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Medical Services

Blood-Alcohol Testing of U.S. Personnel

***This regulation supersedes USAREUR Regulation 40-160, 16 July 1999.**

For the Commander:

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Summary. This regulation establishes policy and procedures for blood-alcohol testing, obtaining blood samples, and reporting results of blood-alcohol determinations.

Applicability. This regulation applies to U.S. military and civilian personnel assigned to commands, organizations, and activities in the European theater, including Department of Defense Dependents Schools. In this regulation the term “person” applies to Servicemembers, civilian employees, family members, and contractor personnel who have obtained a U.S. Forces certificate of license or a USAFE driving permit issued by the United States Army Garrison Schinnen drivers testing station. This regulation does not apply to local national employees.

Supplementation. Organizations will not supplement this regulation without Command Surgeon (CSURG), USAREUR (AEAMD), approval.

Forms. AE and higher level forms are available through the Army in Europe Publishing System (AEPUBS).

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the USAREUR CSURG (AEAMD, DSN 371-2010). Users may suggest improvements to this regulation by sending DA Form 2028 to the United States Army Europe Regional Medical Command (MCEU-JA), CMR 442, APO AE 09042-0130.

Distribution. B (AEPUBS).

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Glossary

1. PURPOSE

This regulation establishes policy for the following actions when requested by (U.S. military police or other) proper authorities:

- a. Determining need for blood-alcohol testing.
- b. Obtaining blood samples.
- c. Reporting results of blood-alcohol determinations.

2. REFERENCES

Appendix A lists references.

3. EXPLANATION OF ABBREVIATIONS

The glossary defines abbreviations.

4. RESPONSIBILITIES

Military medical professionals will determine the need for blood-alcohol testing according to the procedures in this regulation.

5. DETERMINING THE NEED FOR BLOOD-ALCOHOL TESTING

Military medical professionals may determine the level of intoxication of a person by—

- a. Observing the person. Outward signs or symptoms of drunkenness or impairment (for example, general appearance and behavior, orientation, speech, coordination, breath odor) may be used to determine if a person is intoxicated. Witnesses may present their observations of these signs or symptoms as evidence.

b. Giving the person a blood-alcohol test (BAT). The examining medical officer will decide if a BAT is necessary for a medical diagnosis or treatment. Medical personnel may extract blood for a BAT as evidence of intoxication or impairment in the following instances:

(1) When directed by the commander of a Servicemember (SM), military judge, or military magistrate. This directive may be made orally or in writing.

(2) When requested by a law-enforcement officer or criminal investigation division (CID) investigating officer in connection with an apprehension for driving under the influence or driving while intoxicated.

(3) When the person consents.

6. REQUESTS FOR BLOOD-ALCOHOL TESTS AND RESULTS

Commanders, military judges, military magistrates, and law-enforcement personnel may request that blood be drawn from person for a BAT. Figure 1 is a sample request for a BAT and test results. The request must be signed by an authorized person and sent to the laboratory or emergency room where the BAT is administered and to the patient administration division of the medical treatment facility (MTF).

7. LEGAL ASPECTS

a. Obtaining a BAT Sample. Blood samples will not be drawn from a person, with or without consent, if the attending physician considers the procedure medically inadvisable.

b. Traffic Incidents. Persons who have a U.S. Forces certificate of license or who operate a privately owned vehicle are understood to have given their consent to a BAT. The driver may, however, refuse to submit to a BAT. In these cases, U.S. law-enforcement personnel will inform the person that failure to consent to a BAT will result in the immediate revocation of driving privileges (AE Reg 190-1). If a person refuses to consent to a BAT, the sample may be involuntarily drawn only after a commander, military magistrate, or military judge determines a probable cause exists to warrant a BAT.

c. Nontraffic Incidents.

(1) Based on a determination that probable cause exists to warrant a BAT, the SM's commander, a military magistrate, or a military judge may order an SM to take a BAT.

(2) Civilian employees fall under USAREUR Regulation 600-1, paragraph 27b, which provides that civilian employees will not have a blood-alcohol level of .05 percent or above while on duty. A civilian employee's supervisor who has reasonable cause to believe that an employee who is on duty is impaired because of intoxication may request that the employee take a breath or blood test. Consent to take the test is implied, and failure to take the test may result in suspension of logistic support or other disciplinary action.

d. Voluntary BAT. If the person consents to the BAT, he or she will sign OF 522 before the blood sample is drawn.

e. Involuntary BAT.

(1) If the attending physician determines that an examination of the SM is necessary to preserve the SM's health, the SM may be ordered by either his or her commander or the hospital commander to submit to an examination, including a BAT (AR 600-20, para 5-4). In these cases, an entry will be made in the medical case-history file that the order was issued or that other action was taken only for medical reasons.



Letterhead

Office Symbol

Date

MEMORANDUM FOR

Medical Treatment Facility (*laboratory, emergency room, or other medical unit that draws blood*)
Medical Treatment Facility Patient Administration Division

SUBJECT: Request for Blood-Alcohol Test and Report of Results

1. As (*commander, CID investigating officer, a military police officer duly authorized by applicable directives and operating procedures to request blood-alcohol testing and results for the commander of (unit)*), I request that blood be drawn from (*name*), (*social security number*), and tested for blood-alcohol content according to AE Regulation 40-160.
2. Under the conditions and terms of the Health Insurance Portability and Accountability Act (HIPAA), request that the test results be reported to this office immediately on receipt from the Landstuhl Regional Medical Center. This office is authorized to receive protected patient-health information according to Title 45, Code of Federal Regulations, paragraph 164.512(f)(1); and DOD 6025.18-R, paragraph C7.6.1.2. This request is limited to the extent reasonably practicable based on the purpose for which the blood-alcohol tests are sought. "De-identified" information could not reasonably be used.
3. Notification of the blood-alcohol test results may be sent to this office by e-mail (*e-mail address*) or mail (*office address*).
4. The POC for this action is (*name*) at DSN (*telephone number*).

[FOR THE COMMANDER:]

(*Signature Block*)

Figure 1. Sample Request for BAT and Results

(2) In situations where proper military authorities have determined that probable cause exists to warrant involuntary extraction of blood (b and c(1) above), medical personnel will draw blood and perform a BAT.

8. PROCESSING BLOOD SAMPLES

a. Medical personnel will complete Armed Forces Institute of Pathology (AFIP) Form 1323 to request a BAT and send the package to the Department of Pathology and Area Laboratory Services (DPALS), Landstuhl Regional Medical Center, for processing. The commander or law-enforcement officer will initiate DA Form 4137 (Evidence/Property Custody Document). The medical personnel will complete DA Form 4137 and submit it with the BAT sample.

(1) The examining medical officer will complete the *Incident/Accident Details* block and the *Name of Requester* block on AFIP Form 1323.

(2) The DPALS will assign the specimen a unique identification number. The BAT results will be reported in a memorandum signed by a designee of the Chief, DPALS. The DPALS will keep the original DA Form 4137 and a copy of the BAT-result memorandum.

(3) The BAT-result memorandum will be sent to the requesting MTF patient administration division (PAD).

b. The requesting MTF PAD (the main MTF for outlying health clinics) will file the original BAT memorandum in a secure place. If the PAD has a request for the BAT results from the patient's commander or law-enforcement personnel (para 7), the PAD will provide the test results according to the terms of the request (para 10). The PAD will send only the information that is required to meet the request to each of the following:

- (1) The person's unit commander or supervisor (if the person is a civilian employee).
- (2) The local military police.

9. BLOOD TESTING OF U.S. PERSONNEL BY NON-U.S. ENTITIES

Appendixes B through E describe BAT procedures for Germany, Italy, Belgium, and the Netherlands, respectively. BAT procedures in other countries must be based on local military regulations and civil law.

10. HIPAA APPLICATION

a. The HIPAA (Public Law 104-191) and DOD 6025.18-R govern the release of certain health information, including the results of BATs. The MTF PAD will determine whether to release information according to paragraph 8b. BAT results are considered protected health information (PHI) as defined by the HIPAA. Any person who, without proper authorization, discloses PHI may be subject to adverse administrative action or disciplinary proceedings. Penalties for misuse or misappropriation of PHI include both civil monetary penalties and criminal penalties. The HIPAA allows BAT results to be released to the following persons or entities:

- (1) Commander or a commander's representative (DOD 6025.18-R, chapter 5 and paras C7.11.1.3.1; C7.11.1.3.2; and AR 40-66, para 2-4).
- (2) Law-enforcement personnel—
 - (a) In noncustodial situations (DOD 6025.18-R, paras C7.6.1.2.3.1 through C7.6.1.2.3.3; and AR 40-66, para 2-4).
 - (b) In custodial situations (DOD 6025.18-R, para C7.11.6; and AR 40-66, para 2-4).
- (3) Parent of a minor child (under age 18) (AR 40-66, para 2-3).
- (4) Patient.

NOTE: This list is not intended to include all possible situations in which BAT results may be requested.

b. Questions about the release of individually identifiable health information and this regulation should be directed to the MTF PAD or the Judge Advocate, United States Army Europe Regional Medical Command.

APPENDIX A REFERENCES

SECTION I PUBLICATIONS

Health Insurance Portability Accountability Act (Public Law 104-191)

Code of Federal Regulations Title 45, section 164.512, Uses and Disclosures for Which an Authorization or Opportunity To Agree or Object is Not Required

DOD 6025.18-R, DOD Health Information Privacy Regulation

AR 25-400-2, The Army Records Information Management System (ARIMS)

AR 40-66, Medical Record Administration and Health Care Documentation

AR 600-20, Army Command Policy

AE Regulation 190-1, Driver and Vehicle Requirements and the Installation Traffic Code for the U.S. Forces in Germany

USAREUR Regulation 600-1, Regulated Activities of Members of the U.S. Forces, Civilian Component, and Family Members

SECTION II FORMS

OF 522, Medical Record - Request for Administration of Anesthesia and for Performance of Operations and Other Procedures

AFIP Form 1323, AFIP/Division of Forensic Toxicology - Toxicological Request Form
(<http://www.afip.org/Departments/oafme/tox/index.html>)

DA Form 2028, Recommended Changes to Publications and Blank Forms

DA Form 4137, Evidence/Property Custody Document

APPENDIX B

BLOOD-ALCOHOL TESTS BY GERMAN AUTHORITIES

B-1. GENERAL

When German authorities demand a blood sample from an individual to further a German criminal investigation, U.S. authorities (for example, military police, commanders) should explain to the individual the German law described in paragraph B-2 and state that U.S. personnel are subject to local laws. U.S. authorities will inform U.S. personnel that blood samples for the German authorities may be drawn at a U.S. medical facility rather than in a German facility if this is possible without jeopardizing the taking of evidence. If the person does not wish to have the blood sample drawn in a U.S. medical facility or if this is not possible, he or she will be released to the custody of the attending German police representatives.

B-2. GERMAN LAW

The following law applies when a blood sample is considered necessary by the German authorities to further a German criminal investigation. This law is applicable to members of the U.S. Forces, U.S. civilian employees, and their family members.

- a. A German judge, prosecutor, or assisting official may order a person who is involved in an incident and appears to be under the influence of alcohol to give a blood sample to a German physician.
- b. If a person is ordered to give a blood sample and refuses, a German physician may forcibly draw blood for a BAT.
- c. A sample may not be taken forcibly if the person's health would be endangered.
- d. The cost of the test may be charged to the person by the German court if the person is convicted by German court authorities.

B-3. AE Regulation 190-1

If a German court has suspended driving privileges, requests for restricted driving privileges will not be granted until the German suspension has expired. U.S. Forces members will not drive any vehicle in Europe if their privileges to drive have been withdrawn by German civil authorities.

APPENDIX C

BLOOD-ALCOHOL TESTS BY ITALIAN AUTHORITIES

C-1. GENERAL

When Italian authorities demand a blood sample from a driver who appears intoxicated, U.S. authorities (for example, military police, commanders) should inform the driver that he or she is subject to Italian law and explain the information in paragraph C-2. In addition, military members can be ordered to submit to a blood-alcohol test.

C-2. ITALIAN LAW

a. According to Article 186 of Legislative Decree No. 285 of 30 April 1992 (the Italian Road Code), Italian police are entitled to request drivers to submit to blood-alcohol tests. Refusal to submit to the test or driving while intoxicated with a blood-alcohol level of 0.5 grams per liter (0.05 grams of alcohol per 100 milliliters of blood) or higher is punishable by—

- (1) A fine from €258 to €1,032.
- (2) From 15 days to 1 month confinement.
- (3) Suspension of the drivers license from 15 days to up to 3 months.

b. If Italian authorities suspend or revoke driving privileges of U.S. Forces personnel, U.S. authorities will similarly suspend or revoke the drivers license. Military members are subject to punishment under the Uniform Code of Military Justice, and U.S. civilian employees and family members may face administrative action by the civilian misconduct action authority.

APPENDIX D

BLOOD-ALCOHOL TESTS BY BELGIAN AUTHORITIES

D-1. GENERAL

When Belgian authorities demand a blood sample from an individual to further a Belgian criminal investigation, U.S. authorities (for example, military police, commanders) should explain to the individual the information in paragraph D-2 and state that U.S. personnel are subject to local law.

D-2. BELGIAN LAW

Section II of Article 63 of the Belgian Traffic Law (M.B. 27-3-1968) provides that a motorist has three opportunities to dispute the results of a breath analysis. After the third test, the Belgian police will offer the motorist the option of voluntarily submitting to a blood-alcohol test at the motorist's expense. The Belgian police are not empowered to compel the motorist to take a blood-alcohol test if he or she refuses. If a motorist refuses to allow a breath analysis, the person will automatically be considered to be driving under the influence unless the motorist can claim a valid reason (for example, medical).

APPENDIX E

BLOOD-ALCOHOL TESTS BY DUTCH AUTHORITIES

E-1. GENERAL

When Dutch authorities demand a blood sample from an individual for a criminal investigation, U.S. authorities (for example, military police, commanders) should explain to the individual the Dutch law described in paragraph E-2 and explain that U.S. personnel are subject to local law.

E-2. DUTCH LAW

a. When ordered by the police, a breath-analysis test is compulsory. Failure to submit will lead to criminal prosecution and immediate revocation and confiscation of the drivers license.

b. If the outcome of the initial breath-analysis test indicates the blood-alcohol level is at a higher level than allowed, additional breath samples will be taken at the police station after a period of at least 20 minutes.

c. Law-enforcement officer may attempt to use the breath-analysis device up to four times. Two valid results are required for prosecution, revocation, and confiscation of the drivers license.

E-3. BLOOD TEST

If the attempts in paragraph E-2c fail or if the individual cannot participate in the breath-analysis test due to medical reasons, the police officer may ask permission to take a blood sample for a blood-alcohol test.

a. If the person does not give permission for a blood-alcohol test, a Dutch prosecutor, assisting prosecutor, or senior police officer may order the person to give a blood sample to a Dutch physician for a blood-alcohol test.

b. A sample may not be ordered if the person's health would be endangered. In those cases, a urine sample may be ordered.

c. Under Dutch law, a blood sample may not be taken forcibly. However, failure to give a sample will lead to criminal prosecution and immediate revocation and confiscation of the drivers license.

GLOSSARY

AFIP	Armed Forces Institute of Pathology
BAT	blood-alcohol test
CID	criminal investigation division
DA	Department of the Army
DOD	Department of Defense
DPALS	Department of Pathology and Area Laboratory Services, Landstuhl Regional Medical Center
HIPAA	Health Insurance Portability and Accountability Act
MTF	medical treatment facility
OF	optional form
PAD	patient administration division
PHI	protected health information
POC	point of contact
SM	Servicemember
U.S.	United States
USAFE	United States Air Force in Europe
USAREUR	United States Army Europe