

## Department of the Army, DoD

## § 634.11

available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specific period, but never less than 6 months, applies at all military installations, and remains in effect on reassignment.

(2) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting of the privilege. (See § 634.6.) Revocation of installation driving and registration privileges is authorized for military personnel, family members, civilian employees of DOD, and other individuals with installation driving privileges. For civilian guests, revocation is authorized only with respect to incidents occurring on the installation or in the areas subject to military traffic supervision.

(3) Driving privileges will be revoked for a mandatory period of not less than 1 year in the following circumstances:

(i) The installation commander or designee has determined that the person lawfully apprehended for intoxicated driving refused to submit to or complete a test to measure the alcohol content in the blood, or detect the presence of any other drug, as required by the law of the jurisdiction, installation traffic code, or by Service directive.

(ii) A conviction, nonjudicial punishment, or a military or civilian administrative action resulted in the suspension or revocation of a driver's license for intoxicated driving. Appropriate official documentation of such conviction is required as the basis for revocation.

(4) When temporary suspensions under § 634.10(a)(3) are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: privileges were initially suspended on 1 January 1996 for a charge of intoxicated driving with a blood alcohol content of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on 1 February pending resolution of the charge. On 10 March, the driver was convicted for intoxicated

driving. The mandatory 1-year revocation period will consist of January 1996 plus March 1996 through January 1997, for a total of 12 months with no installation driving privileges.)

### **§ 634.11 Administrative due process for suspensions and revocations.**

(a) Individual Services will promulgate separate regulations establishing administrative due process procedures for suspension or revocation of driving privileges. The procedures in paragraphs (b) and (c) of this section apply to actions taken by Army commanders with respect to Army military personnel and family members and to civilian personnel operating motor vehicles on Army installations. For Marine Corps users, the provisions of this paragraph apply pending publication of a Marine Corps order addressing administrative due process.

(b) For offenses other than intoxicated driving, suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers that person an administrative hearing. Suspension or revocation will take place 10 days after this written notice is received unless an application for a hearing is made by the affected person within this period. Such application will stay the pending suspension or revocation for a period of 10 days.

(1) If, due to action by the Government, a hearing is not held within 10 days, the suspension will not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the 10-day period, the suspension or revocation will become effective immediately on receipt of notice that the request for continuance has been granted.

(2) If it is determined as the result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective when the person receives the written notification of such action. In the event that written notification cannot be verified either through a returned receipt for mail or delivery

through command channels, the hearing authority will determine the effective date on a case-by-case basis.

(3) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through command channels to the installation commander within 10 days from the date the individual is notified of the suspension or revocation resulting from the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be considered per § 634.16.

(c) For drunk driving or driving while intoxicated offenses, reliable evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges.

(1) The reviewer should be any officer whose primary duties are not in the field of law enforcement.

(2) Reliable evidence includes material such as witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to complete chemical testing, video tapes, statements by the apprehended individual, field sobriety or preliminary breath test results, and other pertinent evidence.

(3) Reviews normally will be accomplished within the first normal duty day following final assembly of evidence.

(4) When detailed and reliable evidence is not available, immediate suspension should not be based on published lists of arrested persons, statements by parties not witnessing the apprehension, or telephone conversations or other information not supported by documented and reliable evidence.

(5) Installation commanders may authorize the installation law enforcement officer to conduct reviews and authorize suspensions in cases where the designated reviewer is not reasonably available and, in the judgment of the installation law enforcement officer,

such immediate action is warranted. Review by the designated officer will follow as soon as practicable in such cases. When a suspension notice is based on the law enforcement officer's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(6) For active duty military personnel, written notice of suspension for intoxicated driving will be provided to the individual's chain of command for immediate presentation to the individual.

(7) For civilian personnel, written notice of suspension for intoxicated driving normally will be provided without delay via certified mail. If the person is employed on the installation, such notice will be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended will be required to provide written acknowledgment of receipt of the suspension notice.

(8) Notices of suspension for intoxicated driving will include the following:

(i) The fact that the suspension can be made a revocation under § 634.10(b).

(ii) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within 10 days of the notice of suspension.

(iii) The right of military personnel to be represented by counsel at his or her own expense and to present evidence and witnesses at his or her own expense. Installation commanders will determine the availability of any local active duty representatives requested.

(iv) The right of Department of the Army (DA) civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(v) Written acknowledgment of receipt to be signed by the individual whose privileges are to be suspended or revoked.

(9) If a hearing is requested, it must take place within 10 days of receipt of

the request. The suspension for intoxicated driving will remain in effect until a decision has been made by the installation commander or designee, but will not exceed 10 working days after the hearing while awaiting the decision. If no decision has been made by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(10) Hearing on suspension actions under § 634.10(a) for intoxicated drivers pending resolution of charges will cover only the pertinent issues of whether—

(i) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs.

(ii) The person was lawfully cited or apprehended for an intoxicated driving offense.

(iii) The person was lawfully requested to submit to a test for alcohol or other drug content of blood, breath, or urine and was informed of the consequences of refusal to take or complete such test.

(iv) The person refused to submit to the test for alcohol or other drug content of blood, breath, or urine; failed to complete the test; or submitted to the test and the result was 0.10 percent or higher blood alcohol content, or showed results indicating the presence of other drugs for an on-post apprehension or in violation of State laws for an off-post apprehension.

(v) The testing methods used were valid and reliable, and the results accurately evaluated.

(11) For revocation actions under § 634.10(b)(3) for intoxicated driving, the revocation is mandatory on conviction or other findings that confirm the charge. (Pleas of nolo contendere are considered equivalent to guilty pleas.)

(i) Revocations are effective as of the date of conviction or other findings that confirm the charges.

(ii) The notice that revocation is automatic may be placed in the suspension letter. If it does not appear in the suspension letter, a separate letter must be sent and revocation is not effective until receipt of the written notice.

(iii) Revocations cancel any full or restricted driving privileges that may have been restored during suspension and the resolution of the charges. Requests for restoration of full driving privileges are not authorized.

#### **§ 634.12 Army administrative actions against intoxicated drivers.**

Army commanders will take appropriate action against intoxicated drivers. These actions will include the following:

(a) A written general officer reprimand, administrative in nature, will be issued to active duty Army officers, commissioned and warrant, and non-commissioned officers, to include soldiers in the grade of E-4 appointed on official orders to corporal, in the cases described below. This reprimand may be issued by an officer frocked to the grade of brigadier general. Subsequent filing of the reprimand will be in accordance with the provisions of AR 600-37.

(1) Conviction of intoxicated driving or driving under the influence of alcohol or other drugs either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.10 percent or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of State laws, irrespective of other charges.

(4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.

(b) A written reprimand, administrative in nature, may be issued by a general officer or other appropriate official to active duty soldiers in the grade of E-4 (except corporals) and below in cases described in paragraph (a) of this section.

(c) Review by commanders of the service records of active duty soldiers apprehended for offenses described in