

NEVADA DEPARTMENT OF AGRICULTURE

MOTOR CARRIER PART 382

ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM

POLICY #AG-1-HR-19

POLICY COMMUNICATION:

All supervisors and managers of the Department of Agriculture will provide their employees with a copy of this policy, when applicable. Employees needing clarification should contact their supervisor or AHRS for assistance.

DIRECTOR'S POLICY AUTHORIZATION:

Jim R. Barbee, Director

Date

APPROVED BY THE BOARD OF AGRICULTURE ON _____.
Effective Date

This policy is not a substitute for relevant law or regulation nor does it establish additional rights beyond those provided in law and regulation. This policy is intended to be used in conjunction with the state law and the Rules for State Personnel Administration (NRS & NAC 284).

DEPARTMENT OF AGRICULTURE

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DEPARTMENT OF AGRICULTURE

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ALCOHOL AND CONTROLLED SUBSTANCES TESTING POLICY

I. INTRODUCTION - PURPOSE

Department of Agriculture maintains a strong commitment to provide a safe, efficient, and productive work environment. Driver involvement with alcohol and/or controlled substances can be extremely disruptive and harmful to the workplace. It can adversely affect the quality of work and the performance of drivers, pose serious safety and health risks to the user, co-workers and the public, and have a negative impact on work efficiency and productivity.

Department of Agriculture is concerned that drivers are in a condition to perform their duties safely and efficiently, in the interests of our fellow workers, the public as well as themselves. It is the purpose of this policy to eliminate substance abuse and its effects in the workplace.

Department of Agriculture is also required to comply with Federal regulations pertaining to the attainment and maintenance of an Alcohol and Controlled Substances-Free Workplace. These requirements are outlined by the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), under Title 49 CFR Part 382 and Part 40. The purpose of this program is to reduce accidents that result from the use of alcohol and/or controlled substances, thereby reducing fatalities, injuries and property damage.

II. DRIVERS SUBJECT TO ALCOHOL AND CONTROLLED SUBSTANCES TESTING

The alcohol and controlled substances testing program applies to all Department of Agriculture drivers who are licensed to operate a commercial vehicle that:

- Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds;
- Has a gross vehicle weight rating of 26,001 or more pounds;
- Is designed to transport 16 or more passengers; or
- Is of any size that is used to transport hazardous materials which require the vehicle to be placarded under the hazardous materials regulations.

This includes, but is not limited to: full-time drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors. This program shall not apply to drivers who are granted a Federal or State waiver (i.e. emergency response vehicles) as outlined in Part 382.103.

III. SAFETY-SENSITIVE FUNCTIONS

A driver shall not use alcohol when performing safety-sensitive functions or perform safety-sensitive functions within four hours of using alcohol. A driver shall not report for duty or remain on-duty when his or her job requires performing safety-sensitive functions if he or she has been using controlled substances or has tested positive for controlled substances use.

A driver is performing a safety-sensitive function when:

- All times at an employer terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time performing pre-trip inspections, general inspections, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a qualified sleeper berth;
- All time loading or unloading the vehicle, supervising, or assisting the loading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the motor vehicle, or in giving or receiving receipts for shipments loaded and unloaded;
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

IV. PROHIBITED CONDUCT

The following shall be considered "prohibited conduct" for purposes of this program:

- No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of .04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of .04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.
- No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.
- No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.
- No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- No driver shall refuse to submit to a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a follow-up alcohol or controlled substances test. No employer shall permit a driver who refuses to submit to such tests to perform or to continue to perform safety-sensitive functions.
- No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when use is pursuant to the instructions of a licensed medical practitioner (382.107) who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle. No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.
- No driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

V. DRIVER VOLUNTARY SELF-IDENTIFICATION PROGRAM

Department of Agriculture is supportive of drivers who come forward voluntarily to seek assistance for alcohol misuse or controlled substance use. Drivers who admit to alcohol misuse or controlled substance use will not be subject to the referral, evaluation and treatment requirements as outlined in 49 CFR Part 382 and Part 40 provided that: the driver does not self-identify in order to avoid testing under the requirements; the driver makes the admission of alcohol misuse or controlled substance use before performing safety-sensitive functions; and the driver does not perform a safety-sensitive function until Department of Agriculture is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements as determined by a controlled substance and alcohol evaluation expert. The employee must also provide a negative controlled substance test and/or an alcohol test result of less than .02 before participating in a safety-sensitive function. No adverse action will be taken against a driver making a voluntary admission of alcohol misuse or controlled substance use as long as he/she complies fully with the requirements of the self-identification program.

VI. ALCOHOL AND CONTROLLED SUBSTANCES TESTING

Pursuant to regulations promulgated by the Department of Transportation, drivers will be subject to the following types of controlled substances testing: **1)** pre-employment testing, **2)** reasonable suspicion testing, **3)** post-accident testing, **4)** random testing **5)** return to duty testing and **6)** follow-up testing.

1. Pre-Employment

Prior to the first time a driver performs safety-sensitive functions, the driver shall undergo testing for controlled substances as a condition of employment. The driver will not be allowed to perform safety-sensitive functions until Department of Agriculture has received a verified negative controlled substance test from the Medical Review Officer (MRO). Department of Agriculture may choose not to require a driver applicant to submit to a pre-employment test if Department of Agriculture can verify that the driver has participated in a valid controlled substances testing program within the preceding 30 days and while participating in that program was either tested within the past 6 months (from the date of application) with their previous employer or participated in a random controlled substances selection program for the previous 12 months (from the date of application) with their previous employer. Department of Agriculture will verify that no prior employer of the driver has records indicating a violation of any DOT rule pertaining to controlled substances use.

2. Reasonable Suspicion Testing

A driver shall be required to submit to an alcohol and/or controlled substances test when Department of Agriculture has reasonable suspicion to believe that the driver has violated the prohibitions of the alcohol and controlled substances program. Department of Agriculture's determination that reasonable suspicion exists to require the driver to undergo testing will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include the indications of the chronic and withdrawal effects of alcohol/controlled substances. The required observations for alcohol and/or controlled substances testing shall be made by a supervisor who is trained in accordance with 382.603. A driver may be directed by Department of Agriculture to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions. A driver may be directed by Department of Agriculture to undergo reasonable suspicion controlled substances testing at any time during work hours. If a reasonable suspicion alcohol test is not administered within two hours Department of Agriculture shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight hours Department of Agriculture shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. The supervisor who makes the determination that reasonable suspicion exists will not conduct the driver's breath alcohol test.

A written record shall be made of the observations leading to a reasonable suspicion controlled substances and/or alcohol test, and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier. A driver who has been requested to submit to reasonable suspicion testing will be placed on administrative leave (**with or without pay**) pending receipt of the test results.

3. Post-Accident Testing

Federal regulations require that, as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, a driver shall submit to controlled substances and alcohol testing under the following circumstances: any time a fatality occurs as a result of the accident; anytime a driver receives a citation under State or local law for a moving violation as a result of the accident and the accident involves an injury to anyone which requires immediate medical treatment away from the scene; or anytime a driver receives a citation for a moving violation as a result of the accident and the accident involves disabling damage to any of the vehicles. Disabling damage means one or more vehicles had to be towed away or cannot be driven from the scene.

Department of Agriculture will require each driver to complete a post-accident report form that provides instructions to follow in completing any required alcohol and controlled substances testing. Drivers are then obligated to follow the instructions and see that the tests are conducted. Any driver subject to post-accident testing who leaves the scene of an accident before a test is administered other than for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care or who fails to remain readily available for testing may be deemed by Department of Agriculture to have refused to submit to testing.

In the event that Federal, State or local officials conduct a breath or blood test for the use of alcohol and/or urine tests for the use of controlled substances following an accident, these tests shall be considered to meet the DOT requirements, provided the tests conform to applicable Federal, State or local requirements. The employee will be required to sign a release allowing Department of Agriculture to obtain the test results from such officials.

If an alcohol test is not administered within two hours following the accident, Department of Agriculture shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test is not administered within eight hours following the accident, Department of Agriculture shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request of the Associate Administrator. If the alcohol test is not completed in the required time frames, the driver cannot perform a safety-sensitive function until twenty four hours have elapsed following determination that reasonable suspicion existed and that the driver may have violated the prohibition or an alcohol test is administered with a result of less than .02.

If a controlled substances test is not administered within 32 hours following the accident, Department of Agriculture shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

4. Random Testing

All drivers will be subject to random alcohol and controlled substances testing. The selection of drivers for random alcohol and controlled substances testing shall be made from a computer-based random number generator that is matched with the driver's computer-based code number. The random selection system provides an equal chance for each driver to be selected each time random selection occurs. Random selections will be unannounced and spread reasonably throughout the year. Random selection, by its very nature, may result in drivers being selected in successive selections or more than once in a calendar year. Alternatively, some drivers may not be selected in a calendar year. Department of Agriculture will controlled substances test, at a minimum, 50 percent of the average number of driver positions in each calendar year. Random controlled substances testing may be performed at any time while the driver is at work for the employer. Department of Agriculture will select, at a minimum, 10 percent of the average number of driver positions for random alcohol testing. Random alcohol testing will be limited to the time period surrounding the performance of safety-related functions. A driver will only be tested immediately before, during, or just after the driver has ceased performing such functions. If a driver is selected at random, the DER will notify the driver. Once notified, the driver must take action intended to lead to an immediate collection. If the driver engages in conduct which does not lead to a collection as soon as possible after notification, such conduct may be considered a refusal to test.

5. Return-to-Duty Testing

Each driver who has engaged in prohibited conduct shall be advised by Department of Agriculture of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and treatment programs. Department of Agriculture's responsibility is limited only to making a driver referral for assistance; all costs will be incurred by the employee.

Per DOT requirements, each driver who engages in prohibited conduct shall be evaluated by a substance abuse professional who shall determine what assistance the driver needs in resolving problems associated with alcohol misuse and controlled substances use. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct, the driver shall undergo a return-to-duty alcohol test with an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance and be subject to follow-up testing.

6. Follow-Up Testing

Per DOT requirements, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be evaluated by a Substance Abuse Professional (SAP) to determine that the driver has properly followed any rehabilitation program, and shall be subject to unannounced follow-up alcohol and controlled substances tests administered by Department of Agriculture following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary. All costs will be incurred by the employee.

VII. TESTING GUIDELINES

Alcohol Testing

Alcohol testing is done by testing breath, because breath is the most easily obtained bodily substance and the results are known within minutes of testing. The testing device is called an Evidential Breath Testing Device (EBT). The EBT is a scientific instrument which determines the concentration of alcohol expressed as "percent by weight". The weight of alcohol in the breath sample is determined and the quantity of the alcohol converted to its equivalent value in blood. A blood alcohol concentration (BAC) of .04 means one twenty-fifth of a gram of alcohol per 210 liters of breath. The EBT will print three copies of each test result and the test results are numbered. When the initial test results show a reading of .02 BAC or greater, a confirmation test is conducted. Before the confirmation test, a 15 minute waiting period will occur for the purpose of ensuring that the presence of mouth alcohol from recent use of food, tobacco, or hygiene products does not artificially raise the test result. The confirmation test is done on the same EBT as the first test. When the confirmation result is different from the initial test, the confirmation test result will always be used to determine driver consequences. The driver will be given a copy of the breath alcohol testing form.

Controlled Substances Testing

The controlled substances testing program required by the regulations is limited to five controlled substances types: (1) Marijuana, (2) Cocaine, (3) Opiates, (4) Amphetamines and (5) Phencyclidine (PCP).

As set forth in 49 CFR Part 40, all controlled substances testing is done from urine specimens collected under highly controlled conditions. The driver provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document and prepares the specimen and accompanying paper work for shipment to a controlled substances testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification and integrity are not compromised.

Driver protection is also built in to the testing procedures. In order to meet the Federal requirements, the only laboratories that can be used for testing are those certified by the Federal Department of Health and Human Services. The initial test of any specimen will be an immunoassay which meets the requirement of the Food and Drug Administration for commercial distribution. All specimens identified as positive will be further confirmed using gas chromatography/mass spectrometry techniques. Before a laboratory is certified to conduct controlled substances testing, it is subject to a rigorous testing and inspection by the Department of Health and Human Services (DHHS). This testing and inspection includes the submission of test samples to the laboratory for analysis during three test cycles over a period of three months. If these test samples are correctly analyzed a team of qualified inspectors conduct an on-site inspection prior to certification of the lab. Continuing evaluation of the performance of certified laboratories by the Department of Health and Human Services includes the submission of performance test specimens every other month and an on-site inspection at least twice a year.

The laboratory must report test results to Department of Agriculture's designated Medical Review Officer within an average of five working days after the receipt of the specimen by the laboratory. Test results must be certified accurate. The report must identify the controlled substances, metabolites tested for, whether the results are positive, adulterated, substituted or negative, the specimen identification number assigned to the driver, and the controlled substances testing laboratory specimen identification number. The laboratory must also provide to Department of Agriculture a bi-annual statistical summary of urinalysis testing of drivers, which shall not include any personal identity information. The laboratory will retain samples that yield confirmed positive test results for one year in secured frozen storage. Because it is possible that some analytes may deteriorate during storage, the results of the re-test are to be reported as confirmation of the original test results if the detected level of the controlled substance is below the DOT established limits and equal to or greater than the sensitivity of the test.

VIII. COLLECTION SITES

The DER will maintain a list of sites for sample collection. The driver will not be allowed to transport himself or herself to or from the collection site in the event of a reasonable suspicion test or post-accident test request. The DER will arrange transportation for the driver at all times. The driver shall report immediately to the collection site once properly notified.

IX. THE ROLE OF THE MEDICAL REVIEW OFFICER

The Medical Review Officer (MRO) is a licensed, nationally certified physician who is knowledgeable in the medical use of prescription controlled substances and the pharmacology and toxicology of illicit controlled substances. The primary responsibility of the MRO is to review and interpret positive, adulterated, substituted or invalid test results obtained through Department of Agriculture's controlled substances testing program. Alcohol testing is not subject to medical review given the evidentiary nature of its results.

In terms of controlled substances testing, it is important to understand that a positive, adulterated, substituted or invalid test result does not automatically identify an individual as an illegal controlled substances user. The MRO must evaluate the alternative medical explanations that could account for a positive, adulterated, substituted or invalid test result.

The review of a positive, adulterated, substituted or invalid test result is initiated immediately upon receipt and is ordinarily completed within two working days after receipt of all information pertinent to the review. No information about the test result shall be given to Department of Agriculture during this period. In addition to information provided by the driver, this review will include considerations of chain of custody documents prepared at the time of collection and, in connection with the laboratory, processing of the specimen. This review must also include review of the chain of custody process. If the MRO is unable to contact the driver directly, the MRO will contact Department of Agriculture's DER, who shall in turn contact the driver and direct the driver to contact the MRO immediately, but no later than seventy-two hours as required by the regulations. The DER will inform the driver of the consequences of failing to do so as outlined in the regulations. During this time, Department of Agriculture will not stand-down the driver from performing safety-sensitive functions based only on a request by the MRO to talk with the driver regarding the pending test result. However, Department of Agriculture reserves the right to petition the Department of Transportation for a waiver of the stand-down provision if Department of Agriculture determines that standing-down a driver is necessary for safety and Department of Agriculture can provide data on safety problems or incidents that could have been prevented if a stand-down procedure were in place. During the review of the laboratory results, the MRO will conduct a medical interview with the driver, review the driver's medical history, or review other biomedical factors. This interview may be conducted by telephone. The MRO must review all medical records that the tested driver submits when a confirmed positive, adulterated, substituted or invalid test result could have resulted from legally prescribed medication.

If any questions arise about the accuracy or validity of a positive, adulterated, substituted or invalid test result, the MRO should review the laboratory records to determine whether the required procedures were followed. This will require collaboration with the laboratory director, the analysts, and expert consultants. If necessary, the MRO may request the sample be reanalyzed to determine the accuracy of the test result.

The MRO shall not disclose to any third party medical information provided by the individual to the MRO as part of the testing verification process with the following exceptions: the MRO may disclose such information to Department of Agriculture, DOT or any other Federal safety agency, or a physician responsible for determining the medical qualification of the driver when an applicable DOT regulation permits or requires such disclosure; in the MRO's reasonable medical judgement, the information could result in the driver being determined to be medically unqualified under an applicable DOT agency rule; or in the MRO's reasonable medical judgement, the information indicates that continued performance by the driver of his or her covered function could pose a significant safety risk.

At this point, the MRO makes a determination as to whether the result is scientifically sufficient to take further action. However, if the records from the collection site or laboratory raise doubts about the handling of the sample, the MRO may decide the urinary evidence is insufficient and no further actions would be taken. In these cases, the MRO shall note the possible errors in laboratory analysis or chain of custody procedures and shall notify the proper officials.

If it is determined with reasonable certainty that there is a legitimate medical or other reason to account for a positive, adulterated, substituted or invalid laboratory test result, the report will be reclassified as a negative test result. The notice to Department of Agriculture will indicate that the test result was negative. Any medical information obtained by the MRO will be treated as confidential.

If there is no medical or other reason to account for a positive, adulterated, substituted or invalid test result, the verified positive, adulterated, substituted or invalid test result will be disclosed to Department of Agriculture as required by the program. Any medical information acquired that is not specifically related to illegal controlled substances use will be treated as confidential and not disclosed.

No later than 72 hours after receipt of a confirmed positive, adulterated or substituted test result, a driver may submit a written request to the MRO for retesting of the specimen producing the positive, adulterated or substituted test result. The MRO must honor the request. Each driver may have one written request that the sample of the specimen be provided to the original or another DHHS-certified laboratory for testing. Per DOT requirements, Department of Agriculture must ensure that the test takes place and that the employee is not required to pay for the test from his/her own funds before the test takes place. Department of Agriculture reserves the right to seek reimbursement from the driver for the cost of the test once the test is completed.

In summary, the MRO determines whether there is some reason other than illegal controlled substances use to explain a positive, adulterated, substituted or invalid urine controlled substances test. If illegal controlled substances use is verified, the MRO will inform the DER of the identification of the controlled substances found in a positive test. The driver shall then be notified of the results of the random, reasonable suspicion and post-accident controlled substances test if the test results are verified as positive, adulterated or substituted. The driver will also be informed as to which controlled substances(s) were verified as positive. The organization shall notify a driver applicant of the results of a pre-employment controlled substances test if the driver requests such information within 60 days of being notified of the disposition of his/her employment application.

X. DRIVER CONSENT

Per organization policy, a driver's consent to a medical examination and alcohol and controlled substances testing is required as a condition of employment and a driver's refusal to consent may result in disciplinary action, up to and including termination. A driver who refuses to test under DOT regulations shall not be permitted to perform in a safety-sensitive position. Refusal shall be treated as a positive test for purposes of the regulations and will result in disciplinary action up to and including termination, per organization policy.

Consent to a medical examination and testing includes a driver's obligation to fully cooperate. Upon request, a driver must promptly complete any required forms and releases and promptly provide a sample for alcohol and controlled substances testing.

XI. REFUSAL TO SUBMIT TO A TEST

DOT regulations provide that a driver shall not refuse to submit to a required alcohol and/or controlled substances test. Refusal to submit to an alcohol or controlled substances test means that a driver:

- Fails to appear for any test within a reasonable time after being directed to do so by the employer or to remain at the testing site until the testing process is complete. This includes the failure of an employee/owner-operator to appear for a test when called by their testing consortium. An employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- Fails to provide a urine/saliva/breath specimen for alcohol and/or controlled substances testing after he or she has received notice of the requirement for testing. An employee who does not provide an adequate amount of urine/saliva/breath because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- In the case of a directly observed or monitored collection of a controlled substances test, the driver fails to permit the observation or monitoring of the provision of a specimen;

- Fails to provide a sufficient amount of urine when directed and a physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails to provide a sufficient breath specimen and a physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails or declines to take a second test, following a negative dilute result, when required by the employer;
- Fails to undergo an additional medical examination or evaluation, as directed by the Medical Review Officer (MRO) as part of the verification process, or as directed by the DER concerning the evaluation as part of the “shy bladder” or “insufficient breath” procedures in Part 40. In the case of a pre-employment controlled substance test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
- Is reported by the MRO as having a verified adulterated or substituted test result.
- Fails to cooperate with any part of the testing process (e.g. refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process or fails to wash hands after being directed to do so by the collector).
- For an observed collection, fails to follow the observer’s instruction to raise clothing above the waist, lower clothing and underpants and to turn around to permit the observer to determine if the individual has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that he or she has adulterated or substituted the sample.

XII. CONSEQUENCES OF A POSITIVE TEST

Per D.O.T. requirements no driver who is found to have a BAC of .02 or greater but less than .04 shall perform safety sensitive functions until the start of the driver's next scheduled duty period, but not less than 24 hours following the test. Per company policy the driver may also be subject to disciplinary action up to and including termination. A driver testing positive for a prohibited controlled substances or found to have an alcohol concentration of .04 or greater will be subject to disciplinary action up to and including termination (attach your company’s disciplinary action policy). At the sole discretion of the company, a driver may be offered an opportunity to return to duty once they become medically requalified and follow all requirements as outlined in Part 382.605.

XIII. DESIGNATED EMPLOYER REPRESENTATIVE (DER)

The Designated Employer Representative (DER) is an employee authorized by Department of Agriculture to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for Department of Agriculture consistent with the requirements outlined in the regulations. The DER is also responsible for answering any questions a driver may have regarding the alcohol and controlled substances testing program. The DER for Department of Agriculture is as follows:

Kathleen Kirkland
100 N. Stewart Street, Suite 230,
Carson City, NV 89701
(775) 684-0209

XIV. CONFIDENTIALITY OF RECORDS

The release of individual alcohol and/or controlled substances test records is permitted only with the specific written consent of the driver with the following exceptions:

- When requested by the Department of Transportation, Department of Agriculture shall make available copies of all alcohol and/or controlled substances program name-specific records and reports, files, materials, data, documentation, agreements, contracts, policies and statements that are required under 49 CFR Part 382 and Part 40.
- When requested by Federal, state or local safety agency with regulatory authority, Department of Agriculture must provide controlled substances and alcohol test records concerning the driver.
- When requested by the National Transportation Safety Board as part of an accident investigation, Department of Agriculture shall disclose information related to the administration of a post-accident alcohol and/or controlled substances test administered following the accident under investigation.
- Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

- Department of Agriculture may disclose information required to be maintained under this part pertaining to a driver, to the decision maker in a lawsuit, grievance, or other administrative proceedings brought by or on behalf of the driver, and resulting from a positive alcohol and/or controlled substances test or a refusal to test (including, but not limited to, adulterated or substituted test results). These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the controlled substance or alcohol test information sought is relevant to the case and issues an order directing Department of Agriculture to produce the information. Department of Agriculture may release the information only with a binding stipulation that the decision maker to whom it is released will make it available only to parties in the proceeding. Upon written request, a driver shall receive copies of any records pertaining to his/her test results.

XV. RELEASE OF ALCOHOL AND CONTROLLED SUBSTANCES TEST INFORMATION BY PREVIOUS EMPLOYERS

Department of Agriculture shall obtain, pursuant to a driver's written consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, refusals to be tested (including adulterated and substituted test results), and any other violations of the FMCSA alcohol and controlled substance testing regulations within the preceding three years, which are maintained by the driver's previous employers. This information must be obtained and received by Department of Agriculture as soon as possible, but no later than thirty calendar days after the first time a driver performs safety-sensitive functions. If it is not feasible to obtain the information prior to the driver performing safety-sensitive functions, Department of Agriculture will not permit a driver to perform safety-sensitive functions after thirty days without obtaining the information. If the driver stops performing safety-sensitive functions for Department of Agriculture before expiration of the thirty day period or before Department of Agriculture has obtained this information, Department of Agriculture must still obtain these records. Department of Agriculture will provide to each of the driver's employers within the three preceding years the driver's specific, written authorization for release of the information. The release of any information under this part may take the form of personal interviews, telephone interview, letters, or any other method of obtaining information that ensures confidentiality. Department of Agriculture will maintain a written, confidential record with respect to each past employer contacted. Department of Agriculture must ask an applicant whether he or she has tested positive, or refused to test on any pre-employment controlled substance test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency controlled substance and alcohol testing rules during the past three years. If the applicant admits to a positive test or refusal to test, Department of Agriculture will not use the applicant until the applicant documents successful completion of the DOT return-to-duty testing rules.

XVI. DRIVER ASSISTANCE TRAINING PROGRAM

Department of Agriculture shall require supervisors designated to determine whether reasonable suspicion exists to require a driver to undergo testing, to receive at least sixty minutes of training on alcohol misuse and receive at least an additional sixty minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol and controlled substances misuse.

Department of Agriculture will ensure all drivers receive information concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management. The Designated Employer Representative will maintain a list of community treatment resources for drivers in need of assistance.

XVII. SEVERABILITY

If any part or provision of this policy, or the application thereof to any person or circumstance, should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any part of this provision is restrained by such tribunal pending a final determination as to its validity, the remainder of this policy, or the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect.

**DOT Motor Carrier Part 382
Alcohol And Controlled Substances Testing Program**

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Appendix A

DEPARTMENT OF AGRICULTURE

Verification of Driver's Involvement

I, _____, certify _____ participated in a alcohol and controlled substances testing program that met all the requirements of DOT Regulation 49 CFR, Part 382 and Part 40.

The driver's last date of active employment was on _____.

The driver's was last tested on _____.

Please check the following:

Yes No The driver was tested for controlled substances within six months of his/her termination date. If yes, with the driver's written permission, please attach a copy of the controlled substances test result.

Yes No The driver was actively enrolled in the organization's random controlled substances testing program for the last twelve months of his/her employment.

Yes No To my knowledge, the driver has not violated any other regulation outlined in 49 CFR Part 382.

Yes No The driver is qualified under the requirements of DOT Regulation 49 CFR, Part 382 and Part 40 and has not refused to be tested for controlled substances.

Testing Program Information:

Organizational Name: _____
Address: _____
Phone Number: _____
Contact Person: _____

I certify that to my knowledge, the foregoing information is correct and true.

Dated:

Signature of Authorized Representative

Appendix B

DEPARTMENT OF AGRICULTURE

Driver Pre-employment Alcohol/Controlled Substances Statement

I, _____, certify that I have not tested positive or refused to test on any pre-employment alcohol/controlled substances test administered by a past employer in which I applied for but did not obtain safety-sensitive transportation work covered by the Department of Transportation's Alcohol and Controlled Substances Testing Rules during the past three years from the date of my employment application with Department of Agriculture.

Signature of Driver: _____

Date:

Witness: _____

Date:

This authorization is valid until revoked in writing by the above stated driver.

- DRIVER NOTICE -

IF THE DRIVER APPLICANT HAS HAD A POSITIVE PRE-EMPLOYMENT CONTROLLED SUBSTANCES TEST OR REFUSAL TO TEST DURING THE PAST THREE YEARS FROM THE DATE OF THIS EMPLOYMENT APPLICATION WITH DEPARTMENT OF AGRICULTURE, DO NOT SIGN THIS FORM.

DEPARTMENT OF AGRICULTURE WILL NOT EMPLOY A DRIVER TO PERFORM SAFETY-SENSITIVE FUNCTIONS UNTIL AND UNLESS THE DRIVER DOCUMENTS SUCCESSFUL COMPLETION OF THE RETURN TO DUTY PROCESS AS OUTLINED IN THE DOT REGULATIONS. DRIVER VERIFICATION OF THE COMPLETION OF THE RETURN TO DUTY PROCESS MUST BE SUBMITTED TO THE DESIGNATED EMPLOYER REPRESENTATIVE TO BE CONSIDERED ELIGIBLE FOR EMPLOYMENT.

**DEPARTMENT OF AGRICULTURE
CONSENT FORM
RELEASE OF ALCOHOL AND CONTROLLED SUBSTANCES TEST RESULTS TO
PROSPECTIVE EMPLOYERS**

Upon request, I, _____, authorize Department of Agriculture to release to all alcohol and controlled substances testing records obtained for the last three years of my employment.

The purpose of this release is to assist me in complying with my new employer, _____, DOT Alcohol and Controlled Substances Testing Program.

This consent is valid until revoked in writing by the above driver.

Date

Signature of Driver Applicant

Witness

Appendix D

**DEPARTMENT OF AGRICULTURE
NOTICE TO DRIVERS**

I acknowledge that I have received a copy of Department of Agriculture's CFR 49 Part 382 Alcohol and Controlled Substances Testing Policy. I have read the Policy in its entirety and understand its requirements.

Date

Driver Name (Please Print)

Driver Signature

Reasonable Suspicion Report - Page Two

10. (Continued)

- 2) Inform driver that Department of Agriculture's policy requires drivers to consent to testing and that refusal is grounds for disciplinary action up to and including termination.
- 3) Again request driver to consent to testing.
 - a) If driver agrees, have he/she sign testing release and follow procedure for collecting sample.
 - b) A Department of Agriculture representative will arrange transportation and accompany the driver to the collection site, stay in the waiting room until notified that the collection has been completed and then arrange transportation home for the driver.
 - c) If driver still refuses, inform driver that he/she is suspended pending Department of Agriculture's decision. Request driver to sign refusal to test form.
11. After testing sample is collected, inform driver that he/she is on investigative suspension pending the results of the test and Department of Agriculture's decision on the matter.
12. In cases where the driver is suspected of being under the influence of alcohol and/or controlled substances, arrange transportation (i.e., taxi) home for the driver. If the driver refuses transportation, attempt to persuade the driver to change his/her mind. Do not restrain the driver. In cases where the driver refuses transportation and his/her condition suggests that the driver presents a potential or actual safety risk to themselves or other drivers, notify the police. Inform the driver that you intend to call the police unless he/she accepts transportation. Have a witness verify the driver's refusal of transportation.
13. To the best of my knowledge, this report represents the physical, behavioral, speech or performance indicators of the above-named driver observed by me and upon which I based the decision to request the driver to submit to reasonable suspicion testing.

Supervisor Signature: _____

Date:

Appendix F

**DEPARTMENT OF AGRICULTURE
DRIVER RESPONSE FORM**

8. Driver's response to alcohol and/or controlled substances testing request: (must be handwritten by driver)

10. Driver's reason for refusing to submit to alcohol and/or controlled substances testing: (must be handwritten by driver)

Appendix G

DEPARTMENT OF AGRICULTURE

NOTICE TO DRIVER APPLICANTS

CONTROLLED SUBSTANCES TESTING REQUIREMENT

Department of Agriculture has a vital interest in maintaining safe, healthful and efficient working conditions for our customers, the public, and our drivers. Using or being under the influence of alcohol and/or controlled substances on the job may pose serious safety and health risks not only for the user, but to all those who work with the user. The possession, use or sale of alcohol or an illegal controlled substances poses unacceptable risks to safe, healthful and efficient operations.

To meet this compelling interest, and in compliance with the Department of Transportation's Alcohol and Controlled Substances Testing Requirements (49 CFR Part 382) drivers who wish to be considered for employment must agree to **SUBMIT TO PRE-EMPLOYMENT CONTROLLED SUBSTANCES TESTING.**

By completing and signing this Notice and the attached Application of Employment, the driver applicant understands and agrees to submit to a pre-employment controlled substances testing as provided for in Department of Agriculture's Alcohol and Controlled Substances Policy.

ANY DRIVER APPLICANT WHO IS UNWILLING TO AGREE TO THESE CONDITIONS SHOULD NOT APPLY FOR EMPLOYMENT WITH DEPARTMENT OF AGRICULTURE. Refusal of a driver applicant to agree to controlled substances testing at this time does not preclude applying for employment with Department of Agriculture at some future date.

Date:

SIGNATURE OF DRIVER APPLICANT

Appendix H

DEPARTMENT OF AGRICULTURE

ALCOHOL AND CONTROLLED SUBSTANCES AWARENESS PROGRAM OUTLINE

In the alcohol and controlled substances awareness program I received information on:

- The dangers of substance abuse in the workplace.
- The effects and consequences of alcohol and controlled substances use on personal health, safety and the work environment.
- Physiological and psychological aspects of chemical dependency.
- Recognition of the warning signs that indicate alcohol or controlled substances use or abuse.
- Education on how not to support, cover up or make excuses for a fellow driver abusing alcohol or controlled substances.
- Available treatment resources and recovery options.

Driver Name (Please Print)

Date

Driver Signature

Appendix H

Page 2

**DEPARTMENT OF AGRICULTURE
SUPERVISORY TRAINING OUTLINE**

I, _____, acknowledge that I have attended a supervisory training program as required by Department of Agriculture.

The supervisory training program provided information on:

- Recognition of the physical, behavioral, speech and performance indicators of probable employee alcohol misuse (one-hour training) and controlled substances abuse (one- hour training).
- How to document performance problems associated with alcohol and controlled substances abuse.
- How to conduct the corrective interview--practical and legal concerns.
- Making effective supervisory referrals for the troubled driver.
- Reintegration issues--working with the driver after treatment.

Signed

Date

I certify that the training conducted complies with the training requirements as outlined in 382.603.

Trainer name: Bob Sinnett, M.A.

Organization: Sinnett Consulting Services

Address: 10580 North McCarran # 115-212, Reno, Nevada 89503

Phone: (775) 746-1616

Signature:

Appendix I

RANDOM TESTING DOCUMENTATION FORM

PREPARE THIS FORM EACH TIME TEST SELECTION IS PERFORMED

Employer: _____

Location: _____

Testing Periods Per Year: _____

This Test Period Number: _____

Numbers of Drivers To Be Tested This Period: _____

Selection Date: _____

Eligible Driver's Names (list alphabetically)	Random Selection #	Collection Date	Alcohol Test Results	Drug Test Results
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Appendix J

**DEPARTMENT OF AGRICULTURE
DRIVER POST-ACCIDENT REPORT**

Date of Accident: _____

Time of Accident: _____

Location of Accident: _____

Driver: _____

Driver's Social Security #: _____

Description of Accident:

Involved Parties:

Name: _____

Address: _____

Phone: _____

Witnesses:

Name: _____

Address: _____

Phone: _____

Name: _____

Address: _____

Phone: _____

Driver Post-Accident Report

Page Two

Investigating Officer:

Name: _____

Address: _____

Phone: _____

Were any tests administered by the law enforcement officer? _____

Were you issued a moving vehicle citation? _____

Did any vehicle sustain disabling damage to the extent the vehicle was undrivable and required towing?

Did you sustain an injury that required immediate treatment away from the scene?

(please describe)

Treatment Facility:

Name: _____

Address: _____

Phone: _____

Contact Person: _____

Were there any fatalities? _____

Contact Department of Agriculture's DER (Kathleen Kirkland 775-684-0209) to review the report form and receive instructions on providing a sample for alcohol and controlled substances testing (if required).

Appendix K

**DEPARTMENT OF AGRICULTURE
POST - ACCIDENT REVIEW**

1. Review Driver's Post-Accident Report Form.

2. Attempt to contact investigating officer to discuss circumstances of the accident and determine if there is reason to believe the driver was under the influence of alcohol or controlled substances.

3. Notify driver of the closest collection site to proceed to provide a sample for alcohol and controlled substances testing (if required).
Collection Site: _____
Address: _____
Phone: _____
Contact Person: _____
Appointment Time: _____

4. Inform the driver that they will be placed on leave of absence with pay pending receipt of the post-accident test result.

Appendix L

DEPARTMENT OF AGRICULTURE RECORD KEEPING REQUIREMENTS

General requirements - Department of Agriculture shall maintain records of its alcohol misuse and controlled substances use prevention program as provided in the regulation. The records shall be maintained in a secure location with controlled access.

Period of Retention- Department of Agriculture shall maintain the records in accordance with the following schedule:

- 1) **Five years.** The following records shall be maintained for a minimum of five years:
 - a. Records of driver alcohol test results with results indicating an alcohol concentration 0.02 or greater.
 - b. Records of driver verified positive controlled substances test results.
 - c. Documentation of refusals to take required tests.
 - d. Calibration documentation.
 - e. Driver evaluation and referrals.
 - f. Records related to the administration of the alcohol and controlled substances testing program.
 - g. A copy of each annual calendar year summary required by § 382.403.

Two years - Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

One year - Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02.

Indefinite Period – Records related to the education and training of breath alcohol technicians, screening test technicians, SAP's, MRO's, supervisors, and drivers shall be maintained by Department of Agriculture while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

Types of Records - The following specific records shall be maintained.

1. Records related to the collection process:
 - a. Documents relating to the random selection process.
 - b. Calibration documentation for evidential breath testing devices.
 - c. Documents of breath alcohol technician training.
 - d. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests.
 - e. Documents generated in connection with decisions on post-accident tests.
 - f. Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing.
 - g. Consolidated annual calendar year summaries as required by §382.403.
2. Records related to a driver's test results:
 - a. Copy of the alcohol test form, including the results of the test.
 - b. Copy of the chain of custody and control form.
 - c. Documents sent by the medical review officer to the employer.
 - d. Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part.
 - e. Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.
 - f. Documents generated in connection with verifications of prior employer's alcohol or controlled substances test results that must be obtained in connection with the exception contained in §382.301 and §382.413.
3. Records related to other violations of this part.
4. Records related to evaluation:
 - a. Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance.
 - b. Records concerning a driver's compliance with recommendations of the substance abuse professional.

5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substances use awareness, including a copy of the employer's policy on alcohol misuse and controlled substances use.
 - b. Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials.
 - c. Documentation of training provided to supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion.
 - d. Certification that any training conducted under this part complies with the requirements for such training.
6. Administrative records related to alcohol and controlled substances testing:
 - a. Agreements with collection site facilities, laboratories, breathe alcohol technicians, screening test technicians, medical review officers, consortia and third party service providers.
 - b. Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s).
 - c. Semi-annual laboratory statistical summaries of urinalysis required by § 40.111(a);
 - d. Department of Agriculture's alcohol and controlled substances testing policy and procedures.
 - e. Location of records - All records required by this part shall be maintained as required by §390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration (FMCSA).

Appendix N

**DEPARTMENT OF AGRICULTURE
POST-ACCIDENT ALCOHOL AND CONTROLLED SUBSTANCES TEST
DOCUMENTATION FORM**

_____ was involved in a commercial motor vehicle accident
name of driver

on _____ requiring the administration of a post-accident alcohol
month, day, year

and controlled substance test pursuant to Part 382. Department of Agriculture was
notified of the accident at _____ on _____ by
time month, day, year

_____. The accident occurred at or near
driver/other

_____. The following efforts were undertaken to have the driver
tested as required by the regulations:

A. An alcohol test was administered within two hours which demonstrated a blood alcohol concentration of _____.

B. An alcohol test could not be administered to the driver within two hours of the accident because:

C. An alcohol test was administered after _____ hours (but not more than eight), which demonstrated a blood alcohol concentration of _____.

D. An alcohol test was not administered within eight hours of the accident because:

E. A controlled substances test (circle one) **was/was not** administered within 32 hours.

F. A controlled substances test was not administered within 32 hours because:

Department of Agriculture Representative

Date

Appendix O

**DEPARTMENT OF AGRICULTURE
MISSED ALCOHOL TEST DOCUMENTATION REPORT**

Type of Test Requested:

_____ Post-Accident

_____ Reasonable Suspicion

Date:

Location:

Time:

Type of safety sensitive function the driver was performing at the time of the test request:

An alcohol test was not administered within eight hours because:

A blood alcohol test would have been available within eight hours at the following facility:

Name of facility:

Address of facility:

Phone number of facility:

Department of Agriculture Representative

Date

Submit to: Attn: Alcohol Testing Program
 Office of Motor Carrier Standards (HCS-1)
 FMCSA
 400 Seventh Street S.W.
 Washington, D.C. 20590

Appendix P

DEPARTMENT OF AGRICULTURE

RELEASE OF TESTING INFORMATION BY PREVIOUS EMPLOYER

I, _____, hereby authorize _____
driver/applicant's name previous employer/company name

to release to _____
company contact new employer/company name

_____ address _____ city/state/zip

() _____ () _____
phone fax

results of any positive controlled substance tests, alcohol tests with a result of .04 or greater, evidence of refusal to be tested (including adulterated or substituted test results); other violations of the FMCSA alcohol and controlled substance testing rules and information on any required substance abuse professional (SAP) evaluation and compliance with SAP recommendations for the preceding three years.

This authorization is valid until withdrawn by me in writing.

Dated this _____ day of _____

Name of driver _____

Signature of driver _____

SS Number _____ Witness _____
signature

Appendix Q

DOCUMENTATION OF CONFIRMATION FROM PREVIOUS EMPLOYER

This document certifies that _____ reports that
prior employer

_____ had:
driver

- 1. Positive controlled substances test(s) Yes No
- 2. Alcohol test Result(s) of .04 or greater Yes No
- 3. Refusals to be tested for the preceding three years
(including adulterated or substituted test results) Yes No
- 4. Other violations of FMCSA alcohol & controlled substance
testing regulations Yes No

If YES to any of the above, below is the name and address of the substance abuse professional (SAP) that evaluated this individual. Please attach documentation of the employee's successful completion of the DOT return to duty requirements including follow-up tests. **For a driver who has successfully completed a SAP referral and remained in your employment, please provide documentation on whether the driver had any of the above testing violations any time after completion of the SAP referral.**

SAP _____

SAP address _____

SAP city/state/ZIP _____

Date: _____
month, day, year

Prior Employer Representative: _____
signature

Appendix R

DRIVER DUE PROCESS RIGHTS AND RESPONSIBILITIES- INVESTIGATION OF PERSONAL HISTORY FILE

- 49CFR Part 391 requires all employers to inform drivers, in writing, of the following due process rights regarding the alcohol and controlled substances testing information that will be provided to the prospective employer: the right to review information provided by previous employers; the right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer and the right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.
- Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment.
- The prospective employer must provide this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business days deadline will begin when the prospective employer receives the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.
- Drivers wishing to request correction of erroneous information in records received must send the request for the correction to the previous employer that provided the records to the prospective employer. The previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct the data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver. Drivers wishing to rebut information in records received must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's record. Within five business days of receiving a rebuttal from a driver, the previous employer must forward a copy of the rebuttal to the prospective motor carrier employer and append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year data retention requirement. The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

Appendix R

Page 2

- The driver may also report failures of previous employers to correct information or include the driver's rebuttal as part of information, to the FMCSA. The prospective motor carrier employer must use the information only as part of deciding whether to hire the driver. The prospective motor carrier employer, its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

I have read the driver due process rights and responsibilities- investigation of personal history file statement in its entirety and understand its requirements.

Date

Driver Name (Please Print)

Driver Signature