

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

Wesley Franklin

DANIEL Wm. FESSLER
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Attachments: Appendix A
Appendix B

APPENDIX A

General Order 157-C
(Supersedes General Order 157-B)

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).

Adopted December 20, 1995. Effective January 1, 1996.
Resolution TL-18716

CHARTER-PARTY CARRIERS OF PASSENGERS

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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 AND 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 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 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 5351-5360 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.

- 2.04--"SPECIAL IDENTIFICATION LICENSE PLATE". A "special identification license plate" is a plate issued to a limousine owner or operator by the California Department of Motor Vehicles in accordance with Section 5385.6 of the Public Utilities Code.
- 2.05--"LIMOUSINE". A "limousine" includes any luxury sedan, of either standard or extended length, with a seating capacity of not more than 9 passengers, including the driver, used in the transportation of passengers for hire on a prearranged basis to or from airports 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.

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 party arranging the transportation shall have exclusive use of the vehicle. 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. Number of persons in the charter group.
 7. Points of origination and destination.
- Upon request, the driver shall show the waybill to any Commission or airport enforcement officer.
- 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 OR SPECIAL LICENSE PLATE 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, except that every charter-party carrier operating a limousine may instead state its special identification license plate number. 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.

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 and permit. 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 REQUIREMENTS BEFORE OPERATION. All vehicles operated under each certificate or permit 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.

- 4.04--TCP NUMBER TO BE DISPLAYED ON VEHICLE. 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.

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--DECALS TO BE DISPLAYED. Vehicles designed to carry not more than 8 persons, including the driver, shall display the Commission-issued decal. Vehicles with seating capacity of 9 to 15 persons, including the driver, may display the Commission-issued decal, which will be issued upon request to the License Section of the Safety and Enforcement Division. Any decals issued by the Commission shall be affixed to the lower right hand corner of the rear bumper of the vehicle.

- 4.06--SPECIAL IDENTIFICATION LICENSE PLATES FOR LIMOUSINES. Charter-party carriers operating limousines shall display a set of special identification license plates issued by the Department of Motor Vehicles pursuant to Public Utilities Code Section 5385.6. The special identification license plates shall be displayed in lieu of the decal requirements of Part 4.05. Upon cancellation, suspension or revocation of a charter-party carrier's permit or certificate, the carrier shall immediately remove the special identification license plates and surrender them to the Commission. This Part is effective February 4, 1996.

- 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 P.U.C. 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, TCP number(s) or special identification license plate(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, identification symbols, and all special identification license plates when a vehicle is sold or transferred.

PART 5--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:
- A. An employee of the permit/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--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 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). Such records shall be maintained for a minimum period of three years.
- 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 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.

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 PU 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) 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 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).

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 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 using the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form." 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.

Approved and dated December 20, 1995, at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By Wesley M. Franklin
Executive Director

Wesley Franklin

DANIEL Wm. FESSLER

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners

APPENDIX B

**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**

PASSENGER STAGE CORPORATIONS

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Commission

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, 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--"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 information 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 cancelations, 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).

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 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.

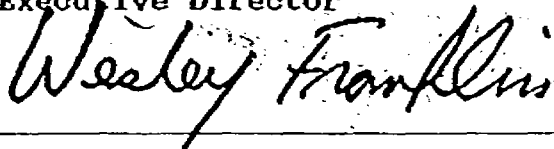
No evidence from a positive test shall be admissible in a criminal prosecution concerning unlawful possession, sale or distribution of controlled substances.

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 using the "Federal Drug Testing Custody and Control Form" and the "DOT Breath Alcohol Testing Form." 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.

Approved and dated December 20, 1995, at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

By Wesley M. Franklin
Executive Director



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