

# ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 49: Transportation

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## **PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING**

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SOURCE: 66 FR 43103, Aug. 17, 2001, unless otherwise noted.

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## Subpart A—General

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### §382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

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### §382.103 Applicability.

(a) This part applies to service agents and to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State and are subject to:

- (1) The commercial driver's license requirements of part 383 of this subchapter;
- (2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial drivers license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of part 655 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in §390.5 of this subchapter; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

(4) Who operate "covered farm vehicles," as defined in 49 CFR 390.5.

[66 FR 43103, Aug. 17, 2001, as amended at 78 FR 16194, Mar. 14, 2013; 81 FR 68346, Oct. 4, 2016; 81 FR 71016, Oct. 14, 2016; 81 FR 87724, Dec. 5, 2016]

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### **§382.105 Testing procedures.**

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

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### **§382.107 Definitions.**

Words or phrases used in this part are defined in §§386.2 and 390.5 of this subchapter, and §40.3 of this title, except as provided in this section—

*Actual knowledge* for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

*Alcohol concentration (or content)* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

*Alcohol use* means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

*Commerce* means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; or

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

*Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse)* means the FMCSA database that subpart G of this part requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

*Confirmation (or confirmatory) drug test* means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

*Confirmation (or confirmatory) validity test* means a second test performed on a urine specimen to further support a validity test result.

*Confirmed drug test* means a confirmation test result received by an MRO from a laboratory.

*Consortium/Third party administrator (C/TPA)* means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

*Controlled substances* mean those substances identified in §40.85 of this title.

*Designated employer representative (DER)* is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

*Disabling damage* means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions*. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions*. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

*DOT Agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

*Driver* means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

*Employer* means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

*Licensed medical practitioner* means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

*Negative return-to-duty test result* means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in §40.305 of this title.

*Performing (a safety-sensitive function)* means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

*Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under this part plus the number of refusals

of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

*Refuse to submit (to an alcohol or controlled substances test)* means that a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);

(2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);

(6) Fail or declines to take a second test the employer or collector has directed the driver to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.



*Safety-sensitive function* means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

*Screening test (or initial test)* means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

*Stand-down* means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

*Violation rate for random alcohol testing* means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003; 77 FR 59825, Oct. 1, 2012; 81 FR 87724, Dec. 5, 2016; 83 FR 48726, Sept. 27, 2018; 84 FR 51432, Sept. 30, 2019]

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### **§382.109 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

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### **§382.111 Other requirements imposed by employers.**

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

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### **§382.113 Requirement for notice.**

Before performing each alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

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### **§382.115 Starting date for testing programs.**

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

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### **§382.117 Public interest exclusion.**

No employer shall use the services of a service agent who is subject to public interest exclusion in accordance with 49 CFR part 40, Subpart R.

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### **§382.119 Stand-down waiver provision.**

(a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under this section.

(b) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request, which includes all of the information required by that section to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(d) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(e) Questions regarding waiver applications should be directed to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

[66 FR 43103, Aug. 17, 2001, as amended at 72 FR 55700, Oct. 1, 2007]

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### **§382.121 Employee admission of alcohol and controlled substances use.**

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

(4) It must ensure that:

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and

(5) It may incorporate employee monitoring and include non-DOT follow-up testing.

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### **§382.123 Driver identification.**

(a) *Identification information on the Alcohol Testing Form (ATF)*. For each alcohol test performed under this part, the employer shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the ATF.

(b) *Identification information on the Federal Drug Testing Custody and Control Form (CCF)*. For each controlled substance test performed under this part, the employer shall provide the following information, which must be recorded as follows:

(1) The driver's commercial driver's license number and State of issuance in Step 1, section C of the CCF.

(2) The employer's name and other identifying information required in Step 1, section A of the ATF.

[81 FR 87724, Dec. 5, 2016]

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## **Subpart B—Prohibitions**

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### **§382.201 Alcohol concentration.**

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

[66 FR 43103, Aug. 17, 2001, as amended at 77 FR 4483, Jan. 30, 2012]

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### **§382.205 On-duty use.**

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

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### **§382.207 Pre-duty use.**

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

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### **§382.209 Use following an accident.**

No driver required to take a post-accident alcohol test under §382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

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### **§382.211 Refusal to submit to a required alcohol or controlled substances test.**

No driver shall refuse to submit to a pre-employment controlled substance test required under §382.301, a post-accident alcohol or controlled substance test required under §382.303, a random alcohol or controlled substances test required under §382.305, a reasonable suspicion alcohol or controlled substance test required under §382.307, a return-to-duty alcohol or controlled substances test required under §382.309, or a follow-up alcohol or controlled substance test required under §382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

[77 FR 4483, Jan. 30, 2012]

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### **§382.213 Controlled substance use.**

(a) No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I.

(b) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in §382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(c) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(d) An employer may require a driver to inform the employer of any therapeutic drug use.

[77 FR 4483, Jan. 30, 2012]

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### **§382.215 Controlled substances testing.**

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

[66 FR 43103, Aug. 17, 2001, as amended at 77 FR 4483, Jan. 30, 2012]

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### **§382.217 Employer responsibilities.**

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40 of this title.

(b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40 of this title.

(c) The driver refused to submit to a test for drugs or alcohol required under this part.

(d) The driver used alcohol prior to a post-accident alcohol test in violation of §382.209.

(e) An employer has actual knowledge, as defined at §382.107, that a driver has:

(1) Used alcohol while performing safety-sensitive functions in violation of §382.205;

(2) Used alcohol within four hours of performing safety-sensitive functions in violation of §382.207; or

(3) Used a controlled substance.

[81 FR 87724, Dec. 5, 2016]

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## Subpart C—Tests Required

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### §382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either:

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c)(1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).



(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c) (1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with §382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test.

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

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**§382.303 Post-accident testing.**

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

**TABLE FOR §382.303(A) AND (B)**

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES YES

ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

(d)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(h) *Exception.* This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with §177.823 of this title.

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### **§382.305 Random testing.**

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions.

(c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by §382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the FEDERAL REGISTER the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the FEDERAL REGISTER.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by §382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the FEDERAL REGISTER the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the FEDERAL REGISTER.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of §382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i)(1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

(3) Each driver selected for testing shall be tested during the selection period.

(j)(1) To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) As an employer, you may use a service agent (e.g., a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(k)(1) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced.

(2) Each employer shall ensure that the dates for administering random alcohol and controlled substances tests conducted under this part are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

[66 FR 43103, Aug. 17, 2001, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 75459, Dec. 31, 2003; 81 FR 68346, Oct. 4, 2016]

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### **§382.307 Reasonable suspicion testing.**

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with §382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to

perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

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### **§382.309 Return-to-duty testing.**

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, subpart O.

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### §382.311 Follow-up testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, subpart O.

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## Subpart D—Handling of Test Results, Records Retention, and Confidentiality

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### §382.401 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations, and

(vii) A copy of each annual calendar year summary required by §382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) shall be maintained for a minimum of 2 years.

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) *Types of records.* The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) A copy of each annual calendar year summary as required by §382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title;

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part;

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in §382.301, and

(B) Must obtain as required by §382.413.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of §382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by §40.213(g) of this title; and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Semi-annual laboratory statistical summaries of urinalysis required by §40.111(a) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by §390.29 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

(e) *OMB control number.* (1) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126-0012.

(2) The information collection requirements of this part are found in the following sections: Sections 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.401, 382.403, 382.405, 382.409, 382.411, 382.601, 382.603.

[66 FR 43103, Aug. 17, 2001, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 75459, Dec. 31, 2003; 78 FR 58479, Sept. 24, 2013; 81 FR 87725, Dec. 5, 2016]

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### **§382.403 Reporting of results in a management information system.**

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The employer must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at §40.26 and appendix H to part 40). The employer may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see: <http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., *Consortium/Third party administrator* as defined in 49 CFR 382.107) may prepare the MIS report on behalf of an employer. However, a company official (e.g., *Designated employer representative* as defined in §382.107) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75459, Dec. 31, 2003; 78 FR 58479, Sept. 24, 2013; 83 FR 22875, May 17, 2018]

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### **§382.405 Access to facilities and records.**

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under §382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer, and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the employer under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of

Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

(1) Employers must disclose information related to the employer's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and

(2) FMCSA will provide access to information in the Clearinghouse concerning drivers who are involved with the crash under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver). Additionally, an employer may disclose information in criminal or civil actions in accordance with §40.323(a)(2) of this title.

(h) An employer shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in §40.321(b) of this title.

[66 FR 43103, Aug. 17, 2001, as amended at 81 FR 87725, Dec. 5, 2016]

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### **§382.407 Medical review officer notifications to the employer.**

Medical review officers shall report the results of controlled substances tests to employers in accordance with the requirements of part 40, Subpart G, of this title.

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### **§382.409 Medical review officer or consortium/third party administrator record retention for controlled substances.**

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer (MRO as defined in §40.3 of this title) or a consortium/third party administrator (C/TPA as defined in §382.107), and no MRO or C/TPA may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a MRO or a C/TPA from releasing to the employer, the Clearinghouse, or to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G, of this title.

[66 FR 43103, Aug. 17, 2001, as amended at 81 FR 87725, Dec. 5, 2016]

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### **§382.411 Employer notifications.**

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours.

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### **§382.413 Inquiries for alcohol and controlled substances information from previous employers.**

(a) Employers must request alcohol and controlled substances information from previous employers in accordance with the requirements of §40.25 of this title, except that the employer must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with §382.701(a) to comply with the requirements of §40.25 of this title with respect to FMCSA-regulated employers. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee's follow-up testing plan directly from the previous employer in accordance with §40.25(b)(5) of this title.

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the employer must request the alcohol and controlled substances information required under this section and §40.25 of this title directly from those employers regulated by a DOT Agency other than FMCSA.

[81 FR 87725, Dec. 5, 2016]

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### **§382.415 Notification to employers of a controlled substances or alcohol testing program violation.**

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements in this part who has violated the alcohol and controlled substances prohibitions under part 40 of this title or this part without complying with the requirements of part 40, subpart O, must notify in writing all current employers of such violation(s). The driver is not required to provide notification to the employer that administered the test or documented the circumstances that gave rise to the violation. The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

[81 FR 87725, Dec. 5, 2016]

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## **Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct**

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### **§382.501 Removal from safety-sensitive function.**

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in §382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

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### **§382.503 Required evaluation and testing.**

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

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### **§382.505 Other alcohol-related conduct.**

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

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## **§382.507 Penalties.**

Any employer or driver who violates the requirements of this part shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b). In addition, any employer or driver who violates the requirements of 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b).

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## **Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral**

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### **§382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.**

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under §382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and

(12) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

(i) A verified positive, adulterated, or substituted drug test result;

(ii) An alcohol confirmation test with a concentration of 0.04 or higher;

(iii) A refusal to submit to any test required by subpart C of this part;

(iv) An employer's report of actual knowledge, as defined at §382.107:

(A) On duty alcohol use pursuant to §382.205;

(B) Pre-duty alcohol use pursuant to §382.207;

(C) Alcohol use following an accident pursuant to §382.209; and

(D) Controlled substance use pursuant to §382.213;

(v) A substance abuse professional (SAP as defined in §40.3 of this title) report of the successful completion of the return-to-duty process;

(vi) A negative return-to-duty test; and

(vii) An employer's report of completion of follow-up testing.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the signed certificate and may provide a copy of the certificate to the driver.

[66 FR 43103, Aug. 17, 2001, as amended at 78 FR 58479, Sept. 24, 2013; 81 FR 87725, Dec. 5, 2016; 83 FR 16226, Apr. 16, 2018]

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### **§382.603 Training for supervisors.**

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under §382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

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### **§382.605 Referral, evaluation, and treatment.**

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

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## **Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse**

SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted.

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### **§382.701 Drug and Alcohol Clearinghouse.**

(a) *Pre-employment query required.* (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) *Annual query required.* (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.

(c) *Employer notification.* If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

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### **§382.703 Driver consent to permit access to information in the Clearinghouse.**

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;

(2) An alcohol confirmation test with a concentration of 0.04 or higher;

(3) A refusal to submit to a test in violation of §382.211;

(4) An employer's report of actual knowledge, as defined at §382.107, of:

(i) On duty alcohol use pursuant to §382.205;

(ii) Pre-duty alcohol use pursuant to §382.207;

(iii) Alcohol use following an accident pursuant to §382.209; and

(iv) Controlled substance use pursuant to §382.213;

(5) A SAP report of the successful completion of the return-to-duty process;

(6) A negative return-to-duty test; and

(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.

(d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

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### **§382.705 Reporting to the Clearinghouse.**

(a) *MROs.* (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

(i) Verified positive, adulterated, or substituted controlled substances test results;

(ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

(i) Reason for the test;

(ii) Federal Drug Testing Custody and Control Form specimen ID number;

(iii) Driver's name, date of birth, and CDL number and State of issuance;

(iv) Employer's name, address, and USDOT number, if applicable;

(v) Date of the test;

(vi) Date of the verified result; and

(vii) Test result. The test result must be one of the following:

(A) Positive (including the controlled substance(s) identified);

(B) Refusal to test: Adulterated;

(C) Refusal to test: Substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) *Employers.* (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:



(i) Reason for the test;

(ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Employer name, address, and USDOT number;

(iv) Date of the test;

(v) Date the result was reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with §382.309);

(B) Positive; or

(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:

(i) On-duty alcohol use pursuant to §382.205;

- (ii) Pre-duty alcohol use pursuant to §382.207;
- (iii) Alcohol use following an accident pursuant to §382.209; and
- (iv) Controlled substance use pursuant to §382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

- (i) Driver's name, date of birth, CDL number and State of issuance;
- (ii) Employer name, address, and USDOT number, if applicable;
- (iii) Date the employer obtained actual knowledge of the violation;
- (iv) Witnesses to the violation, if any, including contact information;
- (v) Description of the violation;

(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and

(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.

(d) *SAPs*. (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

- (i) SAPs name, address, and telephone number;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;

(iii) Date of the initial substance-abuse-professional assessment; and

(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately.* Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

### REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher.
	—Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher.
	—Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result.
	—Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was initiated.
	—Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

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### **§382.707 Notice to drivers of entry, revision, removal, or release of information.**

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

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### **§382.709 Drivers' access to information in the Clearinghouse.**

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

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### **§382.711 Clearinghouse registration.**

(a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) *Employers.* (1) Employer Clearinghouse registration must include:

(i) Name, address, and telephone number;

(ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and

(iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or

report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

(c) *MROs and SAPs*. Each MRO or SAP must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents*. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

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### **§382.713 Duration, cancellation, and revocation of access.**

(a) *Term*. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation*. FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) *Revocation*. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

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### **§382.715 Authorization to enter information into the Clearinghouse.**

(a) *C/TPAs*. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

(b) *SAPs*. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

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### **§382.717 Procedures for correcting information in the database.**

(a) *Petitions limited to inaccurately reported information*. (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) *Exceptions*. (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).

(b) *Petition*. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number, and CDL number and State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate; and

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition.* The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

(d) *Notice of decision.* Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment.* (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review.* (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: “Administrative Review of Drug and Alcohol Clearinghouse Decision” and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers.* When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

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## **§382.719 Availability and removal of information.**

(a) *Driver information not available.* Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

(1) The SAP reports to the Clearinghouse the information required in §382.705 (d);

(2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;

(3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and

(4) Five years have passed since the date of the violation determination.

(b) *Driver information remains available.* Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions.* (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available.* Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

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### **§382.721 Fees.**

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

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### **§382.723 Unauthorized access or use prohibited.**

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or



otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

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### **§382.725 Access by State licensing authorities.**

(a)(1) Beginning January 6, 2020, and before January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State may obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(2) On or after January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

[81 FR 87725, Dec. 5, 2016, as amended at 84 FR 68057, Dec. 13, 2019]

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### **§382.727 Penalties.**

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Resolution TL-18716  
Safety & Enforcement Division**

**R E S O L U T I O N**

**RESOLUTION ADOPTING A MANDATORY CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION PROGRAM FOR PASSENGER STAGE CORPORATION AND CHARTER-PARTY CARRIER OF PASSENGER APPLICANTS AS REQUIRED BY CHAPTER 405, STATUTES OF 1995 (SB 46) AND AMENDING GENERAL ORDERS 157-B AND 158 TO INCLUDE CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION REQUIREMENTS PURSUANT TO PUBLIC UTILITIES CODE SECTIONS 1032.1 AND 5374 AND RENUMBERING GENERAL ORDERS 157-B AND 158 TO 157-C AND 158-A, RESPECTIVELY**

**SUMMARY**

General Order (GO) 157-B contains rules and regulations governing the operations of charter-party carriers of passengers pursuant to Chapter 8 of Division 2 of the Public Utilities (PU) Code (beginning with Section 5351). GO 158 contains rules and regulations governing the operations of passenger stage corporations pursuant to Chapter 5 of Division 1 of the PU Code (beginning with Section 1031).

Chapter 405, statutes of 1995 (SB 46), effective January 1, 1996, amended the PU Code to require the Commission, after considering any suggestions from the California Highway Patrol (CHP), to adopt a controlled substance and alcohol testing certification program for passenger stage and charter-party carrier applicants which is substantially similar to the program in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR), except that a negative test for alcohol shall show a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing. The requirements for rehabilitation and for return-to-duty and followup testing procedures must be substantially as in Part 382 of Title 49 of the CFR.

Any passenger stage corporation or charter-party carrier applicant who proposes to employ any driver who will operate a vehicle having a seating capacity of 16 persons or more, including the driver, is already required by federal regulations and the Vehicle Code to provide for a controlled substance and alcohol testing program for those drivers. The controlled substance and alcohol testing requirements under Chapter 405 apply to passenger stage corporation and charter-party carrier applicants who propose to employ any driver who will operate a vehicle with a seating capacity of 15 persons or less, including the driver, when the driver is not already required to comply with the federal testing regulations.

Additionally, Chapter 405 requires the Commission to adopt a controlled substance and alcohol testing certification program that includes the following elements:

- 1) Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive to pay the costs of rehabilitation and return-to-duty and followup testing.
- 2) The test results shall be reported to the applicant, except that test results for applicants who are also drivers must be reported directly to the Commission. Further, the Commission is required to perform random and for-cause inspections of applicants' documents supporting compliance with the controlled substance and alcohol testing program.
- 3) Any negative test for a driver must be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to the negative result; however, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing.
- 4) All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.

#### STATUTORY REQUIREMENTS

Chapter 405 made the following changes to the Public Utilities Code.

Section 1032.1 was added to read:

1032.1(a) The commission shall not issue a certificate of public convenience and necessity pursuant to this article unless the applicant provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission.

(b) The commission, after considering any suggestions made by the Department of the California Highway Patrol, shall adopt a program that includes, but need not be limited to, all of the following requirements:

(1) Drivers shall test negative for each of the controlled substances specified in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations, before employment. Drivers shall test negative for these controlled substances and for alcohol at such other times as the commission, after consulting the Department of the California Highway Patrol, shall designate. As used in this section, a negative test for alcohol

means an alcohol screening test showing a breath alcohol concentration of less than 0.02 percent.

(2) Procedures shall be substantially as in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations, except that the driver shall show a valid California driver's license at the time and place of testing, and except as provided otherwise in this section. Requirements for rehabilitation and for return-to-duty and followup testing, and other requirements except as provided otherwise in this section, shall be substantially as in Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations.

(3) A test for one applicant shall be accepted as meeting the same requirement for any other applicant. Any negative test result shall be accepted for one year as meeting any requirement for periodic testing for that applicant or any other applicant, if the driver has not tested positive subsequent to a negative result. However, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing.

(4) In the case of an applicant who is also a driver, test results shall be reported directly to the commission. In all other cases, results shall be reported directly to the applicant.

(5) All test results are confidential and shall not be released without the consent of the driver, except as authorized or required by law.

(6) Applicants shall be responsible for compliance with, and shall pay all costs of, this program with respect to their employees and potential employees, except that an applicant may require employees who test positive to pay the costs of rehabilitation and of return-to-duty and followup testing.

(7) The requirements of the program do not apply to any driver required to comply with the controlled substance and alcohol use and testing requirements of Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations, or Section 34520 of the Vehicle Code, or to any driver exempted from the provisions of that Section.

(c) No evidence derived from a positive test result pursuant to the program shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.

(d) On the request of an applicant, the commission shall give the applicant a list of consortia certified pursuant to Part 382 (commencing with Section 382.101) of Title 49 of the Code of Federal Regulations that the commission knows offer tests in California.

(e) The commission shall conduct random and for-cause inspections of applicants' documents supporting compliance with the program.

(f) For purposes of this section, "employment" includes self-employment as an independent driver.

Section 5374 of the Public Utilities Code was amended to read:

5374.(a) Before a permit is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a permit pursuant to this chapter unless the applicant meets both of the following requirements:

(1) It certifies on a form acceptable to the commission that the applicant will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(2) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

(b) (1) Before a certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a certificate pursuant to this chapter unless the applicant meets all of the following requirements:

(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.

(C) It has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation requiring a class B driver's license under the certificate.

(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.

(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with

the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(G) It has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 5378.1.

(H) It has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this subdivision may be inspected by the commission and the Department of the California Highway Patrol.

(I) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

(2) With respect to subparagraphs (B) and (F) of paragraph (1), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) In addition to the requirements in subdivision (b), class A and class B charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

#### DISCUSSION

General Orders 157-B and 158 currently require all drivers of charter-party and passenger stage corporation vehicles to comply with Parts 392.4 and 392.5 of Title 49 of the CFR in regards to drug and alcohol use. However, there is no current Commission requirement that carriers provide for a controlled substance and alcohol testing certification program for their drivers before operating authority is granted or renewed.

Chapter 405 requires the Commission, after considering any suggestions from the CHP, to adopt a controlled substance and alcohol testing certification program for passenger stage and charter-party carrier applicants which is substantially similar to the program in Parts 40 and 382 of Title 49 of the CFR, except that a negative test for alcohol shall show a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing. Chapter 405 requires pre-employment testing, and according to Chapter 405, the requirements for rehabilitation and for return-to-duty and followup testing procedures must be substantially as in Part 382 of Title 49 of the CFR.

Commission staff reviewed the federal testing program contained in Parts 40 and 382 of Title 49 of the CFR and believes it adequate to meet the safety concerns of California's citizens with the addition of criteria mandated by Chapter 405. The testing program adopted by the Commission will include additional federal testing requirements which are not specifically detailed in Chapter 405. Those additional testing

requirements are: post accident testing (Part 382.303); random testing (Part 382.305); and testing due to reasonable suspicion (Part 382.307). Further, staff contacted the CHP for recommendations on implementing Chapter 405. The CHP's main concern was that the Commission adopt regulations as similar to the federal regulations as possible to reduce confusion in the industry. This resolution achieves that goal.

Chapter 405 added Section 1032.1(b)(7) to the PU Code which exempts certain drivers from the Commission's mandatory alcohol and controlled substance testing certification program. Drivers exempted from the Commission's program are those already required to comply with the federal program, drivers required to comply with Section 34520 of the Vehicle Code, or drivers specifically exempted from complying with Section 34520 of the Vehicle Code. Section 34520 of the Vehicle Code requires all motor carriers and drivers to participate in a controlled substance and alcohol testing certification program that meets the federal requirements in 49 CFR Part 382, except that drivers of certain government operated emergency vehicles are exempted from complying with the drug testing requirements of the Vehicle Code if the drivers are already participating in a substance abuse detection program sponsored by their employer.

The federal regulations require the drivers of "commercial vehicles" to participate in a controlled substance and alcohol testing program. In 49 CFR Part 382.107 a vehicle that is designed to transport 16 or more passengers, including the driver, is defined as a commercial vehicle. Therefore, any passenger stage corporation or charter-party carrier applicant proposing to employ any driver who will operate a vehicle having a seating capacity of 16 persons or more, including the driver, is already required by federal regulations and the Vehicle Code to provide for a controlled substance and alcohol testing program for those drivers. Any passenger stage corporation or charter-party carrier applicant proposing to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, when the driver is not already covered by the federal regulations, is required to provide for the controlled substance and alcohol testing certification program adopted by this Commission.

Any driver already required to comply with the federal testing regulations does not have to comply with the requirements of Chapter 405. Hence, this Resolution is not intended to require employers to duplicate testing programs. However, when any driver has an accident, whatever the seating capacity of the vehicle being driven, the employer must administer a post accident drug test (Part 382.303), and when there is reasonable suspicion that any driver is under the influence of controlled substances or alcohol, whatever the seating capacity of the vehicle being driven, the employer must administer a drug test (Part 382.307). Also, any driver covered under the federal regulations who is removed from a "safety sensitive function" as defined in 49 CFR Parts 382.107 and 395.2 based on a controlled substance or alcohol test result is automatically barred under this Commission's program from performing a safety sensitive function.



49 CFR 40.1 states that Part 40, "Procedures For Transportation Workplace Drug Testing Programs," is applicable only to carriers and their drivers subject to Department of Transportation (DOT) regulations. Chapter 405 makes passenger stage corporation and charter-party carrier applicants who propose to employ drivers who will operate vehicles with a seating capacity of 15 persons or less, including the driver, subject to the DOT drug testing regulations as modified by Chapter 405 and this Commission. Part 40 of the CFR refers to controlled substances and alcohol collectively as "drugs."

There are specific references in the federal regulations which conflict with Chapter 405. We are not offering an exhaustive list of these conflicts but intend to identify them as specifically as is practical. For example, in 49 CFR Part 382, a negative test for alcohol is indicated by a blood alcohol level of less than 0.04 percent. A carrier complying with Chapter 405 must have a testing program that requires drivers to show blood alcohol levels of less than 0.02 percent instead of less than 0.04 percent. Some of the specific parts in the CFR in which the 0.04 figure must be substituted with 0.02 are Parts 382.201, 382.301, and 382.413. Whenever there is a reference to a violation of Subpart B in regards to blood alcohol levels, for the purposes of this Commission's program, there is a violation if the driver's blood alcohol level is 0.02 or greater. The requirements in Parts 382.505(b) and 382.601(b)(10) relating to actions that must be taken if a driver has a blood alcohol level of less than 0.04 but greater than 0.02 are not applicable to the Commission's program.

49 CFR Part 382.301 states that a previous negative test may be used to meet pre-employment testing requirements, and 49 CFR Part 382.405 states that an employee may request that its previous or current employer furnish a prospective employer with a copy of previous tests. However, Chapter 405, in PU Code Section 1032.1, specifically states that no previous negative test may be used to meet pre-employment testing requirements. Chapter 405 states that any negative test for a driver shall be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to the negative result; however, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing. Consequently, under Chapter 405, new applicants proposing to employ drivers who will only operate vehicles with a seating capacity of 15 persons or less, including the driver, will have to require those drivers to undergo testing for alcohol and controlled substances as part of the application process in spite of any recent tests the drivers may have taken, unless the applicant can show that the drivers are currently in his employ and already enrolled in his testing program.

49 CFR Part 382.403 requires employers to file annual reports with the Federal Highway Administration (FHWA) concerning test results, training and employment matters. The FHWA uses the information compiled from these annual reports to determine the percentage of drivers who must be randomly tested each year.

Employers should use the percentages established by the FHWA when determining the number of drivers to be randomly tested under the Commission's testing program. However, the Commission will not require employers to file annual reports for drivers required to comply with this Commission's controlled substance and alcohol testing certification program, nor are employers to include drivers only subject to this Commission's testing program in their annual reports to the FHWA. Because charter-party carriers are required to renew their operating authorities every three years, the Commission may verify compliance at the time of renewal instead of requiring annual reports. Additionally, Chapter 405 requires the Commission to conduct random and for-cause inspections of applicants' documents supporting compliance with the controlled substance and alcohol testing certification program.

The Commission staff recommends that if, as a result of a random or for-cause inspection of a charter-party carrier or passenger stage corporation's documents, the Commission determines that a carrier is in violation of the Commission adopted controlled substance and alcohol testing certification program, the Commission suspend the carrier's operating authority. The Commission should not reinstate the carrier's operating authority until the carrier has shown that it has come into compliance with the Commission adopted controlled substance and alcohol testing certification program.

49 CFR Parts 40.23 and 40.59 require an employer to use the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form" to identify employees who are being tested and to request specific kinds of tests. For simplicity of administration, employers should use the same forms for tests administered under this Commission's program. Under federal law, the test results are reported to the employer on a copy of the above forms designated for the employer. There is no designated copy for this Commission, although under Chapter 405, a copy of the test results is to be mailed directly to the Commission when the driver is a driver-applicant. Therefore, a driver-applicant applying for new operating authority must cause the employer's copy of its pre-employment controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively. A driver-applicant applying for renewal of operating authority must cause a copy of its most recent controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively.

49 CFR Part 40.29 requires laboratories to make documentation, including copies of test results, available to DOT on request. By this Resolution, the Commission requires laboratories to make the equivalent documentation, including test results, available to it on request.

Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive

to pay the costs of rehabilitation and return-to-duty and followup testing.

All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under the Commission's testing program may be released under the same circumstances as those detailed in the federal regulations contained in 49 CFR Parts 40 and 382. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.

The Commission must give applicants, upon request, a list of certified consortia that the Commission knows offer tests in California.

In addition, the Commission staff recommends the Commission deny issuance or renewal of a driver-applicant's operating authority if the driver-applicant's most recent tests indicate the use of alcohol or controlled substances in violation of the Commission's adopted testing program. Operating authority for such a driver-applicant would not be granted or renewed until the driver-applicant showed that it had complied with the referral, evaluation and return-to-duty testing provisions of Part 382.605.

Attached to this resolution is General Order (GO) 157-C which appears as Appendix A and GO 158-A which appears as Appendix B. These General Orders have been amended to reflect the controlled substance and alcohol testing certification program discussed above. Part 4.01 of General Order 158-A has been amended also to include the requirement that carriers report the handicap accessible status of their vehicles (per PUC Decision 92-12-065).

**FINDINGS OF FACT:**

1. General Orders 157-B and 158 currently require all drivers of charter-party and passenger stage corporation vehicles to comply with Parts 392.4 and 392.5 of Title 49 of the CFR in regards to drug and alcohol use; but these General Orders do not require carriers to provide for a controlled substance and alcohol testing certification program.
2. Chapter 405 requires the Commission, after considering any suggestions from the CHP, to adopt a mandatory controlled substance and alcohol testing certification program for passenger stage and charter-party carrier applicants which is substantially similar to the program in Parts 40 and 382 of Title 49 of the CFR, except that a negative test for alcohol shall indicate a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing.
3. The requirements for rehabilitation and for return-to-duty and followup testing procedures must be

substantially as in Part 382 of Title 49 of the CFR. Carriers affected by Chapter 405 will also be required to conduct pre-employment testing (Part 382.301), post accident testing (Part 382.303), random testing (Part 382.305) and testing due to reasonable suspicion (Part 382.307).

4. Commission staff reviewed the federal testing program contained in Parts 40 and 382 of Title 49 of the CFR and believes it adequate to meet the safety concerns of California's citizens with the addition of criteria mandated by Chapter 405 and criteria adopted by the Commission. In addition, staff contacted the CHP for recommendations on implementing Chapter 405. The CHP's main concern was that the Commission adopt regulations as similar to the federal regulations as possible to reduce confusion in the industry. This resolution achieves that goal.
- 5a. Chapter 405 added Section 1032.1(b) (7) to the PU Code which exempts certain drivers from the Commission's mandatory alcohol and controlled substance testing certification program. Drivers exempted from the Commission's program are those already required to comply with the federal program, drivers required to comply with Section 34520 of the Vehicle Code, or drivers specifically exempted from complying with Section 34520 of the Vehicle Code. Section 34520 of the Vehicle Code requires all motor carriers and drivers to participate in a controlled substance and alcohol testing certification program that meets the federal requirements in 49 CFR Part 382, except that drivers of certain government operated emergency vehicles are exempted from complying with the drug testing requirements of the Vehicle Code if the drivers are already participating in a substance abuse detection program sponsored by their employer.
- b. The federal regulations require the drivers of commercial vehicles to participate in the controlled substance and alcohol testing program detailed in 49 CFR Parts 40 and 382. In 49 CFR Part 382.107 a vehicle that is designed to transport 16 or more passengers, including the driver, is defined as a "commercial vehicle." Therefore, any passenger stage corporation or charter-party carrier applicant proposing to employ any driver who will operate a vehicle having a seating capacity of 16 persons or more, including the driver, is required by federal regulations and the Vehicle Code to provide for a controlled substance and alcohol testing program for those drivers. Any passenger stage corporation or charter-party carrier applicant proposing to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, when the driver is not already covered by the federal regulations, is required to provide for the controlled substance and alcohol testing certification program adopted by this Commission. Consequently,

requirements appearing in 49 CFR Parts 40 and 382 which apply to the driver of a commercial motor vehicle apply to all drivers required to comply with this Commission's testing certification program, except as those requirements are modified by Chapter 405 and this Resolution. Therefore, whenever the federal regulations limit their application to the drivers of commercial vehicles, for the purposes of this Commission's program vehicles with a seating capacity of 15 persons or less, including the driver, shall be considered commercial vehicles. This affects, for example, the determination of what are "safety sensitive functions" for purposes of this Commission's program.

- c. Any driver already required to comply with the federal testing regulations does not have to comply with the requirements of Chapter 405. Hence, this Resolution is not intended to require employers to duplicate testing programs. However, when any driver has an accident, whatever the seating capacity of the vehicle being driven, the employer must administer a post accident drug test (Part 382.303), and when there is reasonable suspicion that any driver is under the influence of controlled substances or alcohol, whatever the seating capacity of the vehicle being driven, the employer must administer a drug test (Part 382.307). Also, any driver covered under the federal regulations who is removed from a "safety sensitive function" as defined in 49 CFR Parts 382.107 and 395.2 based on a controlled substance or alcohol test result is automatically barred under this Commission's program from performing a safety sensitive function.
6. 49 CFR Part 40.1 states that Part 40, "Procedures For Transportation Workplace Drug Testing Programs," is applicable only to carriers and their drivers subject to DOT regulations. Chapter 405 makes passenger stage corporation and charter-party carrier applicants who propose to employ any driver who will operate a vehicle with a seating capacity of 15 persons or less, including the driver, when the driver is not already covered by the federal regulations, subject to the DOT drug testing regulations as modified by Chapter 405 and this Commission.
7. There are specific references in the federal law which conflict with Chapter 405. The Commission is not offering an exhaustive list of these conflicts, but intends to identify them as specifically as is practical. For example, in 49 CFR Part 382, a negative test for alcohol is indicated by a blood alcohol level of less than 0.04 percent. A carrier complying with Chapter 405 must have a testing program that requires drivers to show blood alcohol levels of less than 0.02 percent instead of less than 0.04 percent. Some of the specific parts in the CFR in which the 0.04 figure must be substituted with 0.02 are Parts 382.201, 382.301, and 382.413. Whenever there is a reference to a violation

of Subpart B in regards to blood alcohol levels, for the purposes of this Commission's program, there is a violation if the driver's blood alcohol level is 0.02 or greater. The requirements in Parts 382.505(b) and 382.601(b)(10) relating to actions that must be taken if a driver has a blood alcohol level of less than 0.04 but greater than 0.02 are not applicable to the Commission's program.

8. 49 CFR Part 382.301 states that a previous negative test may be used to meet pre-employment testing requirements, and 49 CFR Part 382.405 states that an employee may request that its previous or current employer furnish a prospective employer with a copy of previous tests. However, Chapter 405, in PU Code Section 1032.1, specifically states that no previous negative test may be used to meet pre-employment testing requirements. Chapter 405 requires that any negative test for a driver be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to the negative result; however, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing. Consequently, new applicants must require all of their drivers who must comply with Chapter 405 to undergo testing for alcohol and controlled substances as part of the application process in spite of any recent tests the drivers may have taken, unless the applicant can show that the drivers are currently in his employ and already enrolled in his testing program.
9. 49 CFR Part 382.403 requires carriers to file annual reports with the Federal Highway Administration (FHWA) concerning test results, employment and training matters. The FHWA uses the information compiled from these annual reports to determine the percentage of drivers who must be randomly tested each year. Employers should use the percentages established by the FHWA when determining the number of drivers to be randomly tested under the Commission's testing program. However, the Commission will not require employers to file annual reports for drivers required to comply with this Commission's controlled substance and alcohol testing certification program, nor are employers to include drivers only subject to this Commission's testing program in their annual reports to the FHWA. Because charter-party carriers are required to renew their operating authorities every three years, the Commission may verify compliance at the time of renewal instead of requiring annual reports. Additionally, Chapter 405 requires the Commission to conduct random and for-cause inspections of applicants' documents supporting compliance with the controlled substance and alcohol testing certification program.

10. 49 CFR 40.23 and 40.59 require an employer to use the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form" to identify employees who are being tested and to request specific kinds of tests. For simplicity of administration, employers should use the same forms for tests administered under this Commission's program. Under federal law, the test results are reported to the employer on a copy of the above forms designated for the employer. There is no designated copy for this Commission, although under Chapter 405, a copy of the test results is to be mailed directly to the Commission when the driver is a driver-applicant. Therefore, a driver-applicant applying for new operating authority must cause the employer's copy of its pre-employment controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively. A driver-applicant applying for renewal of operating authority must cause a copy of its most recent controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively.
11. 49 CFR Part 40.29 requires laboratories to make documentation, including copies of test results, available to DOT on request. By this Resolution, the Commission requires laboratories to make the equivalent documentation, including test results, available to it on request.
12. Chapter 405 directs the Commission to give applicants, upon request, a list of certified consortia that the Commission knows offer the tests in California.
13. Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive to pay the costs of rehabilitation and return-to-duty and followup testing.
14. All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under the Commission's testing program may be released under the same circumstances as those detailed in 49 CFR Parts 40 and 382. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.
15. Chapter 405 requires the Commission to deny operating authority to an applicant who has not provided for a mandatory controlled substance and alcohol testing certification program as adopted by the Commission. The

Commission staff recommends the Commission also deny issuance or renewal of a driver-applicant's operating authority if the driver-applicant's most recent tests indicate the use of alcohol or controlled substances in violation of the Commission's adopted controlled substance and alcohol testing certification program. Operating authority would not be granted or renewed until the driver-applicant showed that it had complied with the referral, evaluation and return-to-duty testing provisions of Part 382.605. The Commission staff also recommends that if, as a result of a random or for-cause inspection of a charter-party carrier or passenger stage corporation's documents, the Commission determines that a carrier is in violation of the Commission adopted controlled substance and alcohol testing certification program, the Commission suspend the carrier's operating authority. The Commission should not reinstate the carrier's operating authority until the carrier has shown that it has come into compliance with the Commission adopted controlled substance and alcohol testing certification program.

16. In order to implement the requirements of Chapter 405, it is necessary to amend General Orders Series 157 and 158.

**IT IS ORDERED that:**

1. General Order 157-B is amended as set forth in Appendix A to this resolution.
2. General Order 158 is amended as set forth in Appendix B to this resolution.
3. The Executive Director shall provide copies of this Resolution to all charter-party carriers and passenger stage corporations.
4. Effective January 1, 1996, all passenger stage corporation and charter-party carrier applicants must certify, before operating authority will be issued or renewed, either (A) that they have provided for a controlled substance and alcohol testing certification program as adopted by the Commission or (B) that they are subject only to the federal testing program and are therefore exempt from the requirements of Chapter 405.
5. A controlled substance and alcohol testing certification program is adopted for passenger stage corporation and charter-party carrier applicants who must certify to 4(A) above. This program shall be substantially equivalent to the program in Parts 40 and 382 of Title 49 of the Code of Federal Regulations, except a negative test for alcohol shall show a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing. This program shall also contain



requirements added or modified by Chapter 405 and this Commission as discussed in the Findings of Fact herein.

6. The requirements for rehabilitation and for return-to-duty and followup testing, and other requirements will be equivalent to those in Part 382 of Title 49 of the Code of Federal Regulations, except for the requirements added by Chapter 405 and this Commission discussed in the Findings of Fact herein. Carriers affected by Chapter 405 will also be required to conduct pre-employment testing (Part 382.301), post accident testing (Part 382.303), random testing (Part 382.305) and testing due to reasonable suspicion (Part 382.307).
7. The Commission staff will give applicants, upon request, a list of certified consortia that the Commission knows offer tests in California.
8. Under this Commission's program, an employer shall use the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form" prescribed in 49 CFR Parts 40.23 and 40.59 to identify employees who are going to be tested and to request specific kinds of tests. Under federal regulations, the test results are reported to the employer on a copy of the above forms designated for the employer. There is no designated copy for this Commission, although under Chapter 405, a copy of the test results is to be mailed directly to the Commission when the driver is a driver-applicant. Therefore, a driver-applicant applying for new operating authority must cause the employer's copy of its pre-employment controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively. A driver-applicant applying for renewal of operating authority must cause the employer's copy of its most recent controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer and breath alcohol technician, respectively.
9. The Commission staff will perform random and for-cause inspections of applicants' documents supporting compliance with the controlled substance and alcohol testing certification program.
10. Any negative test for a driver will be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to the negative result; however, an earlier negative result shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing.
11. The controlled substance and alcohol testing requirements under Chapter 405 apply to passenger stage corporation and charter-party carrier applicants who propose to

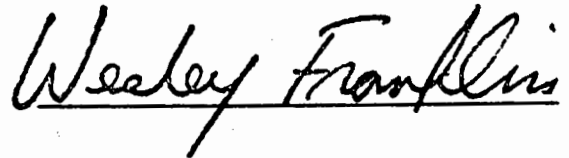
employ any driver who will operate a vehicle with a seating capacity of 15 persons or less, including the driver, when the driver is not already covered by the federal regulations.

12. All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under the Commission's testing program may be released under the same circumstances as those detailed in 49 CFR Parts 40 and 382.
13. Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive to pay the costs of rehabilitation and return-to-duty and followup testing.
14. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.
15. 49 CFR Part 40.29 requires laboratories to make documentation, including copies of test results, available to DOT on request. By this Resolution, the Commission requires laboratories to make the equivalent documentation, including test results, available to it on request.
16. Operating authority will be denied if a passenger stage corporation or charter-party carrier applicant does not provide for a mandatory controlled substance and alcohol testing certification program as adopted by the Commission. Issuance or renewal of a driver-applicant's operating authority will be denied if the driver-applicant's most recent tests indicate the use of alcohol or controlled substances in violation of the Commission's adopted controlled substance and alcohol testing certification program. Operating authority for a driver-applicant testing positive will not be granted or renewed until the driver-applicant shows that it has complied with the referral, evaluation and return-to-duty provisions of Part 382.605.
17. If, as a result of a random or for-cause inspection of a charter-party carrier or passenger stage corporation's documents, the Commission determines that a carrier is in violation of the Commission adopted controlled substance and alcohol testing certification program, the Commission may suspend the carrier's operating authority. The Commission will not reinstate the carrier's operating authority until the carrier has shown that it has come into compliance with the Commission adopted controlled substance and alcohol testing certification program.
18. This resolution is effective December 20, 1995.

I hereby certify that the foregoing resolution was duly introduced, passed and adopted at a regular meeting of the Public Utilities Commission of the State of California, held on the twentieth day of December, 1995. The following Commissioners voted favorably thereon:

**PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Wesley M. Franklin  
Executive Director

A handwritten signature in cursive script that reads "Wesley Franklin". The signature is written in dark ink and is positioned above the printed name of the President.

**DANIEL Wm. FESSLER**

**President**

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

**Commissioners**

**Attachments: Appendix A  
Appendix B**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Resolution TL-18760  
Safety & Enforcement Division  
Page 1 of 5 pages**

**R E S O L U T I O N**

**RESOLUTION REVISING THE MANDATORY CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION PROGRAM FOR PASSENGER STAGE CORPORATION AND CHARTER-PARTY CARRIER OF PASSENGER APPLICANTS AS ADOPTED IN RESOLUTION TL-18716 AND AMENDING GENERAL ORDERS 157-C AND 158-A TO REFLECT THOSE REVISIONS**

**SUMMARY**

Chapter 405, statutes of 1995 (SB 46), effective January 1, 1996, amended the Public Utilities (PU) Code to require the Commission to adopt a controlled substance and alcohol testing certification program for passenger stage and charter-party carrier applicants which is substantially similar to the program in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR).

General Order (GO) 157-C contains rules and regulations governing the operations of charter-party carriers of passengers pursuant to Chapter 8 of Division 2 of the PU Code (beginning with Section 5351). GO 158-A contains rules and regulations governing the operations of passenger stage corporations pursuant to Chapter 5 of Division 1 of the PU Code (beginning with Section 1031).

By Resolution TL-18716 we incorporated the SB 46 requirements into General Orders 157-C and 158-A, effective January 1, 1996. Since that time, some technical errors in Resolution TL-18716 have been identified by staff. This resolution modifies General Orders 157-C and 158-A to correct these errors.

**STATUTORY REQUIREMENTS**

The statutory requirements of Chapter 405 appear in Resolution TL-18716.

**DISCUSSION**

It is the staff's opinion that certain technical errors were made in Resolution TL-18716 which need to be corrected, and the suggested corrections appear below.

On page 7 of Resolution TL-18716, in the second paragraph and in Finding of Fact number 7 on pages 11 and 12, there are references to "blood alcohol level" which should read "breath alcohol level."

The U.S. Department of Transportation has informed us that its authorized custody and control forms, "the DOT Breath Alcohol Testing Form" and "the Federal Drug Testing Custody and Control

Form," may only be used for drivers who are required to participate in a federally mandated drug and alcohol testing program. In addition, federal regulations do not require controlled substance test results to be reported on custody and control forms, but allow a medical review officer to use any manner of signed, written notification which meets the requirements of 49 CFR Part 382.407. In the third paragraph on page 8, in Finding of Fact number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158, there are requirements that carriers use the federal forms when implementing their state mandated program and that controlled substance test results be reported to the Commission by the medical review officer on the employer's copy of the custody and control form. Therefore, the Commission adopted regulations should be changed to require that carriers use custody and control forms that are substantially similar to, but distinct from, the forms authorized by the federal government. The Commission adopted regulations should also be amended to allow a medical review officer to report test results to the Commission in a manner consistent with the requirements of 49 CFR Part 382.407.

The pre-employment alcohol testing requirements discussed in the third paragraph on page 7, in Findings of Fact number 8 on page 12 and number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158 should be rescinded due to the decision of the Fourth U.S. Circuit Court of Appeal (American Trucking Association vs Federal Highway Authority 51 F.3d 405 (4th Circuit 1995)) and the subsequent suspension of the pre-employment alcohol testing requirements (See 49 CFR Part 382.301(e)). Also, a statement should be added to Part 10.02 in General Orders 157 and 158 to emphasize that pre-employment alcohol testing is not required.

The references to having a copy of the driver-applicant's test results sent directly to the Commission by the attending medical review officer or breath alcohol technician in the third paragraph on page 8, in Finding of Fact number 10 on page 13, in ordering paragraph 8 on page 15 and in Part 10.06 of General Orders 157 and 158 should allow for the test results to be sent to the Commission by the administrator of the consortium in which the driver is enrolled. When drivers enter into a consortium for the purposes of drug and alcohol testing, the consortium routinely receives and distributes custody and control forms and test results. As this control of the paper trail is part of the consortium's purpose, it would not be advisable for the Commission to prohibit consortia from providing that service.

Attached to this resolution is an amended GO 157-C which appears as Appendix A and an amended GO 158-A which appears as Appendix B. These General Orders have been amended to reflect the changes discussed above.

**FINDINGS OF FACT:**

1. As directed by Chapter 405, statutes of 1995 (SB 46), the Commission adopted alcohol and controlled substance testing requirements for passenger stage corporations and charter-party carriers (Resolution TL-18716). Certain technical errors were made in the resolution which need to be corrected.
2. On page 7 of Resolution TL-18716, in the second paragraph and in Finding of Fact number 7 on pages 11 and 12, there are references to "blood alcohol level" which should read "breath alcohol level."
3. The U.S. Department of Transportation has informed us that its authorized custody and control forms, "the DOT Breath Alcohol Testing Form" and "the Federal Drug Testing Custody and Control Form," may only be used for drivers who are required to participate in a federally mandated drug and alcohol testing program. In addition, federal regulations do not require controlled substance test results to be reported on custody and control forms, but allow a medical review officer to use any manner of signed, written notification which meets the requirements of 49 CFR Part 382.407. In Resolution TL-18716 in the third paragraph of page 8, in Finding of Fact number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158, there are requirements that carriers use the federal custody and control forms when implementing their state mandated programs and that controlled substance test results be reported to the Commission by the medical review officer on the employer's copy of the custody and control form. Therefore, the Commission adopted regulations should be changed to require that carriers use custody and control forms that are substantially similar to, but distinct from, the forms authorized by the federal government. The Commission adopted regulations should also be amended to allow a medical review officer to report test results to the Commission in a manner consistent with the requirements of 49 CFR Part 382.407.
4. In Resolution TL-18716, the pre-employment alcohol testing requirements discussed in the third paragraph on page 7, in Findings of Fact number 8 on page 12 and number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158 should be rescinded due to the decision of the Fourth U.S. Circuit Court of Appeal (American Trucking Association vs Federal Highway Authority 51 F.3d 405 (4th Circuit 1995)) and the subsequent suspension of the pre-employment alcohol testing requirements (See 49 CFR Part 382.301(e)). Also, a statement should be added to Part 10.02 in General Orders 157 and 158 to emphasize that pre-employment

alcohol testing is not required.

5. In Resolution TL-18716, the references to having a copy of the driver-applicant's test results sent directly to the Commission by the attending medical review officer or breath alcohol technician in the third paragraph on page 8, in Finding of Fact number 10 on page 13, in ordering paragraph 8 on page 15 and in Part 10.06 of General Orders 157 and 158 should allow for the test results to be sent to the Commission by the administrator of the consortium in which the driver is enrolled. When drivers enter into a consortium for the purposes of drug and alcohol testing, the consortium routinely receives and distributes custody and control forms and test results. As this control of the paper trail is part of the consortium's purpose, it would not be advisable for the Commission to prohibit consortia from providing that service.
6. In order to fully implement the requirements of Chapter 405, it is necessary to amend Resolution TL-18716 and General Orders Series 157 and 158 to incorporate the modifications set forth in Findings 2 through 5.

**IT IS ORDERED that:**

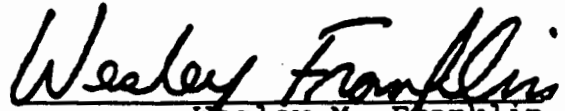
1. General Order 157-C is amended as set forth in Appendix A to this resolution.
2. General Order 158-A is amended as set forth in Appendix B to this resolution.
3. The Executive Director shall provide copies of this Resolution to all charter-party carriers and passenger stage corporations.
4. On page 7 of Resolution TL-18716, in the second paragraph, and in Finding of Fact number 7 on pages 11 and 12, references to "blood alcohol level" shall read "breath alcohol level."
5. In Resolution TL-18716, in the third paragraph on page 8, in Finding of Fact number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158, the requirement that carriers use federal custody and control forms when implementing their state mandated programs is revised to require carriers to use custody and control forms that are substantially similar to, but distinct from, the custody and control forms authorized by the federal government. The requirement that controlled substance test results be reported to the Commission by the medical review officer on the employer's copy of the custody and control form is revised to allow a medical review officer to report test results to the Commission

in a manner consistent with the requirements of 49 CFR Part 382.407.

6. In Resolution TL-18716, the pre-employment alcohol testing requirements discussed in the third paragraph on page 7, in Findings of Fact number 8 on page 12 and number 10 on page 13, in ordering paragraph number 8 on page 15, and in Parts 10.02 and 10.06 of General Orders 157 and 158 are rescinded. Also, a phrase is added to Part 10.02 in General Orders 157 and 158 to emphasize that pre-employment alcohol testing is not required.
7. In Resolution TL-18716, the references to having a copy of the driver-applicant's test results sent directly to the Commission by the attending medical review officer or breath alcohol technician in the third paragraph on page 8, in Finding of Fact number 10 on page 13, in ordering paragraph 8 on page 15 and in Part 10.06 of General Orders 157 and 158 are revised to allow for the test results to be sent to the Commission by the administrator of the consortium in which the driver is enrolled.
8. This resolution is effective September 4, 1996.

I hereby certify that the foregoing resolution was duly introduced, passed and adopted at a regular meeting of the Public Utilities Commission of the State of California, held on the fourth day of September, 1996. The following Commissioners voted favorably thereon:

**PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

  
Wesley M. Franklin  
Executive Director

DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

President P. Gregory Conlon,  
being necessarily absent, did not  
participate.

Attachments: Appendix A  
Appendix B



General Order 157-E  
(Supersedes General Order 157-D)

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rules And Regulations Governing the Operations of Charter-Party Carriers of  
Passengers Pursuant to Chapter 8 Of Division 2 of the Public Utilities Code  
(Beginning With Section 5351).

Amended Effective October 25, 2018  
Resolution TL-19129

Amended Effective February 13, 2019  
D.19-02-001

Amended Effective October 31, 2019  
D.19-10-061

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## PART 1--GENERAL PROVISIONS

**1.01--Short Title.** These rules and regulations shall be known as "General Order Series 157."

**1.02--References to Statutes, Rules and Regulations.** Whenever reference is made to any portion of any law, such reference shall apply to all amendments and additions heretofore or hereafter made; and whenever reference is made to any portion of these rules and regulations, such reference shall apply to all amendments and additions hereafter made.

**1.03--Construction of Singular and Plural.** The singular number includes the plural, and the plural the singular.

**1.04--"Shall" and "May."** "Shall" is mandatory and "may" is permissive.

**1.05--Liability Insurance Requirements.** Every charter-party carrier shall comply with all provisions of General Order Series 115.

**1.06--Applicability of Vehicle Code.** Every charter-party carrier and its drivers shall comply with the provisions of the California Vehicle Code.

**1.07--Commission May Order Deviations.** The Commission may authorize deviations from these rules and regulations or prescribe or require the observance of additional or different rules by special order.

**1.08--Availability of General Order Series 157, Vehicle Code And Title 13.** Every charter-party carrier shall have a current copy of General Order series 157 and a current copy of the California Vehicle Code and the Motor Carrier Safety Sections (Subchapter 4, Article 12 and 14, and Subchapter 6.5, Articles 1, 3, 6, and 8) of Title 13 of the California Code of Regulations in a place available to all drivers.

## PART 2--DEFINITIONS

**2.01--Commission.** "Commission" means the Public Utilities Commission of the State of California.

**2.02--Charter-Party Carrier of Passengers, TCP, Carrier.** The definition of "charter-party carrier of passengers" shall be that set forth in Sections 5351-5363 of the Public Utilities Code. The initials "TCP" mean "transportation charter-party."

Within this General Order the word "carrier" means charter-party carrier of passengers.

**2.03--Charter-Party Vehicle, Vehicle.** "Charter-party vehicle" is a motor vehicle used in charter-party service. Within this General Order the word "vehicle" means charter-party vehicle, unless identified as a personal vehicle (Part 2.14.)

**2.04--Modified Limousine.** A "modified limousine" is any vehicle that has been modified, altered, or extended in a manner that increases the overall wheelbase of the vehicle, exceeding the original equipment manufacturer's published wheelbase dimension for the base model and year of the vehicle, in any amount

sufficient to accommodate additional passengers with a seating capacity of not more than 10 passengers including the driver, and is used in the transportation of passengers for hire. For purposes of this section, "wheelbase" means the longitudinal distance between the vertical centerlines of the front and rear wheels.

**2.05--Limousine.** A "limousine" includes any sedan or sport utility vehicle, of either standard or extended length, with a seating capacity of not more than 10 passengers including the driver, used in the transportation of passengers for hire on a prearranged basis within this state.

**2.06--Driver-Applicant.** A driver-applicant is any applicant for charter-party carrier operating authority who will also be a driver of any vehicle authorized to be operated under the authority. This definition does not apply to drivers of personal vehicles operated on a TNC platform.

**2.07--Electronic Communication.** "Electronic Communication" is the transmission of information, and/or documents or forms required by General Order 157-E, by and/or between a charter-party carrier and the passenger(s), using electronic devices such as computers. A good example of a form of electronic communication is the use of e-mail.

**2.08--Electronic Documents.** "Electronic Documents" mean electronic versions of any and all documents or forms required by General Order 157-E, whether electronic or paper in origin, stored in an electronic format in lieu of paper documents. Electronic documents include e-mails by and/or between the charter-party carrier and the passenger(s).

**2.09--Electronic Format.** "Electronic Format" means an electronic method of creating a document, and/or copying a hard copy document, such that the document can be accessed electronically using a personal computer, workstation, local area network, wide area network, intranet, the Internet, or other type of network.

**2.10--Electronic Means.** "Electronic Means" is the electronic transmission of any and all documents and/or forms required by General Order 157-E, or the transmission of information, by and/or between a charter-party carrier and the passenger(s), through an electronic method such as e-mail.

**2.11--Electronic Records.** "Electronic Records" mean electronic copies of any and all documents and/or forms required by General Order 157-E, whether electronic or paper in origin, and electronic copies of e-mails, stored by the charter-party carrier in an electronic format.

**2.12--Electronic Retention.** "Electronic Retention" means an electronic storage method used by a charter-party carrier to retain electronic copies of any and all documents and forms required by General Order 157-E, whether electronic or paper in origin, and to retain electronic copies of e-mails by and/or between a charter-party carrier and the passengers.

**2.13--Transportation Network Company.** A "Transportation Network Company" is a charter-party carrier, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California

that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle. TNCs are prohibited from accepting street hails from potential passengers. The primary distinction between a TNC and a TCP is that the TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for commercial purpose. To that end, a TNC is not permitted to itself own vehicles used in its operations or own fleets of vehicles.

**2.14--Personal Vehicle.** A “personal vehicle” means a vehicle that is used by a participating TNC driver to provide prearranged transportation services for compensation that meets all the following requirements:

1. Has a passenger capacity of eight persons or less, including the driver.
2. Is owned, leased or rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver.
3. Meets all inspection and other safety requirements imposed by the Commission.
4. Is not a taxicab or limousine.

### **PART 3--GENERAL REQUIREMENTS AND RESTRICTIONS**

**3.01--Prearranged Transportation.** Class A and Class B charter-party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384(b) shall provide transportation only on a prearranged basis. The driver shall possess a waybill which includes the following:

1. Name of carrier and TCP number.
2. Vehicle license plate number.
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Whether the transportation was arranged by telephone, written contract or electronic communication.
7. Number of persons in the charter group.
8. Name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation.
9. Points of origination and destination.

A charter-party carrier may use, retain, and produce any waybill, and/or any and all other documents or forms required by General Order 157-E, in electronic or hardcopy format. Upon request, the driver shall show the waybill to any Commission or airport enforcement officer, or to any official of a city, county, or city and county authorized to inspect waybills pursuant to Public Utilities Code Section 5371.4(h) in either electronic or hardcopy format. A charter-party carrier shall produce in its office a hard copy of any waybill and any and all other

documents or forms required by General Order 157-E when requested by the Commission or one of its authorized representatives pursuant to Section 5389 of the Public Utilities Code.

**3.02--Operations At Airports.** No carrier shall conduct any operations on the property of or into any airport unless such operations are authorized by both this Commission and the airport authority involved. Consistent failure to comply with safety or traffic rules and regulations of an airport authority may result in suspension or revocation of Commission operating authority.

**3.03--Taxi Transportation Service Not Authorized.** A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters.

**3.04--Sub-Carriers.** A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter-party carrier. The agreement for the utilization of the second carrier's vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carriers' names, TCP numbers, and the services to be provided.

**3.05--Renewal Of Authority.** Each carrier shall be responsible for filing renewal applications at least three months prior to the expiration date of the certificate or permit.

**3.06--Fictitious Names.** A carrier shall not use any trade, business, or fictitious names which are not on file with the Commission.

**3.07--Advertisements Shall Include TCP Number.** Carriers shall state the number of their certificate or permit in every written or oral advertisement, broadcast, or other holding out to the public for services. The certificate or permit number shall include the prefix "TCP", and the suffix "A", "B", "C", "S", "P", and/or "Z" (Class "A" certificate, Class "B" certificate, Class "C" certificate, round-trip sightseeing permit, charter-party permit, and specialized carrier permit, respectively) which identify the authority or authorities under which transportation service will be provided.

**3.08--Alcoholic Beverages and Minors.** If alcoholic beverages will be consumed or transported and a member of the party is under 21 years of age, the carrier shall comply with the provisions set forth in Public Utilities Code Section 5384.1 through 5384.5.

## **PART 4--VEHICLES**

**4.01--Equipment Statement to be Current.** Every charter-party carrier, excluding TNCs, shall maintain, on file with the Commission, an equipment list of all vehicles (owned or leased) in use under each certificate and permit. The information for each vehicle shall include the manufacturer, model year, vehicle identification number (VIN), seating capacity (including driver), description of body type or model designation, whether the vehicle is leased or owned,



handicap accessible status, and its license plate number, its gross vehicle weight rating (GVWR) or gross vehicle weight (GVW), and whether the vehicle is a modified limousine, and the vehicle's terminal address.

Additions and deletions to the equipment list shall be filed within ten days of the date the vehicle is put into or pulled out of service.

**4.02--Safety Requirements Before Operation.** All vehicles operated under each certificate or permit, except personal vehicles operated on a TNC platform, shall comply with the requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations. Every carrier must inspect all vehicles and maintain proper documentation of such inspections.

**4.03--Name Of Carrier And Vehicle Number To Be Displayed On Vehicle.** A vehicle shall not be operated in service unless there is painted or displayed, on each side of the vehicle, the name or trade name of the carrier. Every carrier shall assign an identifying number to each vehicle. Such number shall be painted on or otherwise permanently attached to the rear and each side of the exterior of each vehicle. The carrier's name and vehicle numbers shall be sufficiently large and color contrasted as to be readable, during daylight hours, at a distance of 50 feet. However, the provisions of this section shall not apply to vehicles temporarily leased by carriers for a period of less than 30 days or to vehicles designed to carry not more than 15 persons, including the driver. This requirement does not apply to TNCs.

**4.04--TCP Number to be Displayed on Vehicle, Except TNCs.** The number assigned by the Commission to the carrier's authority shall be shown in full on all charter party vehicles, including the prefix "TCP", the authority number and the authority suffix "A", "B", "C", "S", "P" and/or "Z" (which designate Class "A" certificate, Class "B" certificate, Class "C" certificate, round-trip sightseeing permit, charter-party permit, and specialized carrier permit, respectively). The letter and numeral symbol size and placement shall be as follows:

The identification symbol shall be in sharp color contrast to the background and such size and shape and so located as to be readily legible during daylight hours at a distance of 50 feet. The symbols shall be displayed on each side of the vehicle, EXCEPT vehicles designed to carry not more than 15 persons, including the driver, which shall display the identification symbol on the front and rear bumpers.

This requirement does not apply to personal vehicles operated on TNCs platforms.

**4.05--19-Point Vehicle Inspection.** All charter-party carriers, including TNCs, shall ensure that every vehicle, except vehicles defined as a bus pursuant to California Vehicle Code § 233, and modified limousines as defined in Pub. Util. Code § 5361, utilized in its operations undergoes a 19-point vehicle inspection at a facility licensed by the California Bureau of Automotive Repair prior to initial

operation and every 12 months or 50,000 miles thereafter. The 19-point inspection shall include the items on the following checklist:

1. Foot brakes
2. Emergency brakes
3. Steering mechanism
4. Windshield
5. Rear window and other glass
6. Windshield wipers
7. Headlights
8. Tail lights
9. Turn indicator lights
10. Stop lights
11. Front seat adjustment mechanism
12. Doors (open, close, lock)
13. Horn
14. Speedometer
15. Bumpers
16. Muffler and exhaust system
17. Condition of tires, including tread depth
18. Interior and exterior rear view mirrors
19. Safety belts for driver and passenger(s)

**4.06--Maintenance of Vehicle Inspection Records.** All charter-party carriers, including TNCs, shall maintain records demonstrating that every vehicle, except vehicles defined as a bus pursuant to California Vehicle Code § 233, and modified limousines as defined in Pub. Util. Code § 5361, used in its operations comply with the 19-point vehicle inspection requirement. These records shall be retained for a period of three years and shall be made available for inspection by or production to the Commission.

**4.07--Damage to Identification Symbols.** It shall be the carrier's responsibility to make immediate restoration or replacement of any damage caused to the identification names and numbers on vehicles.

**4.08--Illegal Display Of TCP Identification.** Immediately upon revocation or termination of any permit or certificate the TCP number for the permit or certificate shall be removed from all vehicles. If new operating authority is later granted, it shall be the responsibility of the carrier to make the appropriate identification.

**4.09--Unauthorized Use Of Operating Authority.** A carrier shall not knowingly permit its operating authority or TCP number(s) to be used by others.

**4.10--Sale or Transfer Of Vehicle.** It shall be the carrier's responsibility to remove all certificate or permit numbers and identification symbols when a vehicle is sold or transferred.

## **PART 5—DRIVERS, EXCLUDING TNC DRIVERS**

**5.01--Driver to Be Licensed.** Every driver of a charter-party vehicle shall be licensed as required under the California Vehicle Code and shall comply with the driver provisions of the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.

**5.02--Driver Record.** Every carrier shall enroll in the "Pull Notice Program" of the Department of Motor Vehicles as defined in Vehicle Code Section 1808.1. A charter-party vehicle shall not be operated by any driver who is presumed to be a negligent operator under Vehicle Code Section 12810.5.

**5.03--Driver Status.** Every driver of a vehicle shall be the permit/certificate holder or under the complete supervision, direction and control of the operating carrier and shall be:

1. An employee of the permit/certificate holder; or,
2. An employee of a sub-carrier; or,
3. An independent owner-driver who holds charter-party carrier authority and is operating as a sub-carrier.

**5.04--Alcoholic Beverages And Drugs: Use By Driver Forbidden.** All drivers shall comply with the rules in the Code of Federal Regulations Title 49, Parts 392.4 and 392.5. This rule, in part, prohibits drivers from consuming or being under the influence of a drug or alcoholic beverage while on duty, and prohibits carriers from allowing drivers to consume or be under the influence of a drug or alcoholic beverage while on duty.

## **PART 6--RECORDS AND INSPECTIONS**

**6.01--Charter-Party Records.** Every carrier shall institute and maintain in its offices, a set of records which reflect information as to the services performed, including waybills, as described in Section 3.01. Every carrier shall also maintain copies of all lease and sub-carrier agreements, and shall maintain maintenance and safety records (including, but not limited to, the records required in Paragraphs 4.01 and 4.02), driver records (including, but not limited to, the records required in Paragraph 5.02), and consumer complaint records (including, but not limited to, the records required in Paragraph 7.01). Such records shall be maintained for a minimum period of three years. Charter-party carriers may use electronic retention, as defined in 2.12 above, to store such documents.

**6.02--Inspections.** The duly authorized representatives of this Commission shall have the right at all times and shall be allowed to enter into any vehicle or facility or to have access to and to inspect any computer or electronic device used by any charter-party carrier for retention and production of any waybills and/or other documents or forms required by General Order 157-E for the purpose of inspecting the accounts, books, papers, and documents and for ascertaining whether or not these rules are being complied with and observed.

Every owner, operator, or driver of any vehicle shall afford the duly authorized representatives of this Commission all reasonable opportunity and facilities to make such an inspection.

## **PART 7--COMPLAINTS**

**7.01--Carrier Required To Answer Complaints.** Every carrier shall respond within 15 days to any written complaint concerning transportation service provided or arranged by the carrier. A carrier shall, within 15 days, respond to Commission staff inquiries regarding complaints and provide copies of any requested correspondence and records.

## **PART 8--EXEMPTIONS**

**8.01--By Written Request.** If, in a particular case, exemption from any of these rules and regulations is desired, a written request may be made to the Commission for such exemption. Such a request shall be accompanied by a full statement of the conditions existing and the reasons relied on to justify the exemption. It is to be understood that any exemption so granted shall be limited to the particular case covered by the request.

**8.02--Pilot Programs.** For any pilot program established by the Commission, Commission staff processing a license application may grant the requested exemption where the carrier, in its permit application pursuant to this General Order, presents a justification in writing that clearly and specifically shows consistency between the exemption request and the Commission's purpose for the pilot program and demonstrates that, if the exemption is granted, the carrier's operations will be functionally equivalent to the operations otherwise required by this General Order. Any exemption granted under this part shall be in effect for 12 months or for the duration of the pilot program, whichever is shorter. Renewal of the exemption may be granted by Commission staff for only one additional period of time not to exceed 12 months, where the carrier presents an updated justification for the request consistent with this section. The justification presented by any carrier under this part shall be posted by Commission staff on the website.

## **PART 9--TRANSPORTATION BY YOUTH CAMPS**

**9.01--Transportation By Nonprofit Youth Camps.** Transportation performed by nonprofit organizations which is incidental to the operation of youth camps is not subject to the Passenger Charter-Party Carriers' Act, Public Utilities (PU) Code Section 5351, et seq., under the exclusion set forth in Pub. Util. Code Section 5353(f).

**9.02--Transportation By For-Profit Youth Camps.** Transportation performed by for-profit organizations which is incidental to the operation of youth camps is subject to the Passenger Charter-Party Carriers' Act, Public Utilities Code Section 5351, et. seq.

## **PART 10--CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION PROGRAM**

**10.01--Who Must Comply.** All charter-party carrier applicants (new and renewal), excluding TNCs, who propose to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, must provide for a mandatory controlled substance and alcohol testing certification program for those drivers as required by this General Order unless all such drivers are already covered by federal testing regulations. Charter-party carriers who employ any driver who operates a vehicle with a seating capacity of 16 persons or more, including the driver, must comply with the federal regulations concerning controlled substance and alcohol testing for those drivers.

**10.02--Controlled Substance and Alcohol Testing Program.** Every applicant who must comply with this General Order shall provide for a testing program as required in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR), except as modified herein.

For the purposes of this Commission's program vehicles with a seating capacity of 15 persons or less, including the driver, shall be considered commercial vehicles. This affects, for example, the determination of what are "safety sensitive functions" for purposes of this Commission's program.

A negative test for alcohol shall show a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing.

Every such applicant must conduct pre-employment testing (Part 382.301), post-accident testing (Part 382.303), random testing (Part 382.305), testing due to reasonable suspicion (Part 382.307), follow-up testing (Part 382.311), and return-to-duty testing (Part 382.309), except that pre-employment testing for alcohol is not required.

Each such applicant must provide educational materials (Part 382.601) that explain the requirements of Part 382 of Title 49 of the CFR and this General Order as well as the employer's policies and procedures with respect to meeting the testing requirements.

Such applicants must advise employees (Part 382.605) of the resources available to them to resolve problems associated with the misuse of alcohol and use of controlled substances.

Such applicants must ensure that supervisors undergo the appropriate training to determine whether reasonable suspicion exists to require a driver to undergo testing (Part 382.603).

Such applicants must use a custody and control form that is substantially similar to, but distinct from, the "Federal Drug Testing Custody and Control Form" and

the "DOT Breath Alcohol Testing Form" to identify employees who are being tested and to request specific kinds of tests (49 CFR Parts 40.23 and 40.59).

**10.03--Requirements for Pre-Employment Testing.** An earlier negative result for a driver shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing. (Any negative test result shall be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to a negative result.)

**10.04--Testing Costs.** Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive to pay the costs of rehabilitation and return-to-duty and follow up testing.

**10.05--Confidentiality of Tests.** All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under the Commission's testing program may be released under the same circumstances as those detailed in 49 CFR Parts 40 and 382. The Commission may require laboratories to make copies of test results available to it on request. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.

**10.06--Driver-Applicant Test Results Reported to the Commission.** Test results for applicants who are also drivers must be reported directly to the Commission consistent with the requirements of 49 CFR Part 382.407. Therefore, a driver-applicant applying for new operating authority must cause a copy of its pre-employment controlled substance test results to be sent directly to the Commission by the attending medical review officer or by the administrator of the consortium in which the driver-applicant is enrolled. A driver-applicant applying for renewal of operating authority must cause a copy of its most recent controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer or by the administrator of the consortium in which the driver-applicant is enrolled.

## **PART 11--TRANSPORTATION NETWORK COMPANIES**

**11.01--Insurance.** TNC insurance requirements are set forth in Pub. Util. Code §5433 and General Order 115-G.

**11.02--Proof of Insurance.** TNCs shall obtain proof of insurance from each TNC driver before the driver begins providing service and for as long as the driver remains available to provide service. TNC drivers shall be required to provide proof of their personal insurance coverage. TNC drivers shall carry proof of TNC insurance coverage at all times during use of a vehicle in connection with a transportation network company's online-enabled application or platform.

**11.03--Criminal Background Checks.** TNCs must meet the requirements of Pub. Util. Code § 5445.2, as follows:

1. A TNC or a third party working on the TNC's behalf must perform a search of a multistate and multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation; and conduct a search of the United States Department of Justice National Sex Offender Public Web site.
2. A TNC may not contract with, employ, or retain drivers currently registered on the Department of Justice National Sex Offender Public Web site; or convicted of either a violent felony, as defined by §667.5 of the Penal Code or a violation of Penal Code §§ 11413 (engages in terrorism), 11418 (uses weapons of mass destruction), 11418.5 (threatens to use weapons of mass destruction) or 11419 (possesses restricted biological agents).
3. A TNC may not contract with, employ, or retain persons convicted of any of the following offenses within the previous seven years: misdemeanor assault or battery; domestic violence offense; driving under the influence of alcohol or drugs; a felony violation of Elections Code § 18540 (threatening or intimidating a voter) , or Penal Code §§ 67 (offering a bribe), 68 (receiving a bribe), §85 (bribing a Legislator), 86 (legislator accepting a bribe), 92 (bribing a judge), 93 (judge accepting a bribe), 137 (bribing a witness), 138 (witness accepting a bribe), 165 (bribing a local official), 518 (extortion), 530 (false Impersonation), 484(a) (fraud), and §487(a) (grand Theft). Excludes Penal Code §§ 18500 (law enforcement acting in good faith) and 25540(b) (transporting firearms to and from a target range).

Every licensed TNC shall also comply with the following requirements:

4. A criminal background check company retained by a TNC must comply with the audit and accreditation standards that the National Association of Professional Background Screeners adopted in the following fields: data information and security; legal and compliance; client education; research and data standards; verification and service standards; and miscellaneous business practices. If a TNC conducts background checks in-house, the TNC must itself be accredited by the same entity.
5. A TNC must receive proof of accreditation of the background check company and provide proof of accreditation to the Commission.
6. The background screening for each TNC driver must be conducted prior to allowing the driver to operate on the TNC's platform and repeated at least once per year thereafter, for as long as the TNC driver is authorized to operate on the TNC's platform. The TNC

must provide proof of annual screening of its drivers to the Commission,

7. The information a TNC can require from a criminal background check going past seven years is at a minimum for those disqualifying categories of offenses and convictions set forth in Pub. Util. Code § 5445.2 and GO 157-E, Part 11.03.2.

**11.04--Zero Tolerance Policy.** TNCs shall institute a zero tolerance intoxicating substance policy with respect to drivers as follows:

1. The TNC shall include on its website, mobile application and riders' receipts, notice/information on the TNC's zero-tolerance policy and the methods to report a driver whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride.
2. The website and mobile application must include a phone number or in-app call function and email address to contact to report the zero-tolerance complaint.
3. Promptly after a zero-tolerance complaint is filed, the TNC shall suspend the driver for further investigation.
4. The website and mobile application must also include the phone number and email address of the Commission's Passenger Section: 1-800-894-9444 and CIU\_intake@cpuc.ca.gov.

**11.05--Annual Report of Zero Tolerance Violations.** Each TNC shall annually submit to the Commission a verified report detailing zero tolerance complaints against drivers as required by D.13-09-045.

**11.06--Driving Records.** TNCs shall obtain each TNC driver's driving record before the driver begins providing service and quarterly thereafter. Drivers with convictions for reckless driving, driving under the influence, hit and run, or driving with a suspended or revoked license shall not be permitted to be a TNC driver. Drivers may have a maximum of three points on their driving records for lesser offenses, e.g., equipment problems, speeding, or child safety seat violations.

**11.07--Driver Training Program.** TNCs shall establish a driver training program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. This program must be filed with the TNC's permit application. TNCs must report to the Commission on an annual basis the number of drivers that became eligible and completed the course.

**11.08--Driver License.** TNC drivers must possess either: (a) a valid California driver license, or (b) in the case of a nonresident active military member or a nonresident dependent of an active military member, a valid driver license issued by the other state or territory of the United States in which the member or dependent is a resident, be at least 21 years of age, and must provide at least one year of driving history before providing TNC services.



**11.09--Driver Vehicles.** TNCs may only utilize street-legal coupes, sedans, or light-duty personal vehicles including vans, minivans, sport utility vehicles (SUVs) and pickup trucks. Hatchbacks and convertibles are acceptable.

Regardless of whether a TNC driver chooses to rent, lease or own a personal vehicle, the Commission's existing regulations will apply if the TNC driver wishes to provide transportation services in California.

Each TNC must ensure that each personal vehicle used by their TNC drivers complies with all applicable regulations, including but not limited to the insurance requirements, a 19-point vehicle inspection performed at a California Bureau of Automotive Repair- licensed facility, and trade dress rules.

**11.10--Number of Passengers on Any Given Ride.** TNC drivers are prohibited from transporting more than 7 passengers on any given ride.

**11.11--Application Display.** An application (app) used by a TNC to connect drivers and passengers must display for the passenger: 1) a picture of the driver, and 2) a picture of the vehicle the driver is approved to use, including the license plate number to identify the vehicle.

**11.12--Modified Vehicle Prohibition.** TNC vehicles cannot be modified from factory specifications, (e.g. no "stretch" vehicles).

**11.13--Authority to Operate.** TNCs (not the drivers) must be permitted by this Commission before operating as a TNC.

**11.14--Application Disclosure.** TNCs shall clearly disclose on their app and website and make accessible to drivers that:

1. TNCs facilitate rides between passengers and private drivers using a personal vehicle.
2. Each TNC, which shall be the primary, or its driver, or a combination thereof is required to maintain insurance policies as required by General Order 115-G and Public Utilities Code §5433 et seq.

**11.15--Prearranged Transportation.** TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences.

TNC drivers are strictly prohibited from accepting street hails.

**11.16--Proof of Prearranged Ride.** Upon request, drivers shall display to Commission or airport enforcement officers, law enforcement, or city or county officials a physical or electronic record of a ride in progress sufficient to establish that it was prearranged. To the extent that trip records are contained on electronic devices, TNC drivers are not required to relinquish custody of the devices in order to make the required display.

**11.17--Participation In DMV Pull Notice Program.** Every TNC shall enroll in the California Department of Motor Vehicle's Employer Pull Notice Program to obtain timely notice when any of the following are added to a TNC driver's driving record:

1. Convictions

2. Accidents
3. Failures to appear
4. Driver's license suspension or revocation
5. Any other action taken against the driving privilege

**11.18--Proof Of Driver's Personal Insurance.** TNCs shall obtain proof of insurance from each TNC driver before the driver begins providing service and for as long as the driver remains available to provide service.

**11.19--Trade Dress.** TNC vehicles shall display consistent trade dress in the front and rear of the vehicle (i.e., distinctive signage or display on the vehicle) when providing TNC services that is sufficiently large and color contrasted as to be readable during daylight hours at a distance of at least 50 feet. The trade dress shall be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with a particular TNC (or licensed transportation provider). Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills or placed in the front and rear windshields. Magnetic or removable trade dress is acceptable. TNCs shall file a photograph of their trade dress with the Commission.

**11.20--Rating By Drivers and Passengers.** Although TNCs may provide platforms allowing drivers and passengers to "rate" each other, TNCs shall ensure that such ratings are not based on unlawful discrimination, and that drivers do not discriminate against passengers or potential passengers on the basis of geographic endpoints of the ride, race, color, national origin, religion, sex, disability, age, or sexual orientation/identity.

**11.21--Complaints.** If a passenger files a complaint against a TNC or its driver, CPUC staff shall have the right to inspect TNC records and vehicles as necessary to investigate and resolve the complaint to the same extent the Commission and Commission staff is permitted to inspect all other charter-party carriers.

**11.22--Disclosing Drivers' Information to The Commission.** TNCs shall provide notice to their drivers that the driver's consent is not needed for the disclosure of their information to the Commission.

**11.23--Operations At Airports.** TNCs shall not conduct any operations on the property of or into any airport unless such operations are authorized by the airport authority involved.

**11.24--Wheelchair Accessible Vehicles.** TNCs shall allow passengers to indicate whether they require a wheelchair-accessible vehicle or a vehicle otherwise accessible to individuals with disabilities.

**11.25--Annual Reporting Requirements.** Each TNC shall annually submit to the Consumer Protection and Enforcement Division (CPED) the verified reports required by D.13-09-045 by September 19. The reports shall include data for the 12-month period beginning August 1 and ending July 31 of the following year. If a subsequent Commission decision, order, rule or regulation adds additional annual reporting requirements, each TNC shall submit those reports by September 19 of each year, unless the Commission states otherwise.

**11.26--Verified Reports.** Each TNC must verify all required annual reports. A verified report provides a signature of a corporate officer of the TNC, who verifies under penalty of perjury under the laws of the State of California that the report is accurate and contains no material omissions.

**11.27--Annual Reporting Of Accessible Vehicle Requests.** Annually, each TNC shall submit to CPED a verified report detailing the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with requests for accessible vehicles.

**11.28--Annual Reporting by Zip Codes.** Annually, each TNC shall submit to CPED a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid. And finally, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.

**11.29--Annual Reporting of Zero Tolerance Complaints.** Annually, each TNC shall submit to CPED a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.

**11.30--Annual Reporting of Each TNC Driver's Hours and Miles.** One year from the effective date of these rules, and annually thereafter, each TNC shall submit to CPED a verified report detailing the average and mean number of hours and miles each TNC driver spent driving for the TNC.

**11.31--Fare-Splitting Reports.** As part of its annual report to CPED, each TNC that has a fare-splitting operation must provide evidence of the impact that their fare-splitting operations have had on reducing traffic-related injuries and evidence of the environmental impact that their fare-splitting operations have

had. Further, each TNC that offers fare-splitting services must regularly report to CPED on the structure of the fares charged for each split-fare ride.

**GENERAL ORDER 158-A**  
**(Supersedes General Order 158)**

**PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

**RULES AND REGULATIONS GOVERNING THE OPERATIONS OF PASSENGER  
STAGE CORPORATIONS AND THE CONSTRUCTION AND FILING OF TARIFFS  
AND TIMETABLES**

Adopted December 20, 1995. Effective January 1, 1996.

Resolution TL-18716

Amended September 4, 1996. Effective September 4, 1996.

Resolution TL-18760

**PASSENGER STAGE CORPORATIONS**

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### **PART 1—GENERAL PROVISIONS**

- 1.01—**SHORT TITLE.** These rules and regulations shall be known as “General Order Series 158”.
- 1.02—**REFERENCES TO STATUTES AND RULES AND REGULATIONS.** For convenience, reference to some of the principal pertinent provisions of the Public Utilities Code are Sections 1031–1040 “Passenger Stage Corporations” and Sections 486–496 “Tariff Schedules”. Whenever reference is made to any portion of any law, such reference shall apply to all amendments and additions heretofore or hereafter made; and whenever reference is made to any portion of these rules and regulations, such reference shall apply to all amendments and additions hereafter made.
- 1.03—**CONSTRUCTION OF SINGULAR AND PLURAL.** The singular number includes the plural, and the plural the singular.
- 1.04—**“SHALL” and “MAY”.** “Shall” is mandatory and “may” is permissive.
- 1.05—**LIABILITY INSURANCE REQUIREMENTS.** Every passenger stage corporation shall comply with all provisions of General Order 101 Series.
- 1.06—**APPLICABILITY OF VEHICLE CODE.** Every passenger stage corporation and their drivers shall comply with the provisions of the California Vehicle Code.
- 1.07—**COMMISSION MAY ORDER DEVIATIONS.** The Commission may authorize deviations from these rules and regulations or prescribe or require the observance of additional or different rules by special order.
- 1.08—**AVAILABILITY OF GENERAL ORDER SERIES 158, VEHICLE CODE AND TITLE 13.** Every passenger stage corporation shall have a current copy of General Order Series 158 and a current copy of the California Vehicle Code and the Motor Carrier Safety Sections (Subchapter 4, Articles 12 and 14, and Subchapter 6.5, Articles 1, 3, 6, and 8) of Title 13 of the California Code of Regulations in a place available to all drivers.

### **PART 2—DEFINITIONS**

- 2.01—**“COMMISSION”.** “Commission” means the Public Utilities Commission of the State of California.
- 2.02—**“PASSENGER STAGE CORPORATION”, “PSC”, “CARRIER”.** The definition of “passenger stage corporation” shall be that set forth in Section 226 of the Public Utilities Code. The initials “PSC” mean passenger stage corporation. Within this General Order the word “carrier” means passenger stage corporation carrier unless specific reference includes charter-party carriers.

- 2.03—“VEHICLE”. Within this General Order the word “vehicle” means a motor vehicle operated in passenger stage service.
- 2.04—“TARIFF”, TIMETABLE”. The definition of “tariff” and “timetable” means an original publication, a supplement, amendment, or revised page thereto, or a reissue thereof.
- 2.05—“SCHEDULED SERVICE”. Within this General Order the term “scheduled service” means service to be provided to specific places at specific times.
- 2.06—“DRIVER-APPLICANT”. A driver-applicant is any applicant for passenger stage operating authority who will also be a driver of any vehicle authorized to be operated under the authority.

**PART 3—GENERAL REQUIREMENTS AND RESTRICTIONS**

- 3.01—OPERATIONS AT AIRPORTS. No carrier shall conduct any operations on the property of or into any airport unless such operations are authorized by both this Commission and the airport authority involved. Consistent failure to comply with safety or traffic rules and regulations of an airport authority may result in suspension or revocation of Commission operating authority.
- 3.02—TAXI TRANSPORTATION SERVICE NOT AUTHORIZED. A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters.
- 3.03—SUB-CARRIERS. A carrier shall not use the services of another carrier (sub-carrier) that provides the vehicle and the driver, unless the second carrier holds Commission authority as a charter-party carrier. The agreement for the utilization of the second carrier’s vehicle(s) and driver(s) by the operating carrier shall be evidenced by a written document, and shall contain the carrier’s names, TCP numbers, and the services to be provided.
- 3.04—FICTITIOUS NAMES. A carrier shall not use any trade, business, or fictitious names, which are not on file with the Commission.
- 3.05—ADVERTISEMENTS SHALL INCLUDE PSC NUMBER. Carriers shall state the number of their certificate in every written or oral advertisement, broadcast, or other holding out to the public for services. The number shall be preceded by the letters “PSC”.

**PART 4—VEHICLES**

- 4.01—EQUIPMENT STATEMENT TO BE CURRENT. Every carrier shall maintain, on file with the Commission, an equipment list of all vehicles (owned or leased) in use under each



certificate. The information for each vehicle shall include the manufacturer, model year, vehicle identification number (V.I.N.), seating capacity (including driver), description of body type or model designation, whether the vehicle is leased or owned, handicap accessible status, and its license plate number. Additions and deletions to the equipment list shall be filed within ten days of the date the vehicle is put into or pulled out of service.

- 4.02—SAFETY REQUIREMENT BEFORE OPERATION. All vehicles operated under each certificate shall comply with the requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations. Every carrier must inspect all vehicles and maintain proper documentation of such inspections.
- 4.03—NAME OF CARRIER AND VEHICLE NUMBER TO BE DISPLAYED ON VEHICLE. A vehicle shall not be operated in service unless there is painted or displayed, on each side of the vehicle, the name or trade name of the carrier. Every carrier shall assign an identifying number to each vehicle. Such number shall be painted on or otherwise permanently attached to the rear and each side of the exterior of each vehicle. The carrier's name and vehicle numbers shall be sufficiently large and color contrasted as to be readable, during daylight hours, at a distance of 50 feet. However, the provisions of this section shall not apply to vehicles temporarily leased by carriers for a period of less than 30 days.
- 4.04—PSC NUMBER TO BE DISPLAYED ON VEHICLE. The number assigned by the Commission to the carrier's authority shall be shown in full on all vehicles, including the prefix "PSC", and the authority number. The letter and numeral symbol size and placement shall be as follows:
- The identification symbol shall be in sharp color contrast to the background and such size and shape and so located as to be readily legible during daylight hours at a distance of 50 feet. The symbols shall be displayed on each side of the vehicle.
- The identifying symbol displayed by a carrier subject to the jurisdiction of the Interstate Commerce Commission (ICC) shall serve in lieu of the above requirements, provided such ICC operating authority is registered with this Commission in accordance with the Interstate and Foreign Highway Carrier's Registration Act (commencing with PU Code Section 3901).
- 4.05—DAMAGE TO IDENTIFICATION SYMBOLS. It shall be the carrier's responsibility to make immediate restoration or replacement of any damage caused to the identification names and numbers on vehicles.

- 4.06—**ILLEGAL DISPLAY OF P.U.C. IDENTIFICATION.** Immediately upon revocation or termination of any certificate the PSC number for the certificate shall be removed from all vehicles. If new operating authority is later granted, it shall be the responsibility of the carrier to make the appropriate identification.
- 4.07—**UNAUTHORIZED USE OF OPERATING AUTHORITY.** A carrier shall not knowingly permit its operating authority or its PSC number(s) to be used by others.
- 4.08—**SALE OR TRANSFER OF VEHICLE.** It shall be the carrier's responsibility to remove all certificate numbers and identification symbols when a vehicle is sold or transferred.

**PART 5—DRIVERS**

- 5.01—**DRIVER TO BE LICENSED.** Every driver of a vehicle shall be licensed as required under the California Vehicle Code and shall comply with the driver provisions of the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.
- 5.02—**DRIVER RECORD.** Every carrier shall enroll in the "Pull Notice Program" of the Department of Motor Vehicles as defined in Vehicle Code Section 1808.1. A vehicle shall not be operated by any driver who is presumed to be a negligent operator under Vehicle Code Section 12810.5.
- 5.03—**DRIVER STATUS.** Every driver of a vehicle shall be the certificate holder or under the complete supervision, direction and control of the operating carrier and shall be:
- A. An employee of the certificate holder; or,
  - B. An employee of a sub-carrier; or,
  - C. An independent owner-driver who holds charter-party carrier authority and is operating as a sub-carrier.
- 5.04—**ALCOHOLIC BEVERAGES AND DRUGS: USE BY DRIVER FORBIDDEN.** All drivers shall comply with the rules in the Code of Federal Regulations Title 49, Parts 392.4 and 392.5. This rule, in part, prohibits drivers from consuming or being under the influence of a drug or alcoholic beverage while on duty, and prohibits carriers from allowing drivers to consume or be under the influence of a drug or alcoholic beverage while on duty.

**PART 6—RECORDS AND INSPECTIONS**

- 6.01—**RECORDS.** Every carrier shall institute and maintain in its offices, a set of records on the services it performs. These records shall include tariffs, timetables, and the number of passengers transported. Every carrier shall also maintain copies of all lease and sub-carrier agreements, and shall maintain maintenance and safety records (including, but not limited to, the records required in Sections 4.01 and 4.02), driver records (including, but not limited to, the records required in Section

5.02), and consumer complaint records (including, but not limited to, the records required in Section 7.01). All records shall be maintained for a minimum period of three years.

6.02—INSPECTIONS. Commission staff shall have the right to enter any vehicle or facility to inspect a carrier's accounts, books, papers, and documents, or to ascertain if Commission rules and State laws are being complied with and observed. Every owner, operator, or driver of any vehicle shall afford the Commission staff all reasonable opportunity and facilities to make such an inspection.

#### **PART 7—COMPLAINTS**

7.01—CARRIER REQUIRED TO ANSWER COMPLAINTS. Every carrier shall respond within 15 days to any written complaint concerning transportation service provided or arranged by the carrier. A carrier shall, within 15 days, respond to Commission staff inquiries regarding complaints and provide copies of any requested correspondence and records.

#### **PART 8—TARIFFS AND TIMETABLES**

8.01—APPLICABILITY. All carriers shall file tariffs and all scheduled carriers shall file timetables in compliance with the Public Utilities Code, Commission directives, and the following rules. Commission staff may reject a tariff or timetable for noncompliance with the rules any time before it becomes effective. A tariff or timetable currently in effect may be rejected or canceled for noncompliance on 30 days' notice.

8.02—PURPOSE. Tariffs and timetables are for the information and use of the general public. They shall be published in a manner that ensures they are readable and that their terms and conditions are easy to understand and apply.

8.03—FILING REQUIREMENTS. Three copies of each tariff and timetable shall be delivered to the Commission with a signed transmittal letter clearly explaining the purpose of the filing, the notice provisions followed, and the statutory authority for the filing. Where the filing affects an airport, an additional copy with attached mailing label, for each affected airport authority, shall be provided. Separate filings can be made for distinct services and/or service territories. A carrier may receive a receipt by filing an additional copy of the transmittal letter and a self-addressed stamped envelope. A copy of the transmittal letter will be dated by the Commission and returned to acknowledge receipt of a filing. The Commission may direct the reissue of any tariff and/or timetable.

8.04—POSTING. All carriers shall follow the posting rules set forth in General Order 122 Series. In addition, all carriers serving an airport shall conspicuously display tariff and timetable informa-

tion in each vehicle used in airport service, in each location where airport tickets are sold, and shall have copies available for public distribution. The required airport service information shall include, but not be limited to:

- a) All airport service fares, or if the carrier has more than 10 fares, at least 10 fares representative of the service performed.
- b) All other charges (e.g. baggage, waiting).
- c) Complete complaint procedures including reference to the Commission's regulatory role and passenger complaint line.

For purposes of this section, vehicles serving airports as part of through intercity service shall not be deemed carriers serving an airport and shall be exempt from the posting requirements contained herein.

8.05—CONTENT. Each tariff shall contain the complete terms and conditions under which the carrier will provide service, including:

- A. A title or cover page containing the legal name and Commission-issued PSC number(s) of the carrier, all trade names, a business address and telephone number, the territory or points to and from which the tariff applies (briefly stated), the date effective on the bottom right side of the page, and the authority under which the tariff is filed (e.g., decision number, order number).
- B. All fares, additional charges, and discount provisions.
- C. An attached timetable including specific route points and times for all scheduled services.
- D. A service definition, hours of service, and specified territory by name and postal ZIP code for nonscheduled services.
- E. Any service restrictions or limitations, including policies for: guarantee of service; ticket sale, use, refund, and exchange; and baggage provisions.
- F. If applicable, procedures for the handling of claims for loss or damage of express shipments consistent with General Order 139.
- G. A consumer complaint procedure that includes the address and telephone number of the Safety and Enforcement Division's Consumer Affairs Unit.

8.06—FORM. Tariffs and timetables shall be filed in book (pamphlet) or loose-leaf form. Tariffs shall be machine-printed on paper of good quality.

8.07—SIZE. Tariffs and timetables shall be filed on paper of good quality that is no larger than 8-1/2 inches by 11 inches and no smaller than 8 inches by 10-1/2 inches.

8.08—UNIFORM SYMBOLS. Uniform symbols shall be used to indicate changes in tariffs as follows:

Letter (A), (a) or ◆ to indicate increases.

Letter (R), (r) or ♣ to indicate reductions.

Letter (C), (c) or ▲ to indicate a change resulting in neither an increase nor a reduction.

The following symbols shall be used only for the purposes indicated:

\* to show new material added to the tariff.

+ to show "Applicable to intrastate traffic only."

⊙ to indicate "Applicable to interstate traffic only."

□ to indicate reissued matter.

8.09—LOOSE-LEAF TARIFFS. Each page or supplement of a loose-leaf tariff shall show:

A. The name, PSC number, address, and telephone number of the issuing carrier.

B. The page number (e.g. "Original Page 4," "Third Revised Page 10," etc.).

C. The date the page will become effective in the lower right corner.

D. The authority under which the amendment is filed.

E. Amendments shall be made by filing new pages. Amended pages shall be new pages or consecutively numbered revisions of previous pages (e.g. "First Revised Page 10 cancels Original Page 10"). A loose-leaf tariff may be canceled by supplement or by filing a new tariff.

F. A one-inch margin on the left-hand side of each page.

8.10—AMENDMENTS TO BOOK TARIFFS. Book (pamphlet) tariffs shall be amended by filing supplements constructed generally in the same manner and arranged in the same order as the tariff being amended. Each supplement shall refer to the page, item, or index of the tariff or supplement it amends. Every supplement, excluding suspensions and cancellations, shall contain a cumulative index of changes in the tariff. No tariff shall have more than 2 supplements in effect at any one time. When a tariff with 2 supplements requires amendment, the entire tariff shall be reissued.

- 8.11—ADOPTION OF TARIFFS. When operative rights of a carrier are transferred from the operating control of one company to that of another, the succeeding carrier shall issue its own tariff canceling the tariff of the preceding company or issue an adoption notice accepting as its own the tariffs of the preceding company. The adoption notice shall state the Commission order authorizing the transfer. The carrier shall also immediately inform, in writing, all agents or other carriers issuing tariffs in which it participates, of the change in ownership.
- 8.12—CHANGE OF NAME. When a carrier changes its legal or trade name, without the transfer of control, it shall, within 10 days, amend its tariff to show the new name of the carrier. The carrier shall also, within 10 days, inform in writing, all agents or other carriers issuing tariffs in which it participates of the change in name. Said agents and carriers shall promptly amend the affected tariffs to reflect the change in name. The tariff amendments shall show the new name of the carrier and its former name, for example, "ABC Limo (formerly XYZ Limo)."

#### **PART 9—EXEMPTIONS**

- 9.01—BY WRITTEN REQUEST. If, in a particular case, exemption from any of these rules and regulations is desired, a written request may be made to the Commission for such exemption. Such a request shall be accompanied by a full statement of the conditions existing and the reasons relied on to justify the exemption. It is to be understood that any exemption so granted shall be limited to the particular case covered by the request.

#### **PART 10—CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION PROGRAM**

- 10.01—WHO MUST COMPLY. All passenger stage corporation applicants who propose to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, must provide for a mandatory controlled substance and alcohol testing certification program for those drivers as required by this General Order unless all such drivers are covered by the federal testing regulations. Passenger stage corporations who employ any driver who operates a vehicle with a seating capacity of 16 persons or more, including the driver, must comply with the federal regulations concerning controlled substance and alcohol testing for those drivers.
- 10.02—CONTROLLED SUBSTANCE AND ALCOHOL TESTING PROGRAM REQUIRED. Every applicant who must comply with this General Order shall provide for a testing program as required in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR), except as modified herein.

For the purposes of this Commission's program, vehicles with a seating capacity of 15 persons or less, including the driver, shall be considered commercial vehicles. This affects, for example, the determination of what are "safety sensitive functions" for purposes of this Commission's program.

A negative test for alcohol shall show a breath alcohol concentration of less than 0.02 percent and drivers must show a valid California driver's license at the time and place of testing.

Every such applicant must conduct pre-employment testing (Part 382.301), post-accident testing (Part 382.303), random testing (Part 382.305), testing due to reasonable suspicion (Part 382.307), followup testing (Part 382.311), and return-to-duty testing (Part 382.309), except that pre-employment testing for alcohol is not required.

Each such applicant must provide educational materials (Part 382.601) that explain the requirements of Part 382 of Title 49 of the CFR and this General Order as well as the employer's policies and procedures with respect to meeting the testing requirements.

Such applicants must advise employees (Part 382.605) of the resources available to them to resolve problems associated with the misuse of alcohol and use of controlled substances.

Such applicants must ensure that supervisors undergo the appropriate training to determine whether reasonable suspicion exists to require a driver to undergo testing (Part 382.603).

Such applicants must use a custody and control form that is substantially similar to, but distinct from, the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form" to identify employees who are being tested and to request specific kinds of tests (49 CFR Parts 40.23 and 40.59).

**10.03—REQUIREMENTS FOR PRE-EMPLOYMENT TESTING.**

An earlier negative result for a driver shall not be accepted as meeting the pre-employment testing requirement for any subsequent employment, or any testing requirements under the program other than periodic testing. (Any negative test result shall be accepted for one year as meeting any requirement for periodic testing if the driver has not tested positive subsequent to a negative result.)

**10.04—TESTING COSTS.**

Applicants shall be responsible for being in compliance with the testing program and shall pay all costs of the testing program, except that an employer may require employees who test positive to pay the costs of rehabilitation and return-to-duty and followup testing.

- 10.05—**CONFIDENTIALITY OF TESTS.** All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under the Commission's testing program may be released under the same circumstances as those detailed in 49 CFR Parts 40 and 382. The Commission may require laboratories to make copies of test results available to it on request. No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.
- 10.06—**DRIVER-APPLICANT TEST RESULTS TO BE REPORTED TO THE COMMISSION.** Test results for applicants who are also drivers must be reported directly to the Commission consistent with the requirements of 49 CFR Part 382.407. Therefore, a driver-applicant applying for new operating authority must cause a copy of its pre-employment controlled substance test results to be sent directly to the Commission by the attending medical review officer or by the administrator of the consortium in which the driver-applicant is enrolled. A driver-applicant applying for renewal of operating authority must cause a copy of its most recent controlled substance and alcohol test results to be sent directly to the Commission by the attending medical review officer or by the administrator of the consortium in which the driver-applicant is enrolled.

Approved and dated September 4, 1996, at San Francisco, California.

**PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA**

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