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To: All Members Enrolled in the NEFI Drug/Alcohol Testing Program

From: Donna Carcerano, NEFI Benefits Administrator  
Mark S. Morgan, Esq., NEFI Regulatory Counsel

Re: Pre-Employment Testing – Federal Motor Carrier Safety Administration (49CFR 382

NEFI would like to remind our members of the controlled substance pre-employment testing exception and procedures for non-mandatory pre-employment alcohol testing under the U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing program applicable to both interstate and intrastate drivers hauling hazardous materials(49 CFR 382 et seq.).

### ***I. Pre-employment Controlled Substance Testing Exception***

Generally, an employer is required to perform a pre-employment controlled substance test under the FMCSA's drug and alcohol testing regulations (49 CFR 382.301(a)). However, there is an important exception to the pre-employment controlled substance testing requirement that NEFI members should know about. An employer **is not** required to administer a pre-employment controlled substance test if the following conditions are met (49CFR 382.301(b)).:

- ( 1. The driver has participated in a controlled substances testing program that meets FMCSA controlled substance testing requirements within the previous 30 days; and
2. While participating in that program, the driver either:
  3. Was tested for controlled substances within the past 6 months (from the date of application with the employer), or
  - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
3. The employer must also ensure that no prior employer of the driver - of whom the employer has knowledge - has records of the driver's violation of any U.S. DOT controlled substance regulations within the previous six months.

An employer who exercises this exception must obtain from the controlled substance testing program(s) in which the driver participates or participated the following information:

- (i) Name(s) and address(es) of the program(s).
- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to FMCSA drug and alcohol testing requirements . (iv) Verification that the driver is qualified under, FMCSA controlled substance testing regulations and that the driver has not refused to be tested for controlled substances.
- (v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months, including any any other violation of the FMCSA drug and alcohol testing regulations.

(An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information included in (i) –(vi) above at least once every six months.

All records obtained and prepared pursuant to the pre-employment controlled substance testing exception must be kept on file at the employers principal place of business for a period of no less than five years (49 CFR382.401 (b)).

If the employer cannot verify that the driver is participating in a controlled substance testing program that complies FMCSA regulations, the exception does not apply and the employer must conduct a pre-employment controlled substances test on the driver seeking employment.

### ***Pre Employment Alcohol Testing***

Employers may, conduct pre-employment alcohol testing under this part, although it is not required under the FMCSA drug and alcohol testing regulations. However, if an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

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

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

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

4. Conduct all pre-employment alcohol tests using the alcohol testing procedures of [49 CFR part 40](#)

5. Prevent a covered employee from performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

Additional information about pre-employment testing of drivers including all regulatory requirements under the FMCSA drug and alcohol testing program, forms, useful Q&A's and guidance can be found at <http://www.dot.gov/ost/dapc/index.html>

Please contact me, Donna Carcerano, Benefits Administrator, NEFI, [donna@nefi.com](mailto:donna@nefi.com), 617-923-5020 direct, if you have questions.