



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*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, and bulletins regarding employee driving under the influence and drinking while intoxicated offenses issued under the FAA Personnel Management System.*

**REVISION:** This revised directive supersedes TSA MD 1100.75-4, *Addressing DUI and DWI Offenses*, dated November 22, 2006.

**SUMMARY OF CHANGES:** Sections 4D and 4E, Definitions, have been revised to reflect similar text. Section 4F, is amended to redefine the term “Employee.” Section 4G, Definitions, has been added to define the term “Law Enforcement Officer.” Section 4I, Definitions, has been revised to remove the reference to the Chair, Professional Review Board and to add a reference to the Assistant Administrator for the affected program office. Section 4J, Definitions, has been added to define the term “Security/Operational Personnel.” Section 7B(2)(c), Procedures, has been added to reflect actions relating to TSA law enforcement personnel as defined in [TSA MD 1100.88-1, Law Enforcement Position Standards and Hiring Requirements](#). Section 7B(4), Procedures, is amended to remove the provision relating to Alcohol Related Offenses prior to TSA employment. Section 7B(5) has been revised to remove to clarify exceptions to the mandate removal for second offenses, and to delete the reference to the Deputy Assistant Secretary.

1. **PURPOSE:** 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. The Aviation and Transportation Security Act, Pub.L. 107-71 (ATSA)
  - 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](#), 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 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.
- F. Employee: An individual employed by TSA in any temporary or permanent capacity. This definition does not apply to contract personnel.
- G. Law Enforcement Officer: Any individual designated to perform law enforcement duties as defined in TSA MD 1100.88-1.
- H. 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.
- I. Management Official: A manager who is a higher-level official in the employee’s chain of command or as designated by the Assistant Administrator for the affected program office.
- J. Security/Operational Personnel: TSA employees who are assigned to security and/or operational duties, e.g., Federal Security Directors (FSD), Assistant FSDs, Deputy FSDs, Transportation Security Managers, Transportation Security Officers, and Bomb Appraisal Officers.
- K. Support Personnel: All TSA employees, including managers, who are not Security/Operational Personnel.
- L. Transportation Security Officer (TSO): All TSA Transportation Security Officers, including Lead and Supervisory TSOs and Behavioral Detection Officers (BDOs).

## 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. See TSA MD 1100.73-5, [\*Employee Responsibilities and Conduct\*](#)

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 Employees: Once an employee reports an Alcohol Related Offense, or a Management Official otherwise learns of the incident, the Management Official – <sup>1</sup>

(1) Shall not permit the employee to perform screening, security, or law enforcement related duties pending the outcome of an administrative inquiry; <sup>2</sup>

(2) Shall assign the employee to non-screening, non-security, or non-law enforcement related duties, such as handling baggage (not to be confused with the functions of a baggage TSO), directing passengers, or administrative duties;

(3) Shall exercise his or her discretion with respect to the appropriate level of duties Support 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.

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

<sup>2</sup> "Security-Related Functions" include, but are not limited to, such duties as screening passengers and baggage, observing passengers, other checkpoint functions, and operating a government vehicle. "Law Enforcement Functions" include, but are not limited to, such duties as carrying a firearm, operating a government vehicle, flying in connection with official business (duty status), or a combination of these activities.

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, excluding law enforcement officers, after obtaining evidence that the employee has committed his or her **first** Alcohol Related Offense as a TSA employee. 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 (e.g., deferred prosecution or conviction); and
  - (b) In cases involving TSA Security/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 security 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.
  - (c) In cases involving TSA law enforcement officers, **a suspension of 30 days** shall be the standard administrative action **proposed** for the **first** Alcohol Related Offense, notwithstanding the provisions of any other TSA policy or directive. The final imposed sanction may be decreased if mitigating factors exist. The proposed sanction may be increased if aggravating factors as described in section 7B(3) below are present and the deviation from the standard is approved by the Assistant Administrator for the affected program office.<sup>3</sup> At his or her discretion depending upon the facts and circumstances in each case, including the determination that the employee can safely perform law enforcement 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.

**Note:** This standard only applies to law enforcement officers as defined in TSA policy that are authorized to carry firearms.
- (3) The Management Official has the discretion to take and/or initiate action that is more severe than the actions described above in sections 7B(2)(a) and (c) respectively, if there are aggravating factors in the employee's first Alcohol Related Offense. Examples of aggravating factors include, but are not limited to, consideration that the Alcohol Related Offense occurred:
  - (a) while employee was in TSA uniform;

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<sup>3</sup> Pursuant to section 7L of TSA MD 1100.88-1, Law Enforcement Position Standards and Hiring Requirements, law enforcement officers who are convicted of a felony offense must be removed from employment.

- (b) while employee was in route to or from a TSA work location;
  - (c) on TSA owned or leased property or airport property; or
  - (d) involves other serious aggravating factors in which case legal concurrence should be obtained. Note that serious aggravating factors must be specific to the Alcohol Related Offense and do not include the employee's prior disciplinary record.
- (4) If an employee is arrested a second time for an Alcohol Related Offense while employed with TSA, the Management Official shall take action to remove the employee from employment consistent with the provisions of [TSA MD 1100.75-3, Addressing Performance and Conduct](#), after the effective date of this directive.
- (5) If there are exceptional mitigating facts and circumstances, the Deciding Official, who must be at least one level above the Proposing Official in the chain of command, and at a level approved in writing by the Assistant Administrator or designee, of the affected program office, may approve an exception to the requirement to remove an employee who has been arrested for their second Alcohol Related Offense as a TSA employee. If the Assistant Administrator has not designated a level for review of these actions, the level shall be no lower than the General Manager, Assistant Director, or similar senior level. The facts supporting the exception must be in writing, and incorporated into the final decision. The affected employee may challenge the action through the applicable grievance/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, suspensions, 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 Assistant Administrator for the appropriate component.

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

**APPROVAL**

*Signed*

*4/15/2009*

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Richard A. Whitford  
Assistant Administrator for Human Capital

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Date

Distribution: Assistant Secretary, Deputy Administrator, Assistant Administrators, Office Directors, Area Directors, Senior Field Executives, Federal Security Directors, Administrative Officers, TSA Affiliated HR Offices, Special Agents in Charge, Affiliated HR Offices, and all TSA Employees

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