

§ 634.34

(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) Breath-testing devices must be listed on the approved NHTSA conforming products list published in the FEDERAL REGISTER. All tests must be administered by trained personnel as specified in § 634.36 and must adhere to the procedures described in §§ 634.37 and 634.38 relating to voluntary and involuntary testing.

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

(e) 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.

(f) 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 per § 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.

32 CFR Ch. V (7-1-99 Edition)

(2) If the percentage is 0.05 but less than 0.10, presume the person is 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 0.10 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.

(c) The standards in paragraph (a) of this section, may be modified locally to agree with those established by the State or host nation.

(d) 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 regulation 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(c)).

(3) A non-portable breath-testing device approved by the State or host nation is used. For Army and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the FEDERAL REGISTER. (See § 634.33.)

(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) Portable 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 a non-portable evidentiary breath-testing device.

(ii) According to manufacturer operating instructions. (For Army and Marine Corps, the portable breath-testing device must also be listed on the NHTSA conforming products list published in the FEDERAL REGISTER.)

(2) Non-portable evidentiary 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, and other pedestrians (16 years or older with sponsor's consent only). 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 will 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) and portable breathalyzers 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 regulation may be used as evidence in courts-martial, nonjudicial proceedings under Article