

## PART 62b—DRUNK AND DRUGGED DRIVING BY DoD PERSONNEL

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### §62b.1 Purpose.

This part:

(a) Establishes DoD policy regarding drunk and drugged driving by DoD personnel (hereafter referred to as "intoxicated driving").

(b) Assigns responsibility for and explains DoD policy and procedures on the establishment and operation of the DoD Intoxicated Driving Prevention Program, which is designed to address the problem of and increase the awareness and attention given to intoxicated driving by DoD personnel.

(c) Establishes the DoD Intoxicated Driving Prevention Task Force (DIDPTF).

### §62b.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

### §62b.3 Policy.

(a) Intoxicated driving is incompatible with the maintenance of high standards of performance, military discipline, DoD personnel reliability, and readiness of military units and supporting activities. It is DoD policy to reduce significantly the incidence of intoxicated driving within the Depart-

ment of Defense through a coordinated program of education, identification, law enforcement, and treatment. Specifically, the goal of the DoD Intoxicated Driving Prevention Program is to reduce the number of fatalities and injuries suffered by DoD personnel and the amount of property damage that result from intoxicated driving. Persons who engage in intoxicated driving, regardless of the geographic location of the incident, have demonstrated a serious disregard for the safety of themselves and others. It is appropriate for military commanders, in the exercise of their inherent authority, to protect the mission of an installation and the safety of persons and property therein to restrict driving privileges of persons who engage in such actions.

(b) The Department of Defense shall participate in the national effort to prevent intoxicated driving by maintaining appropriate relationships with other governmental agencies and private organizations and shall cooperate with responsible civil authorities consistent with statutory and regulatory constraints in detecting, identifying, apprehending, prosecuting, educating, and counseling intoxicated drivers and in reporting cases as required by State laws and applicable Status of Forces Agreements.

### §62b.4 Procedures.

(a) *Education and training.* (1) The Military Services shall provide drug and alcohol education that focuses on intoxicated driving for each of the following: law enforcement, public information, emergency room, and safety personnel. Club managers, bartenders, and waitresses serving alcoholic beverages and Class VI or package sales personnel shall receive annual refresher training. In addition, leadership curricula at all levels (PCO/PXO indoctrination, training for judge advocates and military judges, and officer and noncommissioned officer schools) shall include specific information and a review of current Military Service policy on intoxicated driving.

(2) Other DoD Components shall provide similar instruction in conjunction with the training and education requirements of part 62a of this title.

(3) DoD Components shall cooperate, to the extent feasible and permitted by law and regulation, with community leaders and existing grassroots organizations that are working to combat intoxicated driving, in planning and implementing local education efforts.

(b) *Suspension of driving privileges.* Each DoD Component of its supporting agency that regulates driving privileges shall establish procedures for mandatory suspension of driving privileges on military installations and in areas subject to military traffic supervision. They shall establish procedures for acquiring arrest reports and other official documentation of intoxicated driving incidents consistent with applicable laws and regulations. Such procedures shall be sufficiently flexible to meet local needs.

(1) Military personnel and their family members, retired members of the Military Services, DoD civilian personnel, and others with installation driving privileges may have those driving privileges suspended, regardless of the geographic location of an intoxicated driving incident.

(i) Suspension is authorized for non-DoD civilians only with respect to incidents occurring on the military installation or in areas subject to military traffic supervision.

(ii) With respect to DoD civilian personnel covered by a negotiated agreement, a suspension under this paragraph may be reviewed only to the extent required by the negotiated agreement applicable to the affected employee. Such matters mandatorily are excluded from DoD Component administrative grievance procedures. A grievance under such a procedure will not delay imposition of a preliminary or 1-year suspension of driving privileges.

(iii) A notice of suspension will not become effective until 24 hours after the incident for which a suspension is imposed. However, this provision does not preclude appropriate action to prevent an intoxicated person from operating a motor vehicle, nor does it affect the validity of an earlier suspension imposed on the same individual.

(iv) A hearing authorized under paragraph (b) (2), (3), or (5) of this section, shall be conducted by the installation commander. The power to conduct a

hearing and make a decision may be delegated only to an official whose primary duties are not in the field of law enforcement. At a hearing under this paragraph, the individual shall have the right to present evidence and witnesses at his or her own expense. The individual may be represented by counsel at his or her own expense. DoD civilian personnel may have a personal representative present in accordance with applicable laws and regulations.

(2) *Suspension based upon lawful apprehension.* (i) Preliminary suspension of driving privileges is mandatory based upon an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.

(ii) The individual shall be notified in writing of the preliminary suspension. The notice shall include the arrest report or other documentation and shall inform the individual that a 1-year suspension can be imposed upon conviction, imposition of nonjudicial punishment, or action by civilian authorities leading to suspension or revocation of the individual's driver's license. The notice shall inform the individual that he or she has the right to submit a request within 5 working days to vacate the preliminary suspension and that failure to request such a hearing will result in continuation of the preliminary suspension.

(iii) If a hearing has not been requested within 5 working days, the preliminary suspension shall be continued until there has been a criminal, nonjudicial, or administrative disposition.

(iv) If the individual requests a hearing to vacate the preliminary suspension, it shall be held within 10 working days of the request. If the official conducting the hearing determines that the apprehension was based upon probable cause, the preliminary suspension shall be continued; if not, it shall be vacated. Such determinations are solely for purposes of acting on the preliminary suspension and are without prejudice to the rights of any party in a subsequent criminal or administrative proceeding involving the same or a related incident.

(v) If the individual is acquitted, the charges are dismissed, or there is an

equivalent determination in a non-judicial punishment proceeding or civilian administrative action, the preliminary suspension shall be vacated.

(vi) If there is a conviction, non-judicial punishment, or civil suspension or revocation of driving privileges, the suspension shall be continued for 1 year from the date of the original preliminary suspension. Such action shall be taken only on the basis of an official report.

(3) *Suspension for refusal to take a blood alcohol content (BAC) test* (i) Preliminary suspension of driving privileges is mandatory based upon an official report that an individual refused to submit to a lawfully requested BAC test.

(ii) The individual shall be notified of the preliminary suspension in writing. The notice shall include the arrest report or other documentation and shall inform the individual that a 1-year suspension can be imposed after a hearing under paragraph (b)(3)(iv) of this section. The notice also shall inform the individual that he or she has the right within 5 working days to submit a request for a hearing to validate the preliminary suspension and that the suspension will be for 1 year if a hearing is not requested.

(iii) If a hearing is not requested within 5 working days, the suspension shall be for 1 year.

(iv) If the individual requests a hearing to vacate the preliminary suspension, it shall be held within 10 working days of the request. The hearing shall consider the arrest report or other official documentation, information presented by the individual, and such other information as the hearing officer may deem appropriate. The official conducting the hearing shall consider the following issues: (A) Did the official have reasonable grounds to believe that the person had been operating or was in actual physical control of, a motor vehicle while intoxicated? (B) Was the person lawfully cited or apprehended for an intoxicated driving offense? (C) Was the individual lawfully requested to submit to a BAC test? (D) Did the person refuse to submit to or fail to complete a BAC test required by the law of the jurisdiction in which the test was requested? If, in view of these

issues, the test was lawfully requested, the suspension shall be for 1 year, irrespective of the ultimate disposition of the underlying intoxicated driving offense. If not, the preliminary suspension shall be vacated. Such determinations are solely for purposes of acting on the preliminary suspension and are without prejudice to the rights of any party in a subsequent criminal or administrative proceeding involving the same or a related incident.

(4) *Suspension upon conviction, non-judicial punishment, or civilian administrative action.* (i) Suspension of driving privileges for 1 year is mandatory when there has been a conviction, non-judicial punishment, or civilian revocation or suspension of driving privileges for intoxicated driving, regardless of any prior administrative determination under §62b.4 (b)(2), (b)(3), or (b)(5).

(ii) Such action shall be taken only on the basis of an official report.

(iii) The individual shall be notified in writing of the suspension and shall be notified that an exception may be granted only under paragraph (b)(6) of this section.

(iv) The suspension shall be issued by the installation commander. This authority may be delegated only to an official whose primary responsibilities are not in the field of law enforcement.

(5) *Repeat offenders.* (i) Preliminary increase in suspension of driving privileges is mandatory based upon an arrest report or other official documentation of an individual's driving in violation of a suspension imposed under this part or under similar rules previously issued by a DoD Component.

(A) The individual shall be notified in writing of the preliminary increase in suspension. The notice shall include the arrest report or other documentation of the violation as well as documentation of the original suspension and shall inform the individual that his or her original suspension can be increased by 2 years after a hearing under paragraph (b)(5)(i)(C) of this section. The notice shall inform the individual that he or she has the right within 5 working days to submit a request for a hearing to vacate the preliminary increase in suspension and

that the original suspension will be increased by 2 years if such a request is not submitted.

(B) If a hearing has not been requested within 5 working days, the original suspension shall be increased by 2 years.

(C) If the individual requests a hearing to vacate the preliminary suspension, it shall be held within 10 working days of the request. The hearing shall consider the arrest report or other official documentation, information presented by the individual, documentation of the original suspension, and such other information as the hearing officer may deem appropriate. If the official conducting the hearing determines that the allegation of driving in violation of a suspension is supported by a preponderance of the evidence, the original suspension shall be increased by 2 years. If not, the preliminary increase in suspension shall be vacated. Such determinations are without prejudice to the rights of any party in a subsequent criminal or administrative proceeding involving the same or a related incident.

(D) If in a subsequent judicial, non-judicial, or administrative proceeding, it is determined that the individual did not violate a suspension, the preliminary increase in suspensions shall be vacated.

(ii) For each subsequent determination within a 5-year period that a 1-year suspension is authorized under paragraph (b) (2) through (4) of this section, driving privileges shall be suspended for 2-years. Such period shall be in addition to any suspension perviously imposed. Military personnel shall be prohibited from obtaining or using a U.S. Government Motor Vehicle Operator's Indentification Card, Standard Form (SF) 46, for 6 months for each such incident. A determination whether DoD civilian personnel should be prohibited from obtaining or using an SE 46 shall be made under Federal Personnel Manual chapter 930 and other laws and regulations applicable to civilian personnel. Nothing in this paragraph precludes an installation commander from imposing a prohibition upon obtaining or using an SF 46 for a first offense or for such other

reasons as may be authorized under applicable laws and regulations.

(6) *Exceptions.* (i) Exceptions to the mandatory suspension provisions in this part may be granted under regulations by the DoD Component concerned on a case-by-case basis. Requests for exceptions shall be in writing. Such exceptions may be granted only on the basis of:

(A) Mission requirements;

(B) Unusual personal or family hardship; or

(C) In the case of a preliminary suspension following lawful apprehension, delays exceeding 90 days in the formal disposition of the allegations insofar as such delays are not attributable to the individual.

(ii) With respect to a person who has no reasonably available alternate means of transportation to officially assigned duties, a limited exception shall be granted for the sole purpose of driving directly to and from such duties. This does not authorize a person to drive on a military installation if the person's driver's license is under suspension or revocation by a State, Federal, or host country civil court or administrative agency. Maximum reliance shall be placed on carpools, public transportation, and reasonably available parking facilities adjacent to the installation before such a limited exception is granted. Nothing in this provision precludes appropriate or other administrative action on the basis of an intoxicated driving incident or driving in violation of a previously imposed suspension.

(iii) Exceptions granted under this paragraph shall be reported in writing to the next official in the chain of command.

(7) Overseas commanders with authority to issue driver's licenses shall establish procedures for suspension of such licenses for intoxicated driving. Such procedures, insofar as the commanders deem practicable, shall be similar to the procedures for suspension of installation driving privileges prescribed in paragraph (b) (1) through (6) of this section.

(8) Persons whose installation driving privileges are suspended for 1 year or more under § 62b.4(b) (2), (3), or (4), above, shall complete an alcohol or

drug safety action program or equivalent alcohol education course (minimum of 8 hours) before their installation driving privileges may be reinstated.

(c) *Screening.* Each DoD Component or its supporting agency shall establish procedures for screening military personnel charged with intoxicated driving offenses within 7 working days of issuance of notice of the preliminary suspension to determine whether a member is dependent on alcohol or other drugs. The results of this screening shall be made available to the command having jurisdiction over the case before adjudication. Information concerning personal alcohol and drug abuse provided by a member in response to screening questions may not be used against the member in a court-martial or on the issue of characterization in an administrative separation proceeding. Nothing in this provision precludes introduction of such evidence for other administrative purposes or for impeachment or rebuttal purposes in any proceeding in which evidence of alcohol or drug abuse (or lack thereof) first has been introduced by the member, nor does it preclude disciplinary or other action based on independently derived evidence. DoD civilian personnel charged with intoxicated driving shall be advised of the Civilian Employee Assistance Program or Installation Drug and Alcohol Program and the availability of evaluation in accordance with Federal Personnel Manual Supplement 792-2. Retired members of the Military Services shall be advised of the availability of evaluation and treatment programs.

(d) *Notification of State Driver's License Agencies.* Each DoD Component or its supporting agency shall establish a systematic procedure in accordance with part 286a of this title to notify State driver's license agencies of DoD personnel whose installation driving privileges are suspended for 1 year or more following final adjudication of the intoxicated driving offense or upon suspension for refusal to submit to a lawful BAC test under paragraph (b) of this section. This notification shall include the basis for the suspension and the BAC level, if known. Exceptions shall be made only when such a suspen-

sion was increased for an additional 2 years for driving on an installation while installation driving privileges were suspended solely on the basis of driving in violation of suspension (see paragraph (b)(5) of this section). This notification shall be sent to the State in which the driver's license was issued and the State in which the installation is located. Sample letter format is provided in appendix 1, and State driver's license agencies are listed in Appendix 2. DoD Components shall establish a system to exchange intoxicated driving and driving privilege suspension data when DoD personnel transfer from one location to another to ensure that the receiving installation continues any remaining portion of the suspension. This information requirement is exempt from formal approval and licensing.

(e) The Military Services shall include the intoxicated driving prevention program as an inspection item of special interest for Inspector General or administrative inspections.

(f) The Military Services shall direct installation commanders to assess the availability of drug and alcohol in the vicinity of military installations through their Armed Forces Disciplinary Control Boards or Control Boards of other appropriate Federal agencies. Whenever the availability of alcohol or drugs, or both, at an establishment off-base presents a threat to the discipline, health, and welfare of DoD personnel, such establishments shall be dealt with as prescribed in the "Armed Forces Disciplinary Control Board and Off-Installation Military Enforcement Guidance" (Army Regulation No. 190-24, Marine Corps Order No. 162.2A, BUPERS Inst. 1620.4A, Air Force Regulation No. 125.11, Commandant Instruction No. 1620.13).

(g) *Cases Involving Death or Serious Injury.* (1) To the extent permitted by law and consistent with the Uniform Code of Military Justice (UCMJ) and the "Manual for Courts-Martial" and in accordance with trial counsel's judgment of appropriate tactical and ethical concerns, consideration shall be given to presenting a victim's impact statement (oral or written statement

by victims or survivors) before sentencing in cases involving intoxicated driving.

(2) Trial counsel are encouraged to make reasonable efforts to ensure that the victim or the victim's family is provided information about the progress and disposition of cases processed under the UCMJ.

(h) DoD Components with field installations shall establish an awards and recognition program to recognize successful local installation intoxicated driving prevention programs.

(i) Each DoD Component or its supporting agency is encouraged to use, as guidance, "Report on a National Study of Preliminary Breath Test (PBT) and Illegal Per Se Laws" and "Interim Report to the Nation by the Presidential Commission on Drunk Driving."

#### § 62b.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) shall:

(1) Develop a coordinated approach to the reduction of intoxicated driving, consistent with this part, recognizing that intoxicated driving prevention programs shall be designed to meet local needs.

(2) Appoint the chair of the DIDPTF.

(3) Monitor Military Service and DoD component regulations that implement the DoD Intoxicated Driving Prevention Program.

(4) Act as focal point for the Department of Defense for interagency and nongovernmental coordination of national intoxicated driving prevention programs.

(5) Evaluate and report biennially to the Secretary of Defense on the effectiveness and efficiency of the DoD Intoxicated Driving Prevention Program.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD(MRA&L)) shall:

(1) Ensure the DoD Department Schools system and section VI schools include specific material in the curriculum (grades 7 through 12) on the effects that alcohol and drugs have on the impairment of driving skills.

(2) Ensure that intoxicated driving, accident, mishap, and injury data include:

(i) BAC of drivers in three categories—.01-.04, .05-.09, and .10 and above.

(ii) Time of day and day of the week the mishap or injury occurred.

(iii) Type of vehicle (include MOPEDs with motorcycle data).

(iv) Death and injury data on DoD personnel killed or injured as a result of intoxicated driving, include those who were not intoxicated themselves but were involved in a mishap as a result of intoxicated driving by another party.

(v) Government property damage cost.

(vi) Cost of treatment of injured DoD personnel.

(vii) Pertinent data on military personnel separated or retired as a result of injury or other action taken because of:

(A) Intoxicated driving by the person being separated or retired; or

(B) Intoxicated driving by another person.

(viii) Other chemical substances causing intoxicated driving that contributed to an accident.

(3) Provide an annual report to the Secretary of Defense that assesses the impact of intoxicated driving on the Department of Defense. The report shall include intoxicated driving arrest, apprehension, and conviction data as well as the number of exceptions granted to the mandatory suspension of driving privileges under paragraph (b)(6) of this section.

(4) Establish procedures (when feasible) under which DoD personnel convicted for driving while intoxicated will pay administrative restitution to the government for property damage or medical expenses to the extent permitted by applicable law.

(5) Amend appropriate DoD issuances to include the use of a preliminary or prearrest breath test (PBT) to be used by law enforcement personnel to indicate impairment when the arresting officer has reason to believe the operator of a motor vehicle may be intoxicated. (See "Report on a National Study of Preliminary Breath Test (PBT) and Illegal Per Se Laws").

(c) The *Head of each DoD Component or its Supporting Agency* shall establish