



NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, bulletins regarding employee driving under the influence and driving while intoxicated offenses issued under the FAA personnel management system. This directive is TSA policy and must be applied accordingly.

REVISION: This revised directive amends TSA MD 1100.75-4, *Addressing Employee Driving Under the Influence (DUI) and Driving While Intoxicated (DWI) Offenses*, dated November 17, 2004.

SUMMARY OF CHANGES: Definitions for Driving While Intoxicated and Driving Under the Influence were added. Section 5A(2), Responsibilities, is amended to redefine reporting requirements for arrests to include reporting alcohol related offenses within 24 hours.

- 1. PURPOSE:** This directive supercedes and rescinds any related Orders, policies, and guidance issued under the Federal Aviation Administration personnel management system (49 U.S.C. § 40122). This directive sets forth the Transportation Security Administration (TSA) policies and procedures for addressing off-duty misconduct involving alcohol, specifically, arrests for either driving under the influence (DUI) or driving while intoxicated (DWI).

Employees who make the knowing and voluntary decision to engage in the reckless, illegal, and dangerous behavior of DUI/DWI offenses demonstrate a disregard for TSA's mission of protecting the Nation's transportation systems to ensure freedom of movement for people and commerce. As an agency empowered with the important and visible role in leading America's battle against terrorism, it is especially important that TSA actively work to keep the public's confidence and trust. Employees who misuse and/or abuse alcohol, a depressant, raise a serious issue about their potential fitness for duty in appropriately dealing with security threats. This fitness for duty concern is aggravated by an employee's voluntary decision to drive in an intoxicated state and potentially endanger the public.

- 2. SCOPE:** This directive applies to all TSA organizational elements and all TSA employees.

- 3. AUTHORITIES:**

- A. Sections 101 and 111(d) of the Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA), November 19, 2001 (49 U.S.C. §§ 114(n), 40122, 44935, and 44935 note)
- B. Sections 403(2) and 423 of the Homeland Security Act of 2002
- C. Applicable TSA and U.S. Department of Homeland Security delegations of authority

4. DEFINITIONS:

- A. Adverse Action: As defined in [TSA MD 1100.75-3, Addressing Performance and Conduct Problems](#), a suspension (of any length), including an indefinite suspension; a removal; or a reduction in pay band or rate of pay.
- B. Alcohol Awareness Program: A state or local government, or court-approved, program designed to deter drunk driving.
- C. Alcohol Related Offense: Preponderant evidence that an employee was driving under the influence, driving while intoxicated, or refused to submit to alcohol testing; e.g., breathalyzer and field sobriety tests. Preponderant evidence may be a police report, test result of blood-alcohol content, charge, indictment, or conviction.
- D. Driving Under the Influence (DUI): Sometimes referred to as driving while intoxicated (DWI) or “drunk driving”. The criminal offense of operating a motor vehicle while under the influence of alcohol or drugs, including prescription drugs, at a level which prevents the driver from thinking clearly or driving safely. State laws specify the levels of blood alcohol content at which a person is presumed to be under the influence. This is the level that is determined to be the level at which an individual cannot safely operate a motor vehicle.
- E. Driving While Intoxicated (DWI): Also referred to as driving under the influence (DUI) or “drunk driving”. The criminal offense of operating a motor vehicle while under the influence of alcohol when an individual’s blood alcohol content is above the legal limit. The blood alcohol content is set by individual state statutes. This is the level that is determined to be the level at which an individual cannot safely operate a motor vehicle.
- F. Employee: All TSA Security and/or Operational Personnel as well as all TSA Support Personnel.
- G. Letter of Reprimand: A form of disciplinary action that may be issued to address a conduct or performance problem. A letter of reprimand may be placed in the employee’s Official Personnel Folder for a specified time, not to exceed two (2) years. A supervisor may maintain a copy for their files.
- H. Management Official: A manager who is a higher-level official in the employee’s chain of command, including, when appropriate, the Chair of the Professional Responsibility Board or Assistant Secretary.
- I. Support Personnel: All TSA employees, including managers, who are not TSA Security and/or Operational Officials.
- J. Transportation Security Officer (TSO): All TSA Transportation Security Officers, including Lead and Supervisory Transportation Security Officers.

5. RESPONSIBILITIES:

A. TSA Employees are responsible for conducting themselves in a manner that does not adversely reflect on TSA, or negatively impact TSA's ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or supervisors to question the employees' reliability, judgment, or trustworthiness.

- (1) TSA employees are responsible for observing and abiding by all laws, rules, and regulations.
- (2) TSA employees are responsible for reporting all arrests, including arrests for an Alcohol Related Offense, to their immediate supervisor or anyone in the chain of command within 24 hours of the arrest. If reporting within 24 hours is not possible due to circumstances beyond the employee's control, they must report as soon thereafter as possible.

B. Supervisors and managers are responsible for implementing necessary personnel actions and procedures set forth in this directive to assist in maintaining TSA's reputation, workplace order, efficiency, and productivity.

6. POLICY: An Alcohol Related Offense negatively affects a TSA employee's ability to discharge his/her functions and accomplish the mission of TSA because such behavior calls into question the employee's reliability, judgment, and trustworthiness, and erodes the public confidence in TSA's ability to perform its mission. This directive articulates TSA's position that, for all employees, repeated DUI/DWI offenses are incompatible with continued employment with TSA.

7. PROCEDURES:

A. All Personnel (Includes Transportation Security Officer (TSO) and Non-TSO Employees): Once an employee reports an Alcohol Related Offense, or a Management Official otherwise learns of the incident¹, the Management Official –

- (1) Shall not permit the employee to perform screening or security-related functions pending the outcome of an administrative inquiry;
- (2) Shall assign the employee to non-screening or non-security related duties, such as handling baggage (not to be confused with the functions of a baggage TSO), directing passengers, monitoring exit lanes, or administrative duties;

¹ A TSA employee's failure to report such occurrences may be separate grounds for disciplinary action.

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- (3) Shall exercise his or her discretion to the appropriate level of duties non-TSO or nonsecurity personnel should perform pending the outcome of administrative inquiries into the Alcohol Related Offense; and
- (4) Shall not place any employee on administrative leave solely because of an Alcohol Related Offense.

B. Required Administrative Action for Alcohol Related Offenses

- (1) Immediately upon learning of an employee's Alcohol Related Offense and in addition to reporting the Offense to the Office of Inspection, the Management Official must initiate an administrative review of the facts and circumstances of the Alcohol Related Offense. This review should normally include obtaining a statement from the employee, a copy of the official police report, and shall include consultation with counsel.
- (2) The Management Official shall:
 - (a) Issue a Letter of Reprimand to the employee once obtaining evidence that the employee has committed his or her **first** Alcohol Related Offense. The Letter of Reprimand will include, among other things, a direction for the employee to enroll in and successfully complete an Alcohol Awareness Program, at his or her own expense, and it should be issued without regard to the ultimate outcome of any criminal proceeding; and
 - (b) In cases involving TSA Security and/or Operational Personnel, the Management Official, at his or her discretion depending upon the facts and circumstances in each case, including the determination that the employee can safely perform the screening or screening-related duties, may return the employee to full duties either once the employee enrolls in an Alcohol Awareness Program or after the employee successfully completes the Alcohol Awareness Program.
- (3) The Management Official has the discretion to take and/or initiate action that is more severe than the Letter of Reprimand described above in section 6B(2), if there are aggravating factors in the employee's first Alcohol Related Offense. Examples of aggravating factors include consideration that the event occurred while: (1) in TSA uniform; (2) in route to or from a TSA work location; (3) on TSA owned or leased property or airport property; or (4) involves other incidents of serious aggravating factors in which case legal concurrence should be obtained.
- (4) Upon determination that an employee has more than one Alcohol Related Offense, the Management Official shall take action to remove the employee from TSA employment consistent with the provisions of [TSA MD 1100.75-3, Addressing Performance and Conduct Problems](#).

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- (5) Employees who have been **convicted** of one or more Alcohol Related Offense prior to TSA employment shall be terminated if it is determined that they commit an Alcohol Related Offense after the effective date of this directive.
 - (6) If there are certain exceptional mitigating facts and circumstances, a Management Official may seek an exception to the requirement to remove an employee who has more than one Alcohol Related Offense by submitting a written request explaining the mitigating facts and circumstances to the Deputy Assistant Secretary or the Assistant Administrator for the appropriate component. The approval or disapproval of such a request must be in writing. If the request is disapproved, there is no further avenue of redress by the Management Official. The affected employee may challenge the action through the applicable appeal process.
- C. Evidence to Support Action: The disciplinary action described in this directive must be supported by the preponderance of the evidence. In the vast majority of the cases, a blood-alcohol reading by a law enforcement official will be determinative of the employee's level of intoxication. A refusal of the employee to submit to a blood-alcohol test, for the purpose of this directive, will be considered conclusive evidence of the employee's intoxication.
- D. Effect of Final Court Proceedings on Disciplinary Actions: As indicated above, the standard of evidence required to support disciplinary actions is not the same standard required for a criminal conviction. In many jurisdictions, there are arrangements where citizens are not ultimately found guilty of an Alcohol Related Offense, but some other traffic violation. As with other disciplinary actions, final court determinations are not determinative of the employment action TSA Management Officials may take with regards to a DUI/DWI situation.
- (1) Employment determinations and the criminal justice system are two different forums and have different standards of proof with different rules of evidence. It is foreseeable that there will be instances where a case may be dismissed on jurisdictional or technical grounds or an employee is found guilty of a non-DUI/DWI offense such as "reckless endangerment." In many of those cases, the employment action described in this directive is still appropriate based on the facts relating to the incident.
 - (2) Cases where the employment actions described in this directive (Letter of Reprimand and termination) are not taken because of a final court decision that is contrary to the original arrest report must be coordinated with and approved by the Deputy Assistant Secretary or the Assistant Administrator for the appropriate component.

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature.

APPROVAL



11/22/2006

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Date

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