

“(c) REPORT TO CONGRESS.—If the Secretary determines that no protocol described in subsection (a) could likely be developed, the Secretary shall report to Congress the basis for such determination.

“(d) INITIATION OF RULEMAKING.—If the Secretary determines that a protocol described in subsection (a) could likely be developed, the Secretary shall report to Congress a description of the elements of such protocol and shall promptly initiate a rulemaking proceeding to implement such protocol.”

#### PERFORMANCE-BASED CDL TESTING

Pub. L. 105-178, title IV, §4019, June 9, 1998, 112 Stat. 414, provided that:

“(a) REVIEW.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Secretary [of Transportation] shall complete a review of the procedures established and implemented by States under section 31305 of title 49, United States Code, to determine if the current system for testing is an accurate measure and reflection of an individual’s knowledge and skills as an operator of a commercial motor vehicle and to identify methods to improve testing and licensing standards, including identifying the benefits and costs of a graduated licensing system.

“(b) REGULATIONS.—The Secretary may issue regulations under section 31305 of title 49, United States Code, reflecting the results of the review.”

#### DRIVER FATIGUE

Pub. L. 105-178, title IV, §4021, June 9, 1998, 112 Stat. 414, provided that:

“(a) TECHNOLOGIES TO REDUCE FATIGUE OF COMMERCIAL MOTOR VEHICLE OPERATORS.—

“(1) DEVELOPMENT OF TECHNOLOGIES.—As part of the activities of the Secretary [of Transportation] relating to the fatigue of commercial motor vehicle operators, the Secretary shall encourage the research, development, and demonstration of technologies that may aid in reducing such fatigue.

“(2) MATTERS TO BE TAKEN INTO ACCOUNT.—In carrying out paragraph (1), the Secretary shall take into account—

“(A) the degree to which the technology will be cost efficient;

“(B) the degree to which the technology can be effectively used in diverse climatic regions of the Nation; and

“(C) the degree to which the application of the technology will further emissions reductions, energy conservation, and other transportation goals.

“(3) FUNDING.—The Secretary may use amounts made available under section 5001(a)(2) of this Act [112 Stat. 419].

“(b) NONSEDATING MEDICATIONS.—The Secretary shall review available information on the effects of medications (including antihistamines) on driver fatigue, awareness, and performance and shall consider encouraging, if appropriate, the use of nonsedating medications (including nonsedating antihistamines) as a means of reducing the adverse effects of the use of other medications by drivers.”

#### § 31306. Alcohol and controlled substances testing

(a) DEFINITION.—In this section and section 31306a, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES.—(1)(A) In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations that establish a program requiring motor carriers to conduct preemployment, reasonable

suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of a controlled substance in violation of law or a United States Government regulation and to conduct reasonable suspicion, random, and post-accident testing of such operators for the use of alcohol in violation of law or a United States Government regulation.

(B) The regulations prescribed under subparagraph (A) shall permit motor carriers—

(i) to conduct preemployment testing of commercial motor vehicle operators for the use of alcohol; and

(ii) to use hair testing as an acceptable alternative to urine testing—

(I) in conducting preemployment testing for the use of a controlled substance; and

(II) in conducting random testing for the use of a controlled substance if the operator was subject to hair testing for preemployment testing.

(C) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle;

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle; and

(C) shall provide an exemption from hair testing for commercial motor vehicle operators with established religious beliefs that prohibit the cutting or removal of hair.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, for urine testing, and technical guidelines for hair testing, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested;

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section; and

(D) laboratory protocols and cut-off levels for hair testing to detect the use of a controlled substance;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) TESTING AS PART OF MEDICAL EXAMINATION.—The Secretary of Transportation may provide that testing under subsection (a) of this section for operators subject to subpart E of part 391 of title 49, Code of Federal Regulations, be conducted as part of the medical examination required under that subpart.

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which those operators shall be required to participate in a program. This section does not prevent a motor carrier from establishing a program

under this section in cooperation with another motor carrier.

(f) SANCTIONS.—The Secretary of Transportation shall decide on appropriate sanctions for a commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law or a Government regulation but who is not under the influence of alcohol or a controlled substance as provided in this chapter.

(g) EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.—A State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section may not be construed to preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(h) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—In prescribing regulations under this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(i) OTHER REGULATIONS ALLOWED.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by commercial motor vehicle employees.

(j) APPLICATION OF PENALTIES.—This section does not supersede a penalty applicable to an operator of a commercial motor vehicle under this chapter or another law.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1017; Pub. L. 104-59, title III, § 342(c), Nov. 28, 1995, 109 Stat. 609; Pub. L. 112-141, div. C, title II, § 32402(a)(1), July 6, 2012, 126 Stat. 795; Pub. L. 114-94, div. A, title V, § 5402(a), Dec. 4, 2015, 129 Stat. 1547.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
31306(a) .....	49 App.:2717(g).	Oct. 27, 1986, Pub. L. 99-570, 100 Stat. 3207-170, § 12020; added Oct. 28, 1991, Pub. L. 102-143, § 5(a)(1), 105 Stat. 959.
31306(b)(1) ..	49 App.:2717(a).	
31306(b)(2) ..	49 App.:2717(b)(1).	
31306(c) .....	49 App.:2717(d).	
31306(d) .....	49 App.:2717(b)(2).	
31306(e) .....	49 App.:2717(c).	
31306(f) .....	49 App.:2717(f)(2).	
31306(g) .....	49 App.:2717(e)(1).	
31306(h) .....	49 App.:2717(e)(3).	
31306(i) .....	49 App.:2717(e)(2).	
31306(j) .....	49 App.:2717(f)(1).	

In subsection (b)(2)(B), the words “may require” are substituted for “as determined by the Secretary” for clarity and to eliminate unnecessary words.

In subsection (c)(2), before subclause (A), the word “subsequent” is omitted as surplus.

In subsection (c)(3), the words “of any individual” are omitted as surplus.

In subsection (c)(4), the words “by any individual” are omitted as surplus.

In subsection (c)(5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirma-

tion test” are substituted for “independent test” for clarity and consistency.

In subsection (c)(6), the word “Secretary” is substituted for “Department” for consistency in the revised title and with other titles of the Code.

In subsection (d), the words “The Secretary of Transportation may provide” are substituted for “Nothing in subsection (a) of this section shall preclude the Secretary from providing” for clarity and to eliminate unnecessary words.

In subsection (g), the words “rule” and “ordinance” are omitted as being included in “law, regulation, standard, or order”. The words “whether the provisions apply specifically to commercial motor vehicle employees, or to the general public” are omitted as surplus.

## Editorial Notes

### AMENDMENTS

2015—Subsec. (b)(1)(A). Pub. L. 114-94, § 5402(a)(1)(B), struck out at end “The regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.”

Subsec. (b)(1)(B), (C). Pub. L. 114-94, § 5402(a)(1)(A), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(C). Pub. L. 114-94, § 5402(a)(2), added subpar. (C).

Subsec. (c)(2). Pub. L. 114-94, § 5402(a)(3)(A), inserted “for urine testing, and technical guidelines for hair testing,” before “including mandatory guidelines” in introductory provisions.

Subsec. (c)(2)(D). Pub. L. 114-94, § 5402(a)(3)(B)–(D), added subpar. (D).

2012—Subsec. (a). Pub. L. 112-141 inserted “and section 31306a” after “this section”.

1995—Subsec. (b)(1)(A). Pub. L. 104-59 added subpar. (A) and struck out former subpar. (A) which read as follows: “In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring motor carriers to conduct pre-employment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.”

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

### HAIR TESTING GUIDELINES

Pub. L. 115-271, title VIII, § 8106, Oct. 24, 2018, 132 Stat. 4106, provided that:

“(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Oct. 24, 2018], and annually thereafter until the date that the Secretary of Health and Human Services publishes in the Federal Register a final notice of scientific and technical guidelines for hair testing in accordance with section 5402(b) of the Fixing America’s Surface Transportation Act (Public Law 114-94; 129 Stat. 1312) [set out below], the Secretary of Health and Human Services shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—

“(1) the status of the hair testing guidelines;

“(2) an explanation for why the hair testing guidelines have not been issued; and

“(3) an estimated date of completion of the hair testing guidelines.

“(b) REQUIREMENT.—To the extent practicable and consistent with the objective of the hair testing described in subsection (a) to detect illegal or unauthorized use of substances by the individual being tested, the final notice of scientific and technical guidelines under that subsection, as determined by the Secretary of Health and Human Services, shall eliminate the risk of positive test results, of the individual being tested, caused solely by the drug use of others and not caused by the drug use of the individual being tested.”

Pub. L. 114-94, div. A, title V, § 5402(b), Dec. 4, 2015, 129 Stat. 1548, provided that: “Not later than 1 year after the date of enactment of this Act [Dec. 4, 2015], the Secretary of Health and Human Services shall issue scientific and technical guidelines for hair testing as a method of detecting the use of a controlled substance for purposes of section 31306 of title 49, United States Code.”

### DRUG TEST RESULTS STUDY

Pub. L. 106-159, title II, § 226, Dec. 9, 1999, 113 Stat. 1771, provided that:

“(a) IN GENERAL.—The Secretary shall conduct a study of the feasibility and merits of—

“(1) requiring medical review officers or employers to report all verified positive controlled substances test results on any driver subject to controlled substances testing under part 382 of title 49, Code of Federal Regulations, including the identity of each person tested and each controlled substance found, to the State that issued the driver’s commercial driver’s license; and

“(2) requiring all prospective employers, before hiring any driver, to query the State that issued the driver’s commercial driver’s license on whether the State has on record any verified positive controlled substances test on such driver.

“(b) STUDY FACTORS.—In carrying out the study under this section, the Secretary shall assess—

“(1) methods for safeguarding the confidentiality of verified positive controlled substances test results;

“(2) the costs, benefits, and safety impacts of requiring States to maintain records of verified positive controlled substances test results; and

“(3) whether a process should be established to allow drivers—

“(A) to correct errors in their records; and

“(B) to expunge information from their records after a reasonable period of time.

“(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 9, 1999], the Secretary shall submit to Congress a report on the study carried out under this section, together with such recommendations as the Secretary determines appropriate.”

### POST-ACCIDENT ALCOHOL TESTING

Pub. L. 105-178, title IV, § 4020, June 9, 1998, 112 Stat. 414, required the Secretary of Transportation to conduct a study of the feasibility of utilizing law enforcement officers for conducting post-accident alcohol testing of commercial motor vehicle operators under this section to obtain more timely information and provided the study would also assess the impact of post-accident alcohol testing requirements on motor carrier employers, including any burden that employers may encounter in meeting the testing requirements under this section, and required the Secretary to transmit to Congress a report and recommendations on the study not later than 18 months after June 9, 1998.

## § 31306a. National clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators

(a) ESTABLISHMENT.—