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Subpart D—Traffic Supervision

§ 634.24 Traffic planning and codes.

(a) Safe and efficient movement of traffic on an installation requires traffic supervision. A traffic supervision program includes traffic circulation planning and control of motor vehicle traffic; publication and enforcement of traffic laws and regulations; and investigation of motor vehicle accidents.

(b) Installation commanders will develop traffic circulation plans that provide for the safest and most efficient use of primary and secondary roads. Circulation planning should be a major part of all long-range master planning at installations. The traffic circulation plan is developed by the installation law enforcement officer, engineer, safety officer, and other concerned staff agencies. Highway engineering representatives from adjacent civil communities must be consulted to ensure the installation plan is compatible with the current and future circulation plan of the community. The plan should include the following:

(1) Normal and peak load routing based on traffic control studies.

(2) Effective control of traffic using planned direction, including measures for special events and adverse road or weather conditions.

(3) Point control at congested locations by law enforcement personnel or designated traffic directors or wardens, including trained school-crossing guards.

(4) Use of traffic control signs and devices.

(5) Efficient use of available parking facilities.

(6) Efficient use of mass transportation.

(c) Traffic control studies will provide factual data on existing roads, traffic density and flow patterns, and points of congestion. The installation law enforcement officer and traffic engineer usually conduct coordinated traffic control studies to obtain the data. Accurate data will help determine major and minor routes, location of traffic control devices, and conditions requiring engineering or enforcement services.

(d) The (Military) Surface Deployment and Distribution Command Transportation Engineering Agency (SDDCTEA) will help installation commanders solve complex highway traffic engineering problems. SDDCTEA traffic engineering services include—

(1) Traffic studies of limited areas and situations.

(2) Complete studies of traffic operations of entire installations. (This can include long-range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

(e) Installation commanders should submit requests for traffic engineering services in accordance with applicable service or agency directives.

§ 634.25 Installation traffic codes.

(a) Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this part, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 U.S.C. 402).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances.

(b) The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(5) Violators are responsible for all costs of towing, storage and impounding of vehicles for other than evidentiary reasons.

(c) Installation traffic codes will also contain the provisions discussed as follows: (Army users, see AR 385–55).

(1) *Motorcycles and mopeds.* For motorcycles and other self-propelled, open, two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine, the following traffic rules apply:

(i) Headlights will be on at all times when in operation.

(ii) A rear view mirror will be attached to each side of the handlebars.

(iii) Approved protective helmets, eye protection, hard-soled shoes, long trousers and brightly colored or reflective outer upper garment will be worn by operators and passengers when in operation.

(2) *Restraint systems.* (i) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(ii) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

(iii) Restraint systems will be worn by all military service members and Reserve Component members on active Federal service driving or riding in a POV whether on or off the installation.

(iv) Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

(v) Restraint systems are required only in vehicles manufactured after model year 1966.

(3) *Driver distractions.* Vehicle operators on a DoD Installation and operators of Government owned vehicles shall not use cell phones unless the vehicle is safely parked or unless they are using a hands-free device. The wearing of any other portable headphones, earphones, or other listening devices (except for hand-free cellular phones) while operating a motor vehicle is prohibited. Use of those devices impairs driving and masks or prevents recognition of emergency signals, alarms, announcements, the approach of vehicles, and human speech. DoD Component safety guidance should note the potential for driver distractions such as eating and drinking, operating radios, CD players, global positioning equipment, etc. Whenever possible this should only be done when the vehicle is safely parked.

(d) Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against service members for off-post violations of the installation traffic code.

(e) In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 U.S.C. 13 to military installations having concurrent or exclusive Federal jurisdiction.

(f) In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 U.S.C., DODD 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. In those States where traffic laws cannot be assimilated, an extract copy of this paragraph (f) and a copy of the delegation memorandum in DODD 5525.4, enclosure 1, will be posted in a prominent place accessible to persons assigned, living, or working on the installation.

(g) In those States where violations of traffic laws cannot be assimilated because the Federal Government's jurisdictional authority on the installation or parts of the installation is only proprietary, neither 18 U.S.C. 13 nor the delegation memorandum in DoDD

5525.4, enclosure 1, will permit enforcement of the State's traffic laws in Federal courts. Law enforcement authorities on those military installations must rely on either administrative sanctions related to the installation driving privilege or enforcement of traffic laws by State law enforcement authorities.

§ 634.26 Traffic law enforcement principles.

(a) Traffic law enforcement should motivate drivers to operate vehicles safely within traffic laws and regulations and maintain an effective and efficient flow of traffic. Effective enforcement should emphasize voluntary compliance by drivers and can be achieved by the following actions:

(1) Publishing a realistic traffic code well known by all personnel.

(2) Adopting standard signs, markings, and signals in accordance with NHSPS and the Manual on Uniform Traffic Control Devices for Streets and Highways.

(3) Ensuring enforcement personnel establish courteous, personal contact with drivers and act promptly when driving behavior is improper or a defective vehicle is observed in operation.

(4) Maintaining an aggressive program to detect and apprehend persons who drive while privileges are suspended or revoked.

(5) Using sound discretion and judgment in deciding when to apprehend, issue citations, or warn the offender.

(b) Selective enforcement will be used when practical. Selective enforcement deters traffic violations and reduces accidents by the presence or suggested presence of law enforcement personnel at places where violations, congestion, or accidents frequently occur. Selective enforcement applies proper enforcement measures to traffic congestion and focuses on selected time periods, conditions, and violations that cause accidents. Law enforcement personnel use selective enforcement because that practice is the most effective use of resources.

(c) Enforcement activities against intoxicated driving will include—

(1) Detecting, apprehending, and testing persons suspected of driving under the influence of alcohol or drugs.

(2) Training law enforcement personnel in special enforcement techniques.

(3) Enforcing blood-alcohol concentration standards. (See § 634.34).

(4) Denying installation driving privileges to persons whose use of alcohol or other drugs prevents safe operation of a motor vehicle.

(d) Installation officials will formally evaluate traffic enforcement on a regular basis. That evaluation will examine procedures to determine if the following elements of the program are effective in reducing traffic accidents and deaths:

(1) Selective enforcement measures;

(2) Suspension and revocation actions; and

(3) Chemical breath-testing programs.

§ 634.27 Speed-measuring devices.

Speed-measuring devices will be used in traffic control studies and enforcement programs. Signs may be posted to indicate speed-measuring devices are being used.

(a) *Equipment purchases.* Installations will ensure operators attend an appropriate training program for the equipment in use.

(b) *Training and certification standards.* (1) The commander of each installation using traffic radar will ensure that personnel selected as operators of such devices meet training and certification requirements prescribed by the State (or SOFA) in which the installation is located. Specific information on course dates, costs, and prerequisites for attending may be obtained by contacting the State agency responsible for police traffic radar training.

(2) Installation commanders located in States or overseas areas where no formal training program exists, or where the military personnel are unable or ineligible to participate in police traffic radar training programs, may implement their own training program or use a selected civilian institution or manufacturer's course.

(3) The objective of the civilian or manufacturer-sponsored course is to improve the effectiveness of speed enforcement through the proper and efficient use of speed-measurement radar.

On successful completion, the course graduate must be able to—

(i) Describe the association between excessive speed and accidents, deaths, and injuries, and describe the traffic safety benefits of effective speed control.

(ii) Describe the basic principles of radar speed measurement.

(iii) Identify and describe the Service's policy and procedures affecting radar speed measurement and speed enforcement.

(iv) Identify the specific radar instrument used and describe the instrument's major components and functions.

(v) Demonstrate basic skills in checking calibration and operating the specific radar instrument(s).

(vi) Demonstrate basic skills in preparing and presenting records and courtroom testimony relating to radar speed measurement and enforcement.

(c) *Recertification*. Recertification of operators will occur every 3 years, or as prescribed by State law.

§ 634.28 Traffic accident investigation.

Installation law enforcement personnel must make detailed investigations of accidents described in this section:

(a) Accidents involving Government vehicles or Government property on the installation involving a fatality, personal injury, or estimated property damage in the amount established by separate Service/DLA policy. (Minimum damage limits are: Army, $1,000; Air Force, as specified by the installation commander; Navy and Marine Corps, $500.) The installation motor pool will provide current estimates of the cost of repairs. Investigations of off-installation accidents involving Government vehicles will be made in cooperation with the civilian law enforcement agency.

(b) POV accidents on the installation involving a fatality, personal injury, or when a POV is inoperable as a result of an accident.

(c) Any accident prescribed within a SOFA agreement.

§ 634.29 Traffic accident investigation reports.

(a) *Accidents requiring immediate reports*. The driver or owner of any vehicle involved in an accident, as described in § 634.28, on the installation, must immediately notify the installation law enforcement office. The operator of any Government vehicle involved in a similar accident off the installation must immediately notify the local civilian law enforcement agency having jurisdiction, as well as law enforcement personnel of the nearest military installation.

(b) *Investigation records*. Installation law enforcement officials will record traffic accident investigations on Service/DLA forms. Information will be released according to Service/DLA policy, the Privacy Act, and the Freedom of Information Act.

(c) *Army law enforcement officers*. These officers provide the local Safety Office copies of traffic accident investigation reports pertaining to accidents investigated by military police that resulted in a fatality, personal injury, or estimated damage to Government vehicles or property in excess of $1,000.

(d) *POV accidents not addressed in § 634.28*. Guidance for reporting these cases is provided as follows:

(1) Drivers or owners of POVs will be required to submit a written report to the installation law enforcement office within 24 hours of an accident in the following cases, with all information listed in paragraph (d)(3) of this section:

(i) The accident occurs on the installation.

(ii) The accident involves no personal injury.

(iii) The accident involves only minor damage to the POV and the vehicle can be safely and normally driven from the scene under its own power.

(2) Information in the written report cannot be used in criminal proceedings against the person submitting it unless it was originally categorized a hit and run and the violator is the person submitting the report. Rights advisement will be given prior to any criminal traffic statements provided by violators.

Within the United States, the installation law enforcement official may require such reporting on Service forms or forms of the State jurisdiction.

(3) Reports required in paragraph (d)(1) of this section by the Army will include the following about the accident:

(i) Location, date, and time.

(ii) Identification of all drivers, pedestrians, and passengers involved.

(iii) Identification of vehicles involved.

(iv) Speed and direction of travel of each vehicle involved, including a sketch of the collision and roadway with street names and north arrow.

(v) Property damage involved.

(vi) Environmental conditions at the time of the incident (weather, visibility, road surface condition, and other factors).

(vii) A narrative description of the events and circumstances concerning the accident.

§ 634.30 Use of traffic accident investigation report data.

(a) Data derived from traffic accident investigation reports and from vehicle owner accident reports will be analyzed to determine probable causes of accidents. When frequent accidents occur at a location, the conditions at the location and the types of accidents (collision diagram) will be examined.

(b) Law enforcement personnel and others who prepare traffic accident investigation reports will indicate whether or not seat restraint devices were being used at the time of the accident.

(c) When accidents warrant, an installation commander may establish a traffic accident review board. The board will consist of law enforcement, engineer, safety, medical, and legal personnel. The board will determine principal factors leading to the accident and recommend measures to reduce the number and severity of accidents on and off the installation. (The Air Force will use Traffic Safety Coordinating Groups. The Navy will use Traffic Safety Councils per OPNAVINST 5100.12 Series).

(d) Data will be shared with the installation legal, engineer, safety, and transportation officers. The data will be used to inform and educate drivers and to conduct traffic engineering studies.

(e) Army traffic accident investigation reports will be provided to Army Centralized Accident Investigation of Ground Accidents (CAIG) boards on request. The CAIG boards are under the control of the Commander, U.S. Army Safety Center, Fort Rucker, AL 36362–5363. These boards investigate Class A, on-duty, non-POV accidents and other selected accidents Army-wide (See AR 385–40). Local commanders provide additional board members as required to complete a timely and accurate investigation. Normally, additional board members are senior equipment operators, maintenance officer, and medical officers. However, specific qualifications of the additional board members may be dictated by the nature of the accident.

(f) The CAIG program is not intended to interfere with, impede, or delay law enforcement agencies in the execution of regulatory responsibilities that apply to the investigation of accidents for a determination of criminal intent or criminal acts. Criminal investigations have priority.

(g) Army law enforcement agencies will maintain close liaison and cooperation with CAIG boards. Such cooperation, particularly with respect to interviews of victims and witnesses and in collection and preservation of physical evidence, should support both the CAIG and law enforcement collateral investigations.

§ 634.31 Parking.

(a) The most efficient use of existing on- and off-street parking space should be stressed on a nonreserved (first-come, first-served) basis.

(b) Reserved parking facilities should be designated as parking by permit or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title should be avoided.

(c) Illegal parking contributes to congestion and slows traffic flow on an installation. Strong enforcement of parking restrictions results in better use of available parking facilities and eliminates conditions causing traffic accidents.

(d) The ''Denver boot'' device is authorized for use as a technique to assist in the enforcement of parking violations where immobilization of the POV is necessary for safety. Under no circumstances should the device be used to punish or ''teach a lesson'' to violators. Booting should not be used if other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, revocations, or suspensions of on-post driving privileges) are available. Procedures for booting must be developed as follows:

(1) Local standing operating procedures (SOPs) must be developed to control the discretion of enforcers and limit booting to specific offenses. SOPs should focus on specific reasons for booting, such as immobilization of unsafe, uninspected, or unregistered vehicles or compelling the presence of repeat offenders. All parking violations must be clearly outlined in the installation traffic code.

(2) Drivers should be placed on notice that particular violations or multiple violations may result in booting. Also, drivers must be provided with a prompt hearing and an opportunity to obtain the release of their property.

(3) To limit liability, drivers must be warned when a boot is attached to their vehicle and instructed how to have the boot removed without damaging the vehicle.

§ 634.32 Traffic violation reports.

(a) Most traffic violations occurring on DOD installations (within the UNITED STATES or its territories) should be referred to the proper U.S. Magistrate. (Army, see AR 190–29; DLA, see DLAI 5720.4; and Air Force, see AFI 51–905). However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court. For the Navy, DUI and driving under the influence of drugs cases will be referred to the Federal Magistrate.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a DD Form 1805 (United States District Court Violation Notice), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms. Air Force individuals certified under the Parking Traffic Warden Program may issue DD Form 1408 in areas under their control.

(2) A copy of all reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) DD Form 1805 will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and the delegation memorandum in DoDD 5525.4, enclosure 1, and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190–29.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator. DA form 3975 may be used to forward the report.

(2) Detailed instructions for properly completing DD Form 1805 are contained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the DD

Form 1805 (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the DD Form 1805 will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of DD Form 1805 will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service member's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

§ 634.33 Training of law enforcement personnel.

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36 (b)).

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(d) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(e) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

§ 634.34 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested under the implied consent provisions of § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage of alcohol in the person's blood is less than 0.05 percent, presume the person is not under the influence of alcohol.

(2) If the percentage is 0.05 but less than 0.08, presume the person may be impaired. This standard may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If the percentage is 0.08 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in paragraph (a) of this section are percent of weight by volume of alcohol in the blood based on grams of alcohol per 100 milliliters of blood. These presumptions will be considered with other evidence in determining intoxication.

§ 634.35 Chemical testing policies and procedures.

(a) *Validity of chemical testing.* Results of chemical testing are valid under this part only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33).

(3) An evidential breath-testing device approved by the State or host nation is used. For Army, Air Force, and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the ''Conforming Products List for instruments that conform to the Model Specification for Evidential Breath Testing Devices (58 FR 48705), and amendments.''

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) *Breath-testing device operational procedures.* If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Screening breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on an evidential breath-testing device.

(ii) According to manufacture operating instructions. (For Army, Air Force and Marine Corps, the screening breath-testing device must also be listed on the NHTSA conforming products list published in the ''Model Specifications for Evidential Breath Testers'' (September 17, 1993, 58 FR 48705).

(2) Evidential breath-testing devices will be used as follows:

(i) Observe the person to be tested for at least 15 minutes before collecting the breath specimen. During this time, the person must not drink alcoholic beverages or other fluids, eat, smoke, chew tobacco, or ingest any substance.

(ii) Verify calibration and proper operation of the instrument by using a control sample immediately before the test.

(iii) Comply with operational procedures in the manufacturer's current instruction manual.

(iv) Perform preventive maintenance as required by the instruction manual.

(c) *Chemical tests of personnel involved in fatal accidents.* (1) Installation medical authorities will immediately notify the installation law enforcement officer of—

(i) The death of any person involved in a motor vehicle accident.

(ii) The circumstances surrounding such an accident, based on information available at the time of admission or receipt of the body of the victim.

(2) Medical authorities will examine the bodies of those persons killed in a motor vehicle accident to include drivers, passengers, and pedestrians subject to military jurisdiction. They will also examine the bodies of dependents, who are 16 years of age or older, if the sponsors give their consent. Tests for the presence and concentration of alcohol or other drugs in the person's blood, bodily fluids, or tissues will be made as soon as possible and where practical within 8 hours of death. The test results will be included in the medical reports.

(3) As provided by law and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose vehicle is involved in a fatal accident.

§ 634.36 Detection, apprehension, and testing of intoxicated drivers.

(a) Law enforcement personnel usually detect drivers under the influence of alcohol or other drugs by observing unusual or abnormal driving behavior. Drivers showing such behavior will be stopped immediately. The cause of the unusual driving behavior will be determined, and proper enforcement action will be taken.

(b) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle is impaired, field sobriety tests should be conducted on the individual. The DD Form 1920 may be used by law enforcement agencies in examining, interpreting, and recording results of such tests. Law enforcement personnel should use a standard field sobriety test (such as one-leg stand or walk and

turn) horizontal gaze nystagmus tests as sanctioned by the National Highway Traffic and Safety Administration, and screening breath-testing devices to conduct field sobriety tests.

§ 634.37 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent provisions of this part may be used as evidence in courts-martial, nonjudicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this part.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined in this section pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) (MRE 315), and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFI 44–102.

(2) Army and Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction must be based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described in § 634.37, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle and suspected of being under the influence of an intoxicant may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to MRE 315, is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by MRE 315, to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under MRE 315 need not be on duty as the attending physician at the facility where the extraction is to be performed and the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600–20, section IV. Extraction of blood will be accomplished by qualified medical personnel. (See MRE 312(g)).

(1) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(2) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(3) Life endangering force will not be used in an attempt to effect nonconsensual extractions.

(4) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(d) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

(e) Use of Army medical treatment facilities and personnel for blood alcohol testing has no relevance to whether or not the suspect is eligible for military medical treatment. The medical effort in such instances is in support of a valid military mission (law enforcement), not related to providing medical treatment to an individual.

§ 634.39 Testing at the request of the apprehended person.

(a) A person subject to tests under § 634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command. All tests will be completed as soon as possible, with any delay being noted on the results.

(b) If the person requests this test, the suspect is responsible for making all arrangements. If the suspect fails to or cannot obtain any additional test, the results of the tests that were done at the direction of a law enforcement official are not invalid and may still be used to support actions under separate

Service regulations, UCMJ, and the U.S. Magistrate Court.

§ 634.40 General off installation traffic activities.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Army and Air Force installation law enforcement authorities will establish a system to exchange information with civil authorities to enhance the chain of command's visibility of a soldier's and airman's off post traffic violations. These agreements will provide for the assessment of traffic points based on reports from state licensing authorities involving Army military personnel. The provisions of subpart E of this part and the VRS automated system provide for the collection of off post traffic incident reports and data. As provided in AR 190–45, civilian law enforcement agencies are considered routine users of Army law enforcement data and will be granted access to data when available from Army law enforcement systems of records. Off-installation traffic activities in overseas areas are governed by formal agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this part. The exchange of information is limited to Army and Air Force military personnel. Provost marshals will not collect and use data concerning civilian employees, family members, and contract personnel except as allowed by state and Federal laws.

§ 634.41 Compliance with State laws.

(a) Installation commanders will inform service members, contractors and DOD civilian employees to comply with State and local traffic laws when operating government motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR 55–162/OPNAVINST 4600.11D/AFJI 24–216/MCO 4643.5C).

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the following conditions exists.

(i) The offense warrants detention.

(ii) The person's condition is such that further operation of a motor vehicle could result in injury to the person or others.

(2) Prompt notice to military authorities when military personnel or drivers of Government motor vehicles have—

(i) Committed serious violations of civil traffic laws.

(ii) Been involved in traffic accidents.

(3) Prompt notice of actions by a State or host nation to suspend, revoke, or restrict the State or host nation driver's license (vehicle operation privilege) of persons who—

(i) Operate Government motor vehicles.

(ii) Regularly operate a POV on the installation. (See also § 634.16).

§ 634.42 Civil-military cooperative programs.

(a) *State-Armed Forces Traffic Workshop Program.* This program is an organized effort to coordinate military and civil traffic safety activities throughout a State or area. Installation commanders will cooperate with State and local officials in this program and provide proper support and participation.

(b) *Community-Installation Traffic Workshop Program.* Installation commanders should establish a local workshop program to coordinate the installation traffic efforts with those of local communities. Sound and practical traffic planning depends on a balanced program of traffic enforcement, engineering, and education. Civilian and military legal and law enforcement officers, traffic engineers, safety officials, and public affairs officers should take part.