

# PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

## CALIFORNIA PUBLIC UTILITIES CODE

### CONTROLLED SUBSTANCES AND ALCOHOL TESTING CERTIFICATION PROGRAM

#### I. GENERAL PROGRAM REQUIREMENTS

All passenger stage and charter-party applicants who propose to employ drivers who will operate vehicles having a seating capacity of 15 persons or less, including the driver, must comply with the Commission's controlled substance and alcohol testing certification program requirements detailed below. Charter-party applicants who propose to employ drivers who will operate vehicles with a seating capacity of 16 persons or more, including the driver, must comply with the federal drug testing requirements for those drivers. If all of your drivers will operate vehicles with a seating capacity of 16 persons or more, you do not have to comply with the state drug testing program or complete part II below. If this is the case, sign and date on the line directly below and complete parts III and IV.

**(A person who employs himself/herself as a driver is considered an employer for the purposes of these requirements.)**

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

Public Utilities Code Section 5374 provides that:

The commission shall not issue or renew a charter-party carrier permit or certificate unless the applicant provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

Public Utilities Code Section 1032.1 states that:

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 follow-up 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 follow-up 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 testing 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.

**Title 49 of the Code of Federal Regulations (CFR) Part 382: Controlled Substance and Alcohol Use and Testing**

To fully understand what is required of you under the CFR, you must obtain a copy of Parts 40 and 382 and become familiar with their directives or obtain one of the controlled substance and alcohol testing program training kits now available on the market.

The following is a brief summary of Part 382.

The CFR requires employers to provide educational materials to their drivers which explain the requirements of Part 382 and the employer's policies and procedures with respect to meeting these requirements (382.601). Further, Part 49 requires employers to provide for a comprehensive drug testing program to ensure that drivers do not operate vehicles while being impaired by alcohol or controlled substances.

Every carrier must conduct pre-employment testing (382.301), post accident testing (382.303), random testing (382.305), testing due to reasonable suspicion (382.307), follow-up testing (382.311), and return-to-duty testing (382.309).

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

Employers must ensure that supervisors are properly trained to determine whether reasonable suspicion exists to require a driver to undergo testing (382.603).

Employers shall not permit an employee who has violated the provisions of Part 382 to perform safety-sensitive functions including driving a commercial vehicle.

**Title 49 of the CFR Part 40: Procedures for Transportation Workplace Drug Testing Programs**

Part 40 provides for the specific procedures for conducting alcohol and controlled substance tests.

**II. CONTROLLED SUBSTANCE AND ALCOHOL TESTING CERTIFICATION PROGRAM**

**A. Education (Self employed independent operator is also required to make this showing)**

Unless you have a contract for services from a company which has been prescreened by the Commission staff you must specify the materials you will use to explain to your employees your policies and procedures as an employer with respect to meeting the drug testing requirements of the CFR and PU Code Section 5374. Attach copies of any written material you will use. If you have a contract with a consultant who is setting up a program for you, write the consultant's name and telephone number in the space below and provide a copy of the contract or agreement you have with this consultant to show that you have purchased his services.

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**B. Supervisor Training**

All persons designated to supervise drivers must receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. You must show proof that your driver supervisor has completed this training or has enrolled in a training program.

C. Provide the name and telephone number of the facility that will manage or perform your alcohol and controlled substance tests. If you have set up your own program, give us the name of the federally certified laboratory that will be performing your drug tests. If you have a contract with a consultant/company who will manage your ongoing drug testing, give us the name and telephone number of the consultant/company performing this service for you as well as a copy of the contract or agreement.

Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

D. If there is to be only one driver under the permit, you must enroll that driver in a random testing pool that is managed by an independent company/consultant and provide a copy of the contract or agreement for the random testing service. If you have a contract with a consultant/company who will be managing your testing program list the consultant's/company's name and telephone number below.

Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

E. A driver/applicant is any applicant (individual, partner, or officer of a corporation) who is applying for charter-party carrier operating authority who will also drive one of the vehicles to be operated under the charter-party authority.

Are you, or any of the applicants, a driver-applicant?

Yes  No

If yes, the driver/applicant is required to cause a copy of its controlled substance and alcohol tests results to be sent directly to the Commission. This application will not be granted until a copy of the alcohol and controlled substance tests have been received, reviewed and found to be in compliance with Chapter 405.

### III. ORGANIZATIONAL REQUIREMENTS

Name and telephone number of person(s) in your business responsible for controlled substance and alcohol testing certification program who will be managing your random drug testing program:

Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

### IV. CERTIFICATION

I (we) certify that I (we) have read and understand the requirements in Sections I. through IV. above and that I am (we are) able to and will comply with each of them; and that the information I (we) have provided on this form, and in any attachments, is true and correct to the best of my (our) knowledge and belief. I (we) certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_

Signature of Applicant(s)

If applicant is a corporation:

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Signature of Corporate Officer

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Title of Corporate Officer