incidental use.” Finally, this guidance would provide additional information in a question-and-answer format to assist grantees in developing and submitting project proposals for FTA review.

**DATES:** Comments should be received on or before March 2, 2006.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Paul Marx, 202–366–1675, or Paula Schwach, 816–329–3935. FTA is located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95

or later), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 9). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the FTA Web site: <http://www.fta.dot.gov>. Internet users may also 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>.

### Background

The Federal Transit laws have included joint development authority since the Urban Mass Transit Act of 1974. In the Transportation Equity Act for the 21st Century (TEA-21), the joint development authority was incorporated into the definition of a transit capital project, at 49 U.S.C. 5302(a)(1)(G). This made joint development activities eligible for reimbursement under formula and discretionary transit grant programs. SAFETEA-LU added intercity bus and rail terminals to the joint development authority, and excepted them from the prohibition on supporting the construction of space for commercial, revenue-producing activities.

The definition of "capital project" reads, in pertinent part, as follows:

(1) Capital project.—The term "capital project" means a project for \* \* \*

(G) a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, because the improvement enhances the effectiveness of a mass transportation project and is related physically or functionally to that mass transportation project, or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation—

(i) Including, property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as

daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) Excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to mass transportation;" [Emphasis on additions added.]

FTA has implemented the joint development authority as part of its grant program circulars, inserting guidance as Appendix A to Circular 5010.1, guidance for new Major Capital Investments, and as Appendix B to the Grants Management and Formula Capital Grants circulars, 9300.1 and 9030.1. The proposed revision incorporates the new authority provided in SAFETEA-LU, and it seeks to clarify how FTA will review and approve specific activities involving the use of federally-assisted real property. These include transfer of real property for joint development, incidental use and shared use of transit property, as well as property disposition. The following are changes made to the original Appendix, for each of Circulars 5010.1, 9030.1 and 9300.1. The revised Appendix, as a substitute for the existing Appendices, is accessible on the FTA Web site, at <http://www.fta.dot.gov/>; as well as in the DOT Docket, at FTA-2006-23511.

- Page 1—Reorganized the beginning of the Appendix to focus on the three tests defining a joint development: Statutory Definition; Financial Return; and Highest and Best Transit Use.

- Page 5—Eligible Costs—Added element f., "including integrity bus and rail facilities." This item reflects the new authority in SAFETEA-LU.

- Page 10—Added a new Section 9: Process for Submitting a New Joint Development Proposal.

- Page 12—Revised Frequently Asked Questions, to include new examples on low and moderate-income housing (Question 11), Parking for Community Service Activities (Question 13), the difference between Joint Development Transfer and Disposition (Question 14), and the difference between Joint Development and Shared Use (Question 15).

- Page 25—Added Questions 18, 19, and 20 to clarify the treatment of property disposition, sharing common walls, and intercity bus and rail stations.

- Attachment 1—FTA has developed a Joint Development checklist defining

what is to be included in a project proposal submitted for FTA review.

FTA seeks comment on these revisions to the joint development appendices to the respective FTA Circulars.

In addition, FTA seeks comment on two basic issues that arose during the development of this Appendix.

Physically or Functionally Related—A joint development project must be a mass transportation improvement that is physically or functionally related to the transit project. Based on the implementation of this authority over the last twenty years, FTA has taken this to mean that: either the joint development must be integrated into the transit project—i.e., share its common walls, floor, and/or roof—or that the joint development must be related to the transit project by function, as evidenced by connecting pathways, joint use of parking, bicycle and related amenities, and enhancement of the transit system by the joint development. FTA has tended to prefer projects where the joint development was fully integrated into the overall transit project, thus ensuring physical relationship.

However, the addition of intercity bus and train stations to the definition of a joint development project raises some questions regarding functional relationship. The joint development is intended to enhance the effectiveness of public transit, and this may occur optimally if the intercity bus or rail station is in a nearby but separate facility from the transit station. FTA seeks comment on whether a direct (short distance) pedestrian or bicycle pathway is sufficient to establish a functional relationship between two stand-alone structures that are defined as a transit capital project, or whether FTA should require that a joint transit/intercity terminal project share a common wall and roof in order to conform to the requirements of SAFETEA-LU.

Parking is a related issue in this regard. FTA generally will not support parking in excess of transit need. However, both intercity bus and rail terminals will have a need for parking (and taxi access) even if most of their customers come to the terminal on public transportation. FTA seeks comment on how to incorporate intercity bus and rail terminal parking requirements into the overall transit project.

Maintenance cost is also a related issue in this regard. Unlike other joint development projects, intercity bus and rail stations are not required to pay "a reasonable share of the costs of the facility through rental payments and

other means; \* \* \* FTA has interpreted this exception as applying to the construction cost of these facilities, not their ongoing reasonable costs of maintenance. FTA will encourage public transportation agencies to negotiate shared maintenance agreements to ensure satisfactory condition and usefulness of the joint development project over its full term.

**Proportion of Incidental Use**—FTA is considering establishing a percentage of additional space that may be supported with transit grant funds for joint development and/or incidental use purposes. Taking as given that the primary purpose of the expenditure is a transit project—say, a bus transfer facility—how much more space would be reasonable to include for a joint development activity such as a day care center, congregate meal facility, or health care facility? Is it reasonable for the physical capacity of the jointly developed improvement to exceed the transit facility in size and/or cost? This question arises particularly in the context of an intercity bus or rail station which, since its service area is likely to be considerably larger than the transit agency's, may require even more "peak" than the transit agency does.

Related to this issue is the question of how to treat changes in the use of joint development space after the project is complete. For example, if space was made available for a day care center but three years after the project is complete, the day care center manager moves the operation to another location. FTA seeks comment on whether the transit agency should be required to replace the day care center only with another eligible transit activity (such as a senior care or public health activity), or whether the space might be made available for lease by a public or private sector activity. FTA is considering requiring the transit agency to perform a new market analysis on the basis of replacing the initial joint development activity with a market-based joint development activity.

Finally, the public transit agency may reasonably seek to build a large enough facility to allow for future expansion. Given that such facilities may have a useful life of 40 years or more, it is reasonable to anticipate some growth in the transit agency and its service over that term. The transit agency may then wish to offer this additional space for rent on a non-interfering basis until it is needed for transit operations. FTA seeks comment on a method for determining what growth is "reasonable" to project in this instance. FTA is considering linking this projected growth to population forecasts for the region, as

used by the Metropolitan Planning Organization for its long range plans.

Issued on: January 24, 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

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

**ACTION:** Notice of random drug and alcohol testing rates.

**SUMMARY:** This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

**DATES:** *Effective Date:* January 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jerry Powers, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366-2896 (telephone) and (202) 366-7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at <http://www.fta.dot.gov>, click on "Safety and Security."

**SUPPLEMENTARY INFORMATION:** On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions and to begin submitting annual reports by March 15 of each year beginning in 1996. The annual report includes the number of employees who had a verified positive for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. The testing rules were updated on August 1, 2001, and established a random testing rate for prohibited drugs and the misuse of alcohol.

The rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the "positive rate" for the

entire transit industry is less than one percent for two preceding consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year ("positive rate" means the number of positive results for random drug tests conducted under 49 CFR 655.45 plus the number of refusals of random tests required by 49 CFR 655.49, divided by the total number of random drug tests, plus the number of refusals of random tests required by 49 CFR part 655).

The alcohol provisions provide that the random rate may be lowered to 10 percent if the "violation rate" for the entire transit industry is less than 0.5 percent for two consecutive years. It will remain at 25 percent if the "violation rate" is equal to or greater than 0.5 percent but less than one percent, and it will be raised to 50 percent if the "violation rate" is one percent or greater for any one year ("violation rate" means the number of covered employees found during random tests given under 49 CFR 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by 49 CFR 655.49, divided by the total reported number of random alcohol tests plus the total number of refusals of random tests required by 49 CFR part 655).

49 CFR 655.45(b) states that, "the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire industry. The information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by 49 CFR part 655. In determining the reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and make appropriate modifications in calculating the industry's verified positive results and violation rates."

In 2005, the FTA required a random drug testing rate of 50 percent of the total number of their "safety-sensitive" employees for prohibited drugs based on the "positive rate" for random drug test data from 2002 and 2003. FTA has received and analyzed the latest available data (CY2004) from a representative sample of transit employers. Based on the data, the random drug rate was lower than 1.0 percent for the two preceding consecutive years (0.96 percent for 2003 and 0.89 percent for 2004). However,