DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2024–0019]

Agency Information Collection Activity Under OMB Review: Transit COVID–19 Response Program

AGENCY: Federal Transit Administration, Department of Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 24, 2024, FTA published a 60-day notice (89 FR 85000) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received (1) comment after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Transit COVID–19 Response Program.

OMB Control Number: 2132–0581.

Background: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Federal Transit Administration (FTA) is requesting a three-year approval without change of an existing information collection from the Office of Management and Budget (OMB). Although the Public Health Emergency for the COVID–19 pandemic ended in May 2023 and the FTA discontinued COVID–19 reporting requirements in September 2022, the FTA is seeking to renew this information collection to ensure that an existing framework can be readily updated to address future health emergencies. This renewal would allow the FTA to respond more swiftly to future public health emergencies by gathering data on their impact on the transit industry.

FTA began collecting monthly data in April 2021 related to impacts from the coronavirus disease 2019 (COVID–19) on public transportation agencies, including transit workforce counts; transit service levels; counts of COVID–19 positives, fatalities, recoveries, and unvaccinated employees; whether or not a transit agency has implemented the U.S. Centers for Disease Control and Prevention (CDC) Order and Transportation Security Administration (TSA) Security Directive requiring workers and passengers to wear masks; and whether or not the agency used FTA funds to support vaccine access services. FTA used this data to inform FTA's COVID–19 response and recovery actions, including monitoring of safety measures and impacts, development of technical assistance and safety advisories, monitoring use of FTA grant funds to address COVID–19 considerations, and monitoring compliance with Federal requirements.

Current Action: Extension without change of a currently approved collection.

Respondents: Recipients and sub-recipients of FTA funds under the Urbanized Area Formula Funding program or the Formula Grants for Rural Areas program that operate transit systems or pass-through funds to sub-recipients that operate transit systems. Recipients of FTA funds under the Enhanced Mobility of Seniors and Individuals with Disabilities program were requested to provide this information on a voluntary basis.

Estimated Total Annual Respondents: 2,390.

Estimated Annual Total Responses: 28,680.

Estimated Annual Burden Hours on Respondents: 10,356.

Frequency: As needed.

Kusum Dhyani,

Director, Office of Management Planning.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2024–0020]

Notice of Proposed Policy Statement Regarding the Applicability of FTA's Drug and Alcohol Testing Program to Transportation Network Companies

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice proposes to clarify FTA's policy on the applicability of

FTA's drug and alcohol testing program to transportation network companies. FTA proposes to update the Shared Mobility frequently asked questions, published in 2016 on FTA's website, to correct an error that has resulted in the misapplication of what is commonly known as the taxicab exception and clarify when the exception applies. FTA seeks comment from all interested parties. After review and consideration of the comments, FTA will issue a final notice announcing the policy statement and the revised FAQs.

DATES: Comments must be received by February 13, 2025. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit all comments electronically to the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the instructions for submitting comments. *Instructions:* All submissions must refer to the Federal Transit Administration and the docket number of this notice. Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on *https://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For legal questions, Emily Jessup, Attorney-Advisor, (202) 366–8907, or *Emily.Jessup@dot.gov.* For program questions, Iyon Rosario, Sr. Drug and Alcohol Program Manager, (202) 366–2010, or *Iyon.Rosario@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

As transit agencies increasingly partner with transportation network companies (TNCs) to provide service, FTA is responding regularly to inquiries regarding whether and when FTA's Drug and Alcohol rule applies.

As required by Federal transit law at 49 U.S.C. 5331 and FTA's Drug and Alcohol rule at 49 CFR part 655, recipients of funding under FTA's Urbanized Area Formula Program, Capital Investment Grants Program, and Rural Areas Formula Program (49 U.S.C. 5307, 5309, and 5311, respectively) must establish and implement drug and alcohol testing programs for employees and contractors that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by personnel who perform safety-sensitive functions, including vehicle operators. These testing requirements apply to contractors who perform a safety-sensitive function for an FTA recipient, even if the service the contractor provides is not federally funded. This includes drivers of taxicabs and transportation network companies (TNCs) who perform the safety-sensitive function of operating a revenue service vehicle under contract with transit agencies.

Specifically, 49 U.S.C. 5331 provides, in relevant part:

> (b) Testing Program for Public Transportation Employees.—
> (1)(A) In the interest of public transportation safety, the Secretary shall prescribe regulations that establish a program requiring public transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title to conduct preemployment, reasonable suspicion, random, and post-accident testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of drugs and alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of drugs and alcohol.

This language has remained substantively unchanged since 1991. FTA applies the statute to all services of recipients of sections 5307, 5309, and 5311, including their subrecipients and contractors.

FTA's Drug and Alcohol rule, 49 CFR part 655, provides in relevant part:

> § 655.3 Applicability.
> (a) Except as specifically excluded in paragraphs (b) [FRA], and (c) [USCG] of this section, this part applies to:
> (1) Each recipient and subrecipient receiving Federal assistance under 49 U.S.C. 5307, 5309, or 5311; and (2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.
> § 655.4 Definitions.
> *Contractor* means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.
> *Covered employee* means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part.
> *Employer* means a recipient or other entity that provides public transportation service or which performs a safety sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.
> *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:
> (1) Operating a revenue service vehicle, including when not in revenue service[.]
> * * *

As transit-TNC service partnerships have become more prominent, questions have arisen over the applicability of what is generally known as the ''taxicab exception.'' Further, as explained in detail in Section III of this notice, an error in one of FTA's current Shared Mobility FAQs has contributed to the exception being implemented in a way inconsistent with the original intent of the taxicab exception. FTA is proposing this update and clarification to the FAQs in response to these inquiries, as well as to correct the error, to ensure recipients and TNCs have a better understanding of when the Drug and Alcohol rule applies and when it does not.

The taxicab exception is based on a lack of contractual or informal arrangement between the transit agency and taxicab company and who controls the selection of the company/driver providing the trip. In 1994, when the exception was issued, many taxicab drivers were independent operators, providing service to any individual who hailed them from the curb. The selection was random and non-predictable, with the rider flagging down the next taxicab that appeared. Because of this randomness, it would have been impractical for the transit agency to require all the local taxicab drivers to take a ''pre-employment'' test or be part of its random testing pool if there was even a slight possibility that a rider might hail them using transit-agency issued scrip or vouchers. However, if the transit agency contracted with a taxicab company, or if there were only one or two taxicab companies providing service in the area, then the transit agency could establish a known pool of participating drivers and include the drivers in the agency's testing program.

A rider-initiated vehicle selection via a rider-controlled app, such as for first mile-last mile service with TNCs, is today's functional equivalent of a street-corner or curbside flag-down of a taxicab. A TNC driver providing service to the general public has no expectation they will be selected for a transit agency subsidized trip when they are selected by the app, and where there are two or more providers, the transit agency has little or no control over the rider's selection of a company/driver. In contrast, in situations where the rider contacts a transit agency to schedule a

ride, and the agency has either pre-approved one or more providers or created a pool of designated drivers, such as for ADA paratransit trips where an agency uses taxicabs or TNCs, the transit agency has a demonstrable measure of control over the selection of the company/driver and therefore has the ability to include those drivers within its testing program in the interest of public safety.

II. Background

Subsequent to passage of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, codified at 49 U.S.C. 5331), FTA issued its first round of drug and alcohol abuse prevention rules on February 15, 1994.[1] In the preambles, the final rules said this about taxicabs providing service for or on behalf of transit agencies:

User-side subsidies. A user-side subsidy refers to the practice of providing passengers publicly subsidized scrip or vouchers, which the passenger then uses to pay for transportation from a private carrier such as a taxicab company. In essence, a recipient provides transportation services indirectly through such subsidies. The regulation applies to certain recipients of FTA funding, and to transit operators providing service under contract or other arrangements with those recipients. To the extent that a taxi operator does not provide service under an arrangement with an FTA recipient but is chosen at random by the passenger, it would not be subject to the rule. If, however, the taxicab company or private operator does provide service under an arrangement with an FTA recipient, it is covered by the rule as a contractor, as defined by the rule. In such cases, the taxi company may wish to designate only certain drivers to provide such service, in which case only those designated drivers would be subject to the rule's drug and alcohol testing program.[2]

The distinction between contracting with a taxi company to provide service as opposed to merely providing vouchers without any sort of contract or arrangement arises, at least in part, from the legislative history of the Omnibus Transportation Employee Testing Act, which includes the following floor statement:

Drug and alcohol-testing requirements must not be circumvented through contracting out of work. Safety-sensitive employees of recipients of the Federal transit grant money identified in the bill, and those safety-sensitive employees working for contractors of such recipients must be covered exactly to the same extent and in the same fashion. I know that I speak for all conferees when I say that we will not tolerate a situation where employees performing substantially the same safety-sensitive function are covered or not covered depending on whether they work directly for a public authority or an outside contractor. 137 Cong Rec. S14766 (daily ed. Oct. 16, 1991). (Statement of Sen. D'Amato).

This statement demonstrates congressional intent to include in the testing program contractors who are performing the same work as a transit agency employee.

Since the issuance of those first drug and alcohol rules, FTA has consistently, as a matter of policy, indicated that the drug and alcohol rules do not apply when the transit agency has no contractual or informal arrangement with local taxicab companies, the transit agency provides user-side subsidies in the form of scrip or vouchers, and the passenger chooses among more than two taxicab companies to provide a trip. The 2016 FAQs changed this to ''two or more'' for added flexibility. Prior to the availability of TNCs, such arrangements were for incidental use that supports public transportation, such as guaranteed ride home programs.

Thus, the exception is based on who controls the selection of the company/driver providing each trip; only when there is no contract or informal arrangement for service between the transit agency and the taxicab company or TNC, *and* the passenger selects the provider for each trip, does the Drug and Alcohol rule not apply.

In the preamble to the 2001 Drug and Alcohol final rule, FTA stated,

FTA policy continues to recognize the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. Therefore, the drug and alcohol testing rules apply when the transit provider enters into a contract with one or more entities to provide taxi service. The rules do not apply when the patron (using subsidized vouchers) selects the taxi company that provides the transit service. This guidance reflects the FTA Master Agreement, which requires recipients to include appropriate clauses in third party contracts requiring contractors to comply with applicable Federal requirements. It also recognizes the practical difficulty of administering a drug and alcohol testing program to entities that only incidentally provide taxi service on behalf of a transportation service provider.[3]

III. Current Implementation

As stated above, a rider-initiated vehicle selection via a rider-controlled app, such as for first mile-last mile service with TNCs, is today's functional equivalent of a street-corner or curbside flag-down of a taxicab. In such instances, when the rider selects the provider and the transit agency has no control over the selection, the Drug and Alcohol rule does not apply. However, the use of TNCs has gone beyond ''incidental'' support of public transportation with first mile-last mile and guaranteed ride home programs to regularly supplementing or replacing public transportation service. For example, many transit agencies are contracting with TNCs to provide same-day ADA paratransit trips and are not including TNC drivers in an FTA/DOT-approved testing program. Other agencies are canceling late-night fixed route service and contracting with TNCs for demand-responsive service or adding new demand-responsive service provided by taxicabs or TNCs and not including those drivers in the agency's testing program. This exclusion means passengers are exposed to drivers who are not subject to drug and alcohol testing, raising safety concerns. Because in these situations, the taxicabs/TNCs are supplementing or replacing transit service and have some sort of contractual or informal arrangement with the transit agency, the taxicab companies or TNCs should be identifying an established group of drivers for these arrangements, and the drivers should be included in the transit agency's drug and alcohol testing program, or an FTA/DOT-compliant testing program conducted by the taxicab company or TNC.

In 2016, FTA published Shared Mobility Frequently Asked Questions (FAQs) on the applicability of the Drug and Alcohol rule to TNCs. One of those questions included an erroneous answer that has resulted in numerous transit agencies incorrectly concluding that the Drug and Alcohol rule does not apply under various scenarios where there is a contractual relationship between the transit agency and one or more TNCs.

While the transportation industry has evolved beyond hailing taxicabs on the corner, the basis for the inapplicability of the Drug and Alcohol rule to some taxicab and TNC operations that provide transit agency-subsidized trips remains the same: a lack of a contractual or informal arrangement between the transit agency and the TNC or taxicab operator, and the randomness of the customer choosing the provider for each trip.

1. Lack of Contractual Relationship

In 2016, TNCs were starting up and partnering with transit agencies to provide first mile-last mile and same-day ADA paratransit service. Many transit agencies using TNCs for same-day ADA paratransit or other on-demand service entered into contracts

[1] 59 FR 7531; 49 CFR parts 653 and 654, replaced with part 655 in 2001 (66 FR 41996).

[2] 59 FR 7531 at 7542 and 7582, Feb. 15, 1994.

[3] 66 FR 41996, Aug. 9, 2001.

or informal arrangements with TNCs to provide the service.

FTA developed FAQs related to the eligibility of such services, requirements related to the ADA, and FTA's controlled substance and alcohol testing requirements.[4]

One of the FAQs included an erroneous answer:

Question: Does the taxicab exception apply to ridesourcing companies?

Answer: It depends. The rationale for the taxicab exception is the same for ridesourcing companies when a public transit agency has a contractual or informal arrangement with two or more ridesourcing companies or taxicab companies to provide a specific service or type of service, and the public transit passenger chooses among the providers. In this case, the public transit agency would have to contract with at least two ridesourcing companies and/or taxicab companies to ensure the passenger has a choice of which provider to contact for a ride.

There may be some situations in which a public transit agency contracts with two or more ridesourcing companies as well as one or more taxicab companies in order to ensure the service is available for all passengers. For example, the taxicab company may be the only contractor with accessible vehicles, or may be the only contractor able to schedule trips over the phone or accept cash payment from passengers. While some passengers may have only one choice, this does not change the fact that many passengers will have more than one choice, and so the taxicab exception will apply to all of the providers.

The answer should read, ''a public transit agency does not have a contractual or informal arrangement . . .'' but instead reads, ''a public transit agency has a contractual or informal arrangement . . .'' The error in the answer to this question has led to a situation in which the regulation is applied in a manner inconsistent with its original intent. The statement, ''is the same for ridesourcing companies when a public transit agency has a contractual or other arrangement with two or more ridesourcing companies or taxicab companies'' is erroneous as the Drug and Alcohol rule does not apply when there is a lack of a contractual or other arrangement. This answer is inconsistent with FTA's long-standing policy related to the applicability of the rule to taxicabs, and also is inconsistent with other FAQs which indicate the Drug and Alcohol rule applies when there is a contract or other arrangement, and has caused confusion in the industry. As explained above, when a transit agency enters into a contract or informal arrangement with another entity to provide service, the contractor's employees must be part of an FTA/DOT-compliant drug and alcohol testing program. See 49 CFR 655.3(a)(2). Today's proposed policy statement and updated FAQs would amend the FAQs to be consistent with the original intent of the inapplicability of the Drug and Alcohol rule to taxicabs providing a safety-sensitive function for transit agencies in certain situations.

2. Customer Choice Every Ride

An additional condition that must be met for the Drug and Alcohol rule to not apply is that customers must choose their provider for every trip, as they would if they were hailing a cab or using a TNC app. Some transit agencies are challenged by the ''customer choice'' component and have sought additional guidance from FTA. FTA has consistently expressed that for the rule not to apply, the customer must choose the TNC or taxicab provider for each trip. Some agencies have developed apps where the passenger makes a provider selection when signing up for the app but is not offered a choice of provider for each ride. In this case, because the passenger is not making a provider choice for each ride, the Drug and Alcohol rule applies. This interpretation is consistent with the original rationale for the inapplicability of the rule in that rider selection of a provider for each ride is random and non-predictable.

Some transit agencies have argued this customer choice requirement is burdensome and if the passenger is given the option to select their provider from two or more companies when they first sign up for service, the Drug and Alcohol rule should not apply. This argument is inconsistent with the reasoning behind the original rationale for inapplicability of the rule, which is that when a transit agency provides a voucher to a passenger for use with any TNC or taxicab provider in the area, the transit agency does not know and/or cannot control which provider a passenger contacts for service, and thus it would be impracticable to include the drivers of those providers in a testing program. When the transit agency knows which entity will provide the trip, it exercises control, and the drivers must be part of an FTA/DOT-compliant testing program.

Some agencies have expressed concern regarding passenger choice and how the transit agency can keep track of usage. Transit agencies need to know who is using the TNC or taxi service and whether the trip is within the service area in order for the TNC to be reimbursed for the trip and to ensure only eligible trips are reimbursed. Notably, user-side subsidies or vouchers can be electronic, such as providing a unique code to each passenger who uses the app to request a ride from a TNC or taxi provider. This set-up enables the transit agency to monitor usage while maintaining the user choice element for each ride.

IV. Policy Statement

a. Background

The availability of TNCs to provide same-day ADA paratransit, late night on-demand, first mile-last mile, and other services has been valuable to transit agencies as they strive to provide exceptional public transportation service. Over time, this use of TNCs to supplement public transit has moved from incidental to regular, with TNCs providing millions of trips per year to public transit passengers. Transit agencies have sometimes found FTA's TNC FAQs difficult to interpret, and this has led to findings during FTA drug and alcohol audits. By this proposed update to the FAQs, FTA intends to remove ambiguities and ensure transit agencies and TNCs are clear about the applicability of FTA's Drug and Alcohol rule to TNCs.

As with everything we do at FTA, safety is paramount. The Drug and Alcohol program combats prohibited drug use and alcohol misuse by drivers engaged in the provision of public transit. When a taxicab or TNC provides service on behalf of a public transit agency, the passenger can reasonably expect the driver of that vehicle to be subject to the same requirements as a bus or train operator.

If a transit agency has a contract or arrangement in place with TNCs or taxicabs to transport passengers, it is critical that drivers are not impaired while performing this safety-sensitive duty. This is especially important when TNCs or taxicabs are providing service for seniors, persons with disabilities, or youth, who may not have the ability to depart a vehicle being operated by an impaired driver, especially if the passenger needs assistance to exit the vehicle, or it is late at night, in inclement weather, or in an unfamiliar neighborhood. This leaves the passenger in the difficult situation of having to complete the ride, knowing their safety is at risk. Parity in the application of regulations intended to address drug and alcohol use and abuse will ensure all passengers are afforded the same protections.

For those TNCs operating service under contract or informal arrangement with a transit agency, it is likely not

[4] See *https://www.transit.dot.gov/regulations-and-guidance/shared-mobility-faqs-controlled-substance-and-alcohol-testing-requirements.*

necessary to include every driver in a drug and alcohol testing program. TNCs are welcome to identify a subset of drivers that serve the transit agency contract. TNCs may wish to require all new drivers joining their platforms participate in the drug and alcohol testing program as a means of building the number of drivers eligible to drive for the public transit agency contract. TNCs may not have to create a separate random testing pool; the identified subset of drivers may be placed into the transit agency's random testing pool at the discretion of the transit agency and the TNC. If the TNC creates its own testing program, the testing program must meet FTA/DOT requirements. In either case, drivers will be subject to all testing requirements of 49 CFR parts 40 and 655.

b. Proposed Policy

FTA proposes modifying its Shared Mobility Controlled Substance and Alcohol Testing Requirements FAQs to clarify when the exception applies and to fix the existing error. FTA proposes the relevant set of FAQs would read as follows:

Shared Mobility Controlled Substance and Alcohol Testing Requirements

Under Federal transit law (49 U.S.C. 5331), public transportation recipients that receive financial assistance under the FTA's Urbanized Area, Capital Investment Grant, and Rural Area programs must conduct controlled substance and alcohol testing of public transportation employees responsible for safety-sensitive functions, including operating, dispatching, and maintaining revenue service vehicles. These FAQs describe the extent to which ridesourcing companies are subject to the drug and alcohol testing requirements. For questions, contact Iyon Rosario (*iyon.rosario@dot.gov*), FTA's Senior Drug and Alcohol Program Manager.

When does the Drug and Alcohol rule apply?

The Federal Transit Administration (FTA) Drug and Alcohol rule (49 CFR part 655) provides that the rule applies to recipients and subrecipients of Urbanized Area (section 5307), Capital Investment Grant (section 5309), and Rural Area (section 5311) funds, as well as their contractors and subcontractors. A ridesourcing company may be a contractor. Under the rule, a contractor is any entity providing a safety-sensitive function for a recipient or subrecipient. The contract may be a written contract or an informal arrangement ''that reflects an ongoing relationship between the parties.''

The intent of the Drug and Alcohol rule is to cover only those situations in which a transit operator has a contract or arrangement with taxicab or TNC operators. In these instances, the public knows that to take advantage of services funded in part by a transit agency, it must deal with a particular taxicab or TNC. On the other hand, where there is no contract or informal arrangement and a passenger randomly chooses among a variety of different taxi and/or TNC companies, these FAQs recognize the practical difficulties of trying to administer a drug and alcohol testing program in connection with all of those companies; accordingly, FTA's rule on drug and alcohol testing would not cover such services.

Does the testing requirement apply to employees and independent drivers of contractors not otherwise providing public transportation?

Yes. The Drug and Alcohol rule (49 CFR part 655) extends the controlled substance and alcohol testing requirement to employees of contractors performing a safety-sensitive function. This includes the independent drivers of a ridesourcing company contracting with a public transportation agency. FTA has consistently interpreted the regulation (49 CFR part 655) to include contractors who do not directly engage in public transportation operations, including taxicab operators and TNCs unless there is no contractual or informal arrangement, the transit agency merely provides user-side vouchers, and the passenger chooses the provider for each trip.

Are private companies like ridesourcing companies required to comply with DOT drug and alcohol testing requirements?

Recipients of Urbanized Area (section 5307), Capital Investment Grant (section 5309), and Rural Area (section 5311) funds must conduct drug and alcohol testing of all employees or contractors performing safety-sensitive functions. Ridesourcing companies are subject to the testing requirement to the extent they are a contractor of a recipient and perform a safety-sensitive function. However, as described below, in some situations, the Drug and Alcohol rule may not apply to ridesourcing companies.

Under what circumstances must TNC drivers be included in a drug and alcohol testing program?

TNC and taxicab drivers who provide or may provide transportation service under a contract or informal arrangement with a transit agency must be included in an FTA/DOT compliant drug and alcohol testing program. Further, when a passenger does not choose the TNC or taxicab company providing the service for each trip, the TNC and taxicab drivers must be included in an FTA/DOT compliant drug and alcohol testing program. TNC and taxicab drivers may be added to a transit agency's existing testing pool or the TNC or taxicab company may establish its own FTA/DOT compliant testing program that includes drivers for the transit agency contract. For example, some transit agencies contract with TNCs, taxicab companies, and other entities to provide ADA paratransit service to eligible passengers. In those situations, the Drug and Alcohol rule applies to the TNC or taxicab company providing the service. Similarly, if a public transit agency provides vouchers to passengers to use with only one TNC or taxicab company, the passenger does not have a choice of which company to contact, so the Drug and Alcohol rule applies.

Under what circumstances does the Drug and Alcohol rule not apply to ridesourcing companies?

TNCs and taxicab companies are not required to include their drivers in an FTA/DOT compliant drug and alcohol testing program when all of the following apply:

—There are two or more providers available to provide the service, and
—There is no contractual or informal arrangement between the TNC or taxicab company and the FTA recipient to provide service and
—The passenger randomly selects a provider for each trip from two or more available providers.

If the transit agency does not contract or have an informal arrangement with the TNC or taxicab company but only provides user-side subsidies to the passenger and the passenger contacts the TNC or taxicab company directly for each ride and has a choice of two or more providers, the Drug and Alcohol rule will not apply. In this case, the public transit agency would have to inform its passengers of which TNCs or taxicab companies they may contact for a ride, and the passenger would schedule their own rides with their preferred provider for each trip. *NOTE:* A passenger who does not have a smartphone or other means to contact a provider directly may contact the transit agency to assist in scheduling the trip, even though the transit agency has no contractual relationship with any

provider. FTA expects this to be rare and to not occur where there is a provider that will schedule trips over the phone.

There may be some situations in which a public transit agency permits passengers to schedule trips with a choice of two or more ridesourcing companies as well as one or more taxicab companies in order to ensure the service is available for all passengers. In some cases, the taxicab company may be the only provider able to schedule trips over the phone or accept cash payment from passengers without a smart phone or credit card. As long as there is no contract or informal arrangement, the Drug and Alcohol rule does not apply to situations where there are multiple providers but only one provider that accepts phone reservations and/or accepts cash. While some passengers may have only one choice, this does not change the fact that many passengers will have more than one choice, so the Drug and Alcohol rule will not apply to these providers.

May a transit agency develop an App for users to schedule rides with TNCs?

A transit agency may develop an app for passenger convenience to schedule unsubsidized rides with the TNCs and taxicab companies in its area. Such an app does not constitute a contractual or informal arrangement for purposes of the drug and alcohol testing requirement. A shared app, on its own, without a link to a transit-agency subsidized TNC or taxicab trip, is not a safety-sensitive function. However, if the transit agency is subsidizing trips (*e.g.,* with vouchers) scheduled with the app, the Drug and Alcohol rule applies unless there are two or more providers available with the same app, with no contractual or informal arrangement for the transportation service, and passengers can choose the provider for each trip.

If my project is funded with Public Transportation Innovation (Section 5312) research funds, does the drug and alcohol testing requirement apply?

No. If the project is funded with research dollars, the law permits the Secretary to prescribe terms and conditions for the grant award. FTA has determined the Drug and Alcohol rule does not apply to these funds, even if the recipient of Public Transportation Innovation (Section 5312) research funds is also a recipient of Urbanized Area (Section 5307), Capital Investment Grant (Section 5309) or Rural Area (Section 5311) funds.

Does the Drug and Alcohol rule apply to pilot programs that do not use any FTA funds?

Yes. If a transit agency receiving FTA funds under 49 U.S.C. 5307, 5309, or 5311 subsidizes ridesourcing services under a pilot program that does not use FTA funds, the transit agency must incorporate the ridesourcing company drivers into an FTA/DOT compliant drug and alcohol testing program, unless there are two or more providers, there is no contractual or informal arrangement for the transportation service, and passengers can choose the provider for each trip. Drivers may be included in a transit agency's testing pool or a TNC's or taxicab company's testing pool, as long as the testing program complies with FTA's drug and alcohol testing regulation.

FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice with a final set of Frequently Asked Questions.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2024–30966 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0093]

Deepwater Port License Application: Texas GulfLink LLC (GulfLink)—Special Notice

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) is providing notice to the public of the delay in issuing the Record of Decision for the proposed Texas GulfLink Deepwater Port, as the agency continues to process and consider public submissions on the proposed project.

FOR FURTHER INFORMATION CONTACT: Brian Barton, Office of Deepwater Ports and Port Conveyance, MARAD, telephone: 202–366–4610, email: *Deepwater.Ports@dot.gov*.

SUPPLEMENTARY INFORMATION: Under section 5(k) of the Deepwater Port Act of 1974 (DWPA) (33 U.S.C. 1504(k)), MARAD is required to publish a written statement in the **Federal Register** regarding delays in the processing of applications for oil or natural gas terminals licensed under the DWPA. On May 30, 2019, MARAD and the U.S. Coast Guard (USCG) received a license application from GulfLink for all Federal authorizations required for a license to construct, own, and operate a deepwater port for the export of oil in the Gulf of Mexico off the coast of Brazoria County, TX. A Notice of Application summarizing and providing further information regarding the GulfLink Deepwater Port License application was published in the **Federal Register** on June 26, 2019 (84 FR 30298). After extensive public and interagency review, a Final Environmental Impact Statement (FEIS) was published on July 5, 2024, and the final public hearing was held on September 13, 2024. Over 44,000 public submissions on the FEIS and final public hearing were received in the TGL docket number MARAD–2019–0093 at *Regulations.gov*. MARAD is still reviewing and considering the comments received and issuance of a Record of Decision is therefore delayed. The applicable deadline for issuance of the Record of Decision is set forth in DWPA section 5(i)(1) (33 U.S.C. 1504(i)(1)). This ongoing review will ensure that all substantive public comments are considered and that the information, data, and viewpoints received during this phase of the project review are fully assessed and evaluated before MARAD renders a final decision.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, visit *www.transportation.gov/privacy*.

(Authority: DWPA, Pub. L. 93–627 (33 U.S.C. 1501 *et seq.*); 49 CFR 1.93(h))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–30974 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0035; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).