

**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.

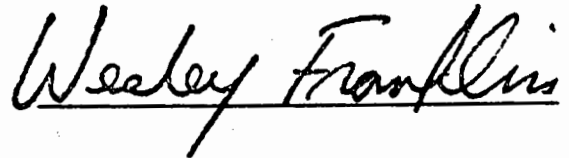
12. All test results are confidential and may not be released without the consent of the driver, except as authorized or required by law. 49 CFR Parts 40.35, 40.81, 382.405 and 382.413 detail rules concerning disclosure and confidentiality of employee test records. The results of tests required under 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:**

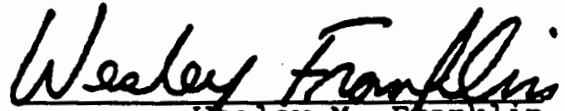
1. General Order 157-C is amended as set forth in Appendix A to this resolution.
2. General Order 158-A is amended as set forth in Appendix B to this resolution.
3. The Executive Director shall provide copies of this Resolution to all charter-party carriers and passenger stage corporations.
4. On page 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