

DoD school systems, military medical commanders, and military installation commanders, and to other DoD personnel as appropriate, in connection with monitoring activities conducted pursuant to this part.

PART 58—HUMAN IMMUNODEFICIENCY VIRUS (HIV-1)

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AUTHORITY: 10 U.S.C. 113.

SOURCE: 56 FR 15281, Apr. 16, 1991, unless otherwise noted.

§ 58.1 Purpose.

This part supersedes Deputy Secretary of Defense Memorandum, "Policy on Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)," August 4, 1988, Deputy Secretary of Defense Memorandum, "Recommendations for Revision of DoD Human Immunodeficiency Virus (HIV) Policies," March 8, 1988, Assistant Secretary of Defense (Health Affairs) Memorandum, "Policy on Clinical Evaluation, Staging and Disease Coding of Military Personnel Infected with Human Immunodeficiency Virus (HIV)," September 11, 1987, Assistant Secretary of Defense (Health Affairs) Memorandum, "The DoD HTLV-III Testing Program," December 5, 1985, Assistant Secretary of Defense (Health Affairs) Memorandum, "Military Implementation of Public Health Service Provisional Recommendations Concerning Testing Blood and Plasma for Antibodies to HTLV-III," July 17, 1985, to update policy, responsibilities, and procedures on identification, surveillance, and administration of civilian and military personnel infected with HIV-1.

§ 58.2 Applicability.

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

§ 58.3 Definitions.

(a) *Human Immunodeficiency Virus-1 (HIV-1)*. The virus most commonly associated with the Acquired Immune Deficiency Syndrome (AIDS) in the United States.

(b) *HIV-1 and/or AIDS Education Program*. Any combination of information, education, and behavior-change strategies designed to facilitate behavioral alteration that will improve or protect health. Included are those activities intended to support or influence individuals in managing their own health through lifestyle decisions and self-care. Operationally, such programs include community, worksite, and clinical aspects using appropriate public health education methodologies.

(c) *Serologic Evidence of HIV-1 Infection*. A reactive result given by a Food and Drug Administration (FDA)-approved enzyme-linked immunosorbent assay (ELISA) serologic test that is confirmed by a reactive and diagnostic immunoelectrophoresis test (Western blot (WB)) test on two separate samples.

(d) *Host Nation*. A foreign nation to which DoD U.S. civilian employees are assigned to perform their official duties.

(e) *DoD Civilian Employees*. Current and prospective DoD U.S. civilian employees, including appropriated and nonappropriated fund personnel. This does not include members of the family of DoD civilian employees, employees of, or applicants for, positions with contractors performing work for the Department of Defense, or their families.

(f) *Epidemiological Assessment*. The process by which personal and confidential information on the possible

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modes of transmission of HIV-1 are obtained from an HIV-1 infected person. This information is used to determine if previous, present, or future contacts of the infected individual are at risk for infection with HIV-1 and to prevent further transmission of HIV-1.

§ 58.4 Policy.

It is DoD policy to:

(a) Deny eligibility for appointment or enlistment for Military Service to individuals with serologic evidence of HIV-1 infection.

(b) Screen active duty (AD) and Reserve component military personnel periodically for serologic evidence of HIV-1 infection.

(c) Refer AD personnel with serologic evidence of HIV-1 infection for a medical evaluation of fitness for continued service in the same manner as personnel with other progressive illnesses, as specified in DoD Directive 1332.18.¹ Medical evaluation shall be conducted in accordance with the standard clinical protocol, as described in the Standard Clinical Protocol.² Individuals with serologic evidence of HIV-1 infection who are fit for duty shall not be retired or separated solely on the basis of serologic evidence of HIV-1 infection. AD personnel with serological evidence of HIV-1 infection or who are ELISA repeatedly reactive, but WB negative or indeterminate, shall be advised to refrain from donating blood.

(d) Deny eligibility for extended AD (duty for a period of more than 30 days) to those Reserve component members with serologic evidence of HIV-1 infection (except under conditions of mobilization and on the decision of the Secretary of the Military Department concerned). Reserve component members who are not on extended AD or who are not on extended full-time National Guard duty, and who show serologic evidence of HIV-1 infection, shall be transferred involuntarily to the Standby Reserve only if they cannot be utilized in the Selected Reserve.

¹Copies may be obtained at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

²Forward requests for copies to the Office of the Assistant Secretary of Defense (Health Affairs), the Pentagon, Washington, DC 20301-1200.

(e) Retire or separate AD or Reserve Service members infected with HIV-1 who are determined to be unfit for further duty, as implemented in DoD Directive 1332.18.

(f) Ensure the safety of the blood supply through policies of the Head of the Armed Services Blood Program Office, the FDA guidelines, and the accreditation requirements of the Head of the American Association of Blood Banks.

(g) Comply with applicable statutory limitations on the use of the information obtained from a Service member during, or as a result of, an epidemiologic assessment interview and the results obtained from laboratory tests for HIV-1, as provided in this part.

(h) Control transmission of HIV-1 through an aggressive disease surveillance and health education program.

(i) Provide education and voluntary HIV-1 serologic screening for DoD healthcare beneficiaries (other than Service members).

(j) Comply with host-nation requirements for HIV-1 screening of DoD civilian employees, as described in appendix B to this part.

§ 58.5 Responsibilities.

(a) The Assistant Secretary of Defense (Health Affairs), in coordination with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), the General Counsel of the Department of Defense (GC, DoD), and the Assistant Secretary of Defense (Reserve Affairs), is responsible for establishing policies, procedures, and standards for the identification, surveillance, and administration of personnel infected with HIV-1. The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall provide overall policy guidance and approval for the HIV-1 and/or AIDS education and information efforts and shall establish the HIV-1 and/or AIDS Information and Education Coordinating Committee.

(b) The Secretaries of the Military Departments shall establish Service policies, procedures, and standards for the identification, surveillance, education, and administration of personnel infected with HIV-1, based on and consistent with all sections of this part.

(c) The Assistant Secretary of Defense (Force Management and Personnel) shall establish and revise policies governing HIV-1 screening of DoD civilian employees assigned to, performing official travel in, or deployed on ships with ports of call at host nations, in coordination with the ASD(HA), the Assistant Secretary of Defense (International Security Affairs), and the GC, DoD.

(d) The Assistant Secretary of Defense (International Security Affairs) shall identify or confirm host-nation HIV-1 screening requirements for DoD civilians, transmit this information to the ASD(FM&P), and coordinate requests for screening with the Secretary of State.

(e) The Heads of the DoD Components shall implement HIV-1 screening policies and procedures for DoD civilian employees identified in §58.5(c) and shall take the following actions:

(1) Report newly established host-nation HIV-1 screening requirements to the ASD(FM&P) and provide sufficient background information to support a decision. This reporting requirement is exempt from licensing, in accordance with DoD 7750.5-M,³ paragraph E.4.b.

(2) Develop and distribute policy implementing instructions.

(3) Establish procedures to notify individuals who are evaluated as HIV-1 seropositive and provide initial counseling to them.

§ 58.6 Procedures.

(a) Applicants for Military Service and, periodically, AD and Reserve component military personnel shall be screened for serologic evidence of HIV-1 infection. Testing and interpretation of results shall be in accordance with the procedures in HIV-1 Testing and Interpretation of Results.⁴ Test results shall be reported to the Reportable Disease Data Base, as described in the ASD(HA) Memorandum.

(b) Applicants for enlisted service shall be screened at the Military Entrance Processing Stations or the initial point of entry to Military Service. Applicants who enlist under a delayed enlistment program, but before entry

on AD and who exhibit serologic evidence of HIV-1 infection, may be discharged due to erroneous enlistment.

(c) Officer candidates shall be screened during their preappointment and/or precontracting physical examination. The disposition of officer applicants who are ineligible for appointment due to serologic evidence of HIV-1 infection shall be in accordance with the procedures in appendix A of this part.

(d) Applicants for Reserve components shall be screened during the normal entry physical examinations or in the preappointment programs established for officers. Those individuals with serologic evidence of HIV-1 infection who are required to meet accession medical fitness standards to enlist, or be appointed, are not eligible for Military Service with the Reserve components.

(e) Initial testing and periodic retesting of AD and Reserve component personnel shall be accomplished in the priority listed in Disease Surveillance and Health Education.⁵

(f) AD personnel (including Active Guard and/or Reserve) who exhibit serologic evidence of HIV-1 infection shall receive a medical evaluation. Guard and Reserve personnel, not on extended AD, must obtain a medical evaluation from a civilian physician.

(g) The Head of each Military Service shall appoint an HIV-1 and/or AIDS education program coordinator to serve as the focal point for all HIV-1 and/or AIDS education program issues and to integrate the educational activities of the medical and personnel departments.

(h) An HIV-1 and/or AIDS Information and Education Coordinating Committee shall be established to enhance communication among the Heads of the Military Services, recommend joint education policy and program actions, review education program implementation, and recommend methodologies and procedures for program evaluation. That committee shall be chaired by a representative of the ASD(HA). Members shall include two representatives from the Office of the ASD(FM&P) (OASD(FM&P)), and the HIV-1 and/or

³See footnote 1 to §58.4(c)

⁴See footnote 2 to §58.4(c)

⁵See footnote 2 to §58.4(c).

AIDS education program coordinator from each Military Service. Additional members shall represent the Armed Services Blood Program Office and, on an ad hoc basis, the Office of the ASD(HA). Policy and program proposals shall be coordinated with the Secretaries of the Military Departments.

(i) The Head of each Military Service shall prepare a plan for the implementation of a comprehensive HIV-1 and/or AIDS education program that includes specific objectives with measurable action steps. The plan shall address information, education, and behavior-change strategies, as described in Disease Surveillance and Health Education.

(j) Civilians may not be mandatorily tested for serologic evidence of HIV-1 infection except as necessary to comply with valid host-nation requirements for screening of DoD employees. Procedures for mandatory screening of DoD civilians shall be in accordance with appendix B of this part.

(k) The medical assessment of each exposure to, and/or case of, HIV-1 infection seen at a military medical treatment facility (MTF) shall include an epidemiological assessment of the potential transmission of HIV-1 to other persons at risk of infection, including sexual and other intimate contacts and family of the patient, and transfusion history. The occurrence of HIV-1 infection or serologic evidence of HIV-1 infection may not be used as a basis for any disciplinary action against an individual, except as described in Limitations on the Use of Information.⁶

(l) Each Head of a military medical service shall ensure conduction of an ongoing clinical evaluation of each AD Service member with serological evidence of HIV-1 infection at least annually. CD4 lymphocyte percentages or counts shall be monitored at least every 6 months. Appropriate preventive medicine counseling shall also be provided to all individual patients, and public health education materials shall be made available to that medical services' beneficiary population. Each Head of a military medical service shall en-

sure conduction of longitudinal clinical evaluations of AD Service members with serologic evidence of HIV-1 infection and shall ensure preparation of internal reports to facilitate timely review and reassessment of current policy guidelines.

(m) All Heads of the military MTFs shall notify promptly the cognizant military health authority, when there is clinical or laboratory evidence indicative of infection with HIV-1, in accordance with appendix C of this part.

(n) The Secretary of each Military Department shall ensure that a mechanism is established to gather data on the epidemiology of HIV-1 infection of its members. Such epidemiological research shall be accomplished to ensure appropriate protection of information given by the Service member on the means of transmission.

(o) The Secretary of the Army, as the Head of the lead Agency for infectious disease research within the Department of Defense, shall budget for and fund tri-Military Department DoD HIV-1 research efforts, in accordance with guidance provided by the ASD(HA). The research program shall focus on the epidemiology and natural history of HIV-1 infections in military and military associated populations; on improving the methods for rapid diagnosis and patient evaluation; and on studies of the immune response to HIV-1 infection, including the potential for increased risk in the military operational environment.

(p) Service members with serologic evidence of HIV-1 infection shall be assigned within the United States, including Alaska, Hawaii, and Puerto Rico, due to the high priority assigned to the continued medical evaluation of military personnel. The Secretaries of the Military Departments may restrict such individuals to nondeployable units or positions for purposes of force readiness. To protect the health and safety of Service members with serologic evidence of HIV-1 infection and of other Service members (and for no other reason), the Secretaries of the Military Departments may, on a case-by-case basis, limit assignment of HIV-1-infected individuals on the nature and location of the duties performed in

⁶See footnote 2 to § 58.4(c).

accordance with operational requirements.

(q) AD and Reserve component personnel with serologic evidence of HIV-1 infection shall be retained or separated in accordance with Retention and Separation.⁷

(r) The ASD(HA), in coordination with the Heads of the Military Services, shall revise Standard Clinical Protocol, HIV-1 Testing and Interpretation of Results, Disease Surveillance and Health Education, Procedure for Evaluating T-Helper Cell Count, as appropriate. The ASD(FM&P) shall revise appendix B to this part, as appropriate, through publication in the FEDERAL REGISTER. Revisions under this paragraph shall be in coordination with the GC, DoD.

APPENDIX A TO PART 58—ADMINISTRATION OF OFFICER APPLICANTS

Administration of officer applicants who are ineligible for appointment, due to serologic evidence of HIV-1 infection, shall be in accordance with the following provisions:

A. Enlisted members who are candidates for appointment through Officer Candidate School (OCS) or Officer Training School (OTS) programs shall be disenrolled immediately from the program. If OCS and/or OTS is the individual's initial entry training, the individual shall be discharged. If the sole basis for discharge is serologic evidence of HIV-1 infection, an honorable or entry-level discharge, as appropriate, shall be issued. A candidate who has completed initial entry training during the current period of service before entry into candidate status shall be administered in accordance with Service regulations for enlisted personnel.

B. Individuals in preappointment programs, such as Reserve Officer Training Corps (ROTC) and Health Professions Scholarship Program participants, shall be disenrolled from the program. However, the Head of the Military Service concerned, or the designated representative, may delay disenrollment to the end of the academic term (i.e., semester, quarter, or similar period) in which serologic evidence of HIV-1 infection is confirmed. Disenrolled participants shall be permitted to retain any financial support through the end of the academic term in which the disenrollment is effected. Financial assistance received in these programs is not subject to recoupment, if the sole basis for disenrollment is serologic evidence of HIV-1 infection.

C. Service academy cadets, midshipmen, and personnel attending the Uniformed Services University of the Health Sciences (USUHS) shall be separated from the respective Service academy or USUHS and discharged. The Head of the Military Service concerned, or the designated representative, may delay separation to the end of the current academic year. A cadet or midshipman granted such a delay in the final academic year, who is otherwise qualified, may be graduated without commission and, thereafter, discharged. If the sole basis for discharge is serologic evidence of HIV-1 infection, an honorable discharge shall be issued.

D. Commissioned officers in DoD-sponsored professional education programs leading to appointment in a professional military specialty (including, but not limited to, medical, dental, chaplain, and legal and/or judge advocate) shall be disenrolled from the program at the end of the academic term in which serologic evidence of HIV-1 infection is confirmed. Disenrolled officers shall be administered in accordance with Service regulations. Except as specifically prohibited by statute, any additional Service obligation incurred by participation in such programs shall be waived, and financial assistance received in these programs shall not be subject to recoupment. Periods spent by such officers in these programs shall be applied fully toward satisfaction of any preexisting Service obligation.

E. All personnel disenrolled from officer programs who are to be separated shall be given appropriate counseling, to include preventive medicine counseling and advice to seek treatment from a civilian physician.

APPENDIX B TO PART 58—HIV-1 TESTING OF DOD CIVILIAN EMPLOYEES

A. Requests for authority to screen DoD civilian employees for HIV-1 shall be directed to the ASD(FM&P). Only requests that are based on a host-nation HIV-1 screening requirement shall be accepted. Requests based on other concerns, such as sensitive foreign policy or medical healthcare issues, shall not be considered under this part. Approvals shall be provided in writing by the ASD(FM&P). Approvals shall apply to all of the Heads of the DoD Components that may have activities located in the host nation.

B. Specific HIV-1 screening requirements may apply to DoD civilian employees currently assigned to positions in the host nation, and to prospective employees. When applied to prospective employees, HIV-1 screening shall be considered as a requirement imposed by another nation that must be met before the final decision to select the individual for a position or before approving temporary duty or detail to the host nation. The Secretary of Defense has made no official commitment, for positions located in

⁷See footnote 2 to §58.4(c).

host nations with HIV-1 screening requirements, to those individuals who refuse to cooperate with the screening requirement or to those who cooperate and are diagnosed as HIV-1 seropositive.

C. DoD civilian employees who refuse to cooperate with the screening requirement shall be treated, as follows:

1. Those who volunteered for the assignment, whether permanent or temporary, shall be retained in their official position without further action and without prejudice to employee benefits, career progression opportunities, or other personnel actions to which those employees are entitled under applicable law or regulation.

2. Those who are obligated to accept assignment to the host nation under the terms of an employment agreement, regularly scheduled tour of duty, or similar and/or prior obligation may be subjected to an appropriate adverse personnel action under the specific terms of the employment agreement or other authorities that may apply.

3. Host-nation screening requirements, which apply to DoD civilian employees currently located in that country, also must be observed. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges, to comply with the requirements.

D. Individuals who are not employed in the host nation, who accept the screening, and who are evaluated as HIV-1 seropositive shall be denied the assignment on the basis that evidence of seronegativity is required by the host nation. If denied the assignment, such DoD employees shall be retained in their current positions without prejudice. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges, on DoD civilian employees currently located in the host nation. In all cases, employees shall be given proper counseling and shall retain all the rights and benefits to which they are entitled, including accommodations for the handicapped as in the ASD(FM&P) Memorandum¹ "Information and Guidance on Human Immunodeficiency Virus (HIV)" January 22, 1988 and FPM Bulletin, 792-42² and for employees in the United States (29 U.S.C. 794). Non-DoD employees should be referred to appropriate support service organizations.

E. Some host nations may not bar entry to HIV-1-seropositive DoD civilian employees, but may require reporting of such individuals to host-nation authorities. In such cases, DoD civilian employees who are evaluated as HIV-1 seropositive shall be informed of the reporting requirements. They shall be counseled and given the option of declining the assignment and retaining their official

positions without prejudice or notification to the host nation. If assignment is accepted, the requesting authority shall release the HIV-1 seropositive result, as required. Employees currently located in the host nation may also decline to have seropositive results released. In such cases, they may request and shall be granted early return at Government expense or other appropriate personnel action without prejudice to employee rights and privileges.

F. A positive confirmatory test by WB must be accomplished on an individual if the screening test (ELISA) is positive. A civilian employee may not be identified as HIV-1 antibody positive, unless the confirmatory test (WB) is positive. The clinical standards in this Directive shall be observed during initial and confirmatory testing.

G. Procedures shall be established by the Heads of the DoD Components to protect the confidentiality of test results for all individuals, consistent with the ASD(FM&P) Memorandum and DoD Directive 5400.11.³

H. Tests shall be provided by the Heads of the DoD Components at no cost to the DoD civilian employees, including applicants.

I. DoD civilian employees infected with HIV-1 shall be counseled appropriately.

APPENDIX C TO PART 58—PERSONNEL NOTIFICATION AND EPIDEMIOLOGICAL INVESTIGATION

A. Personnel Notification

1. On notification by a medical health authority of an individual with serologic or other laboratory or clinical evidence of HIV-1 infection, the cognizant military health authority shall undertake preventive medicine intervention, including counseling of the individual and others at risk of infection, such as his or her sexual contacts (who are military healthcare beneficiaries), on transmission of the virus. The cognizant military health authority shall coordinate with the Heads of the military and civilian blood bank organizations and preventive medicine authorities to trace back possible exposure through blood transfusion or donation of infected blood (ASD(HA)) Memorandum and refer appropriate case-contact information to the appropriate military or civilian health authority.

2. All individuals with serologic evidence of HIV-1 infection who are military healthcare beneficiaries shall be counseled by a physician or a designated healthcare provider on the significance of a positive antibody test. They shall be advised as to the mode of transmission of that virus, the

¹See footnote 2 to §58.4(c).

²See footnote 2 to §58.4(c).

³See footnote 1 to §58.4(c).

appropriate precautions and personal hygiene measures required to minimize transmission through sexual activities and/or intimate contact with blood or blood products, and of the need to advise any past sexual partners of their infection. Women shall be advised of the risk of perinatal transmission during past, current, and future pregnancies. The infected individuals shall be informed that they are ineligible to donate blood and shall be placed on a permanent donor deferral list.

3. Service members identified to be at risk shall be counseled and tested for serologic evidence of HIV-1 infection. Other DoD beneficiaries, such as retirees and family members, identified to be at risk shall be informed of their risk and offered serologic testing, clinical evaluation, and counseling. The names of individuals identified to be at risk who are not eligible for military healthcare shall be provided to civilian health authorities in the local area where the index case is identified, unless prohibited by the appropriate State or host-nation civilian health authority. Such notification shall comply with the Privacy Act (5 U.S.C. 552a). Anonymity of the HIV-1 index case shall be maintained, unless reporting is required by civil authorities.

4. Blood donors who demonstrate repeatedly reactive ELISA tests for HIV-1, but for whom WB or other confirmatory test is negative or indeterminate, and who cannot be reentered into the blood donor pool shall be appropriately counseled.

B. Epidemiological Investigation

1. Epidemiological investigation shall attempt to determine potential contacts of patients who have serologic or other laboratory or clinical evidence of HIV-1 infection. The patient shall be informed of the importance of case-contact notification to interrupt disease transmission and shall be informed that contacts shall be advised of their potential exposure to HIV-1. Individuals at risk of infection include sexual contacts (male and female); children born to infected mothers; recipients of blood, blood products, organs, tissues, or sperm; and users of contaminated intravenous drug paraphernalia. Those individuals determined to be at risk who are identified and who are eligible for healthcare in the military medical system shall be notified. Additionally, the Secretaries of the Military Departments shall provide for the notification, either through local public health authorities or by DoD healthcare professionals, of the spouses of Reserve component members found to be HIV-1-infected. Such notifications shall comply with the Privacy Act (5 U.S.C. 552a). The Secretaries of the Military Departments shall designate all spouses (regardless of the Service affiliation of the HIV-1-infected Re-

servist) who are notified under this provision to receive serologic testing and counseling on a voluntary basis from MTFs under the Secretaries' of the Military Departments jurisdiction.

2. Communicable disease reporting procedures of civil authorities shall be followed to the extent consistent with this Directive through liaison between the military public health authorities and the appropriate local, State, territorial, Federal, or host-nation health jurisdiction.

PART 59—VOLUNTARY MILITARY PAY ALLOTMENTS

Sec.

- 59.1 Purpose.
- 59.2 Applicability.
- 59.3 Policy.
- 59.4 Responsibilities.

AUTHORITY: 37 U.S.C. chapter 13.

SOURCE: 52 FR 34215, Sept. 10, 1987, unless otherwise noted.

§ 59.1 Purpose.

This part updates the policies that implement title 37 U.S. Code, chapter 13 and govern voluntary allotments of pay and allowances for active and retired members.

§ 59.2 Applicability.

This part applies to the Office of the Secretary of Defense and the Military Departments. The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 59.3 Policy.

(a) *General.* (1) The voluntary allotment system is provided primarily as a means to assist military members in accommodating their personal and family financial responsibilities to the exigencies of military service. It is a convenience and privilege not to be exploited or abused. To avoid unjustifiable expense to the government, its use shall be limited to the purposes outlined in the following paragraphs.

(2) All existing approved registered allotments of military pay and allowances for active duty and retired members that were authorized previously by this part at the time registered may be continued as approved allotments. However, if any such allotments are