

## 6.21 – Drug and Alcohol Abuse Prevention and Testing v020820

### PART 1: PURPOSE AND AUTHORITY

This rule furthers NMSU’s efforts to provide a healthy and safe academic and work environment in accordance with regulatory requirements of state and federal law, which include, among others, the Omnibus Transportation employee Testing Act of 1991, the Federal Drug-Free Workplace Act of 1988 and the Drug-Free Schools and Communities Act Amendments of 1989.

Consistent with Regents Policy 16.65, this rule reflects the university’s commitment to a drug and alcohol-free workplace and workforce by formalizing its drug and alcohol testing protocols. The rule clarifies current practices relating to job positions regulated by the federal Department of Transportation (DOT) and pre-employment drug and alcohol testing of Candidates offered employment in a Safety Sensitive Position. The rule expands the current drug and alcohol testing program to all employees in Safety Sensitive Positions, and reasonable suspicion and post-accident drug and alcohol testing to employees involved in an accident or incident causing a Significant Consequence. This rule will enhance workplace safety and work performance by providing a fair and equitable system for identifying the existence of work-related drug or alcohol abuse or misuse among employees and Candidates for employment, under defined circumstances.

NMSU’s drug and alcohol testing program is conducted in accordance with the scientific and technical guidelines established by the U.S. Department of Health and Human Services, utilizing only laboratories certified to conduct drug testing for federal agencies.

### PART 2: DEFINITIONS

The following terms are defined for purposes of this rule, and will be capitalized to denote that it is a defined term:

- A. **Alcohol:** A colorless liquid, produced by the fermentation of sugar or starch, that is the intoxicating agent in fermented drinks, specifically including without limitation, spirits, wines, malt beverages, and other liquors.
- B. **AVP HRS:** Assistant Vice President for Human Resource Services
- C. **Candidate:** Any person who submits an employment application for Safety Sensitive Position.
- D. **CDL:** Commercial Driver’s License.
- E. **Confirmation Test:** A second analytical procedure conducted to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).
- F. **Controlled Substance:** Any substance listed in Schedule I or II of the Controlled Substances Act (CSA) [Title 21 United States Code]
- G. **Drug:** For random testing purposes, Drug is defined as marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs or any non-prescription substance containing those drugs. [HHS Mandatory Guidelines for Federal Workplace Drug Testing, 53 FR 11970-01] For reasonable suspicion, rehabilitation or post-accident testing, any Controlled Substance may be included.
- H. **Drug Test Notification:** A confidential memorandum issued in accordance with this rule notifying the employee that the employee is subject to testing pursuant to this rule, which provides instructions to report for testing.
- I. **HRS-CLPD:** The Center for Learning and Professional Development division within NMSU Human

Resource Services.

- J. **HRS-ELR:** The Employee and Labor Relations division within NMSU Human Resource Services.
- K. **Initial Test:** An immunoassay screen, which meets the requirements of the Food and Drug Administration, used to eliminate negative specimens from further consideration.
- L. **Laboratory:** A laboratory external to NMSU that is certified by the federal Department of Health and Human Services under the National Laboratory Certification Program to conduct urine drug testing for federal agencies. [49 CFR 40.81 Subpart F]
- M. **Last Chance Rehabilitation Agreement:** An agreement that may be entered into by NMSU Human Resource Services that gives an employee who has violated this rule or committed other serious misconduct one last chance to remain employed, provided the conditions outlined in the agreement are honored by the employee; if they are not, the employee is terminated without further due process. (*See Part 4 D. and Part 6 C. below*)
- N. **Medical Review Officer (MRO):** A licensed physician employed or contracted by the Laboratory knowledgeable in the medical use of prescription and non-prescription drugs and alcohol and the pharmacology and toxicology of illegal drugs and alcohol.
- O. **Omnibus Safety-Sensitive Position:** A Safety-Sensitive Position within NMSU involving transportation responsibilities including aviation, trucking, railroads, mass transit, and other transportation positions, and subject to federal Department of Transportation drug and alcohol testing regulations. At NMSU, such positions often require a commercial driver's license.
- P. **On Duty:** Any time during an employee's workday; any time while operating an NMSU vehicle, or any vehicle to conduct NMSU business.
- Q. **Random Selection:** A system for selecting employees or groups of employees for drug or alcohol testing in a statistically random system based on a neutral criterion, such as employment or social security numbers, without individualized suspicion that a particular employee is using drugs or alcohol.
- R. **Reasonable Suspicion:** A belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts. Reasonable suspicion determinations are made based on direct observations and documented using a standard checklist maintained by HRS-ELR.
- S. **Substance Abuse Testing Coordinator (SATC):** A employee appointed by the AVP HRS, in consultation with the executive director of Aggie Health and Wellness, to coordinate NMSU's drug and alcohol testing program.
- T. **Safety-Sensitive Position:** Positions designated by the AVP HRS, upon a determination that impairment by drug or alcohol use would constitute an immediate, significant and direct threat to public health, safety or security. These positions include and are not limited to: peace officers, direct health care providers, employees who are required to regularly handle a firearm, employees who hold a position requiring a Department of Defense Security Clearance, and employees whose positions are subject to mandatory drug testing under federal Department of Transportation regulations (typically those whose jobs require a CDL license). It also includes other positions designated by the AVP HRS or relevant campus president, as appropriate, upon request and justification by the supervisor or other member of executive management. (*See Part 5 B. 1. below*)
- U. **Significant Consequence:** An accident or unintended incident involving:
  - 1. loss of human life;
  - 2. a bodily injury requiring immediate medical treatment away from the scene by a professional health care provider;
  - 3. disabling damage to a motorized vehicle requiring transport from the scene, or
  - 4. damage to property likely to exceed \$10,000.
- V. **Split Sample:** Created when the urine sample is split into two. One sample is used for the Initial Test and

if positive, the second sample is available to be used for a Confirmation Test.

**W. Substance Abuse Professional (SAP):** A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor who has their certification from the National Association of Alcoholism and Drug Abuse Counselor's Certification Commission and who has knowledge of diagnosis and treatment of Alcohol and Controlled Substance related disorders. The SAP is a university employee or contractor selected by the executive director of the Aggie Health and Wellness Center.

### **PART 3: EMPLOYEE OBLIGATIONS – PROHIBITED CONDUCT**

NMSU employees are subject to the following:

#### **A. Prohibition of Drugs/Controlled Substances:**

1. No employee will illegally possess, manufacture, distribute, dispense or use any Drug or other Controlled Substance.
2. No employee will ingest any Drug or Controlled Substance, unless prescribed by a licensed medical practitioner.

#### **B. Restrictions Relating to Prescriptions and Over The Counter Medication Restrictions:**

1. Any employee using a prescribed medication with the potential to impair job safety must not report for duty unless the employee has received an express clearance to perform their specific job duties from their personal physician.
2. Employees will not ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage or as prescribed by a health care provider.

#### **C. Restrictions Relating to Alcohol Consumption:**

1. Employees will not consume, possess or transport beverages containing Alcohol while On Duty or while operating an NMSU owned or controlled vehicle, unless the activity is part of a supervisor approved job-related activity.
2. Employees in Omnibus Safety-Sensitive Positions who are required to possess a CDL will not consume Alcohol for the four hours prior to performing safety-sensitive functions.
3. Employees engaged in aircraft operation or maintenance who possess certification from the FAA must not have a BAC greater than a .00 and must not consume Alcohol within the 8 hour period before performing aircraft those functions.
4. Employees whose actions may have contributed to any accident resulting in a Significant Consequence will abstain from the use of Alcohol during the eight hours following the accident or until after the Employee undergoes a post-accident drug and alcohol test, whichever occurs first.

**D. Performing under Influence of Alcohol, Drugs or Controlled Substances Prohibited:** Employees will not report for duty while under the influence of Alcohol or Controlled Substances. Employees will not engage in the off-duty use of Alcohol or Controlled Substances in a manner which adversely affects job performance or which endangers the health or safety of the NMSU community.

**E. Employee Duty to Report On-The-Job Accidents:** An employee who has first-hand knowledge of any on-the-job accident (any event resulting in injury to a person or unexpected damage to vehicle or property), including a driving accident, must report the accident immediately to their supervisor and complete a First Report of Accident form. **[ARP 16.31]**

**F. Supervisor Duties to Report On-The-Job Accidents and Arrange for Post-Accident Testing:**

1. Supervisors who receive knowledge of any on-the-job or work related accident in which a subordinate employee was involved or present must complete a Supervisor's Accident Investigation Report form and transmit the completed form to EHS and HR ELR.
2. If the accident involves a Significant Consequence, the supervisor must also immediately notify HRS-ELR by telephone and obtain instructions about post-accident drug and alcohol testing.
3. Supervisors who acquire knowledge or information that a subordinate employee has engaged in conduct involving Controlled Substances or Alcohol in violation of these rules must report the knowledge to HRS-ELR and will not permit the employee to perform safety-sensitive job duties until authorized by HRS-ELR.

**G. Employee Duties Relative to Drug/Alcohol Testing Directive:**

1. Employees who receive a Drug Test Notification must report to the testing Laboratory without delay and cooperate fully in the submission and collection of the specimen for the drug and alcohol test as directed in the Notification.
2. Employees who are subject to a drug and alcohol test must not tamper with samples or otherwise attempt to interfere with or alter the outcome of the test.
3. Any failure to report to the testing Laboratory, or to cooperate in the drug and alcohol testing process, or any refusal or failure to complete specified forms (e.g. release) or to provide a specimen is considered a refusal to test for the purpose of sanctions under this rule.

**H. Employee Duty to Disclose Certain Drug/Alcohol Criminal Convictions:** Employees must disclose to HRS-ELR any conviction for an alcohol or drug-related offense committed in the workplace, or while On Duty, or which impacts their ability to carry out their job duties (e.g. resulting in loss of required licensure or security clearance). Employees must disclose **within 5 days** from the date of conviction (including a guilty or nolo contendere plea).

**I. Supervisor Duty to Report:**

1. Supervisors must notify HRS-ELR as soon as possible, but no later than 10 days after receiving or obtaining information or knowledge that a subordinate employee has been convicted for an alcohol or drug-related offense committed in the workplace, or while On Duty, or which impacts their ability to carry out their job duties.
2. If not self-reported by the employee, HRS-ELR will assist the supervisor to obtain confirmation of conviction, and upon confirmation, the supervisor must take corrective action within 30 days from the date such knowledge was first obtained.
3. Supervisors are responsible for any reporting required by law or contract. Reporting is required for employees who perform work funded by federal contracts.

**J. Participation in Drug Abuse Awareness and Prevention Programs:** Employees must participate in drug abuse awareness and prevention programs designated as mandatory by HRS, member of executive administration, or as required by their supervisor. Such programming may be mandatory for all employees or directed to specific units or individuals.

**K. Annual Training for Supervisors of CDL-Licensed Drivers:** Employees whose job responsibilities include supervision of commercial motor vehicle drivers will participate annually in legally mandated training for such supervisors.

#### **PART 4: DISCIPLINARY GUIDANCE FOR VIOLATIONS**

The following provides guidance relating to how corrective disciplinary action will be addressed when employees or supervisors are found to have violated this rule.

- A. **Candidate Failed or Refused Drug Test.** A Candidate who has received a conditional offer and refuses to take, or who fails to pass the required drug or alcohol test, will be denied employment.
- B. **Employee Positive Test or Refusal to Test.** Employees who refuse to submit to drug and alcohol testing required by this rule, refuse to authorize the release of test results to NMSU, or who has a positive or otherwise unacceptable result on a drug or alcohol test is subject to involuntary termination from employment, and coded ineligible for rehire.
- C. **Other Employee Violations.** Employees or supervisors who otherwise violates this rule will receive corrective action commensurate with the nature of the offense and seriousness of any risk of harm created or actual harm caused.
- D. **Last Chance Rehabilitation Agreements and Return to Duty.** Where doing so is in the best interest of the institution and will not create undue risk to the NMSU community, NMSU may refer an employee who violates this rule to a rehabilitation program and, subject to rehabilitation testing and other appropriate conditions as may be established by the AVP HRS, allow the employee to return to duty. During any rehabilitation period prior to return to duty, the employee may be placed in a non-Safety Sensitive Position or placed on leave at NMSU's sole discretion. Depending upon the circumstances and any legal requirements, an employee may be allowed to use sick, annual, or leave without pay for the rehabilitation period. An employee subject to a Last Chance Rehabilitation Agreement who then refuse or fail to meet the rehabilitation period conditions and requirements are subject to termination pursuant to the agreement, without further due process or right to appeal. If after a Last Chance Rehabilitation opportunity, an employee fails to maintain acceptable job performance and conduct after returning to work following a Last Chance Rehabilitation opportunity will be subject to evaluation and discipline based on said performance, in accordance with university policies and procedures.
- E. **Sanctions under Other rules.** Nothing in this rule prevents or limits the imposition of additional or other sanctions that may be appropriate under other NMSU rules or state law when an incident involves drug or alcohol abuse.

#### **PART 5: ROLES AND RESPONSIBILITIES**

- A. **Executive Director Aggie Health and Wellness.** Roles and responsibilities under this rule include:
  - 1. In consultation with the AVP HRS, the executive director of Aggie Health and Wellness Center appoints the coordinator of the university's drug and alcohol testing program pursuant to the this rule, referred to as the Substance Abuse Testing Coordinator (SATC). The duties and functions of the SATC may be assigned as supplemental duties to an incumbent NMSU employee.
  - 2. Appointment of the Substance Abuse Professional (SAP), who works for NMSU as a licensed substance abuse counselor in the Employee Assistance Program or Counseling Center.
- B. **HRS AVP.** Roles and responsibilities under this rule include:
  - 1. Consideration of requests from supervisors to designate specific job positions as a Safety Sensitive Position. The AVP HRS will issue the decision and if in agreement, will cause the position to be added to the list of Safety Sensitive Positions. If a request is denied, the supervisor may seek review from the relevant campus president, whose determination will be final.
  - 2. In consultation with the executive director of Aggie Health and Wellness Center, appoints the Substance Abuse Education and Prevention Coordinator (SAEPC) who has primary responsibility for implementing NMSU's employee substance abuse awareness and education programming described

in this rule.

3. Determines when a Last Chance Rehabilitation Agreement may be appropriate and the conditions to be imposed in it (*See Part 4 D. above*)
- C. **HRS-ELR.** HRS-ELR, working in coordination with supervisors, has primary responsibility for enforcement of NMSU's rules pertaining to terms and conditions of employment. Specific responsibilities include:
1. HRS-ELR accepts notification of positive or otherwise unacceptable test results, as well as reports of other suspected violations of this rule, notifies direct supervisors, and assists supervisors with the disciplinary and sanctioning process.
  2. HRS-ELR participates in making reasonable suspicion determinations.
  3. HRS-ELR may issue drug and alcohol testing notifications, with copies to the SATC.
  4. HRS-ELR maintains a current list of the university's Safety-Sensitive Positions and communicates any changes to that list to the SATC.
  5. HRS-ELR administers Last Chance Rehabilitation Agreements and Return to Duty when employees may be afforded this opportunity.
- D. **Substance Abuse Education and Prevention Coordinator (SAEPC).** Appointed by the AVP HRS, in consultation with the executive director of the Aggie Health and Wellness Center, the SAEPC has primary responsibility for implementing NMSU's employee substance abuse awareness and education programming as further described in this rule.
- E. **Substance Abuse Professional (SAP).** Appointed by the executive director of Aggie Health and Wellness Center, the SAP has primary responsibility for assisting employees who voluntarily seek referrals to rehabilitation services, as well as those who are offered a Last Chance Rehabilitation agreement, following a positive drug or alcohol test, or a refusal to test. In the case of self-referrals by employees who do not hold Safety Sensitive Positions, such self-referral is confidential. For employees in Safety-Sensitive Positions, the SAP will provide notice of the referral to HRS-ELR, which will work with the employee and their supervisor to determine whether a reassignment of duties or a leave of absence is most appropriate. In the case of employees who decide to enter into a Last Chance Rehabilitation Agreement, HRS-ELR will consult with the SAP in determining appropriate terms and conditions.
- F. **Substance Abuse Testing Coordinator (SATC).** Appointed by the executive director of Aggie Health and Wellness Center in consultation with the AVP HRS, the SATC has primary responsibility for administering NMSU's drug and alcohol abuse prevention and testing program. The SATC has primary responsibility for:
1. Issuing Drug Test Notifications in coordination with HRS-ELR;
  2. Delivering the Drug Test Notification;
  3. Communicating and coordinating with the testing Laboratory;
  4. Reporting positive or otherwise unacceptable results and refusal/failure to test to HRS-ELR; and
  5. Maintaining all drug and alcohol testing records in compliance with this rule and applicable law.

## **PART 6: REHABILITATION AND EDUCATIONAL PROGRAMS**

- A. **Mandatory Training and Content.** The SAEPC, in conjunction with Human Resource Services' Center for Learning and Professional Development (HRS-CLPD), develops and administers a drug and alcohol abuse awareness and education program for NMSU system employees. The program includes mandatory training modules or sessions to be included in all new employee orientations and periodic mandatory training and refreshers required for all employees. At a minimum, such training includes the following content areas:
1. The dangers of drug and alcohol abuse;
  2. Drug and alcohol abuse recognition;
  3. NMSU's Drug and Alcohol Abuse Prevention and Testing rules and related policies and rules;
  4. Available counseling, rehabilitation, and employee assistance programs;

5. Key federal legal requirements established by the Federal Drug Free Workplace Act and the Omnibus Transportation employee Testing Act; and
  6. Sanctions that may be imposed upon employees for violation of NMSU's rules regarding drug and alcohol use.
- B. CDL Supervisor Training.** The SAEPC, in conjunction with HRS-CLPD and NMSU's Police Department, will provide or arrange for legally required Alcohol and Controlled Substance training for employees who supervise employees in a Safety Sensitive Position.
- C. Rehabilitation Opportunities.** Through the NMSU benefit program known as the Employee Assistance Program (EAP), NMSU provides its employees with short term counseling as well as referrals to drug and alcohol abuse rehabilitation services. The following rules clarify how this benefit program applies in relation to employees who seek confidential EAP services for drug or alcohol abuse issues and employees who may have tested positive and been found in violation of this rule:
1. Employees are responsible for the costs associated with participation in third-party rehabilitation programs and should seek a benefit determination from their health care provider.
  2. Employees in Safety-Sensitive Positions who voluntarily request referral to a drug or alcohol rehabilitation program prior to selection for drug or alcohol testing will be placed in a non-safety sensitive position or granted leave of absence for up to 240 hours/30 days to complete an approved substance abuse program or treatment plan.
  3. Employees subject to a Last Chance Rehabilitation Agreement must abide by the terms and requirements established by ELR and the SAP.
  4. Employees in Safety-Sensitive Positions who voluntarily referred themselves for rehabilitation and employees subject to a Last Chance Rehabilitation Agreement commit to Rehabilitation Testing for a period of at least twelve months and up to 60 months, as determined by the SAP. Those who test positive or refuse to test during the rehabilitation period, fail to successfully complete the rehabilitation program requirements, or who fail or refuse to comply with treatment orders are subject to disciplinary action, up to and including dismissal; those subject to a Last Chance Rehabilitation Agreement will be terminated pursuant to the agreement, without further due process or right to appeal.

## **PART 7: AUTHORIZED DRUG AND ALCOHOL TESTING**

Human Resource Services is authorized to oversee a conduct drug and alcohol testing program, which complies with federal and state legal requirements and includes testing under the circumstances described below.

### **A. Pre-Employment Drug Testing.**

1. Candidates must submit to drug and alcohol testing after receiving an offer of employment and prior to final selection for appointment.
2. Incumbent employees being considered for intra-department transfer, promotion or position change from a non-Safety-Sensitive Position to a Safety-Sensitive Position or Omnibus Safety-Sensitive position must submit to drug and alcohol testing prior to any proposed transfer, promotion or position change.

### **B. Testing Based on Reasonable Suspicion:** NMSU employees may be required to undergo drug and alcohol testing upon a determination of reasonable suspicion that the employee has violated NMSU's drug or alcohol rules based on, but not limited to, any of the following circumstances:

1. Direct observation of the physical symptoms or manifestations of being under the influence of a Controlled Substance or Alcohol such as liquor on breath, slurred speech, unsteady walk, erratic behavior, or impaired coordination while On Duty or at any time for employees assigned to Safety

Sensitive Positions. In such cases, the determination will be based on an assessment by two individuals, including at least one representative from HRS-ELR utilizing a standardized checklist of indicators of drug or alcohol abuse.

2. Direct observation of the unauthorized use or possession of Controlled Substances or drug paraphernalia, or the unauthorized use of Alcohol while On Duty or direct observation of the unauthorized use or possession of drugs or drug paraphernalia on or off-duty, for employees assigned to Safety Sensitive Positions.

**C. Random Testing of Employees in Safety-Sensitive Positions:** Employees in Safety-Sensitive Positions and Omnibus Safety-Sensitive positions are subject to random selection for drug and alcohol testing. The selection process is administered by the SATC utilizing a professionally developed computer generated random selection. Random testing is conducted subject to the following parameters:

1. The percentage (%) rates of employees in Omnibus Safety-Sensitive positions required to undergo drug and alcohol testing on a yearly basis is determined annually by the federal agency governing that particular industry (i.e. Federal Aviation Administration (FAA) or Federal Motor Carrier Safety Administration (FMCSA) etc.).
2. At least ten percent (10%) of employees in other Safety-Sensitive Positions are required to undergo drug and alcohol testing on a yearly basis.
3. Any employee who is on a previously authorized leave of absence at the time of selection is excused from random testing. The SATC may conduct an additional random selection draw to identify employees to replace those not available due to a leave of absence to ensure that the appropriate percentage of employees are tested.

**D. Post-Accident Drug and Alcohol Testing**

1. Reporting Requirement: Any employee who, while On Duty, is involved in or may have contributed to an accident or an incident resulting in loss of human life, any injury to person or any damage to property must, as soon as practicable to do so, report the incident to their supervisor who will notify EHS and ELR.
2. Scope of Post-Accident Testing: Post-accident drug testing is authorized in the case of accident or incident involving a Significant Consequence. Following such an accident or incident, all employees whose conduct could have contributed to the accident or incident (as determined by supervisor or other NMSU personnel) must submit to a drug and alcohol test upon notification by their supervisor or receipt of a Drug Testing Notification. In such cases, supervisors are responsible for obtaining necessary documents from the SATC or ELR and delivering those documents to the relevant subordinate employees as soon as feasible to do so. Any decision by a supervisor that an employee's performance could not have contributed to the accident or incident must be based on the best information available at the time and must be documented in detail, including the decision-making process used to reach the decision.
3. Drug Testing Availability Period: For a period of 8 hours following the accident or incident, involved employees must remain readily available, for receipt of testing instructions and reporting to a testing site. An employee who is subject to post-accident testing who fails to remain readily available for testing, including notifying the supervisor or ELR about their location if they leave the scene of the incident, may be deemed to have refused to submit to testing. Such an employee must not consume Alcohol prior to testing following the incident. Nothing in this section requires the delay of necessary medical attention for injured people, or prohibits an employee from leaving the scene of an accident to obtain necessary assistance or to obtain necessary emergency care.
4. Time Limits for Testing: Post-accident testing will be limited by the following:

- a. If a drug and alcohol test is not administered within two hours following the incident, the supervisor will establish and maintain a record indicating the reasons the test was not promptly administered. If the test is not administered within eight hours following the incident, attempts to administer the test will cease, and the same record will be maintained.
  - b. If a drug test is not administered within 32 hours following the incident, attempts to administer the test will cease, and the supervisor will establish and maintain a record indicating the reasons that a drug test was not promptly administered.
5. Testing by Other Officials: When NMSU is unable to obtain a post-accident test within the required period noted above, the results of a blood, urine, or breath tests for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, will satisfy the requirement of post-accident testing, provided such test conforms to the applicable Federal, State, or local testing requirements. In such situations, employees are required to authorize the release of the test results to NMSU.

E. **Rehabilitation Testing:** Employees subject to a Last Chance Rehabilitation Agreement and employees holding Safety-Sensitive Positions who voluntarily request referral to a third party rehabilitation program are subject to on demand drug testing for a period not to exceed 60 months from the date of the employee's return to duty. Such employees will submit to testing (1) before returning to duty and (2) at any time during any period of suspension or any substance abuse treatment period, as determined by the SAP.

## **PART 8: DRUG AND ALCOHOL TESTING PROCEDURES**

A. **Random Selection Procedures.** The random selection process will be conducted by the SATC. As required by law, individuals in Omnibus Safety Sensitive positions will be selected from a separate pool than individuals in other Safety Sensitive Positions.

B. **Drug Testing Notification Process.** Employees subject to drug and alcohol testing will be notified in writing (Drug Test Notification), and provided instructions for immediately reporting to the testing site.

- 1. The Drug Test Notification (notification) is typically issued by the SATC, but HRS-ELR may also issue it.
- 2. The SATC or HRS-ELR may elect to deliver the notification directly to the employee for operational efficiency, or they will deliver it to the HR Liaison responsible for the employee's unit, and in their absence, to the employee's supervisor. The notification must be delivered to the employee as soon as reasonably possible. The delivery should be in person, unless not feasible and then it may be delivered by email or facsimile.
- 3. The individual who delivers the notification to the employee will document that the notification was delivered to the designated employee, with record of the date, time and location of delivery. The employee will be asked to sign an acknowledgement of receipt form. A refusal to sign the acknowledgement of receipt may be deemed a refusal to test. In such case, the person making delivery should note the refusal on one copy of the form, together with the date, time and location. The documentation of the delivery will be returned to the SATC or HRS-ELR as appropriate.
- 4. The individual who delivers the notification should clearly communicate to the employee that they are required to report to the collection site immediately upon receipt of the notification.

C. **Testing Procedures.** Except as otherwise stated in this rule, all drug and alcohol testing is conducted by a DHHS certified Laboratory. All drug and alcohol testing will be conducted in accordance with the procedures set forth in the Guidelines for Federal Workplace Drug Testing Programs and the Procedures for Transportation Workplace Drug Testing [49 CFR Part 40] and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988. In accordance with those guidelines, a breathalyzer is used for alcohol testing. For drug testing, urine specimens will be collected utilizing a split-sample collection process, and when an Initial Test is positive, a second confirmation test is

conducted. Test results are referred to the MRO for evaluation before being verified and reported as positive. Before verification, the MRO will give the Candidate or employee an opportunity to discuss the test results and will consider any possible or proffered explanation for test results that meet the drug or alcohol test cut-off limits. Upon a MRO verified positive drug test result, the Candidate or employee will have the option to have the specimen from the Split Sample tested by another independent laboratory at the employee's expense.

- D. **Drug Testing Cut-off Levels.** The laboratory reports as negative all specimens that are negative on the Initial Test or negative on the Confirmation Test. Only specimens reported as positive on the confirmatory test are referred to the MRO, and if verified by the MRO, reported to NMSU as positive for a specific drug. The cutoff concentrations used by the Laboratory will be the same as those established by the DOT, as may be amended from time to time. [49 CFR 40.87, Subpart F]
- E. **Alcohol Testing and Cut-Off**
1. Except when otherwise authorized by this rule, a test for alcohol is administered in accordance with DOT regulations [49 CFR Part 40], by breath analysis conducted by a person certified and using a device approved under DOT regulations.
  2. Employees with a blood alcohol content (BAC) level of .04 or more are deemed positive for alcohol unless another cut-off level is required by law for specific employment positions.
- F. **Re-Testing:** Employees whose test results are positive or otherwise not accepted may elect to have a retest conducted at their own expense by another qualified independent laboratory. The original Laboratory will arrange for the shipment of the split sample to the laboratory of the Candidate's or employee's choosing. NMSU will pay for the re-test if the re-test is negative.

## **PART 9: CONFIDENTIALITY AND RECORDS MAINTENANCE**

- A. **Internal Administrative Reporting:** The Laboratory reports verified positive and otherwise unacceptable test results to the SATC or designee. Only administrators who need to know will be made aware of the test results. The SATC will provide written notification of positive test results to Candidates and employees.
- B. **Legally Required Reporting:** When legally required to do so, NMSU will submit drug testing reports to federal agencies in accordance with federal regulations.
- C. **Segregated Records:** No laboratory reports or test results will appear in the employee's personnel file unless they are a part of documentation relating to a disciplinary action contained in the personnel file. Such records will be maintained in a special locked file maintained by the SATC or designee.
- D. **Confidentiality:** Files relating to laboratory reports or test results maintained by the SATC will be disclosed only to NMSU administrators with a legitimate business purpose for reviewing the report and may not be inspected by outside parties except with written permission of the employee or pursuant to a lawful subpoena.
- E. **Records Retention:** Test results and testing records are retained by NMSU for the period of time required by law.