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COVID-19 Vaccine Priority for Commercial Bus Drivers

As COVID-19 hit pandemic levels and states were imposing “stay-at-home” orders, the Cybersecurity and Infrastructure Security Agency (“CISA”) of the U.S. Department of Homeland Security identified bus drivers and workers who provide or support intercity, commuter, and charter bus service as essential to ongoing critical infrastructure operations across the nation.¹ Following CISA guidelines, virtually every state in the U.S. classified bus drivers and workers who provide or support intercity, commuter, and other bus services as essential workers exempt from the shutdown requirements.² These drivers continued working during the pandemic, transporting healthcare workers and other essential workers to and from work. Due to the nature of their workplace, both commercial bus drivers and drivers working for public transit agencies bear significant health and safety risks for themselves and the millions of people they interact with daily. However, commercial drivers are not necessarily receiving the same priority for vaccinations as their public sector counterparts.

States have begun phased allocation of the COVID-19 vaccine, and they are making decisions regarding the segments of the population that are eligible to receive a vaccination while supplies are limited. Many states, following recommendations and guidance from the U.S. Centers for Disease Control and Prevention (“CDC”), have put public transit workers next in line after healthcare workers and the elderly living in long-term care facilities. However, these states make no specific mention of their private sector counterparts, even though the CDC has said that the “public transit worker” category is not limited to those working for public transit agencies.³ Some states are still deciding on vaccination prioritization for workers in the transportation sector. As states move from the initial phase of vaccine allocation, commercial bus drivers should be prioritized for vaccination along with drivers for public transit agencies. Ensuring the safety of all bus drivers is critical to reopening local economies. As more people return to their offices and begin travelling again, they should feel safe and comfortable with their transportation options, regardless of whether it is public or commercial transit.

Like motorcoach drivers, taxi, limousine, and other for-hire vehicle drivers have been deemed essential and continued providing service—what little of it there has been—throughout the pandemic. Despite this essential worker status, this category of drivers was not given high priority for vaccines. Following pressure from the taxi, for-hire, and rideshare industry, state and local politicians, and my own guest editorial in the NY Daily News, *Race To Vaccinate Drivers: Cabbies and Uber Drivers Deserve Better Than What They’re Getting*, published on January 20, 2021, New York State Governor Andrew M. Cuomo was persuaded to allow local governments to offer vaccines for these drivers within their jurisdictions.⁴ New York City wasted no time expanding the group currently eligible for vaccines to include taxi and for-hire vehicle drivers licensed by the New York City Taxi and Limousine Commission, including limousine drivers and those working for Uber, Lyft, and Via.⁵ Other jurisdictions also give high priority to taxi and rideshare drivers, such as Illinois and Washington.⁶ While this is welcome news for these drivers

¹ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

² <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

³ <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>

⁴ <https://medium.com/@healthneed/taxi-driver-and-restaurant-workers-to-be-added-to-vaccine-list-5940c69bd2ff>;
<https://www.vice.com/en/article/pkdmab/gig-workers-are-being-excluded-from-vaccine-priority-list>;
<https://www.nydailynews.com/opinion/ny-oped-race-to-vaccinate-drivers-20210120-57zqncdclnerfhujivi5lo4bwi-story.html>; <https://www.wsj.com/articles/new-york-restaurant-workers-can-now-qualify-for-covid-19-vaccine-11612296868>

⁵ <https://www1.nyc.gov/site/doh/covid/covid-19-vaccines.page>

⁶ https://www2.illinois.gov/HISNews/22614-Phases_1A_and_1B_of_Vaccine_Distribution_in_Illinois.pdf;
<https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/SummaryInterimVaccineAllocationPrioritization.pdf>

and industries in those locales, it is not enough, and more can and should be done elsewhere to ensure taxi, limousine, and other for-hire vehicle drivers are prioritized for vaccinations along with motorcoach drivers and other public transit workers.

In addition to executive sedans and other black cars, many limousine companies own and operate larger vehicles and motorcoaches for-hire. There should likewise be vaccine prioritization for all limousine company drivers since these drivers are also an industry that federal, state, and local governments have deemed essential to the functioning of society and at high risk of exposure to the virus due to their workplace conditions.⁷

Regarding school bus drivers, states are including these workers in the same vaccination category as those who work in the schools, such as teachers, custodians, and food service workers.⁸ Generally, this is the equivalent of CDC's Phase 1b. States like California and Colorado have prioritized school bus drivers and school personnel just after healthcare workers and first responders, ahead of any other transportation providers.⁹

CDC Guidance

All workers who were considered essential for the purposes of “stay-at-home” orders are *not* in the same phase for vaccine allocation. The CDC, following guidance from the Advisory Committee on Immunization Practices (“ACIP”), recommends phased allocation of the vaccine while supply is limited. The ACIP recommends that essential workers who are both in industries essential to the functioning of society based on CISA guidelines and at high risk of exposure be included in the first phase of vaccine distribution, which includes three subsets (1a,¹⁰ 1b, and 1c).¹¹ The CDC and ACIP differentiate between frontline essential workers and all other essential workers for vaccine prioritization, placing frontline essential workers in Phase 1b and all other essential workers in Phase 1c.

According to the ACIP, frontline essential workers are “essential workers likely at highest risk for work-related exposure to the virus because their work-related duties must be performed on-site and involve being in close proximity (<6 feet) to the public or to coworkers.”¹² Under ACIP guidelines, frontline essential workers are limited to first responders (*e.g.*, firefighters and police officers), corrections officers, food and agricultural workers, U.S. Postal Service workers, manufacturing workers, grocery store workers, public transit workers, and those who work in the education sector (teachers and support staff members) as well as child care workers.¹³

Per CDC guidelines, public transit workers in Phase 1b include workers in “school and employee bus transportation” and “interurban and rural bus transportation.”¹⁴ For ease of use, the CDC mapped essential critical infrastructure workers identified by CISA guidelines to standardized industry codes and titles and the corresponding COVID-19 vaccination phases and workforce categories (*i.e.*, “public transit

⁷ https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2_w

⁸ <https://www.npr.org/2021/01/13/955602188/amid-surges-teachers-line-up-for-their-vaccines>;
<https://www.littler.com/publication-press/publication/giving-it-our-best-shot-statewide-vaccination-plans>

⁹ <https://covid19.ca.gov/vaccines/>; <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/VaccineAllocationGuidelines.aspx>

¹⁰ Phase 1a includes healthcare personnel and long-term care facility residents. *See* https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2_w#T1_down

¹¹ https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2_w

¹² https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2_w

¹³ https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2_w

¹⁴ <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>

workers” and “transportation and logistics”), as recommended by ACIP.¹⁵ The CDC lists “interurban and rural bus transportation”¹⁶ and “school and employee bus transportation”¹⁷ as subcategories of public transit workers who should be included in Phase 1b for vaccine priority.¹⁸ The CDC used the 2017 North American Industry Classification System (“NAICS”) to identify industries within the ACIP workforce categories.¹⁹ According to the 2017 NAICS, the “interurban and rural bus transportation” industry “comprises establishments primarily engaged in providing bus passenger transportation over regular routes and on regular schedules, principally outside a single metropolitan area and its adjacent nonurban areas.”²⁰ This industry includes intercity and interstate bus line operations as well as rural bus services.²¹ The “school and employee bus transportation” industry comprises “establishments primarily engaged in providing buses and other motor vehicles to transport pupils to and from school or employees to and from work.”²²

The CDC lists the charter bus industry²³ in Phase 1c along with taxis, limousines, rideshare, hotel-airport shuttle services, and vanpools,²⁴ with a note that “drivers who often transport healthcare workers to/from work, sick passengers to/from medical appointments, and perform other non-emergent medical transportation duties may be considered for higher prioritization.”²⁵ Separate from the COVID-19 pandemic, charter drivers routinely help transport people to safety during natural disasters and states of emergency. This past summer, nearly 1,000 charter drivers moved people out of harm’s way from approaching fires in California and hurricanes along the Gulf Coast and Atlantic Ocean during hurricane season.

How States Have Prioritized Professional Drivers

¹⁵ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

¹⁶ 2017 NAICS Code 4852xx.

¹⁷ 2017 NAICS Code 4854xx.

¹⁸ <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>

¹⁹ NAICS codes are hierarchical; the first two digits represent general categories of economic activities, and each subsequent digit provides another level of detail. The CDC mapped standardized industry codes and titles to the most current version (v4.0) of the CISA Essential Critical Infrastructure Workforce (“ECIW”) list, identifying each essential industry within an ECIW sector. According to the CDC, “[t]he CISA guidance is highly inclusive and aims to identify the full breadth of the essential critical infrastructure workforce. It also primarily describes industries (i.e., at the level of 2 to 6 digit NAICS codes), while the ACIP guidance groups workers into larger categories” (<https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>). For this reason, all workers who were considered essential for the purposes of “stay-at-home” orders are *not* in the same phase for vaccine allocation.

https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf

²⁰ <https://www.naics.com/naics-code-description/?code=485210>

²¹ *Id.*

²² <https://www.naics.com/naics-code-description/?code=485410>

²³ The 2017 NAICS profile for the Charter Bus Industry (NAICS Code 485510) says this “industry comprises establishments primarily engaged in providing buses for charter. These establishments provide bus services to meet customers’ road transportation needs and generally do not operate over fixed routes and on regular schedules;” the industry does not include providing scenic and local sightseeing transportation using buses.

<https://www.naics.com/naics-code-description/?code=485510>

²⁴ Vanpools and shuttle services are included in the 2017 NAICS industry “All Other Transit and Ground Passenger Transportation” (NAICS Code 485999). According to the 2017 NAICS, “This industry comprises establishments primarily engaged in providing ground passenger transportation (except urban transit systems; interurban and rural bus transportation, taxi and/or limousine services (except shuttle services), school and employee bus transportation, charter bus services, and special needs transportation). Establishments primarily engaged in operating shuttle services and vanpools are included in this industry. Shuttle services establishments generally provide travel on regular routes and on regular schedules between hotels, airports, or other destination points.”

<https://www.naics.com/naics-code-description/?code=485999>

²⁵ <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>

Regardless of federal vaccine allocation guidelines, states are setting their own priority lists in accordance with local needs.²⁶ Many states have said they are following CDC and ACIP recommendations and giving high priority to public transit workers, placing them in Phase 1b, just after healthcare workers and the elderly in long-term care facilities.²⁷ If states are following the CDC’s guidance, then the public transit worker category would include commercial providers of employee and student bus transportation, intercity and interstate bus line service, and rural bus services—not just those employed by public transit agencies. However, very few states have made this explicit designation in their vaccination plans.

Illinois and Wyoming do specify that public transit workers in Phase 1b include bus drivers among other commercial passenger transportation providers.²⁸ Wisconsin explains that public transit workers are those “[d]rivers who have frequent close contact with members of the public, limited to: public and commercial intercity bus transportation services” and “those employed by specialized transit services for seniors, disabled persons, and low-income persons.”²⁹ Some states, like Missouri, give higher priority to the entire transportation systems sector and explain that this includes commercial motorcoaches and school buses.³⁰

Washington State, taking a different approach, includes in Phase 1b, “congregate public transit,” which is for “those who work in an enclosed (vs. outdoor) congregate setting interacting with [a] high volume of co-workers or [the] general public over extended periods of time (i.e., >3 hours in [a] 24 hour day) to facilitate the transport of people.”³¹ Examples include high-density transportation settings like buses and lower density settings, “specifically taxies [*sic*], limos and private vehicles over 4 people.”³² Similarly, Oklahoma’s Phase 2 (CDC Phase 1b) includes staff in congregate worksites, including “public transit systems that do not allow for appropriate social distancing.”³³

States are continually revising and updating their vaccination plans according to factors such as vaccine supply and the state prioritization requirements. In the last month, we have seen states, such as California, remove plans for vaccination past the current phase.³⁴ While the transportation industry had previously been in Phase 1b, Tier 2, California’s plan no longer goes beyond Phase 1b, Tier 1—which includes school bus drivers as part of the education and childcare sector but no other transportation providers.³⁵

What States Should Do

²⁶ <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>

²⁷ See e.g., Connecticut (forthcoming) <https://portal.ct.gov/Coronavirus/COVID-19-Vaccination---Phases>; Georgia (forthcoming) <https://covid19.gachd.org/priority-groups-for-covid-19-vaccination-phases/>; Virginia: <https://www.vdh.virginia.gov/content/uploads/sites/191/2021/01/Phase-1b-In-Depth.pdf> (Updated Jan. 28, 2021);

²⁸ https://www2.illinois.gov/IISNews/22614-Phases_1A_and_1B_of_Vaccine_Distribution_in_Illinois.pdf; <https://www.dph.illinois.gov/covid19/vaccination-plan>; <https://www.chicago.gov/city/en/sites/covid19-vaccine/home/vaccine-distribution-phases.html>; https://health.wyo.gov/wp-content/uploads/2021/02/WDH_Phase-1-COVID-19-Vaccination-Priorities_2.1.21.pdf

²⁹ Wisconsin has not assigned alphanumeric identifiers to phases; the initial phase includes frontline healthcare personnel; residents in skilled nursing and long-term care facilities; police and fire personnel, correctional staff; adults age 65 and over. <https://www.dhs.wisconsin.gov/covid-19/vaccine-about.htm>

³⁰ <https://covidvaccine.mo.gov/priority/Phase1b/#phase1b-1>

³¹ www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/SummaryInterimVaccineAllocationPrioritization.pdf

³² www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/SummaryInterimVaccineAllocationPrioritization.pdf

³³ <https://oklahoma.gov/content/dam/ok/en/covid19/documents/vaccine/COVID-19%20Vaccine%20Priority%20Population%20Framework%20for%20Oklahoma%20-%202012-10-20.pdf>

³⁴ <https://www.sacbee.com/news/politics-government/capitol-alert/article249023830.html>

³⁵ <https://covid19.ca.gov/vaccines/#When-can-I-get-vaccinated>

Vaccinating commercial bus and motorcoach drivers on the same timeline as drivers for public transit agencies makes sense. Commercial intercity and commuter bus drivers have been on the frontlines of the pandemic—moving health care workers, along with supplies, around the country—and deserve a spot near the front of the line for COVID-19 vaccines.³⁶ All states should put all passenger ground transport drivers in Phase 1b!

As cities and states continue to rebound from the pandemic and adjust to the new normal, questions about the traveling public’s willingness to use shared mobility and public transit will need to be addressed. The biggest issue that cannot be ignored is the reality and perception of safety in crowded cars and stations. Private intercity, commuter, and charter bus services could be crucial to support the reopening of local economies—but only if riders feel they are safe to use. Vaccinating drivers is both a component of that safety, and it is necessary to mitigate the risk of spreading COVID-19.

The private bus industry has been hit particularly hard by the pandemic. Like many industries, the private motorcoach industry has been decimated by COVID-19 shutdowns and tight travel restrictions. According to a February 9, 2021 statement from the American Bus Association (ABA), “The industry went from generating \$15 billion in 2019 to \$2.6 billion in 2020. Nearly 80 percent of the industry’s workforce has been and continues to be furloughed.”³⁷ According to third-party research commissioned by the ABA, “up to 50% of bus companies could close up shop permanently by 2021,” which “could lead to 30% to 40% of the national bus network vanishing, taking with it 78% of the jobs in the charter-bus sector along with 65% of jobs in the shuttle-bus, commuter, and intercity-bus segments.”³⁸

The Coronavirus Economic Relief for Transportation Services (CERTS) Act, which was enacted this past December, provides \$2 billion in relief for the motorcoach industry and should provide short-term assistance. However, CERTS money is not available yet (it is expected in late February or March), and the motorcoach industry was left out of the subsequent Congressional COVID-19 relief package that has been drafted.³⁹

Vaccinating motorcoach drivers is necessary not only to help the industry recover economically from the pandemic, but it will be invaluable to allowing these drivers to continue providing a critical service. Private motorcoaches and intercity bus companies fill a void in the U.S. transportation system, providing services and routes to many towns across the country that do not have any other intercity transit options. They are a necessary—if often overlooked—piece of the transportation system. Ensuring the safety of these drivers is every bit as important and necessary as it is for the public bus operators. As more people gradually return to their traditional workplaces and begin travelling again, they should feel safe and comfortable with their transportation options – especially if these motorcoaches or intercity buses provide the only option.

³⁶ <https://www.buses.org/news/article/aba-joins-cdc-advisory-committee-deliberations-seeks-high-priority-covid-19>

³⁷ <https://www.buses.org/news/article/aba-disappointed-that-congress-ignored-motorcoach-industry-once-again-in-la>

³⁸ <https://www.businessinsider.com/covid-could-wipe-out-a-vital-transport-network-private-buses-2020-11>;

<https://www.buses.org/news/article/business-insider-with-no-covid-19-relief-in-sight-the-private-bus-industry>

³⁹ https://www.chauffeurdriven.com/news-features/industry-news/2869-uma-watching-regulatory-changes-that-could-impact-industry.html?utm_campaign=ENEWS020321&utm_source=E-News-02-03-21&utm_medium=email;
<https://www.buses.org/news/article/aba-disappointed-that-congress-ignored-motorcoach-industry-once-again-in-la>